



House of Commons
CANADA

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

JUST • NUMBER 046 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, June 16, 2005

—
Chair

Mr. John Maloney

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

Thursday, June 16, 2005

• (0905)

[English]

The Chair (Mr. John Maloney (Welland, Lib.)): I'd like to open the meeting.

This is the 46th meeting of the Standing Committee on Justice, Human Rights, Public Safety, and Emergency Preparedness. We are currently examining Bill C-16, an act to amend the Criminal Code with respect to impaired driving.

Our guests this morning are, from Mothers Against Drunk Driving, Mr. Murie and Mr. Solomon; from the Canadian Council of Criminal Defence Lawyers, Mr. Di Luca; from the Canadian Association of Chiefs of Police, Christopher McNeil; and we still have one group to come through, the Traffic Injury Research Foundation.

We'll start with Mothers Against Drunk Driving.

The routine is a presentation by you up to ten minutes. Everyone will make their presentation, to be followed by questioning by the members in five-minute rounds for questions and answers.

Mr. Solomon, are you going to make the presentation?

Mr. Robert Solomon (Director, Legal Policy, Mothers Against Drunk Driving): Thank you. I'm appearing today on behalf of Mothers Against Drunk Driving. I am MADD Canada's national director of legal policy. I've been a professor at the University of Western Ontario in London since 1972. I've authored numerous articles, studies, and government reports on legal issues in the alcohol and drug field. My research in recent years has focused on impaired driving and the reform of related federal and provincial legislation. Today I will be speaking in favour of Bill C-16 and offering suggestions for strengthening the legislation.

The first thing I want to talk about is the need for Bill C-16. There is ample reason to view drug-impaired driving as a matter of concern. While the exact causal role of various drugs and crashes requires more research, it is clear that drug use constitutes a significant traffic safety problem in Canada. This is particularly true for young drivers. They have the highest rates of both illicit drug use and the highest rates of crashes per kilometre driven.

Although section 253 of the Criminal Code prohibits driving while one's ability to do so is impaired by a drug, it fails to provide the police with any practical means of gathering the evidence necessary for such charges. As a result, those who drive in Canada

while impaired by drugs, or by drugs in combination with alcohol, are largely immune from criminal charges.

Given that Canada's first criminal prohibition against drug-impaired driving was introduced in 1925, it's an understatement that Bill C-16 is long overdue. In any event, the recent increases in drug use and driving, particularly among young drivers, makes the immediate enactment of Bill C-16 essential. It would be a mistake to tie Bill C-16 to Bill C-17, the penalty reduction legislation for cannabis. Similarly, it would be a mistake to postpone enacting Bill C-16 until a consensus emerges on Bill C-17.

I now want to turn to the bill itself. The first thing I would like to do is congratulate Justice Canada and its officials. The bill is a much simpler, stronger, and constitutionally sound framework for drug enforcement than the drug-impaired-driving consultation paper that preceded it. It's gratifying to see that the recommendations that MADD Canada had made in conjunction with the police community have been adopted in the new legislation.

Nevertheless, there are four amendments that we feel would strengthen the bill and improve impaired driving enforcement in Canada. The first suggestion is to amend section 258 of the Criminal Code to extend the presumptions of temporality from two hours to three hours. This is technically complex, like most of the impaired driving legislation. So I'll try to go over it fairly carefully. Pursuant to the presumptions of temporality, evidentiary breath and blood samples taken within two hours of the offence are admissible as evidence of the accused's blood alcohol concentration at the time of the offence. These presumptions are critical to the Crown, because they relieve the prosecutor of the time-consuming and costly obligation of calling a toxicologist in each case.

In 1999, Parliament extended the time the police had to make a demand for breath or blood samples from two to three hours. This amendment appeared promising. It sought to reduce the number of impaired drivers who escaped criminal liability due to the Criminal Code's rigid time constraints. This was often a problem if the arrest was made in a rural area, if the arrest was made on a busy night, or if the police officer was delayed in beginning his investigation because he had to assist at the scene or assist crash victims. However, when Parliament extended the time to make the demand for the blood and breath test, it didn't extend the time in the presumption. As a result, if breath and blood samples are taken after the two-hour limit, the Crown must still call a toxicologist in each and every case. Given the time, expense, and complexity of obtaining such evidence, the charges will most likely be withdrawn, except in cases involving death or serious injury. Due to the failure to extend the presumptions of temporality, the 1999 amendment extending the time period within which police may demand samples has been rendered largely useless.

Secondly, we wish to amend Bill C-16 and the Criminal Code to authorize health practitioners who are appropriately licensed under provincial and territorial law to collect blood samples under the impaired driving provisions. Currently, under the law, only a medical doctor can take the blood samples or direct others to do so. The Criminal Code does not require medical doctors to become involved. Thus, medical doctors may, for whatever reason, choose not to draw the sample. Given the Criminal Code's time limits, it is often difficult for the police to find a doctor who is available and willing to take the time from their other responsibilities to do so.

In our view, these restrictions should be lifted, as they are unnecessary and impractical, and nurses and other licensed and regulated health professionals should be authorized to take the samples. The reality is that it's nurses and related health professionals who in fact draw all the blood samples, or the vast majority of blood samples, in this country, so we want that extended. This amendment would remove one of the other needless obstacles to more effective impaired driving enforcement in this country.

Third, we want to amend Bill C-16 to authorize the police to videotape field sobriety and drug recognition tests. Impaired driving cases are rigorously defended, and all aspects of the officer's conduct may be challenged. Authorizing the police to videotape the tests for drug impairment would provide them with additional evidence, adding weight to the officer's testimony about the suspect's demeanour, behaviour, and performance. Research suggests that videotaping, or the ability of the police to videotape, improves the efficiency of enforcement and results in fewer contested cases. A small pilot project in Ontario suggests that there would be considerable support among police, prosecutors, judges, and defence counsel for videotaping field sobriety and drug evaluation tests. We view it as a minor amendment that would strengthen the legislation.

Fourth, and our last suggested amendment to the bill, is to allow the results of field sobriety testing and drug recognition testing to be used by provincial highway traffic safety officials. It's somewhat ironic that Bill C-16, as drafted, would make it a federal criminal offence for provincial and territorial officials to use these test results to issue short-term roadside licence suspensions; to issue 90-day provincial licence suspensions; and to require impaired drivers to

participate in remedial education, assessment, treatment, and alcohol interlock programs; or to use this evidence in making decisions about impounding vehicles. These provincial and territorial programs play an extremely important role in Canada's overall highway traffic safety strategy. As other witnesses have no doubt pointed out, it would be inefficient and counterproductive to prohibit provinces and territories from using the results of these tests in their traffic safety programs.

I now want to turn to some suggestions about the implementation of the bill, which I think are as important as the suggested amendments. The passage of Bill C-16 simply provides a framework for the enforcement of drug-impaired charges. Unless adequate numbers of police officers are trained and certified to conduct standard field sobriety and drug recognition testing, Bill C-16 will rarely be used. Similarly, there must be sufficient laboratory and toxicological resources available to process, in a timely fashion, the blood and other samples seized under Bill C-16.

• (0910)

It is probably safe to say that relatively few Canadian judges are familiar with standard field sobriety tests and drug recognition testing. Moreover, it is unrealistic to assume that our judges will readily accept drug testing evidence until they develop a better understanding of the elements and scientific underpinnings of these tests.

Unlike the situation in the United States, there is very little information or research on these issues in the Canadian legal or traffic safety literature. The federal government needs to support research on standard field sobriety tests and drug recognition tests, and it must make sure that this information is widely disseminated in the Canadian legal and traffic safety communities.

Police training, the expansion of toxicological resources, and research on standard field sobriety testing are essential to achieving the goals of Bill C-16. We would urge this committee to strongly recommend to the federal government and Transport Canada that these initiatives be funded and implemented.

In conclusion, drug-impaired driving constitutes a significant traffic safety problem, particularly among young drivers. Bill C-16 needs to be amended and passed without delay. It must be passed and implemented well before any action is taken on Bill C-17. Finally, the federal government must ensure that funding is available to train sufficient numbers of officers, to expand services, and to support research on testing.

In closing, I would like to thank you on behalf of my colleague, Andrew Murie, the CEO of MADD Canada, for this opportunity to appear before you on this important matter.

• (0915)

The Chair: Thank you very much, Mr. Solomon.

Mr. Di Luca, please, for 10 minutes.

Mr. Joseph Di Luca (Representative, Canadian Council of Criminal Defence Lawyers): Thank you, Mr. Chair and committee members.

The Canadian Council of Criminal Defence Lawyers welcomes the opportunity to make submissions on this obviously very important piece of legislation. In preparing our submissions today, the CCCDL has collected input from criminal defence lawyers across the country, from British Columbia to Newfoundland up to Nunavut.

The Canadian Council of Criminal Defence Lawyers wants to acknowledge the very valid purpose behind this legislation, which is obviously aimed at ending the carnage on the roads. There's no doubt that drunk and drug-impaired drivers cause inestimable tolls on families and people everywhere.

The CCCDL takes the position that the legislative scheme that's proposed is not only susceptible to potential constitutional challenge but is also overly complex. There is a real risk, in our submission, that the proposed provisions will add a significant layer of technicality to an area of law that as anyone who has ever practised or looked at the area knows is already viewed by many people as overburdened by technical legal defences. It may well be that the issue this legislation tries to tackle is complex in nature and that therefore the response must also be complex, but our concern is that the provisions as crafted in effect will create a veritable minefield for defence counsel to work in.

That said, the CCCDL obviously does not in principle oppose the attenuation of the risk posed by impaired drivers. I want to be clear on that. Rather, what we seek is to have this aim, a very valid aim, accomplished by means that are balanced, appropriately tailored, and meet the constitutional requirements, and moreover, done in a manner that does not infuse the process with unnecessary uncertainty.

I'll just go clause by clause and highlight some of the concerns we have as a national organization. I'll highlight some of the areas we find problematic.

In subclause 2(3), which amends the screening demand provisions of the Criminal Code to permit screening demands to be made where there are reasonable grounds to suspect that a drug is in someone's body, there's no clear understanding as to what "drug" is. Is it an illicit drug? Is it a prescribed drug? Is it an over-the-counter drug? If a person has caffeine or Tylenol or Contac C, is that a drug that is sufficient to trigger a roadside detention and investigation? And if the standardized field sobriety test is met for a variety of reasons, is that sufficient constitutionally to warrant a detention at a police station for upwards of an hour for an investigation?

In my respectful submission, the potential for abuse in that is wide. And there's a distinction to be drawn. When we look at alcohol we know very clearly that alcohol in the body can and will impair a person's ability to drive a motor vehicle; it's just a question of how much or when. There are drugs, however, that will not impair a person's ability to drive. Alcohol will, so to attenuate a person's rights on the suspicion of alcohol in their body is understandably constitutional, given its well-known effects. To have a broad-phrased "drug" alone may well shift, in our submission, the delicate constitutional balance that's required under section 1 to justify the violation of a person's rights at the roadside. It may well be.

Our submission on this point is that in terms of suspicion, a more constitutionally sound provision would tie the suspicion of a drug in the person's body, on the basis of suspicion that it would impair the ability to drive. If the officer suspects that the person's ability to drive is impaired by a drug, at least that way there's a link between the drug in the system and the possibility of impairment. Right now it doesn't exist. Right now, the mere presence of a drug without anything further is sufficient to detain the person.

That's one issue we would have serious concerns over. It remains to be fleshed out, because what will end up happening is that the constitutional analyses that were undertaken in the alcohol-related context will need to be redone under this new regime, and the balance will be different. Leaving it that broad may well invite constitutional scrutiny.

● (0920)

Turning to the issue of the standardized field sobriety tests, obviously they're not set out in the legislation; they need to be clarified by regulation.

The case law in Canada on this, to be blunt, is all over the map. There are judges who call it "junk science"; there are other judges who accept it. From what appears now, in terms of the scheme that's proposed, it will still be the subject of expert testimony at a trial.

Many years ago, when police officers used radar guns to determine the speed of vehicles, expert evidence needed to be called in the courts to prove that the radar gun did what it purported to do. We don't do that any more; it has become an accepted science. We're at a nascent stage with this science right now, at least in Canada. You're looking at an increased use of court resources, turning these trials, quite frankly, into very long, complex trials, because the science will have to be proven.

Moving on, regarding the scheme that allows for the drug recognition evaluation at the police station, we have a number of concerns. I'll try to highlight them briefly.

We absolutely and wholeheartedly adopt MADD's suggestion that these tests should be videotaped. On a very practical note, as a criminal defence lawyer having represented many individuals charged with these offences, I can tell you that from a resolution point of view, I have been able to convince clients much more clearly that a resolution is in their best interests once I've been able to pop a videotape into a VCR and show them just how impaired they were on the evening in question. From that perspective, it is tangible, indisputable, objective evidence as to a person's state of impairment. The courts have relied on it.

Conversely, in those cases that we aggressively defend, it has the opportunity of removing the subjective component from the testing. The tests are geared to be scientific, or have some measure of scientific validity, but inevitably there is going to be a subjective component to the tests, and there will always be an issue as to whether the test was administered according to the protocols. Having a videotape of these tests will answer that question, in all likelihood, and will permit, from a defence perspective, an independent analysis to be conducted of it—which may well confirm that the test was validly done and that its result is scientifically valid; it may also call into question the test.

But ultimately, if the answer is in effect the search for the truth, having a videotape of these tests hurts no one on either side—subject, of course, to financing issues, and that, obviously, is going to be a live concern.

Turning to the admissibility of the drug recognition evaluation, obviously once again, just on that alone the science will need to be proven in court; that's going to be an issue. As opposed to approved instruments, which are scheduled and deemed by presumption to be accurate, the science behind this will need to be the subject of testimony in court, until judges reach a comfort level where they can accept it. You're looking at litigating this issue repeatedly in a number of cases, and you may well be looking at split decisions from different levels of court until appellate authority can settle on the issue. So that's going to be an issue.

I note that in the materials provided in addition to the proposed bill there is an indication that charges will not be laid until the drug testing or the drug recognition evaluation is confirmed by the blood, saliva, or urine test. The questions we have with that are: how long is it going to take for the toxicology test to be done; and what do you do with the person once they're at the police station? Do you let them drive home at that point? Do you keep them in custody?

The toxicology reports, in my experience, are not done on the spot; they're sent off to a laboratory. It could be days, weeks, or months. Keep in mind that—and I use this term in context—the “garden variety” drunk or drug-impaired case is prosecuted summarily, which means there is going to be a limitation period in laying this charge; you're looking at a six-month limitation.

I'm not sure whether the toxicology tests will be done in time; they may well be. You are then going to have to find the accused. The person is gone; they've left the station; they've moved on. If the person is a long-haul truck driver who got stopped drunk driving in Quebec and kept on driving, the person may well be in Vancouver by the time you get around to getting a toxicology report done. It's an impracticality, in that sense, that might need to be fleshed out.

• (0925)

But having said that, we are in support of the confirmation *ex post* of the drug evaluation. It makes sense, and it perhaps recognizes the fact that there's a subjective component to these tests.

The only other issue I would like to add briefly is that the scheme as contemplated right now will set up a quagmire for police officers in terms of testifying and articulating their path of reasoning in assessing grounds to make certain demands. As defence counsel, we already make life tough for police officers in testing their evidence on these cases. Now what you're going to have is the possibility of parallel investigations.

When a police officer launches into an investigation that is looking into alcohol impairment, and potentially drug alone or drug and alcohol impairment, the advice you will be giving a client will be inordinately complex. You will receive a telephone call from a client saying, “I am at the station. They want me to perform sobriety tests here at the station.” You will need to ascertain as a defence counsel, through the police officers, whether this is an alcohol investigation alone. If it is, generally speaking, the advice would be not to perform any sobriety tests at the station. If it's not an alcohol-

related investigation, but rather a drug- or drug-and-alcohol-related investigation, we'll need to ascertain whether there's a basis for being there and give the client advice accordingly. The advice will probably be, you're obligated by law to perform these tests while you're at the station.

Ascertaining where, in that matrix of reasonable grounds and confluence of investigations, you're going to be at any one point in time is going to be very difficult—not to mention that overlaid on top of that will be the issue of the cross-use of evidence seized in a compelled nature, in cases where it's sought to be used where you otherwise would not have been compelled to provide it.

This is very technical, in the sense that it sounds odd, but there are a few cases from the Supreme Court of Canada, one of them called *White*, where in the course of a car accident a person is obliged to participate and provide a statement, and the Supreme Court of Canada held that it's a compelled statement and won't be used against the person in a criminal investigation separate from that.

That issue may very well arise here, where a person is conscripted in effect to provide evidence for a drug or drug and alcohol type of investigation, which, let's assume for the moment, does not proceed as a drug impairment charge, but then that evidence is sought to be tendered against the accused only on an impaired by alcohol charge, when the person may well have been compelled.

I highlight this just to show that the matrix of confusion that is going to result from this merits further study and examination. This is a complex piece of legislation. Its impact will be profound in the sense of the added layers of complexity that are going to be applied to what are otherwise deemed to be routine criminal trials.

The Chair: Mr. Di Luca, can I ask you to wind up in about one minute?

Mr. Joseph Di Luca: Certainly. I'll wrap up right there.

I just want to emphasize that we don't oppose removing drug-impaired drivers from the road. We only ask that it be done in a constitutionally tailored fashion.

I'll leave it at that, Mr. Chair. Thank you.

The Chair: Thank you.

Mr. McNeil.

Mr. Christopher McNeil (Chair, Drug Abuse Committee, Canadian Association of Chiefs of Police): Good morning. It's my pleasure to speak to you today on Bill C-16, on behalf of the Canadian Association of Chiefs of Police.

I understand that you have already heard from other colleagues in the police community. Therefore, I will try not to repeat what they have said.

CACP has become increasingly concerned about drug-impaired driving and is extremely pleased that Parliament also shares this concern.

The current provisions of the Criminal Code do not provide adequate measures to combat driving impaired by substances other than alcohol. Given the inadequacies of these measures, the extent of the problem is difficult to determine.

As you are no doubt aware, studies conducted in B.C. and Quebec show a significant percentage of drivers killed in motor vehicle crashes have drugs or a combination of low-level alcohol and drugs in their blood. Equally, student surveys in Manitoba in 2001 on the prevalence of drug use indicated that young people were more likely to take and drive than drink and drive.

This research is also supported in Nova Scotia, where 26% of students admitted driving within one hour of using cannabis in the preceding year. In Ontario, similar results have occurred, where 20% of high school students reported driving within one hour of using cannabis at least once in the preceding year.

Given, as said earlier, that young people represent the subgroup of the population most at risk of motor vehicle accidents resulting in death and injury, the high rate of adolescents driving after cannabis use is a serious public safety concern.

It is simply misguided to argue that one drug impairs less or differently than another drug. It's simple. Drugs impair your ability to drive.

THC diminishes psychomotor skills and attention span. It reduces the ability to perform tracking tasks such as steering. A cannabis-impaired driver has less ability to make quick decisions and react to an unexpected event. It is little consolation to a grieving family that the driver who killed their loved one would have been more impaired if he had been drinking alcohol instead of smoking pot.

It's simple. Drugs impair, and impaired drivers kill.

The police community has successfully embraced the use of breath-testing technology for alcohol impairment, which as a tool is a deterrent and has contributed to the reduction in impaired drivers. However, no such technology exists for identifying the majority of drugs that cause impairment.

The use of standardized field sobriety tests and drug recognition expert evaluations provide the only reliable method for the police to gather evidence necessary to determine if a subject is impaired and determine the cause of that impairment for prosecution.

Since its introduction in Canada in 1995, police officers from coast to coast have been trained and are being trained in both standard field sobriety tests and drug recognition expert evaluations. Drug recognition expert evaluations have been accepted in courts across this country, but a legislative framework is required.

Currently, paragraph 253(a) of the Criminal Code prohibits both drug- and alcohol-impaired driving. A suspected alcohol-impaired driver can be compelled by demand to provide a breath sample to measure the concentration of alcohol and determine if it exceeds the statutory level. This does not apply in the case of a suspected drug-impaired driver because there is no statutory demand in the Criminal Code.

Police must rely on difficult symptoms of drug impairment such as erratic behaviour and on witness testimony when investigating a suspected drug-impaired driver. Tests are admissible as evidence in court only if the person participates voluntarily.

The proposed amendments to the Criminal Code will fill this gap by providing the authority to compel a suspected drug-impaired

driver by demand to comply with standard field sobriety tests, to complete a drug recognition expert evaluation, and eventually to provide a bodily fluid sample. The bill recognizes the need to provide criminal sanctions for the failure to comply with such a demand.

There is little doubt that the comprehensive strategy initiated in the early 1980s has dramatically changed public attitudes and behaviours towards alcohol-impaired driving. A strong legislative framework that strengthened the ability to detect and prosecute alcohol-impaired drivers was critical to that success. The same success can be achieved again with drug-impaired drivers.

Unfortunately, the shortcomings of the present legislation and the difficulty in prosecuting drug-impaired drivers leaves the public with the impression that drug-impaired driving is not a problem. As noted, young people demonstrate no difficulty and no reservation in admitting that they take and drive.

The drug-impaired driving debate, like other discussions on drug use these days, tends to be clouded by the mixed messages of cannabis reform. By downplaying the use of cannabis and its prohibition, we have also supported the erroneous perception that driving under the influence of cannabis has little or no effect on driving skills.

• (0930)

I would be remiss if I did not at least raise the issue of abuse of prescription and over-the-counter medications that can affect driving as a very public safety concern.

Canadians share the CACP's concerns regarding drug-impaired driving, and support the implementation of legislative measures to detect and prosecute drug-impaired drivers. The CACP, though, and its membership caution Parliament not to inadvertently undermine the current provisions of the Criminal Code regarding alcohol-impaired driving.

The drafting of subclause 2(3) of Bill C-16, which amends subsection 254(2) of the Criminal Code, is of particular concern. Although I accept that the intent of the proposed change is to provide the legislative authority to demand compliance with standardized field sobriety tests, it also could be reasonably interpreted to place an additional burden on the investigation of suspected alcohol-impaired driving.

The use of the word “and” at the end of proposed paragraph 254 (2)(a) creates ambiguity about whether physical coordination tests would be required before a roadside screening device demand could be made. This ambiguity must be clarified. It would be a tragedy if we lost hard-fought ground in the battle against alcohol-impaired driving due to ambiguity in the drafting of this bill.

The CACP recommends that subclause 2(3) of Bill C-16 be amended by either removing the “and” in proposed paragraph 254(2) (a) or by adding a “for greater certainty” provision that clarifies that physical coordination tests would not be required before a roadside screening device demand could be made to suspected alcohol-impaired drivers.

As stated earlier, impaired driving sections are now amongst the most complicated in the Criminal Code. Bill C-16 will further complicate them. The CACP recommends against incorporating multiple amendments to this bill. There is the risk that if the latest legislation becomes too burdensome, it could have a detrimental impact on enforcement in and prevention of impaired driving.

The CACP commends the leadership of the Government of Canada and the RCMP in providing standardized field sobriety test and drug recognition expert training to Canadian police officers. Having said that, Bill C-16 will not have the desired effect if front-line police officers are not afforded the necessary training to implement it. The Government of Canada needs to continue—and enhance—its leadership role in ensuring that all police agencies in Canada have adequate access to standardized field sobriety test training and drug recognition expert training.

The CACP understands that the harms caused by drug abuse, including drug-impaired driving, will only be addressed by a fully funded national drug strategy that includes prevention, education, treatment, and enforcement. But when it comes to drug-impaired driving, the law must do its part.

In closing, I would like to reiterate the statement of my colleague, RCMP Chief Superintendent Raf Souccar, who already testified before you. He said:

By enacting Bill C-16, the federal government will, first, provide to the police community the legislative framework and the instruments required to facilitate the detection and prosecution of drug-impaired driving. Second, it will contribute to making Canada's roads safer and reduce the social, economic, health, and personal costs imposed on society by impaired drivers.

I thank you for your attention.

• (0935)

The Chair: Thank you, Mr. McNeil.

From the Traffic Injury Research Foundation, Mr. Beirness and Mr. Simpson.

Mr. Simpson will make a presentation of approximately 10 minutes.

Dr. Herb Simpson (President and Chief Executive Officer, Traffic Injury Research Foundation): Thank you, Mr. Chairman.

My colleague is Dr. Doug Beirness, vice-president of research with our foundation.

The Traffic Injury Research Foundation, or TIRF, is a national registered charity. In addition to decades of research on research and policy development in the area of drinking and driving, TIRF has been at the forefront of research on the issue of drugs and driving, so it shouldn't be surprising that our comments today are going to focus more on issues fundamental to the need for legislation rather than on the characteristics of the legislation itself. We will, though, address a few pertinent points about this as well.

The knowledge base about drugs and driving is limited, relative to the knowledge base about drinking and driving, in part because the issue of drugs and driving is far more complex. These complexities have hindered progress in the field, rendering solid, unequivocal statements about the magnitude of the problem of drugs and driving tenuous. They also contribute to persistent interpretation errors that have led to wide diversity in the claims about the extent of the problem. However, in our view, an informed analysis of the existing evidence on drugs and driving points to the presence of a serious problem and the need for effective action to deal with it. What follows is our interpretation of findings from research on four interrelated and central questions.

First, do drugs actually affect the abilities needed to drive safely? The answer is an unequivocal yes. Experimental studies have demonstrated that a wide range of drugs impairs a diversity of skills and abilities presumed to be related to the safe operation of a motor vehicle.

An important lesson from this literature concerns the nature of impairment caused by drugs. Different sets of skills and abilities can be affected by different drugs. In other words, there is not a single symptomatology that defines impairment.

For example, some studies have demonstrated that drivers using cannabis exhibit safer performance—e.g., they drive more slowly. However, measures of other skills, such as attention or tracking, show clear evidence of performance impairment. So it's important to recognize that the types of impairment produced by some drugs may differ from those typically associated with alcohol and differ from one another. It follows that there cannot be a single behavioural test for drug impairment. Rather, a variety of performance tests is needed, which, as you know, exists in the DRE.

Second, how many people drive after using drugs? Unfortunately, the data on the frequency and quantity of drug use by drivers is sparse indeed. Very few self-report surveys and even fewer less-subjective roadside surveys have been conducted. Moreover, the methods and procedures have been inconsistent, so reliable figures are not available. At this time, our best estimate is that less than 10% of drivers are using drugs. But there's wide variation in that figure as a function of such things as age. At least one consistent finding emerges from all the surveys: marijuana is the most frequently reported or detected substance, and it is most common among young males.

Third, how many crashes involve drugs? Although there's a rather large body of epidemiological research, the estimates produced vary considerably. Studies have found anywhere from 7% to 30% of drivers involved in collisions to be positive for some drug other than alcohol.

Our best estimate is that the overall incidence of positive drug detections among drivers killed or injured in road crashes is more in the range of 14% to 17%—certainly not an insignificant number. At the same time, this estimate serves to underscore another consistent finding, which is that drugs have never been found with a frequency comparable to that of alcohol.

Another reliable finding is that certain drugs show up consistently and most frequently. The most commonly detected substance is cannabis, typically found in about 10% of cases, and benzodiazepines in approximately 5% of cases.

Finally, when drugs are detected they're frequently found in combination with alcohol, often in half or more of the cases, rendering interpretations about drug impairment problematic but raising issues as well about the risky driving behaviours of polydrug users.

To summarize, we estimate that 14% to 17% of drivers injured or killed in collisions are positive for some drug. Most commonly detected are cannabis and benzodiazepines.

Fourth, how many crashes are caused by drug impairment? The presence of a drug in a collision-involved driver is a necessary but not a sufficient condition for concluding that it was contributory to the crash.

• (0940)

Evidence about the causal role of drugs can, however, be obtained by using two basic methods: so-called case control studies and causal assessment. These methods have already been instrumental in establishing the risk of collision for drivers at various levels of alcohol.

We recently reviewed 19 such drug studies. Unfortunately, the findings are mixed and inconclusive. For example, some studies show increased risk associated with marijuana use. Others fail to find it. Unlike the well-established relationship between levels of alcohol and risk of collision, no such relationships have yet been clearly demonstrated for other drugs. However, one consistent finding does emerge: drugs used in combination with alcohol are associated with much greater risk than alcohol used alone.

To summarize, it's clear that the knowledge base is wanting and cannot provide all the evidence needed for program and policy development, but on balance the evidence shows that the problem of drugs and driving is by no means trivial. It's our opinion that action is more than warranted. At the same time, a commitment is needed to ensure that the necessary evidence will accumulate over the coming years to assist in refining the action that is taken.

I knew you'd be disappointed if a researcher didn't say we needed more research.

What should be done? A sensible and balanced response to the issue must include a diversity of tactics, as you've heard repeatedly, to deal effectively with the many dimensions of the problem. A critical component is legislation and enforcement. The proposed legislation endeavours to facilitate the enforcement of drug-impaired driving laws in a manner analogous to that of enforcing alcohol-impaired driving. A major difference is that alcohol can be reliably

quantified in breath, but a comparable roadside screening instrument for drugs is not viable at this time.

Oral fluid has recently been the subject of a great deal of attention as a readily available and easily collected medium for the detection of drugs. Active levels of most drugs of interest can be detected in oral fluid, and screening devices have been developed for use at roadside.

These devices have in fact been the subject of a large-scale study, known as the ROSITA project, funded by the European Commission. This study concluded that the current generation of oral fluid tests is not sufficiently sensitive and/or specific to give reliable results for all major drugs of interest. However, newer variations are currently being developed and assessed in a continuation of the ROSITA project. These developments need to be closely monitored.

The only alternative at present is to facilitate the collection of evidence of impairment, and the proposed legislation does just that, requiring drivers to perform a series of tests, the SFSTs.

Poor performance on an SFST would produce reasonable grounds to believe a driver is impaired and to proceed with further testing. That further testing, as you know, involves evaluation by an officer trained in the DRE to determine the extent of impairment and the most likely class of drug consumed. The suspect is then required to provide a sample of bodily fluid.

These procedures are not perfect. False positives and false negatives can and do occur, but they are currently the best available. Fortunately, research is ongoing in other countries to improve these techniques and develop other procedures to identify drug-impaired drivers. These improvements and developments need to be monitored. Similarly, as the use of the SFST and DRE becomes more widespread in Canada, the two must be monitored and evaluated.

Now just a few concerns. First, there is a tendency to think of the drug-impaired driving problem primarily in terms of illegal substances and the use of the Criminal Code as a method for dealing with it. But as you know, it's important not to lose sight of the fact that different populations are involved in various aspects of the drug-driving problem—for example, the use of therapeutic drugs by older drivers—and that alternative, or at least complementary, approaches might be more cost-effective and appropriate.

Second, it's essential that drug-impaired driving not be perceived by the public as a less serious offence than alcohol-impaired driving. This could occur, as was mentioned earlier, if the provinces are unable to use sanctions for drug-impaired driving currently applicable in alcohol-impaired driving cases. Such potential inequities need to be resolved.

Finally, further research is necessary to determine the magnitude of drug-impaired driving and quantify the associated risks. This will require routine and systematic testing of drivers involved in serious collisions and studies of the incidence of drug use among drivers on the road.

Thank you, Mr. Chairman, for the opportunity to address the committee.

• (0945)

The Chair: Thank you, Mr. Simpson.

We'll move to questions.

Mr. White, for five minutes, questions and answers.

Mr. Randy White (Abbotsford, CPC): Thank you, Mr. Chairman. Thank you all for coming here.

There have been some interesting presentations. I must say, though, that the legal submissions with respect to serious issues are remarkably similar. I sat on this committee when we dealt with Bill C-17, marijuana. There's a hit-and-run bill in the House right now. There have been similar concerns about the national sex offender registry, Bill C-16, DNA data bank, and a host of other bills that have gone through the House or are sitting here. This fear of Charter of Rights challenges has become an excuse for not improving the justice system. In the meantime, the carnage continues on the road.

Mr. Di Luca, would you succinctly tell me whether or not the Canadian Council of Criminal Defence Lawyers is in favour of proceeding with Bill C-16?

Mr. Joseph Di Luca: As it stands now, we believe the legislation will attract constitutional scrutiny that it may not survive. In principle, we're not for a second suggesting that no one should do anything about drug-impaired or alcohol-impaired drivers. That's about as succinct as I can put it. We agree, in principle, that they pose a danger and that this danger should be attenuated by a constitutionally sound means.

Mr. Randy White: Thank you.

I wrote some legislation that's before the House today, hit-and-run legislation, and it's getting a rough ride. I think it'll eventually come back into our committee here, and so it should.

I'd like to ask Mr. Solomon and Mr. McNeil about the relationship between the recent work done on impaired driving and Bill C-16. We're getting tougher on these pieces of legislation. I have found that many people today who get into an accident while impaired leave the scene for fear of getting caught under the current alcohol-impaired driving laws.

• (0950)

Mr. Robert Solomon: I share the view of Mr. Di Luca that this legislation will be challenged under the charter. So will every other possible piece of legislation. I agree with Mr. Di Luca that some issues will attract fairly rigorous charter scrutiny. But I must say I would disagree with him on the likely outcome of those cases. Obviously, there are no guarantees in charter cases.

You're absolutely right that as the impaired driving legislation has been strengthened, a significant percentage of hit-and-run cases will likely involve people who have used alcohol and are impaired. There's some good research in the United States on the percentage of hit-and-run drivers impaired by alcohol, though their stats may not be comparable in Canada. It is a significant problem.

I think the toughening up of the federal legislation several years ago on fleeing the scene should make the sanctions for that behaviour more serious, but I share your concern that it is a problem.

Mr. Christopher McNeil: I can't make a connection to research on that, but I believe you are correct. If you look at the current assault on the impaired driving in the courts, it's about the activity, not the breathalyzer technology. It's like a radar gun today—if you're caught, you're caught. It leaves you with one option, and that is to flee.

Mr. Randy White: I heard it several times here at this committee: what is a drug? In fact, coffee has been discussed a number of times. Poor Starbucks and Tim Hortons....

What if the bill listed drugs? If Bill C-16 had a schedule of drugs you were looking for—cannabis, meth, cocaine, heroine, speed, whatever—would that be an improvement?

Mr. Joseph Di Luca: I'd be happy to answer that. I think this would be a definite improvement in that it would tailor at least a front end in terms of the officer's ability to launch an investigation to a specific set of drugs, which, by inclusion in the schedule, presumptively, would be proof that those are the types of drugs that would cause, statistically or scientifically speaking, an impairment of the ability to drive. The Narcotic Control Act, or the Controlled Drugs and Substances Act, as it is now, schedules drugs and it schedules them in the rank of seriousness and whatnot, and theoretically there'd be no reason why that couldn't be done in the context of drug-impaired driving as well.

The Chair: Does anyone else wish to comment?

Mr. Solomon.

Mr. Robert Solomon: I would have some concerns that if that were done we'd focus only on the illegal drugs and we'd fail to pick up over-the-counter medications and prescription drugs. I'm not opposed to that idea, but I would want to make sure the scheduling included the full range of drugs that have an impairing potential. I think that would be very difficult to do because of the gazillions of drugs that are being marketed.

I think we have to understand that it's been illegal to drive under the influence of drugs for approximately 80 years. We haven't had a large number of people stopped and questioned about their beta blockers.

So I think it is a concern, but I'm not sure that scheduling is the right answer. Remember, the officer has to have a suspicion that you have drugs in your body. You have to then fail the standard field sobriety test. So at that point the officer has reasonable grounds to believe you're impaired and that's the point at which you then are required.... So I think that's sufficient protection.

I wouldn't be opposed to scheduling as long as it was broad enough. I wouldn't want to put officers in a position of not being able to investigate because they're not fully familiar with psychopharmacology.

• (0955)

The Chair: Thank you.

Mr. Marceau, five minutes, please.

[Translation]

Mr. Richard Marceau (Charlesbourg—Haute-Saint-Charles, BQ): Thank you very much, Mr. Chairman. I wish to thank our witnesses for coming here.

My first question is very simple. On one hand the MADD group told us and I quote:

[English]

There's an increase in driving under the influence of drugs.

[Translation]

On the other hand, Mr. Simpson told us that we do not have accurate data on this. I would like to know if we have or don't have statistics on drug impaired drivers. If we do, what are the numbers? We just heard two opposite versions.

[English]

Mr. Robert Solomon: I don't see any contradiction between my statement and Dr. Simpson's. I think the evidence is that the presence of drugs is appearing more frequently in surveys and also in tests of fatally injured drivers. I think they're there.

I think where there's greater uncertainty is exactly what is the causal role of that drug in that accident, and perhaps Dr. Simpson may elaborate.

[Translation]

Mr. Richard Marceau: Mr. Solomon, I would just like to understand. I have no doubt that you have anecdotal evidence and I do not say so pejoratively. Do you have precise statistics on that problem to which all police forces in the country are trying to resolve? This is a real problem for which everybody wants to find a solution. I would like to know if there are specific data on this subject. If yes, what are they? If you don't have them, could you send them to us through the clerk?

[English]

Mr. Robert Solomon: There are a number of studies that have been published. There have been surveys in Quebec and Manitoba, and the Centre for Addiction and Mental Health has done consistent studies on surveys of students in terms of high school. So there are exact and specific studies in terms of reported drug use by individuals, as well as other studies of the presence of drugs in fatally injured drivers.

So, yes, many of those references are included in our report. Dr. Simpson's work and that of TIRF provide lots and lots of statistics. My understanding is that the presence of drugs in drivers has increased. That's the current trend and that's quite clearly established, but I'll hand the floor to Dr. Simpson.

Dr. Herb Simpson: I think the issue you're addressing also pertains to the question of the risk associated with the consumption of drugs, and there the research literature is not nearly as refined as it is with alcohol. In the case of alcohol, what we have is a dose response relationship that's well established that shows increasing risk with increasing levels of alcohol. Those relationships have not yet been established for most drugs, so we don't have the precision, but we do know that drugs are associated with increased risk of collision involvement. We just don't have the level of precision.

[Translation]

Mr. Richard Marceau: Thank you.

Mr. Di Luca, I thank you for coming here once again. Your presentations are always very interesting.

I have two questions to ask you on your presentation.

You said that you were looking for

[English]

a more constitutionally sound way

[Translation]

to solve this problem. You also mentioned a link between suspicion of impairment and drugs. I am not sure that I understood. First of all, could you explain that to me once again?

Then, you said that standardized sobriety tests are not universally accepted. Are there problems with those tests? If yes, what could be done to help Crown prosecutors and defence counsels such as yourself to agree as they do on the radar gun? We could agree on this and argue on the next steps.

• (1000)

[English]

Mr. Joseph Di Luca: Certainly. Turning to your first question, in terms of alcohol, the suspicion required to make the demand for an alcohol screening device is that there is a presence of alcohol in the body. We know that alcohol impairs, period. Eventually, if you have enough alcohol you will be illegally impaired, but with alcohol at a minimum, if it's in your body, you have some impairing effect. Now granted, if there's a drop of alcohol in you, it may not impair you to any significant degree, but we know that alcohol impairs.

The difficulty, from our perspective, with respect to the drug is that as it stands now it's a drug in your body, and there's no link to the possibility that you are impaired, by definition. There are many drugs. We know there are hundreds of drugs, thousands of drugs, out there, and there's no tie on the basis of even suspicion—or reasonable suspicion at that—that there's a possibility that you may be impaired by the drug just by virtue of the nature of the drug.

To make it more constitutionally sound, in our submission, if you tied the nature of the suspicion (a) to the presence of a drug, if you want to call it that, or a scheduled drug in the person's system, and (b) to the suspicion or possibility based on reasonable suspicion that there is impairment, then fair enough. You've constitutionally tailored the regime to capture the exact people who you're going after in this type of legislation.

If we went back and we scheduled drugs that we know cause impairment, that may well also be an answer for the same problem, just like we have in effect scheduled alcohol as a substance that we know causes impairment. I hope that answers the first question.

If you could help me again, sorry, on your second issue...the test, right?

What I meant by uncertainty in terms of the test...this is a judicial uncertainty about the tests. Judges are restricted to deciding the cases on the evidence that's put before them. They can't necessarily take judicial notice of the scientific validity of certain things. If we had done that thousands of years ago the world would still be flat, according to judges.

So science will change and will alter, and what we're doing in effect is putting evidence before the courts. Certain judges are accepting it. Other judges are requiring expert testimony to validate the scientific basis for these tests to ensure that notwithstanding the fact that there's a subjective component, there is an objectively verifiable result that comes from them.

In terms of getting the Crown and the defence to agree to a standard set, that's probably an exercise similar to herding cats. It will be a very difficult proposition to ever achieve consensus on, but that's part of scientific development as well, and there's a lot of literature in the United States as to cases where the standardized field sobriety test has not played out scientifically and has yielded false results here and there, and there is a statistical basis for that.

So it's not an infallible test and it has a subjective component. Ultimately it's going to come down to a question of placing sufficient evidence before a court to let judges make that call, but I have a ream of cases here where judges are already calling that science into question.

The Chair: Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you all for being here.

Mr. Solomon, on the fourth point you made about allowing, in effect, provincial agencies to use the results of these tests—and I want to be specific about this—I'm assuming you're referring to what is clause 8, with the amendments to section 258.1 of the act.

Mr. Robert Solomon: I believe that is correct.

Mr. Joe Comartin: Is that the only section you're concerned about with regard to the restriction on the use by provincial bodies of this data?

Mr. Robert Solomon: My recollection is it's the specific provision that prohibits their use for any other purpose. I believe it's the only section. I don't have a copy directly in front of me.

Mr. Joe Comartin: Do you have specific proposals as to how this could be amended to allow them to be able to use it?

I think you can appreciate, from what Mr. Di Luca said, that there are obviously concerns about it being used for other Criminal Code offences or drug offences.

Mr. Robert Solomon: I think it's difficult to be asked to draft legislation in the air, but something exempting provincial and territorial highway traffic officials from using this as part of their highway traffic safety programs, something to that effect.... But I prefer to leave that to the ministry to draft.

Mr. Joe Comartin: You're not dumping it on the committee; we're just going to dump it on the staff.

Mr. Robert Solomon: Absolutely.

They also have to come up with the standard field sobriety testing and those other regulations, so we'll keep them busy. That's not a difficult problem, because there are lots of exemptions built; it's just difficult to do it on the fly.

● (1005)

Mr. Joe Comartin: Thank you.

Mr. Simpson, we heard from the Canada Safety Council last week. I don't know if it's the ROSITA study you're talking about, but I think they said they were two years away from being able to come up with a limit for cannabis or THC as we have with alcohol. Are you aware of those studies, Mr. Beirness?

Dr. Douglas Beirness (Vice-President, Research, Traffic Injury Research Foundation): I'm aware that the ROSITA study was proceeding, and I'm aware that oral fluid testing methods and the technology associated with those methods is constantly improving, but I think two years is probably optimistic. I know there are countries in Europe that have set essentially per se limits for drugs. The research does not support that, because we don't know what the risks are associated with various levels of drugs. I think what we need to do is keep track of the oral fluid testing and the procedures so that we can adopt those kinds of things when the technology becomes sufficiently valid that we're able to use it.

Mr. Joe Comartin: We're not there yet.

Dr. Douglas Beirness: We're not there yet.

Mr. Joe Comartin: Maybe as a result of the exchanges we had last week, I've begun to think we're being overly ambitious with this legislation, and if we concentrate just on cannabis, THC, the substances from those products.... Mr. Di Luca, maybe I should ask you. Should we concentrate this legislation just on that?

And, Mr. Simpson, I'd like a comment from you, because my understanding is that the overwhelming problem is not the prescription drugs, it is cannabis. I would think we're probably at a ten to one ratio, maybe as much as a hundred to one, in terms of the concerns we should have for the consumption of cannabis and driving versus the consumption of prescription drugs and driving. There may be an age factor in there because of the aggressiveness of young male drivers, but anyway.

Can I get some comments? Does it make sense that we should limit this to cannabis, THC? Mr. Solomon, I would like to hear from you on that as well.

Mr. Joseph Di Luca: I think there's going to be a division in the literature as to the effects that cannabis and THC have on the ability to drive. There are other drugs out there that are statistically going to have a far greater impact on the ability to drive or the degree of impairment. Having said that, tailoring the scheme to drugs on which there's a scientific basis for concluding there's a risk of impairment makes constitutional sense. Assuming, for a second, and I'm not the scientist at the table, that the scientific data would back and support that, it obviously would be a more tailored and constitutionally sound scheme.

Dr. Herb Simpson: My feeling would be that to restrict it would be a mistake. I believe that's because it would exempt a lot of drugs that are in fact impairing. We can't think of the drug use and the driving population as static; it's a dynamic phenomenon. We have to be aware of things like changes in the characteristics of the driving population, such as an increased number of people who are elderly who are driving, an increased number of them who are retaining their licence and driving more, and an increased population therefore that is using drugs. I think the best and wisest counsel is not to restrict it to one drug like cannabis.

Mr. Robert Solomon: I would share those views.

The Chair: Thank you, Mr. Comartin.

Mr. Macklin, for five minutes.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Mr. Chair, and thank you, witnesses, for being here.

Needless to say, it's a lot simpler working in a world with one drug that's easily identifiable, as alcohol is. What we find ourselves in, though, are the complex realities of today's world in terms of drugs that one consumes.

As we look at this, it's not just the individual drug either, when you talk about cannabis, but rather this complexity of what it might be intermingled with, whether it be over-the-counter drugs, prescription drugs, or otherwise. Seeking an easy answer here, a simple answer that everyone would like, is likely not in the cards. I see a lot of nodding heads.

So I think we have to accept the challenge you've given us, that this is not going to be a task of simplicity but one of trying to establish the impairment, primarily, rather than in fact worrying about specifically what drug or combination of drugs create that impairment.

If we walk back through this, I gather that, first of all, there has to be some indication of impairment. This is not a R.I.D.E. program we're talking about here in terms of alcohol. So the officer has to see some type of impairment in the driver.

Secondly, we would stop the driver under these rules, ask for a field sobriety test, perform the test, and if the person fails, then go on to the DRE—at the station, I presume, in most cases. At this point, if they have all been positive tests, I think we've established impairment.

I just want to clarify. The purpose, then, of getting the actual fluid sample to test for the toxic substances within the bloodstream is only verifying, in a sense, isn't it? It's just to give some objectivity to the fact that all the steps that have been taken to that point in fact really do have some justification, based on chemistry.

Is that a fair comment? I open that to everyone.

• (1010)

Mr. Joseph Di Luca: The confirmatory test, from my understanding, at least as the structure is set up in the proposed legislation, is to confirm the presence of the drug in the person's body. So it's not necessarily a quantification of the drug; it tests for presence.

Presence will tell you whether the drug is there or not. Certain drugs can be in a person's body for a lengthier period of time than others. There's a whole host of issues there. Presence also doesn't necessarily tell you impairment. The presence needs to be, in effect, potentially quantified and then tied back scientifically to impairment.

Even on the issue of impairment, it's not just impairment *simpliciter*; it's impairment of the ability to drive. There's a difference. It's a slight difference, but it is a difference. Some people can be mildly impaired, yet their ability to drive is not impaired. That may be a distinction that only lawyers will dabble in, but ultimately the case law is clear that the proof of the offence requires that the ability to drive is impaired.

So in a broader sense, even though there is this back-ended testing, which is great because it does confirm objectively or it adds an objective verification, there still needs to be a link to the issue of impairment, an evidentiary link, put before a court.

Hon. Paul Harold Macklin: Right, and I suppose, in a sense, it might actually give some type of defence that it wasn't a drug, if in fact the drugs didn't show up—in other words, if it was some other health-related type of proposition the individual was suffering from.

Mr. Joseph Di Luca: We did have one concern. A member of our group from Nunavut wrote in response to my request and indicated that many of her clients are not driving cars, but rather snowmobiles, over many, many miles in the freezing cold over long hours, and getting off a snowmobile and being asked to perform certain tasks might not be scientifically as sound as having a person step out of a vehicle in a warmer climate after a five-minute drive.

That's a concern. That is going to be left to be fleshed out down the road at a trial, presumably, but that's an issue that needs to be looked at also.

Mr. Robert Solomon: I think your assessment was dead-on in terms of the drug test. The drug test simply confirms the presence of the drug in the body. It's the other 10 parts—I think there are 10 parts to the DRE—that establish the impairment.

Hon. Paul Harold Macklin: Let me go back, then, to a comment about the videotaping process. Obviously, we haven't focused on that at all in this legislation, so I'd like to get a sense.

First of all, something that strikes me as a little unusual, Mr. Di Luca, is your suggestion that we should be videotaping the DRE process. Some of that, I believe, occurs in a darkened room, when you're looking at dilation of pupils. How are we going to do this? Isn't there a practical problem here?

Mr. Joseph Di Luca: Whatever can be videotaped ought to be videotaped. On the defence side, even from the resolution perspective, there is a very real basis for having a videotape, showing a person what tests were done, and having your own expert take a look at the tape.

Now having said that, if there is a test that is being done and the visual component is gone, surely there is an audio component as to what is being said, how the test is being administered, the instructions that are being given to the person, and the person's responses. There is an ongoing component, and surely all 12 steps are not in the dark. But it would provide you with an objective source of information that can be used to either confirm or challenge the evidence that's going to be put before the court. In many cases, that will work to the benefit of the prosecution.

• (1015)

Hon. Paul Harold Macklin: Secondly, I know Mr. McNeil wants to get in on this—

The Chair: We'll have to get this in another round.

Hon. Paul Harold Macklin: Mr. McNeil wanted to respond to my question.

The Chair: Okay, Mr. McNeil. I'm sorry, I didn't notice you.

Mr. Christopher McNeil: I'd be extremely concerned. I agree that the SFST tests would show signs of impairment. I think it's overkill to suggest that the DRE would have to be videotaped.

The problem you'd create is that there is no "may". Once you say they may be videotaped, the courts will require them to be videotaped. We'll move to an argument of a best evidence rule as we've seen with criminal statements, and it would be very difficult to get these in....

You have to understand that not all police agencies in this country are in a position to videotape roadside tests as easily as maybe larger agencies in this country. For some it would be quite easy. Most of us have videos in our cars, and that could actually be part of the stop. You could videotape that process. But that's not universal. And if it's "may", it will become "you must" in order for these things to become successful.

The Chair: Any other comments from anyone?

Mr. Thompson, please.

Mr. Myron Thompson (Wild Rose, CPC): Thank you.

Welcome, everyone, and thank you for your words this morning.

I want to express my appreciation to the MADD group for your hard work over the years. I've been a proud contributor and a member of the organization since its inception, and I wish you continued success.

Only a couple of years ago or so, I believe my colleague to my right, and possibly others, helped table a petition with several million names when it came to Ottawa. We remember being strong enough and young enough to help carry in a pile of those. It was calling for zero tolerance. I'm assuming zero tolerance is still the objective of the MADD organization. You can respond to that if you like, but I just wanted to congratulate you for the hard work. Keep it up.

There's no doubt that every member of this committee and probably every member of the House of Commons—I can't imagine there would be anybody who doesn't—wants the objective, in all legislation, to get drunk drivers and impaired drivers off the road. That's what we want to happen, and it has nothing to do with politics.

I have a wife who's going to drive four grandchildren to Calaway Park on Saturday afternoon for a fun day. I'll be worried until they get home, because I know impaired drivers are still on the highways and in greater numbers than we like to see. You only need to read the court news in every newspaper to know that is indeed the case.

Keeping in mind that we have that objective, that is our goal, to provide all the tools to the police to do a good job of cleaning this up. But there are going to be infractions. I'm always wondering what the penalty should be for infractions. How seriously do we take this?

I gave a list to the committee the other day about what other countries were doing. It was rather funny, but some were very effective. One country executes for the first offence. That's a pretty effective deterrent for that person. In another country—I thought it was amusing and found later on it was fairly effective—if the spouse was caught driving impaired, he or she went directly to jail and the spouse went with them. It had some effect; there was quite an incentive for spouses to encourage each other not to get on the road when impaired. All kinds of different ideas come up, but I do not want to take this thing so lightly that we continue to have the problem. I think there has to be some deterrent in there.

I lived in one state in the States where they had two counties—Rio Grande and Alamosa. They were having drinking problems in these two counties. They have county jurisdictions and they can each make by-laws and set up their own rules about what to do with drinking and driving. They made a law in the Rio Grande County that if you got caught and you were impaired—whether drugs or anything—the vehicle was impounded and you lost it. It didn't matter if it was your vehicle, a company vehicle, your dad's vehicle or whatever. It was impounded, and it became the property of the county. It was amazing how the impaired convictions in that county went to almost zero. The other county was envious that Rio Grande County had such good success. But it was such a harsh, scary thing to do.

I would like your comments. What should be the deterrence in regard to a conviction? How serious should it be?

• (1020)

The Chair: Does anyone care to comment on that?

Mr. Robert Solomon: Right now, driving while your ability to do so is impaired by alcohol or drugs is an offence, and there are minimum penalties established in the Criminal Code for that behaviour. It's our view that the penalties for drug-impaired driving should be the same as for alcohol-impaired driving. That would be our assumption; that if you're convicted, it would fall under the current penalty provisions that exist in the Criminal Code.

Mr. Myron Thompson: Anyone else?

Mr. Joseph Di Luca: I can take the unpopular view for a brief moment. Let me start off by saying, having heard the countries you've listed, I'm glad I live in Canada.

Some hon. members: Oh, oh!

Mr. Joseph Di Luca: No, I am, seriously.

Mr. Myron Thompson: You wouldn't want to go to jail with your wife?

Mr. Joseph Di Luca: This is on the record; I can't answer that.

Let me say this; it will be unpopular, but bear with me. There is a very real sentiment out there that the acquittal rate in drunk driving cases is tied to the harshness of the penalties already in place. I don't know if it's tangible, I don't know if it's scientifically proven, but there is a measure of equity that goes on in these trials, in view of the consequences that are imposed on a number of people. There's a variety of reasons for that.

From a purely selfish perspective as a defence lawyer, the harsher the penalties, the more trials that will be fought in these types of cases and the more clients I will have. From that perspective, I agree with you. Fine, let's make it death; then I will always be retained on every single one of these cases. They will be fought tooth and nail; they will be constitutionalized repeatedly.

Having said that—and this is tough—it is one of those areas of crime committed by people from every walk of life: rich, poor, white, black, upper-class, lower-class, educated, non-educated. It is one of those offences for which, when they look at the person who is charged, many people can very easily place themselves in the position of the accused person and say, “I'm glad I had the foresight, the intelligence, the wisdom, not to make such an inordinately stupid mistake, like that person.”

Some people will look at a drug dealer and say, “Gee, yech, a drug dealer! It's that type of class, that type of person, who deals drugs.” Impaired driving cases run the full panoply of people, and that adds a very human element to the trials in these cases, because many of the actors in the justice system will look and see that these aren't the typical criminals who comes before the courts. That infuses a measure of equity in it.

I know it's an unpopular view, but there is some academic writing on it suggesting that if you lowered the penalties, you might actually increase the conviction rate, as ironic as that may seem.

Mr. Myron Thompson: I'd like to point out that I'm acquainted with several individuals, though, who because of the leniency have had five, six, seven convictions.

Mr. Joseph Di Luca: I agree with you, there are going to be the cases of people who are let out with a slap on the wrist on their thirteenth impaired driving case and they kill someone. That is a tragedy no one wants and the system should not tolerate. I agree with you wholeheartedly on that.

• (1025)

Mr. Myron Thompson: Thank you.

The Chair: Mr. McNeil has a comment.

Mr. Christopher McNeil: I'm concerned that we would get confused between the equity of the artificial world of a courtroom and what an equitable punishment might look like there versus the reality of what it looks like in a hospital emergency room or on a roadside.

I think it fundamentally is the role of Parliament to send a message to the courts about how serious the stakes are. One way that is done is by minimum penalties. If Parliament consistently and continually reinforces that message on certain crimes such as drug impairment—

the courts don't act alone, they are not independent in their view of the world—they will eventually respect that this is a serious concern.

I'm a bit concerned. There's an irony in suggesting we not adopt legislation that is overly complicated. Well, I have some news to tell you. As a person responsible for trying to make law simple to front-line police officers, I'm having a hard time finding a piece of criminal law that is not overly complicated to enforce.

Mr. Myron Thompson: That's true. I thank you for that.

The Chair: Thank you.

Mr. Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Mr. Di Luca, I shall add that bad laws make good lawyers rich. I had the opportunity to see that by myself.

As you are here, Mr. McNeil, I shall take this opportunity to ask you some questions. I suppose that you have some experience with roadblocks. How many years have they allowed? I believe it has been about ten years or even more, isn't it?

[*English*]

Mr. Christopher McNeil: It's at least 10 years, yes.

[*Translation*]

Mr. Serge Ménard: Have you noticed if the average number of impaired drivers caught has increased or diminished since the first roadblocks?

[*English*]

Mr. Christopher McNeil: Police roadblocks are one tool, and in many case they are as much an education tool as they are an enforcement tool. In my experience, the number of people caught in roadblocks per se is not necessarily high, but it is a constant, vigilant reminder to people. As Mr. Di Luca said, we're all susceptible to impaired driving and we need constant vigilance. Roadblocks provide a very visible and very strong sense of that.

[*Translation*]

Mr. Serge Ménard: As I said to an RCMP officer who appeared before us, in the beginning, 10 or 12 per cent of drivers stopped at these roadblocks were impaired while today it is less than 1 per cent. Does it correspond to your own assessment?

[*English*]

Mr. Christopher McNeil: I'd only be speaking anecdotally, but clearly when roadblocks were initiated the problem was much more visible than it is today. Clearly there has been an attitudinal shift in society about impaired driving, such that it reflects itself in roadblocks. I would say that's correct.

[*Translation*]

Mr. Serge Ménard: The conclusion is that roadblocks are a deterrent.

[*English*]

Mr. Christopher McNeil: Yes.

[Translation]

Mr. Serge Ménard: This is what criminology data are telling us. Generally, the risk of being caught is a much better deterrent than the severity of sentences.

I do not know who could answer my next question. Maybe you, Mr. Simpson. It is outside your area of research, but as you are a researcher, you might come to it.

I have some concerns about objective tests called in English sobriety tests. I suppose that those are objective tests to verify your reflexes. For some drivers, particularly older ones, but also some young ones, the mere fact of being intercepted by police makes them nervous. They might have more difficulty performing these tests.

Will these tests and the process used take that nervousness into account? It might be variable from person to person and be very intense in some people who can be easily intimidated.

[English]

Dr. Douglas Beirness: Undoubtedly that's the case. Some people do get very nervous, and that may have a small influence on their performance.

The research tends to suggest it's not a huge influence. If you're showing detrimental effects of alcohol or drugs, it's going to show up on the standardized field sobriety test to a much greater extent than it would if you were just simply nervous. One of the strengths of the field sobriety test is the lateral gaze nystagmus test, which looks at movements of the eye as it goes laterally from side to side. That kind of test is not subject to nervousness that we're aware of. It's subject to influence by certain specific drugs.

• (1030)

[Translation]

Mr. Serge Ménard: This might answer my next question.

As I age, I have noticed that in the morning, after two hours on the road between Montreal and Ottawa, I am not able to walk as well when I get out of my car and I didn't drink any alcohol, even the night before. I need several seconds before I can walk normally. I suppose that as I get older, it will be a matter of minutes rather than seconds. Will sobriety tests take these realities into account?

[English]

Dr. Douglas Beirness: Typically, yes. From what I've seen in the United States, where these tests are more common, the officer speaks with the driver for a few minutes, explains what's going on and gives the person a chance to recover from that kind of uneasiness.

[Translation]

Mr. Serge Ménard: But during that time, the driver is still seated. He has not yet come out of his car.

[English]

Dr. Douglas Beirness: After they get out of the car, the officer has to explain what's going to happen. As well, the field sobriety test that's done at the side of the road only provides the officer with sufficient evidence to take the suspected driver downtown, where the tests are repeated as part of the DRE program.

[Translation]

Mr. Serge Ménard: Okay.

Mr. Di Luca, I always appreciate your presence here like my colleague on my right as well as your objectivity even if you recognize your professional partiality.

To my knowledge, the police is not required to give a sample to the driver who gave a sample so that he can have his own analysis made. Doesn't that bother you?

[English]

Mr. Joseph Di Luca: Currently, the way it stands now, there is no requirement to give a sample for a drug investigation? Is that...?

Yes, it's a gap in the legislation, and I can't say otherwise. There is an obvious gap there: you are required to give a sample for alcohol testing; you're not required to do so for anything else. So yes, it is a gap in the testing, and the CCCDL obviously supports measures that are aimed at reducing what is tangibly and scientifically validated as a risk. Our issue is mostly about doing it within constitutional means. So yes, it is a gap, absolutely.

[Translation]

Mr. Serge Ménard: Obviously, if it was filed, we might have the same success as with the breath sample.

[English]

The Chair: Mr. Ménard, we'll have to move on.

Ms. Neville, please.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Mr. Chairman.

This is not my original question, but I want to follow up, Mr. Di Luca, on your comment suggesting "the harsher the sentence, the less likely the conviction". Have there been any impaired driving studies done on socio-economic status or whatever as related to sentencing for impaired driving?

Mr. Joseph Di Luca: Let me preface my comments by saying this first, before I'm not welcome on any bus or plane to go home. People who kill others in drunk driving accidents do not get a slap on the wrist; they go to jail. That has been my experience.

While the use of a conditional sentence, which is very contentious in the drunk driving field, was met with popularity initially, we are seeing now a retraction in its use in cases where there is death or serious bodily harm. It's still available as an option, but in the serious offences, the penalties as we see them—and it's in perspective.... I know I won't convince my friends at MADD of that point, and we will agree to disagree, because they have a very valid and honest intention in what they're doing. It's admirable, to say the least.

Having said that, when you look at non-accident, non-injury, impaired-over-0.08% types of offences, where someone is stopped at a RIDE spot check and blows over the legal limit but there's no injury, there's no accident, there's no harm caused to anyone other than the inordinate risk posed by their presence on the road, those penalties are statutory.

They will ordinarily get the minimum fine that's imposed. They will lose their licence for a year, without exception—at least in Ontario. The process of getting their licence back is inordinately expensive, leaving aside the insurance consequences and what not. There is a rigidity to that sentence, which applies to the rich, to the poor, to the educated or not irrespective of the nature of offence.

The vast majority of the drunk driving offences, thankfully, are ones where bodily harm is not caused. That may well be in part due to the educating effects and the police presence. I absolutely agree with Mr. McNeil: police presence is absolutely vital to stopping people. If the thought is, “I could round the ramp to get on the highway, and there will be a police RIDE check around the corner”, you're not going to take the chance. It's that simple; there's an inherent logic to it.

So the penalties are strict, especially for first offences where there is no injury and the like.

There is some writing on this. Has it been studied thoroughly? No. There is one paper by a professor at Queen's whose name is Daved Muttart. I can provide a copy of it to the clerk, if requested. He did a study—I'm not sure how scientifically related it is—that said ultimately, if you reduce the penalties on certain offences, you may ironically end up saving lives. I'll provide it. It's more of a thought piece than anything else, but it is some indication of the opposite side of the argument.

• (1035)

Ms. Anita Neville: Thank you.

Mr. Murie, you were shaking your head as Mr. Di Luca was speaking.

Mr. Andrew Murie (Chief Executive Officer, Mothers Against Drunk Driving): Our organization is opposed to conditional sentences for people who choose to drink and drive and then kill or seriously injure someone. That's been a point of contention. It happens fairly commonly. So I disagree with my colleague here.

We have looked at the issue. In Ontario, we looked at people charged with impaired driving causing death and impaired driving causing bodily harm. We found that a very low percentage of those people actually charged with the more serious offence got guilty pleas.

Mr. Robert Solomon: Less than 25%.

Mr. Andrew Murie: I think one was 23% and one was 19%. This was a fairly sophisticated study that we did over a long window of time.

Ms. Anita Neville: Did you relate that to socio-economic...?

Mr. Andrew Murie: No, we had to get the information through freedom of information. So we couldn't get the actual socio-economic status of the people being charged. It was basically a look at common data.

Mr. Robert Solomon: The problem is that the penalty issue gets a lot of attention. It's a matter of concern to MADD. Our goals are not only to ensure that people are properly sanctioned but also to have laws that increase apprehension. From 1994 to 1998 we did a study of statistics. Our estimation is that less than one quarter of those who

drink, drive, and kill are even charged with that offence, and less than one quarter of those are convicted.

We want to ensure that police have effective enforcement powers, so that we can increase the perceived and actual rates of apprehension. Sometimes the issue of penalties tends to draw all of the attention. We want smarter, more effective laws. We want more effective laws. It's not just about penalties; it's about prevention.

The Chair: Thank you, Ms. Neville.

• (1040)

Ms. Anita Neville: Do I have more time?

The Chair: No, you're finished.

Mr. Warawa, please.

Mr. Mark Warawa (Langley, CPC): Thank you, Mr. Chairman. Thank you, witnesses, for being here. I found this very interesting, also a little humorous. I'm looking forward to hearing the defence, “Your honour, I was driving a snowmobile and I had too much coffee to drink.” Maybe we'll hear that sometime.

Mr. Joseph Di Luca: I'll leave you my card.

Mr. Mark Warawa: In my former life I was in loss prevention with the Insurance Corporation of British Columbia. I was interested in the statistics showing that most car accidents happen at intersections, and that the most common cause is driving without due care and attention. I'm wondering if the stats may change if, where there is some drug impairment, we start demanding samples at car crashes. People are driving without due care and attention. Is it because they're on a cell phone? Is it impairment because of lack of sleep, prescription drugs, illegal drugs, or alcohol? It might paint a different picture and be helpful in research to find out the causes. Why are people driving without due care?

That's just a side note. I have a question for you, Mr. McNeil. In your presentation on page 5, you say:

Currently, section 253 (a) [of the Criminal Code] prohibits both drug and alcohol-impaired driving. A suspected alcohol-impaired driver can be compelled, by demand, to provide a breath sample to measure the concentration of alcohol in their blood and determine if it exceeds the statutory level. This does not apply in the case of a suspected drug impaired driver because there is no statutory demand...

That's a very important point. Right now, if somebody refuses the request for a sample—somebody who has put themselves and our community at risk through unsafe driving—how is it handled? It's different in each province, but if they're not safe to be on the road, how is this handled at present?

Mr. Christopher McNeil: I would suggest to you that it's not handled. If there's no ability to take that person off the road through the criminal law, it's not handled. Some provinces have more liberal provincial legislation around roadside suspensions, but it's not handled.

You don't get out of the gate at all, you don't get to Mr. Di Luca's arguments in court, if we don't have a demand that requires the person to basically comply with the demand. You never get out of the gate, and that person drives away, in most cases.

Mr. Mark Warawa: I think that's the problem we have. That's why we have to find a solution, and that's why we have Bill C-16.

There was the question from Mr. Di Luca, which I think was valid: what do we do with the impaired person while we're waiting for the test results? We don't leave them locked up, but their car, I'm hoping, is impounded while we're waiting for those tests. But that's probably not what happens either. I've heard cases where the vehicle is towed to their home, and they can get a taxi home and get back in and start driving again.

Mr. Robert Solomon: That's why we want to make sure that if someone fails the field sobriety test at the side of the road, you can invoke the provincial power to issue a 24-hour licence suspension. That's why it's really important that the legislation not prevent the provinces and territories from taking advantage of the highway traffic safety legislation, which has made a significant difference, to take people who are unfit to drive for various reasons—alcohol or drugs—off the road at least temporarily.

Right now there would be no possibility of that, and that's why that amendment, which I think a number of officers have spoken to, and others, is important, to prevent exactly that problem, sir.

Mr. Mark Warawa: Okay. And, Mr. Di Luca, you would support Bill C-16, with some amendments so that it's practical, but you would support providing the police with that tool. Is that correct?

Mr. Joseph Di Luca: Absolutely, in the sense that if the tool is appropriately constitutionally circumscribed, it would then be no different from the tool that is in existence already for alcohol-related investigations. I'd be hard pressed to say you can't do it for drugs but you can for alcohol. As long as we all agree and scientifically the basis is valid, then fair enough.

The Chair: You're out of time, sir.

Mr. Mark Warawa: Thank you.

The Chair: We have a matter to deal with in the committee in addition to this. We've been called for a vote, it would appear, but there are members who can't stay after 11 o'clock, in any event.

I'm at your direction. We can have perhaps one more round, one more MP questioning period, or we could conclude right now to deal with the other matter in camera.

• (1045)

[*Translation*]

Mr. Richard Marceau: Mr. Chairman, I think that our witnesses have done an excellent job. They have enlightened us on the issues and their own concerns. We now have to study the other issues before the vote as we decided two days ago.

[*English*]

The Chair: *D'accord.*

Does everyone agree? Okay.

Gentlemen, thank you very much for your attendance here today. I think it was very informative, and we certainly appreciate the advice you've given us.

We'll adjourn for about two minutes.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.