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Chair

Mr. Ed Fast

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• (1530)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is meeting number six of the Standing Committee on Justice and Human Rights. Today is Monday, March 2, 2009.

Members of the committee, you have before you the agenda for today. We're continuing our study of impaired driving in Canada and we have before us a number of witnesses.

I want to thank all the witnesses for appearing before us to help with our study. I also want to thank those of you who have provided us with written copies of your submissions. Some of the submissions were in English only. They can't be tabled with us, but we'll make sure our clerk receives them, and if you don't finish your submissions orally, we'll certainly have them translated so there will be a complete record for the committee to review.

I want to welcome the various witnesses we have before us today. First of all, from the toxicology section of the Centre of Forensic Sciences—a Government of Ontario body—we have Yvona Buczek and Marc Pelletier. We also have from the Traffic Injury Research Foundation, Robyn Robertson. The Canadian Automobile Association is represented by Eric Lamoureux. And Mothers Against Drunk Driving is represented by Margaret Miller, Dr. Robert Solomon, and Andrew Murie, the CEO. Finally, we have the Alcohol Countermeasure Systems Corporation, represented by Ian Marples, their general counsel. Unfortunately, Denis Dupuis had to send his regrets and won't be appearing today.

Witnesses, each of you has been allocated a certain amount of time in which to present, and I would ask you to keep strictly to that time because we have many questions to ask. Once you're finished with your presentations, we'll open the floor to questions from the members of the committee.

I think we'll simply go in the seating order. We'll start with Yvona Buczek, please.

Dr. Yvona Buczek (Assistant Section Head, Toxicology, Centre of Forensic Sciences, Toxicology Section, Ministry of Community Safety and Correctional Services, Government of Ontario): Good afternoon. My name is Dr. Yvona Buczek, and I'm honoured to have the opportunity to appear before this committee. I'm an assistant section head in the toxicology section, Centre of Forensic Sciences in Toronto, which I will refer to as the CFS.

I'm accompanied today by my colleague, Dr. Marc Pelletier, who is an experienced scientist from our section.

The CFS is a provincial forensic science laboratory in the public safety division of the Ministry of Community Safety and Correctional Services. We provide forensic science services to all official investigative agencies in Ontario.

Much of our work in the toxicology section concerns impaired driving. We train police officers in Ontario in the theory and operation of approved screening devices and evidential breath-testing instruments. We attend court regularly to provide scientific evidence regarding the pharmacology of alcohol impairment and provide calculations of blood alcohol concentrations, or BAC.

I hope the information I present today will be of assistance to the committee.

The operation of a motor vehicle requires the coordinated functioning of a variety of sensory, motor, and intellectual faculties, including divided attention, awareness of one's surroundings, choice reaction time, time to respond to complex driving situations, judgment of speed and distance, risk assessment, vigilance, being alert for extended periods of time, and vision.

The degree of impairment produced by alcohol is dependent upon BAC. Whether impairment is demonstrable depends on the complexity of the driving task. For example, the impairing effects of alcohol are evident in driving situations that are unpredictable and that require a rapid and appropriate response. Under controlled, experimental conditions, impairment of divided attention tasks has been reported at BACs as low as 15 milligrams of alcohol in 100 millilitres of blood. Nevertheless, based on a critical review of the relevant scientific literature, it is my opinion that impairment with respect to driving becomes significant at a BAC of 50 milligrams of alcohol in 100 millilitres of blood and increases from then onward. Impairment may occur in the absence of visible signs of intoxication, which may be due to tolerance.

Alcohol is a small, simple molecule. Relative to other drugs, alcohol produces predictable effects on the body. The effects produced by alcohol in the human body—that is, observable signs of intoxication—are dependent on BAC. The magnitude of the effects increases as BAC increases.

I will now describe the signs of intoxication that would be expected within a wide range of BACs in the light-to-moderate drinker. Please note that in individuals who frequently consume large quantities of alcohol, some effects are diminished due to tolerance. A tolerant individual might not display any observable signs of intoxication, even in the presence of a high BAC level.

At concentrations ranging between zero to 50 milligrams of alcohol in 100 millilitres of blood, while signs of intoxication are absent or slight, information processing is slower. Observable signs might include mild euphoria and lack of inhibitions in a social setting—for example, talking loudly.

At the range between 50 and 100, intoxication is more likely, and might include some degree of motor incoordination, particularly of fine motor skills. There is increased loss of social inhibition—for example, increase of confidence and impaired judgment.

At the range between 100 and 200, intoxication is very apparent due to a decrease in motor coordination, such as slurred speech, staggered walk, inappropriate or sudden changes in mood, and drowsiness.

At 200 and greater, intoxication is very apparent because of increased central nervous system depression, which may include confusion, significant loss of motor control, nausea and vomiting, and varying degrees of sedation up to and including loss of consciousness.

At 300 and greater, intoxication is even more pronounced due to significantly increased central nervous system depression. The general anesthetic properties of alcohol are evident and might result in coma.

At 350 and greater, intoxication might result in death due to respiratory depression.

Scientifically, impairment can be distinguished from intoxication. I define impairment as the diminished ability to operate a motor vehicle. Studies utilizing low BACs have demonstrated impairment at levels much lower than was previously considered to be the threshold.

• (1535)

A review of the scientific literature on this subject can be crystallized in the following two points. One, as the BAC increases, the degree of impairment increases. Whether impairment is observable depends upon the complexity of the task. In an impaired person, impairment might not be observable in the routine driving task, but would be obvious in driving situations requiring a rapid response.

I shall now present a number of key points from the relevant scientific literature. References are available.

Under controlled experimental conditions, it has been demonstrated that repeated performance in certain tasks while under the influence of alcohol might make a subject less sensitive to the effects of alcohol. This is called functional tolerance. Many adults operate motor vehicles on a daily basis. However, driving is largely resistant to functional tolerance due to its complex intellectual demands.

While at high BACs tolerance may reduce signs of intoxication, impairment is still present.

The most that can be said is that at moderate BACs, between 50 and 70, more-frequent drinkers appear to be less affected and at low risk of accident involvement. At higher BACs, the risk of an accident and the impairment of driving ability are both significantly increased in all drinking frequency groups. While habitual binge drinkers demonstrate similar alcohol-induced behaviour impairment, they have less awareness of impairment when compared to lighter-drinking counterparts. They may have false beliefs in their functional tolerance. That is, although their driving was impaired, they maintained the belief that their performance had actually improved.

There is some scientific evidence that supports the concept of functional tolerance, but only at low to moderate BACs and in simple predictable driving tasks. However, it is highly unlikely that functional tolerance can alleviate the impairing effects of alcohol when the driving task is complex or unpredictable.

Laboratory studies have consistently identified divided attention and choice reaction time as being particularly sensitive to the effects of alcohol, and the impairment is evident at less than 50 milligrams of alcohol in 100 millilitres of blood. Studies assessing the impairment effects of alcohol—

• (1540)

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Gently, gently.

Mr. Chairman, may we—

[*English*]

The Chair: I just note that the witness is reading a little bit too quickly, so our translators can't get it all down. Would you just slow down a little bit?

Thank you.

Dr. Yvona Buczek: Studies assessing the impairing effects of alcohol in subjects while actually operating a motor vehicle are the most relevant. A study examining the effects of alcohol in an unpredictable traffic situation, which required subjects to brake suddenly and then make an evasive manoeuvre, showed clear evidence of the degrading effects of alcohol upon driving performance in emerging situations at BACs below 50.

Studies of actual drivers who were stopped on the road have demonstrated an exponential increase in crash risk with increasing BAC. The Grand Rapids study, published by Borkenstein and colleagues in 1974, compared approximately 6,000 motor vehicle collisions to approximately 7,500 control drivers and concluded BACs over 40 are definitely associated with increased accident rate. The risk of causing an accident was increased compared to control drivers by approximately two times at 60, three times at 80, seven times at 100, and twenty-five times at 150 milligrams of alcohol in 100 millilitres of blood.

A more recent study revealed an even greater crash risk in collisions that resulted in driver fatality, which became significant at BACs of 20. When the BACs range from 50 to 79, the relative risk of a driver fatality increased from approximately three to seventeen times that of control drivers.

In conclusion, a critical assessment of the impairment literature diminishes the importance of most subject variables—that is, functional tolerance, driving ability, age, and gender. The two most relevant variables are BAC and complexity of the driving task.

Thank you.

The Chair: Ms. Buczek, you were actually well within your time, so I thank you for that.

We'll move now to Mr. Lamoureux representing the Canadian Automobile Association. You have three minutes.

Mr. Eric Lamoureux (Manager of Government Relations, National, Canadian Automobile Association): Thank you so much for the committee's time.

My name is Eric Lamoureux. I'm here on behalf of the Canadian Automobile Association. I'm their manager of government relations.

On behalf of CAA, I'm pleased to be here today to participate in the committee's review of impaired driving. The committee is to be commended for their investigation of this complex issue, particularly when so many Canadians are impacted by the destructive consequences of impaired driving each year.

From its establishment in 1913, CAA has been Canada's foremost voice advocating for road safety improvements and supporting the rights of Canadian motorists and travellers. With over five million members, CAA continues to advocate for a wide variety of safety initiatives that have helped guide relevant traffic safety laws, public security initiatives, and public policies in Canada. We continue to work with the federal government, our clubs, and other stakeholder groups to ensure that safe drivers on safer roads continue in Canada.

Like you, Mr. Chair, and the members of this committee, CAA, as one of Canada's largest member-based advocacy groups, is anxious to see fewer deaths and injuries on the roads as a result of impaired driving. In 1999 this committee tabled a report entitled "Toward Eliminating Impaired Driving". The report concluded that the current legal blood alcohol content of 0.08 adequately empowered police to remove impaired drivers from the road while not burdening the justice system.

More importantly, the report stated the following:

...that a legal BAC limit of 50 mg/100 ml of blood could result in a loss of public support, especially since scientific evidence suggests that not everyone would be impaired at that level.

Mr. Chair, CAA's principal advocacy focus, on behalf of our members and all the travelling public, is to be a credible promoter of safety issues in Canada. As this is our sole motivation, CAA continues to support this approach. Until studies show overwhelmingly strong and consistent evidence for lowering the criminal blood alcohol content limit, it is our view that the current limit should be maintained and strongly enforced.

Therefore, in order to address the growing concern of impaired driving, CAA supports strong legislation, strict enforcement, and continued education to end the practice of driving while under the influence of alcohol, drugs, or medication. It is our view that this is where the investment of resources should be made.

The committee's review of mechanisms to reduce impaired driving in Canada is timely and well overdue. Current measures are not providing adequate deterrents, and neither are they removing dangerous drivers from the road.

CAA was pleased last year when Parliament strengthened the laws governing impaired driving. The passage of the Tackling Violent Crime Act strengthened the impaired driving laws in Canada by giving police new tools to investigate impairment due to alcohol and drug-impaired driving. It also reduced the ability of those accused of impaired driving to evade conviction because of technical defences.

• (1545)

The Chair: Mr. Lamoureux, your time is up, unfortunately. You'll have lots of time to expand as we allow questions to be put.

Mr. Eric Lamoureux: Sure. Thank you.

The Chair: We'll move on now to Mothers Against Drunk Driving.

Dr. Solomon, are you presenting, or is it Mr. Murie?

Mr. Andrew Murie (Chief Executive Officer, Mothers Against Drunk Driving): I'm going to start. Thanks very much.

First of all, I'd like to introduce my colleague Margaret Miller, our national president. Her son Bruce was a police officer who was killed by an impaired driver.

For our presentation, we have given members handouts in both English and French. Professor Solomon will refer to them, so perhaps you could have them handy.

Our point today, within our three minutes, is just to give a quick update of our presentation since we were last here, which was February of 2008.

Professor Solomon.

Mr. Robert Solomon (Legal Director, Mothers Against Drunk Driving): Thank you very much.

As illustrated by the chart on page 2 of our submission, Canada has one of the worst impaired driving records relative to any other developed country. The percentage and number of impaired driving deaths and injuries in Canada is increasing. The current levels of deaths and injuries now exceed those of 1999.

The impaired driving provisions in Bill C-2, which came into force this last summer, plug long-standing loopholes in the federal law. However, these provisions will not significantly reduce the number of impaired driving deaths, injuries, and crashes in Canada. To achieve this goal of reducing impaired driving deaths requires far broader changes to the Criminal Code, namely laws that will have a major deterrent or preventative impact on impaired driving.

We propose three such measures: the enactment of a streamlined summary conviction Criminal Code 0.05 BAC impaired driving offence; the enactment of a Criminal Code provision authorizing random breath testing for screening drivers; and amendments to eliminate a reduced mandatory driving prohibition for impaired driving offenders in provincial and territorial ignition interlocks.

In the time I have available I will address only the issue of random breath testing.

Millions of Canadians continue to drink and drive in Canada because they can do so with little fear of being stopped or, if stopped, detected and charged. The estimated 10.2 million alcohol impaired driving trips made in 2006 resulted in only 60,000 charges and roughly 32,000 convictions. This translates to one charge for every 168 impaired driving trips and one conviction for every 313 impaired driving trips. Put another way, on average you would have to drive drunk once a week every week for more than three years before you'd be charged once. You'd have to drive drunk once a week every week for six years before it was likely that you would be convicted.

In response to similar problems, numerous jurisdictions around the world have introduced random breath testing. Every systematic review of the research indicates that the introduction of random breath testing results in significant and sustained reductions in impaired driving deaths, injuries, and crashes.

As with any new enforcement technique, random breath testing would be challenged under the Canadian Charter of Rights and Freedoms. I'll briefly outline some of the points that indicate, at least to me, that random breath testing is wholly consistent with the Canadian Charter of Rights and Freedoms.

First, Canadians cannot board planes, enter many court rooms or government buildings, or observe parliamentary proceedings without being scanned and subject to random physical searches of their persons and belongings. If random searches are warranted and justified in these circumstances, then a far more compelling case can be made for RBT, which poses a far more widespread risk.

Driving is already a heavily regulated licensed activity occurring on public roads, and happens to be the number one criminal cause of death in our country. Drivers are already required by common law and statute to stop and provide documentation when requested to do so. Drivers expect to be asked routine questions about licences, vehicles, and sobriety. The Canadian courts have consistently upheld the constitutionality of this random stopping, searching, and questioning of drivers. The introduction of RBT is merely an extension of these routine interventions.

When I first appeared before this committee on behalf of MADD 10 years ago advocating for substantive changes to the federal impaired driving laws, those changes were not made and, as we predicted, impaired driving deaths, injuries, and crashes increased. Doing nothing or doing little is a choice, but unfortunately it's a choice that will leave this country with one of the worst records of impaired driving of any comparable developed democracy.

• (1550)

The Chair: Professor, we're at the end of our time. Thank you.

To clarify for those who are perhaps viewing this elsewhere, we have different time slots for each of our witnesses because some have appeared before this committee on this study already. Those who haven't receive ten minutes and those who have receive three minutes. Then we follow up with random questions asked by members of the committee.

My apologies for cutting you off in the interest of time.

We'll move on to the Alcohol Countermeasure Systems Corp., represented by Ian Marples.

Mr. Marples, you have ten minutes because you haven't appeared before us previously.

Mr. Ian Marples (General Counsel, Alcohol Countermeasure Systems Corp.): Thank you, Mr. Chairman.

I appreciate the opportunity to be here today to speak on behalf of the company I represent, Alcohol Countermeasure Systems Corp. Alcohol Countermeasure Systems, or ACS for short, is a Canadian company with a track record stretching back more than 30 years. During that period of time, ACS has developed a well-earned reputation as a world leader in the field of alcohol ignition interlocks and interlock program services.

ACS interlocks are used in 19 countries around the world. In Canada, ACS supplies interlock devices, installation and monitoring services to offenders, and data management and reporting to jurisdictional administering authorities in all ten provinces, as well as the Yukon Territory.

Alcohol interlocks are sophisticated breath alcohol testing devices that are installed in a vehicle in a way that requires a driver to provide an alcohol-free breath sample before the vehicle can be started. Following a successful breath test and the starting of the vehicle, the alcohol interlock system requires retests at random intervals and activates an alarm if a retest is not taken and passed. In the event the alarm is allowed to remain on for an extended period, the device also initiates a countdown timer that requires the vehicle to be serviced within a few days. Failure to comply with service requirements will cause the alcohol interlock to enter what's referred to as a "lockout" state, meaning the device will not accept a breath test and consequently will prevent the vehicle from being started or operated.

The primary use of alcohol interlock technology to date has been in programs for impaired driving offenders. Such programs typically involve installation of an alcohol interlock device in an offender's vehicle, as well as monitoring and supervision of both the use of the vehicle and the interlock device by administering authorities. The alcohol interlock records events, including breath test results, relating to the use of the device and the vehicle, and the data are recorded and downloaded as part of every service procedure for compliance monitoring purposes.

The first alcohol interlock programs for impaired driving offenders were introduced in the U.S. in the mid-1980s. Canada's experience dates from 1990, when Alberta launched a program, followed in 1997 by Quebec. Since then, all provinces, as well as the Yukon Territory, have established alcohol interlock programs for impaired driving offenders, although many of these programs are relatively new. The Northwest Territories has enabling legislation in place, but has yet to implement an offender program of its own.

Over the years, numerous studies have been undertaken to assess the effectiveness of alcohol interlocks, resulting in a growing body of scientific evidence drawn from programs in both Canada and the U.S. In virtually every case, alcohol interlock devices installed in the vehicles of impaired driving offenders have been shown to be highly effective at preventing driving after drinking, as compared with traditional sanctions, such as licence suspension or revocation. Reductions in recidivism rates range from 75% to more than 90% in some cases.

Although alcohol interlocks are effective in preventing driving after drinking, a number of factors have limited the overall impact that offender interlock programs might otherwise have had in reducing the problem of impaired driving in Canada and elsewhere. Most, but not all, of these factors involve matters within the jurisdictional domain of provincial and territorial governments to address.

In 2008, the Canadian Council of Motor Transport Administrators, or CCMTA, approved model standards for interlock programs in the hope and expectation they would serve as guidelines for provincial and territorial legislative initiatives, and in the process assist in maximizing the effectiveness of alcohol interlock programs as an impaired driving countermeasure. The key elements of the CCMTA's model interlock program standards include: mandatory participation for all impaired driving offenders; early reinstatement incentives; open-ended terms or timeframes; performance-based exit criteria; and links to treatment.

From a federal jurisdictional perspective, the most significant element of these involves early reinstatement incentives, since pressure in favour of such incentives stems from a growing body of evidence suggesting that participation in an alcohol interlock program should commence as soon as possible following the offence.

• (1555)

The rationale for early reinstatement is based on the observation that lengthy periods of licence suspension or revocation are not very effective as a means of getting impaired drivers off the road. A substantial portion of offenders drive under suspension, and in some cases drive after drinking. Another cause for concern involves what appears to be a growing trend among suspended or revoked drivers not to apply for reinstatement after the extended period of licence suspension or revocation has expired.

According to subsection 259(1) of the Criminal Code, persons convicted of drinking and driving offences under sections 253 and 254 are subject to a mandatory driving prohibition order for a minimum period of one year for a first offence, two years for a second offence, and three years for each subsequent offence.

Pursuant to subsection 259(1.1), offenders subject to a driving probation order who participate in a provincial alcohol interlock program and comply with the conditions of the program may operate a vehicle equipped with an alcohol interlock device during the prohibition period unless otherwise ordered by the court. However, under subsection 259(1.2), they cannot drive at all, even with an interlock installed in their vehicle, for a minimum period ranging from three months for first offenders to 12 months for third and subsequent offenders.

In light of the foregoing it is submitted that consideration should be given to amending the Criminal Code to repeal subsection 259(1.2). This is a measure that would be strongly supported by MADD Canada and other stakeholders interested in maximizing the effectiveness of alcohol interlocks and interlock programs.

Alcohol interlocks represent a promising initiative in the battle against impaired driving. That said, in order to harness the potential of this life-saving technology it is incumbent on governments at all levels to put in place a legislative framework that will maximize or at least not hinder the effectiveness of programs in which they are used.

Thank you for your attention.

• (1600)

The Chair: Thank you.

Our final witness, representing the Traffic Injury Research Foundation, is Robyn Robertson. Welcome. You have three minutes.

Mrs. Robyn Robertson (President and Chief Executive Officer, Traffic Injury Research Foundation): Thank you.

I'd like to thank the committee for giving us the opportunity to reaffirm our position. For those of you who are not familiar with our organization, we are a charitable research organization established in 1964, and our focus of research worldwide is the road user. We do a lot of research on impaired drivers.

What I'd like to comment on today is the lowering of the legal limit. There has been a lot of debate about lowering the legal limit. There has been a lot of discussion regarding the scientific evidence. What we're here to do today is look beyond the scientific evidence to the practical impact on the justice system of lowering the legal limit.

Last year our organization completed a national survey of lawyers, both crown and defence counsel, all across Canada. We surveyed more than 1,000 lawyers, and we looked at a number of challenges within the justice system dealing with impaired driving cases. One of the issues we specifically focused on was lowering the legal limit.

I think it's important to point out that lowering the legal limit at a federal level would create a substantial burden on the justice system. If you look at the current situation, the criminal caseload of crown prosecutors is four times that of defence counsel. Impaired driving cases currently account for about 25% of those cases being processed through the system. About a third of the impaired driving cases involve repeat offenders. Lowering the BAC limit would substantially increase the caseloads of lawyers and erode the crown's ability to effectively prosecute higher BAC cases and higher-risk offenders. In addition, current inequities in caseload volume between crown and defence counsel would become more pronounced.

A shrinking number of cases are being resolved using plea agreements. A greater number of cases are actually proceeding to trial. Currently, of the impaired driving cases processed through the system, some 40% go to trial because defendants are not willing to negotiate a plea. Obviously, when cases go to trial, this requires more time and resources to resolve the cases.

Clearly, accused are willing to proceed to trial to avoid a criminal conviction. There's no reason to believe that those accused with lower BACs would be any more inclined to negotiate a plea agreement as opposed to going to trial, particularly when the odds of conviction at trial are low.

Defence counsel spend at least twice as many hours and up to four times as many hours as crown counsel in preparing individual cases. Again, these inequities would increase as caseloads grow.

Nationally, prosecutors report that accused are convicted in 52% of cases at trial. Of those cases going to trial, 52% of the accused are convicted. So we're not being as effective in the courtroom as we would like to be. The low likelihood of conviction erodes the specific deterrent effect of impaired driving laws and serves as an incentive for the accused to proceed to trial. In addition, the amount of time it takes for cases to be resolved in court has grown substantially and will continue to grow.

On the issue of lowering the legal BAC, fewer than 40% of crown prosecutors agree with this option.

If you look at the volume of cases currently being handled administratively at the 0.05 level, there are 47,000 cases. On average, we do about 50,000 criminal cases a year. There are 47,000 administrative suspensions, not counting Ontario, Quebec, which obviously would be implicated in 0.05, and Alberta. So we can expect the number of cases to double.

The Chair: Thank you so much for that presentation.

We're going to move now to questions. I want to welcome Mr. Larry Bagnell back to the table. You were part of this committee in the previous Parliament. I read some of the evidence, and you were quite involved.

You have the first question, and you have seven minutes.

Hon. Larry Bagnell (Yukon, Lib.): Thank you, Mr. Chair. Thank you all for coming. It's very helpful and interesting.

I want to concentrate on the aspect of recidivism, which is a large percentage of the crime, and also on the administrative functions.

I'd like to ask Mr. Marples if there were studies done on people who had the same conviction but chose not to use the interlock. Have there been studies of the two? There was the potential of their reoffending afterwards.

Mr. Ian Marples: The so-called interlock effectiveness studies, which stretch back over the last 20 years, typically involve comparing matched groups of offenders. One group has alcohol interlock devices installed in their vehicles and the other group is simply under suspension or revocation. The studies assess the differences in terms of recidivism rates, or the extent to which the people in each of those groups are caught for subsequent drinking and driving offences.

In those studies, the interlock group invariably does better—not just a little bit better, but much better. Why? It's because interlocks are effective in making responsible decisions about driving after drinking for people who can't make them on their own.

We actually did an assessment ourselves of the number of times alcohol interlocks installed in the vehicles of offenders in Canada have prevented driving after drinking. In 2008 alone it was more than 193,000 times.

•(1605)

Hon. Larry Bagnell: Very good, thank you.

Robyn, I basically agree with what you're saying, but just to be the devil's advocate, if it was lowered to 0.05 it would suggest that government was taking this more seriously. Would that not then reduce the number of people who voluntarily decided to engage in that activity and therefore reduce the activity in the courts?

Mrs. Robyn Robertson: That would depend on our ability to enforce it, and I think the offenders have already learned that our ability to enforce it is not what it should be. Hence, we're seeing a lot of cases that are going to court and people who are challenging. If you increase the number of cases by lowering the limit, then it also detracts from the ability of the justice system to focus on those offenders who are high risk, who are at high BACs, who are repeat offenders, because they're spending their time dealing with lower BAC cases. That's not to say that lower BAC cases aren't important, but we do have administrative sanctions in place. We do have things like ignition interlock, which are very effective. I think there are alternative ways to dealing with the lower BAC cases to ensure that we don't lose our focus on those offenders who are at greatest risk.

Hon. Larry Bagnell: My understanding is that the administrative functions in those provinces and territories where they are, are somewhat effective. If we enhance that right across the country, build it up—maybe, I don't know if we can tie it in to the interlocks for them as well—and put a lot more effort there, there'd be a lot less expense and you would then not tie up the justice system for the serious people. There would be one strategy Canadians could focus on.

Mrs. Robyn Robertson: Yes. I think CCMTA, the Canadian Council of Motor Transport Administrators, has gone through and looked at the 2005 administrative sanctions and recommended a number of enhancements, which we fully support. Frankly, I think you'd get better bang for your buck, because it's going to be very expensive. If prosecutors are already behind the eight ball, vastly increasing the number of cases coming into the system is only going to make it worse.

Hon. Larry Bagnell: Given that my theme is stopping recidivism, which would stop a lot of the crime, do any of the other witnesses have any suggestions as to how we can reduce recidivism, other than keeping them in jail for a few months longer? Do any of the other witnesses who haven't spoken yet want to comment? No?

Mr. Robert Solomon: I will respond.

The evidence indicates that every country that has introduced 0.05, or a lowered their legal limit, has obtained significant traffic safety benefits. The evidence also indicates that among those groups, the group that appears to be most deterred by lowering the blood alcohol level is the so-called hardcore drinking driver. In other words, the decreases in driving among that group are greater. So a 0.05 federal impaired driving offence would have a significant deterrent impact.

The other thing is that Australia has had 0.05 for 25 years. There's no evidence that when it went from 0.08 to 0.05 its courts were backlogged. Every state in the United States has gone from a 0.1 to a 0.08 criminal offence. There's no evidence of any backlog. A 0.05 would have a major deterrent impact. That's not to say that we don't favour beefing up the provincial administrative 0.05. We also support that, and we support both of those measures.

•(1610)

The Chair: Mr. Dosanjh, you have a minute and a half.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Mr. Solomon, I'm new to this committee, but not new to law enforcement. In British Columbia, there used to be a very effective counterattack program. It was very effective, if I might say so myself. It went on for a long time, and is still perhaps there; I'm not aware.

Would you look at the costs of increased prosecutions or charges, the court costs, administrative costs, and then compare that with the same amount of money being spent on counterattack, education, stricter enforcement of what exists? Have you looked at that, and have you come to the conclusion, still, that what you're proposing would be more beneficial?

Mr. Robert Solomon: All of the reviews of the scientific evidence on traffic safety measures that do the most amount of good rank lowering the blood alcohol level extremely highly. So sobriety checkpoints, if well publicized, with lots of media attention, do have a significant deterrent impact, but a 0.05 BAC would appear to be

the second most effective measure. The most effective measure in driving down impaired driving deaths and injuries is random breath testing. A lower blood alcohol level is number two, from all of the reviews of the literature.

Hon. Ujjal Dosanjh: It seems to me the weight of opinion is somewhat equally divided.

Mr. Robert Solomon: In the scientific literature it's not.

Hon. Ujjal Dosanjh: No?

Mr. Robert Solomon: No.

The Chair: We'll leave it at that for now.

We'll move on to Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Thank you, Mr. Chairman.

I have three questions.

I would like to know if the toxicology section of the Centre of Forensic Sciences is suggesting that we opt for a reduction in blood alcohol level from 0.08% to 0.05% under the Criminal Code.

[*English*]

Dr. Yvona Buczek: It is not our role to suggest policy. My opinion is strictly a scientific opinion. The presentation I made today just outlines what the scientific studies show, and that is that impairment becomes significant at a BAC of 50, and then continues from then forward.

[*Translation*]

Mr. Réal Ménard: Thank you for your caution. It has nevertheless led us to a clear statement.

My second question is for the witnesses from MADD.

Of all of the witnesses who have appeared until now—and there must be some 15 if memory serves me well—only two have held the same point of view as you. You obviously want us to decrease the limit from 0.08% to 0.05% under the Criminal Code, and I understand your perspective. However, the people who have spent some time studying these issues, both organizations responsible for law enforcement as well as scientists, claim that the most effective measure is the immediate suspension of the person's driver's licence. This is what some provinces do. We are talking about an administrative reality here.

We have heard that hard core drinkers are few in number but are responsible for a large number of accidents. Therefore, I do not understand the logic of your argument. You say that for them, this is a deterrence measure. Why would people who do not respect the regulations when the level is 0.08% suddenly be convinced to respect them if the level is reduced to 0.05%? Contrary to what you have stated, the statistics do not lead us to conclude that there are more traffic accidents related to impaired driving.

I will let you react to that and I will be happy to listen to your arguments.

[English]

Mr. Robert Solomon: Thank you.

We've addressed those issues in an article that we've published in the international journal *Injury Prevention*, and we've published in the *Criminal Law Quarterly*. The reviews of the research literature are quite clear and they are consistent: lowering blood alcohol levels is extremely effective in deterring impaired driving. That's been the experience of every country that has lowered its blood alcohol level.

The other thing we should be aware of is that the vast majority of other countries around the world have made it an offence to drive with a blood alcohol level of 0.05. I refer to a chart on page 5 of my submission.

Concerning the issue of the hardcore drinking driver, there is a great deal of mythology. Not that many studies have been done about the drinking history of people who are killed in impaired driving crashes. The one study that has been done, a comprehensive study by someone called Baker, in the United States, indicated that even though hardcore drinking drivers make the most impaired driving trips, only about a third of the people who are killed or responsible for fatal crashes are hardcore drinking drivers. The majority of impaired driving deaths and injuries appear in this country to be among what are called heavy episodic drinkers. A typical example is the 16- to 25-year-old male. This group represents 13% of the population but 32% of the traffic injuries. The idea that our problem is limited to hardcore drinking drivers simply doesn't appear to be borne out.

The other thing is that two studies that have been done on the impact of lowering blood alcohol levels, one in Sweden and the other in Australia, indicated that the reductions in the number of people with very high blood alcohol levels was greater when you lowered the blood alcohol level, in Sweden from 0.05 to 0.02 and in Australia from 0.08 to 0.05.

Maybe the problem is with the people you're inviting to be witnesses. I'd like to see more scientists invited and more research people invited, and fewer people who represent particular interests.

• (1615)

[Translation]

Mr. Réal Ménard: Very well. Do I have time for a final question?

Mr. Marples, you seem to be saying that there are inconsistencies between subsections 259(1) and 259(3) of the Criminal Code. I would like you to remind us what the specific change is that you would like to see made to the code.

[English]

Mr. Ian Marples: It's subsection 259(1.2), which prescribes a minimum waiting period before offenders are eligible to participate in a provincial alcohol ignition interlock program. The minimum waiting period is three months for a first offender, ranging up to 12 months for a third and subsequent offender. If the federal Criminal Code were amended by repealing that provision, it would enable impaired driving offenders to get on a provincial interlock program as soon as possible. I think it would go a long way towards closing

the gap that seems to have arisen in the research, which suggests that the longer the licence suspension or revocation period, the greater the likelihood that people will not come back into the system of legal licensing and control.

Bear in mind I'm not suggesting for one second that the federal driving prohibition order be rescinded. I'm talking about the waiting time that would allow people, even though they're subject to a driving prohibition order, to participate in an interlock program.

[Translation]

Mr. Réal Ménard: Thank you.

[English]

The Chair: Thank you.

Mr. Comartin, you have seven minutes.

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

Thank you all for coming.

Professor Solomon, on the point that Mr. Marples has raised, from your paper and the positions you've taken in the past—Mr. Murie, you may be answering this too—you appear to be in agreement that we should look again at reducing the waiting period that people have to achieve in order to get on the interlock program.

Is that correct?

Mr. Andrew Murie: Yes, that's correct.

Mr. Joe Comartin: Mr. Murie, can I ask you, have you taken a specific position, that is, if it's a conviction of a first offence, would you want them to spend any period of time before they could go on the interlock, or could the judge order it immediately, if we made the proper amendment? Or would you see them being non-suspended from driving for, say, 30 days?

Mr. Andrew Murie: We would see that as long as they were in compliance with an alcohol interlock program, they could spend their whole prohibition period on the alcohol interlock. Basically, the federal government would still have their...if they drove without an interlock in their vehicle, it would still be driving while disqualified under the Criminal Code. If they have the interlock on their vehicle, we would be fine with that.

• (1620)

Mr. Joe Comartin: Mr. Marples, what's the current monthly cost of being on the program?

Mr. Ian Marples: If you put it in terms that offenders can readily understand, it's about the price of a drink a day to be on the program, so we're talking in terms of approximately \$105 per month.

Mr. Joe Comartin: Would those costs go down if it had a more widespread use, or is that pretty well a fixed cost?

Mr. Ian Marples: There's some likelihood that the costs would go down, but this is one area where the costs have not really risen appreciably over the last decade. The last cost increase was about 10 years ago, and it put the cost of an interlock program at about \$90 a month. If you figure from \$90 to \$105 over 10 years, that's a pretty good track record, which I would challenge anyone else in the entire country to match.

Having said that, I think there are, obviously, economies of scale. There's certainly the potential for that, yes.

Mr. Joe Comartin: Can you give us a breakdown in terms how much of the \$100 is administrative cost and how much is the actual capital cost of the device and the installation?

Mr. Ian Marples: My guess is it would be about 50-50.

Mr. Joe Comartin: Okay.

Professor Solomon, we heard from the safety council. Actually, I think I may have gotten this after the meeting broke up, but a member of the safety council indicated to me last week that there were only four countries in the world that had lowered the BAC to 0.05 under their criminal sanctions, and that in the rest of the countries that had done it, it was administrative. Do you agree with that?

Mr. Robert Solomon: No.

Mr. Joe Comartin: Okay. Can you give us a sense of how many countries have gone to 0.05 in their criminal—

Mr. Robert Solomon: The background study upon which that is based assumed that if there was no jail time for the offence, then it was administrative. Well, that's simply not accurate. It doesn't make it administrative if there's no jail time. That study suggested that the majority of jurisdictions have 0.08, but then they counted all 50 states individually.

I have a chart here, which in part is based on data provided by the International Center for Alcohol Policies, which is funded by the alcohol industry in the United States. On page 5, as you can see, I think there are 67 countries at below 0.08, and there are 20 countries at 0.08 or higher. The rest of the world has moved on. The rest of the world realizes that lower blood alcohol levels reduce impaired driving deaths or injuries.

The other point I want to make is that we have provincial administrative suspensions at 0.05, and impaired driving deaths are rising. We have one of the world's worst records in impaired driving. So unless we do something significant or substantial, nothing is going to change. Marginal changes aren't going to make a difference. Now I should say I am a big fan of beefing up 0.05 provincial administrative licence suspensions. As a matter of fact, we drafted the original proposal that the CCMTA adopted. So we're not opposed to it. We think it's important, and we want to favour it. But a 0.05 Criminal Code limit would also have a significant impact, and it would provide a consistent approach across the country.

Mr. Joe Comartin: I don't know if you're dealing directly with the government of the province of Quebec, but is there any hope that they're going to move to an administrative function there in the near future?

Mr. Andrew Murie: I think if Quebec moves on the model, they're not going to move to the required seven days, which is in the model for the first time. I think you'd be lucky to see 24 hours.

Mr. Joe Comartin: You're talking about the suspension?

Mr. Andrew Murie: That's what was proposed in their latest round of legislation, which didn't get through.

Mr. Joe Comartin: Are you satisfied with the changes that the Province of Ontario has just brought in, or is about to bring in?

Mr. Andrew Murie: No. I'm satisfied with what P.E.I. has enacted. They went with the full model. Prince Edward Island now has seven days on the first suspension, 30 days on the second, and 90 days on the third. They're the only province so far that's actually implemented the full model. As my colleague Professor Solomon said, if you get a really wide-ranging patchwork quilt, I think unless you have those minimum sanctions in there at the provincial level, it's not going to be effective. They need to do it in unison in a timely fashion.

Mr. Joe Comartin: Ms. Robertson, Professor Solomon mentioned the experience in Australia when they went to 0.05. Do you concur with his determination that in fact we didn't see an overload in the courts at that time in Australia? Or have you studied that?

• (1625)

Mrs. Robyn Robertson: They have an effective justice system. They also have the ability to enforce it with the random breath testing.

Mr. Joe Comartin: You're not suggesting Canada doesn't have an effective justice system?

Mrs. Robyn Robertson: No, I'm saying they have the ability to manage the cases. My concern here is the message we send to the public if we pass the law and we can't enforce it, and in the worst case if we can't handle the cases going through the justice system. I think there's already a strong message with regard to our ability to handle cases, because you see more than 40% of the people going to trial because they know they have a good shot at getting an acquittal.

Mr. Joe Comartin: Has any analysis been done by your association for effectively getting rid of the two-beer defence for most cases, assuming it is going to be successful in surviving the challenge?

Mrs. Robyn Robertson: That will hopefully have an impact in terms of clearing up some of the backlog in the justice system. But I think it's important that we make sure that's going to happen. That "evidence to the contrary" defence, the Carter defence, was one of the things we looked at in the lawyer's survey, and it was a huge impediment for processing cases for sure.

The Chair: Thank you.

We'll move on to Mr. Norlock. You have seven minutes as well.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair.

Thank you to the witnesses for coming, especially those who came on very short notice. My question will be to Ms. Buczek with regard to the definition of alcohol tolerance in toxicological terms. We know some people tolerate alcohol more than others, or have an ability to. For the layperson, could you define what you mean when you use those terms?

Dr. Yvona Buczek: Tolerance is defined as the diminished effect of alcohol on a body. What happens is that if a person drinks large amounts of alcohol on a regular basis, their body will adapt to the presence of alcohol. It will have less of an effect in comparison with when they were a naïf with alcohol.

But in terms of impairment, which is the focus of this committee, you cannot get tolerance to all aspects of impairment. Certain very complex functions are required to operate a motor vehicle, and you cannot get tolerance to that. Tolerance is intoxicated practice. You have to experience the event in the presence of alcohol, and you can't get tolerant to responding to complex driving situations, such as driving on a busy road when someone jumps out in front of the car.

You cannot develop tolerance to everything.

Mr. Rick Norlock: Thank you for that.

Would I be out of line to suggest that what you're saying is that a person who has a high tolerance to alcohol, such as a person who may be an alcoholic, can appear to be functioning in everyday life like most people—they've learned how to walk a little bit straighter, they've learned how to cope with effects on such motor skills as writing or speaking—but then, when faced with an abrupt change in circumstance, they can revert to the same thing that you or I would given the same amount of alcohol?

Dr. Yvona Buczek: That's exactly it. You have to differentiate between the observable signs of intoxication that you describe, such as slurred speech, unsteady gait, and difficulty walking. People tend to get tolerance to that a lot faster. You cannot get tolerance to some of the complex cognitive processes that are required for driving—divided attention, response to complex driving situations, and certain aspects of vision.

You just can't get tolerance to that, even if you are an experienced alcoholic.

Mr. Rick Norlock: Let's take a typical winter's night in Canada when someone is driving home from an event. It's a male, let's say, who weighs approximately 195 pounds and who is around 30 years of age. Let's say his drinking started at around six o'clock in the evening, when he had a light to average meal. He consumed three drinks after the glass of wine he had with his meal.

Could you give me an approximation of what we might observe with his driving at around 10:30 that night?

•(1630)

Dr. Yvona Buczek: Sir, I think I would have to do some calculations to respond to your question.

Mr. Rick Norlock: Well, for the purposes of the committee... This is not like a trial. We're not asking you for something exact.

Just in your experience, off the top of your head, what would you expect to see in this person's driving ability if he'd had four drinks during that time? Give me a rough BAC just so that the average

person at home can make a determination. I think I've just recited to you a typical evening for people, a typical event. For instance, this weekend I went to an awards event.

I think we need to differentiate between somebody who's drunk behind the wheel and somebody who has a diminished ability to drive. The average person listening to these proceedings, or hearing about them, or reading them, would be given the ability to judge for themselves whether the committee is going down the right path and what our deliberations might result in.

Dr. Yvona Buczek: On the scenario you have described here, my colleague was crunching some numbers without a calculator while I was listening to the question. He would say that the scenario you describe would result in a person having a BAC of somewhere between 10 and 45 milligrams of alcohol in 100 millilitres of blood at 10:30, which is the incident time, as we toxicologists refer to it.

Certainly this is not a very high level. If you are talking about 10, that is a very low level of alcohol. However, as I indicated during my presentation, if you take a person like this to the lab and test them on some very sensitive tests with skills that are relevant to driving, you actually may see differences in the performance at 15 as compared to zero. Does that translate into unsafe driving? I don't know. At 45 you'd certainly have more. There would be more skills impaired to a greater extent, and you're going to see them in more people.

Again, you have to differentiate between impairment and what you observe. You may look at somebody at the level of 50, 100, or even 200, and you might not see anything in terms of how they behave. It depends upon what they are doing. If they're just standing there and a police officer is talking to them, they might not show any signs of intoxication, particularly if they are tolerant, going back to your earlier question. If you put them in a car and put them into a very complex driving situation where there are a lot of things happening, where they have to integrate a variety of stimuli from the environment, like observing traffic signs, traffic signals, other cars, and pedestrians, and they have to process all this information, what alcohol does is it causes less information to come in and to be processed at a slower rate. In that aspect, a person would have decreased ability to operate a motor vehicle even at 15, certainly more at 45, and even more at the 100 or 200 level.

The Chair: Thank you.

We'll move on to Mr. Bagnell. Second question, five minutes this time around.

Hon. Larry Bagnell: Thank you.

I just want to talk a bit about the random roadside tests that Mr. Solomon brought up. I wonder if you could tell me roughly how many countries in the world do that. Obviously Canada doesn't.

Mr. Robert Solomon: I believe almost all of the countries in the EU have random breath testing now. The EU has recommended comprehensive breath testing, New Zealand, Australia, Japan... I haven't done a survey of the international law, but I believe probably a majority of countries have some form of random testing—not necessarily random testing at roadside, but clearly the EU, Australia, and New Zealand.

Hon. Larry Bagnell: Do any of the other witnesses have comments on this proposal of Mothers Against Drunk Driving for random roadside tests?

My concern is related to the constitutionality. You raised that yourself. There are a number of Canadians who don't like to be interfered with if they are minding their own business, and I'm not sure the airport scanning is a good example because it's optional. There is a sign when you go there that says you don't have to go through the scan if you don't want to fly on the plane.

•(1635)

Mr. Robert Solomon: You're the boss of that.

Hon. Larry Bagnell: But when you're at home and you want to go to the grocery store you don't have a choice. You're going to be pulled over and tested, by your scheme, so it's comparing apples and oranges. Civil liberties people might have a problem with that.

Mr. Robert Solomon: I would disagree with you, sir. Driving is not a right in this country. Driving is a licensed activity. It is a privilege, so the example you give with the airport is irrelevant.

Also, the courts have already dealt with the issue of whether a government can require random screening to enter a public building. The last time I was here the security seized my shaving cream three times. I was searched. I was scanned three times. We, in this room, believe that the state interest in protecting parliamentarians justifies random search of my person and my property. The courts have addressed this issue and upheld random screening and searching for entering public buildings and courts.

If you look at the statistics on deaths and injuries in Parliament and in government buildings and you look at the deaths and injuries in terms of roadways, there is no comparison. I would suggest to you that the state interest, in terms of random breath testing, the number of lives we would save—probably something like 20% reduction in traffic deaths and injuries—warrants that interference with the right to be free from unreasonable search and seizure. You're right, it is random search, but drivers are already subject to random stopping. Drivers are already subject to random search. Police officers can demand to see my licence and insurance. That's a random search.

The state interest in making sure you are sober is greater than the state interest in making sure you have your insurance and licence with you. That is the reason why. As between random breath testing and 0.05, the evidence is clear. The random breath testing will have a greater impact on reducing deaths and injuries.

The Chair: Thank you.

I believe Mr. Brison has a question.

You have a minute and 45 seconds.

Hon. Scott Brison (Kings—Hants, Lib.): Thank you.

I also thank you, Margaret Miller, for being here. Margaret is a Nova Scotian and a constituent.

I would agree with your assessment of the constitutionality of the issue in terms of random testing, in terms of driving being a privilege and requiring a licence, and it being a choice as to whether or not one drives.

But I have a question on the resource issue. In conjunction with this proposal, have the RCMP or police forces asked for an increase in resources to help make it truly effective and to ensure that we don't just pass a policy change but actually increase resources to facilitate it achieving safer roads?

Mr. Robert Solomon: A random breath testing scheme is a lot more efficient and effective than sobriety checkpoints, where you need to have reasonable suspicion to demand a sample.

I'll ask my colleague to talk about the police attitude toward RBT.

Mr. Andrew Murie: The Canadian Police Association appeared before this committee and was asked what their number one priority was, and they said random breath testing.

What we know about drinking drivers.... It's the perception of being caught. It will reinvigorate police enforcement on impaired driving. For all the things my colleague said, it will also make a fundamental difference on the police enforcement side. That increased perception will drive down the number of drinking drivers. That's where you get the savings in lives, deaths, and injuries.

The Chair: Thank you.

We'll move on to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: I thank the witnesses for being here. I listened attentively to what you said to the committee.

For many years, as a defence lawyer, I argued impaired driving cases. I would therefore like to ask a question of the MADD representatives.

On page 4 of your presentation, you say:

Indeed, contrary to what the alcohol industry and its allies have suggested, research indicates that reducing BAC limits to 0.05% or lower has its greatest impact on high-BAC drivers.

In all sincerity, I have to tell you that I have a very hard time with that. You say that such research exists. Could you send a copy of it to the committee?

•(1640)

[*English*]

Mr. Robert Solomon: Thank you very much.

I have already supplied that research to you in written form. When we appeared before, we gave you a copy of this article, which deals with the issue of whether a 0.05 would have a deterrent impact on high BAC drivers.

I've also given members of this committee the article I published in the *Criminal Law Quarterly*. The article proposes a streamlined 0.05 offence with some reconviction procedures, with the ability to plead guilty without appearing in court, with an automatic reduction or an automatic elimination of the criminal record if the driver had no further impaired driving convictions.

So that information has been provided, but I'd be happy to provide it to you again. And if you wish, I will leave you copies of these documents.

[Translation]

Mr. Marc Lemay: Thank you very much.

Ms. Robertson, I read your document as well. On page 12 of the French version, you say the following.

According to findings from previous studies, it is evident that in the past two decades, the effectiveness and efficiency of the criminal justice system in dealing with impaired driving cases has been eroded.

Can you tell me how and why this has happened? Do you have any studies or documents to support this? Is it because the number of cases is too high?

[English]

Mrs. Robyn Robertson: That research actually comes from the national survey we did of crown and defence counsel, where we looked at how it's taking longer to process these cases than it did 10 or 20 years ago.

You're seeing vastly more people going to trial and challenging the charge. You're seeing more cases lost at trial. You're seeing fewer cases pled. You're seeing caseloads of crown counsel increase dramatically.

I think all those things contribute to an erosion of the deterrent effect. If the public doesn't believe they'll necessarily be convicted, which is why they're willing to go to trial, I think that's a strong statement about how deterred they are.

[Translation]

Mr. Marc Lemay: Could we get a copy of the survey of lawyers?

[English]

Mrs. Robyn Robertson: Yes.

[Translation]

Mr. Marc Lemay: If I understood correctly, according to your presentation, an impaired driver is afraid of losing his driver's licence. Therefore, if we strengthen the driver's licence process, we may achieve the same results as if we reduce the blood alcohol level from 0.08% to 0.05%. Is that correct?

[English]

Mrs. Robyn Robertson: Right. I think the immediacy with which the sanction is applied is important. At an administrative level, they can apply the sanction much more quickly, whereas in a criminal setting it can take more than a year for these cases to get to trial. Usually during that time these people are driving and posing a risk on the road. If the administrative sanctions are enforced and something like an ignition interlock were applied—the research on ignition interlocks shows they're very effective—I think we'd have a better chance there.

The Chair: Thank you, Ms. Robertson.

There was a request for information and both organizations volunteered.

Professor Solomon as well as Ms. Robertson, if you could deliver that to the clerk, we'll distribute it amongst members here. Thank you.

We're moving on to Mr. Rathgeber.

• (1645)

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair.

Thank you to all the witnesses for your excellent presentations and for your interest in this very important matter.

My first questions are to Professor Solomon. With all due respect, Doctor, I disagree with your assessment that random breath testing would survive charter scrutiny.

You're arguing by analogy that individuals who board planes and enter government buildings and courthouses are all subject to some sort of search. I certainly agree with that. I boarded a plane today, and I suspect you may have as well, and you've certainly all entered this Parliament building. But I would suggest that every individual who boarded the plane that I boarded had to subject themselves to walking through a metal detector, and their carry-on luggage went through an X-ray machine.

There are eight witnesses, and you can tell me if I'm wrong, but I suspect that each and every one of you went through a metal detector. If you had a briefcase, it went through an X-ray machine. Am I wrong?

Voices: No.

Mr. Brent Rathgeber: So I'm suggesting to you, Doctor, that this is not random. It is quite different from what you're suggesting in terms of pulling over drivers and making them submit to some sort of roadside screening device. Putting it in the form of a question, do you agree with me that your analogy with respect to public buildings and airplanes is not a proper analogy?

Mr. Robert Solomon: The random breath testing programs operate in two ways. In some jurisdictions, any officer can pull over any car at any time and demand a sample on a roadside screening device. In other jurisdictions, they have established sobriety checkpoints, where every driver going through the checkpoint is subject. So for Parliament and airplanes, it's like the latter situation, where everyone goes through the testing. There's no discretion. They're still waved over at random, but everyone goes through the testing.

I would be happy with either. I'm not particularly perturbed if we give that power to the officers, because right now we give the officers the right to stop vehicles at random, both during routine patrol and also at sobriety checkpoints. I wouldn't be perturbed. But if we had to simply limit "random" to checkpoints and there's random screening and everyone going through the checkpoint, that would be a major step forward, and one that we would favour.

Mr. Brent Rathgeber: I agree with that analogy. I agree that a sobriety checkpoint where every driver has to submit to some sort of test would be more analogous to the courthouse. But then comes the issue of what is an unreasonable search and seizure, with respect to the issue of delay, and to the Oakes test in the Supreme Court of Canada and to proportionality. Walking through a metal detector at a courthouse or an airport or a parliament building is a fairly expeditious process, but if you're going to stop every car at a security checkpoint, there are conceivably going to be vehicles that are detained for hours. Would you not agree with that?

Mr. Robert Solomon: No. In Australia and other jurisdictions where they have random breath testing, at sobriety checkpoints they're able to run people through very quickly, just as right now the police don't line up cars for two and a half hours at RIDE programs. I wouldn't see that as a problem.

As a matter of fact, with random breath testing, it's faster, because you're not looking for individual signs of impairment. If you're driving, you have to blow, and they are able to conduct these very quickly.

In some jurisdictions in Australia, every driver would be subject to random breath testing probably one or two times a year, and it has a major deterrent impact.

Mr. Brent Rathgeber: I'm not questioning deterrent impact, and I support your passion for this issue; I really do. My concern is limited to the law and what our courts have said with respect to unreasonable search and seizures.

I want to be clear: I'm with you, but I think you have a problem with respect to random testing.

Mr. Robert Solomon: There's no question that random testing, whether in a sobriety checkpoint or by officers during routine patrol, would violate paragraph 253(a). It's an unreasonable search and seizure, because there are no individualized grounds for suspicion. The question is whether it can be justified under section 1 of the charter. Our courts have already upheld random screening in lots of other circumstances where the state interest is much lower.

The other thing I think we have to understand is that we're not doing well on impaired driving. We haven't been doing well for quite some time. We've tried this and that and the other thing, and it's not working: impaired driving deaths are going up in our country. Other countries around the world that are developed democracies have introduced random breath testing, and it works.

• (1650)

The Chair: We'll move on to Mr. Bagnell for a third question—is that right?

You'll have five minutes.

Hon. Larry Bagnell: I just have one question. It's for Eric, from the Canadian Automobile Association.

I know you have engineers working 20 years in advance. I'm just wondering whether, as forward thinking, the car manufacturers are thinking of any fancy devices that might inhibit any intoxicated person from driving a new vehicle and whether the insurance companies are thinking, if a person bought that particular option in their car, that their insurance rates would be lowered.

Mr. Eric Lamoureux: Thank you for the question.

We work closely with auto manufacturers on developing new technologies, and the simple answer to your question is no. There has been a lot of research, and innovations have been done for improving sight lines, improving visibility at night, and those sorts of things, but in terms of driver behaviour that extends to blood alcohol content or any sort of impairment in that respect, no, there hasn't been any, to my knowledge.

Mr. Andrew Murie: I can answer the question.

MADD Canada and MADD U.S. sit on an international group with the car manufacturers, and we're working on a non-breath-invasive test to determine blood alcohol levels. Basically, for Canada we're looking at the 0.05 level. If the person is below that level, the car will just start; you won't even know that the technology is there. If it's above 0.05, basically the ignition of the car would not be able to start it.

We're hoping, through this blue-ribbon panel, to have a prototype in cars within a couple of years and hopefully available to fleets and various rental cars within the next five to seven years. The science is there, it's realistic, and the car manufacturers are most willing participants, but in the meantime we need to address some of these other issues.

The Chair: Mr. Dosanjh, you have three minutes.

Hon. Ujjal Dosanjh: Thank you.

Mr. Solomon, I want to pursue the line of questioning of my friend, Mr. Rathgeber.

The kind of model you're proposing, where all the cars go through and each one is tested...you may call it random because the test locations move from place to place, but that is certainly not random. You simply plant yourself in one place and you test everyone going through. I don't know how random that is. It's a random location, but not random testing. That's the first point.

The second point I want to make with you is that there's obviously real crime, whether it's the gangs, whether it's carnage on the roads. I am actually afraid. I came to this country in 1968. I came from Britain. Prior to that I grew up in India. I'm afraid that every year the level of fear and the intensity of fear created in the minds of Canadians is going up, in the way we express ourselves about issues. And when fear goes up, people give in very readily to the prescription of the limiting of their liberties and freedoms.

This is a much larger question. I know there's carnage on the roads. There are alternative ways of dealing with those issues. I want to put to you that it may be constitutionally valid, ultimately, for us to do what you're suggesting. I don't know whether it would be. It might be. But is it desirable to focus on that, rather than on the other alternatives that can get us to the same point?

Mr. Robert Solomon: Thank you for that question.

The problem is that there are no alternatives that can get us to that same point, and that's what all the research indicates.

In 2006 we had 1,278 impaired driving deaths, 77,000 injuries, and 220,000 damaged cars. That's the status quo. The question I want to ask this committee is this. How are we going to reduce that? I don't see a whole lot of other measures available. The research also indicates that, of all the measures we can do, random breath testing—and I know you object to the term, but that's what it's called—is the most effective. The question is—there's no answer to this question, and I think we all have to answer that in our hearts—does the state interest, does the public interest, in traffic safety justify this unreasonable search and seizure, because it's without individualized suspicion? Given that impaired driving is the number one criminal cause of death in this country, given that your chances of being killed in an impaired driving crash are twice as great as your chances of being murdered, given that a disproportionate number of the victims of impaired driving deaths and injuries are young people, I answer that question yes.

Now, one of the things I find interesting is that I think we overinvest, probably, and the media certainly gets overinvested, in spectacular crime and we don't look at the much greater causes of death and injuries on our roads. So my own personal view is, yes, it is a violation; it's an unreasonable search and seizure. I think it is wholly justifiable, and I think the interests of the public justify this intrusion.

•(1655)

The Chair: Thank you, Doctor.

We'll move on to Mr. Dykstra. You've got five minutes.

Mr. Rick Dykstra (St. Catharines, CPC): Thank you, Mr. Chair.

I too, like Mr. Bagnell, served on the justice committee in the 39th Parliament. I have to say we didn't meet in the afternoons—we actually met in the mornings—and Mr. Bagnell, through great strain and consternation, subjected himself to an alcohol intake so he could be tested on the machine, if you will. It was an amazing sacrifice he made that morning, and he proved that the machine did work. So it was a case study that was well documented.

This is a question to you, Mr. Robertson. I'm sorry, I can't quite see you; we're on the same side of the table here.

We didn't quite take this approach, in terms of getting into the details of our court system and where things stood as part of the rationale as to whether or not we should lower to 0.05 from 0.08. You talked a lot about the defence counsel, or mentioned the defence counsel, and the amount of time it takes to prepare for a case. Could you take me through that a little bit, to suggest why it takes so much longer for the defence to prepare a case in this regard than it does for the crown?

Mrs. Robyn Robertson: It's because they have the luxury of more time to prepare for a case.

Mr. Rick Dykstra: If that's the case, I assume it's because somebody is paying them to do so.

Mrs. Robyn Robertson: Right.

Mr. Rick Dykstra: So how do we solve that issue? I know you make the case that at least at the present time it wouldn't necessarily lead to more convictions if we went to 0.05. But as we've heard Professor Solomon mention, there is pretty non-refuted proof that if

we go to 0.05 the conviction rate will increase and the rate of those who are driving while under the influence will be lower.

How do you not relate the two?

Mrs. Robyn Robertson: Could you rephrase the question?

Mr. Rick Dykstra: Professor Solomon is making the argument that if we go to 0.05—and it's been proven in a number of countries that have gone in this direction—fewer people will be driving while impaired. Your argument on the legal side is that we shouldn't go down that road because it's going to lead to fewer convictions. So I'm having a little bit of trouble marrying the two concepts and strategies. I wonder if you can just elaborate a bit more on yours.

Mrs. Robyn Robertson: What we found was based on a study we did here. I think with some of the studies Mr. Solomon is talking about, we don't have a sense as to what their justice system was like or how efficient they were in processing cases. It's very different from country to country.

Our position is based on what we know the current position to be here in the justice system, and the ability of the crown to cope with the cases they have. So I think it's important to recognize that that would bring a large number of cases into the system. From what we've seen to date, people are very willing to go to court and fight criminal convictions and licence suspensions. So I don't see any justification for thinking it would be different for people at a lower BAC. If anything, I think there would be more cases at a lower BAC than at a higher BAC.

•(1700)

Mr. Rick Dykstra: I don't mean to get too detailed here, but in your study was there a country you paid more attention to in order to get an understanding of why they may have been able to process cases more quickly than we do?

Mrs. Robyn Robertson: We didn't look at other countries; we just looked at what was going on in Canada. But anecdotally we've learned—given that we do research in a lot of different countries—that even if they have a 0.05 criminal sanction, it's not necessarily enforced as a criminal offence. That may explain why it's easier for them to process cases more quickly.

Mr. Rick Dykstra: In the 39th Parliament we passed Bill C-2. It went into a couple of areas, and I think it had the support of most of the witnesses around the table. In fact, all of the members who are sitting at this table endorsed the areas of increased fines and sentencing for those convicted. It included the eradication of the two-beer defence. It also went down the road with respect to defining the potential for those who take drugs to be seen as being intoxicated or unfit to drive, and therefore charged under the Criminal Code.

The Chair: Mr. Dykstra, you're out of time.

Mr. Rick Dykstra: Could I just get a quick answer?

The Chair: Yes.

Mr. Rick Dykstra: Did you take into account how some of those significant changes we made would make the system that much more difficult?

Mrs. Robyn Robertson: I think we're optimistic that those changes will have an impact, but it's important that we see whether they do have an impact before we continue adding more to the justice system.

Mr. Rick Dykstra: Okay. Thank you.

The Chair: Monsieur Petit, you have five minutes.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you very much.

I thank the witnesses for having come this afternoon. I have already seen several of you during the last session, when we were discussing drug-impaired driving rather than alcohol. We are now trying to review the changes that we might make to blood alcohol levels and driving impaired by alcohol. Let us set drug-impaired driving aside and concentrate only on alcohol. That is the subject in fact of my question.

We are discussing amending the Criminal Code. As I always say, the Criminal Code is philosophy. It governs what we do in our daily lives and determines whether or not we will be punished. The Criminal Code is part and parcel of who we are.

My question is either for Mr. Andrew Murie or for Mr. Solomon. In some provinces, if an adult is smoking a cigarette in his or her car while accompanied by children, they can be charged and convicted of an offence. To my knowledge, cigarettes do not alter a person's faculties, but that person can nevertheless be convicted. In the same province, a driver can get behind the wheel of a car with a BAC under 0.08% with children in the car, and not be charged with anything and continue on his way.

I am really wondering about this, and I need your assistance. I want to believe that we should all end up with a 0.05% level. I would however like to know what makes you want to reduce the legal BAC to 0.05%, given that in some provinces, smoking a simple cigarette in a car where there are children can result in a conviction, whereas a driver with a BAC below 0.08% driving a car in which there are children will not be charged.

I would like to hear what you have to say about that comparison. If we are going to review the legislation, you will have to at least tell us what your motivation is, scientific principles aside, in wanting to reduce the legal blood alcohol level to 0.05%.

• (1705)

[*English*]

Mr. Robert Solomon: Thank you very much.

What motivates us to move to 0.05 is our review of the traffic safety literature worldwide. Looking at various issues, the two most effective ways of reducing impaired driving deaths and injuries in developed democracies like ours is to lower the blood alcohol level and to introduce random breath testing. So we're motivated by the prospect of reducing deaths and injuries on our roads.

Again, I want to note that we have not been very successful. As a matter of fact, Transport Canada just did a recent study, in 2008, in which they looked at the progress they've made in meeting their targets. Transport Canada and the CCMTA, the Canadian Council of Motor Transport Administrators, set targets in 1996 for where they wanted to be in terms of impaired driving deaths and injuries. The sad fact is that we failed miserably in meeting those targets. Impaired driving deaths now are higher than in 1999. So our concern is reducing the number of victims, the number of deaths, and the

number of injuries. That's what motivates us, and we're driven by the research.

[*Translation*]

Mr. Daniel Petit: I have a question for you, Ms. Robertson. Earlier on, you raised a very interesting subject, that is the bottlenecks in the court system due to the higher number of cases that might be heard if the legal blood alcohol level was 0.05%.

I would like to point out one thing to you. This is true in the case of Ontario, where legal aid fees are paid by the hour. The more time a lawyer takes before the court, the more he is paid. In my province, Quebec, we work on a case basis. The maximum amount that a lawyer can be paid for arguing a case of this nature is approximately \$500. He or she must appear, receive the evidence from the Crown, set a date and attend the trial. The trial lasts from eight to ten hours, including the time spent waiting for the case to be called. On average, a lawyer works for approximately 20 hours and earns \$500. In Quebec, people plead guilty.

There is perhaps a problem that is not in the purview of the federal government but rather of the provinces, who have a different way of dealing with cases before the court. In Ontario, half of the cases are subsidized through legal aid on an hourly basis, and not a case-by-case basis.

Did you look at the differences between Quebec and Ontario?

[*English*]

The Chair: A brief response.

Mrs. Robyn Robertson: We looked at all the jurisdictions across the country in terms of their individual caseloads, in terms of their conviction rates, and we found Quebec had the lowest conviction rate of any other jurisdiction of the cases going to trial. We didn't look at how the costing was done for particular cases, but we did find very comparable trends across all the jurisdictions. We found Quebec probably faced the greatest challenge in prosecuting cases because evidence to the contrary was significant. They tended to do more cases in the 0.08 range and they also had more delays in going to trial.

The Chair: Thank you.

Mr. Storseth, you have five minutes to wind this up.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Thank you, Mr. Chair.

I should say at the beginning I'll be sharing my time with Mr. Rathgeber.

First of all, I want to thank everybody for coming today. Some of you have come multiple times, and it's clear to see the passion and the knowledge and the expertise you have for this issue. I think it's pretty apparent what we're trying to do. We want to increase conviction rates and increase deterrence at the same time. Some of the discussion around the table today, while enlightening, is somewhat discouraging.

Ms. Robertson has said we're not getting the success in bringing our conviction rates up, so why would we want to bog the system down more? In your studies, have you found where the problem is? Is it in the numbers of crown prosecutors or is the bottleneck further down the chain? Do they not have the support staff to provide the background information and the research they need to prosecute properly? Have you been able to identify where the issue is?

• (1710)

Mrs. Robyn Robertson: I think a lot of the issue stems from caseload. The caseload of crown prosecutors is four times that of defence counsel, so off the bat they're fighting an uphill battle. While we may be doing well enforcing and arresting and bringing people in, all things considered it seems to be when the cases come to court people are not willing to plead guilty because of the criminal conviction and because of the licence suspension. Even in instances where the criminal conviction is expunged, the U.S. is under no obligation to recognize that expungement. It's quite the paperwork process to go through. We're seeing more and more that Canadians who want to go across the border are having a more difficult time. Obviously, having a criminal conviction is going to have an impact.

Even at U.S. customs, they found U.S. citizens who come across the border to Canada have difficulty getting back because of that conviction. I think we shouldn't underestimate the impact that criminal conviction is going to have on the average citizen and the degree to which they're willing to go to great lengths to avoid that conviction.

Mr. Brian Storseth: You said 52% is the conviction rate.

Mrs. Robyn Robertson: For cases at trial.

Mr. Brian Storseth: Do you know where that is from previous years?

Mrs. Robyn Robertson: Generally, it is higher, and I'll provide you with a copy of the report, which will show what progress or what lack of progress we've been making. You'll see that for cases going to trial the conviction rate will range from 42% to about 75%, so some jurisdictions are doing better in terms of managing cases.

Mr. Brian Storseth: This is my last question before I go to Mr. Rathgeber. Which jurisdictions in this country are doing better?

Mrs. Robyn Robertson: I would have to say the Atlantic provinces are doing better, and the jurisdictions struggling the most would be Ontario and Quebec.

Mr. Brian Storseth: Thank you.

The Chair: Mr. Rathgeber, you have one minute and 45 seconds.

Mr. Brent Rathgeber: Thank you.

Back to Professor Solomon. You indicated a couple of times today that impaired driving continues to be on the rise and death caused by impaired drivers is also on the rise. In the last 10 years, both levels of government have taken some steps to get tough on this matter. We have increased prohibitions and increased suspensions under the Criminal Code. Fines have increased. In the last 10 years, provinces,

with the exception of Quebec, have all brought in administrative suspensions for readings as low as 0.05.

In light of that, why do you believe—and someone else may be able to help you—that if we go to either 0.05 in the Criminal Code and/or bring in random testing it will help the problem?

Mr. Robert Solomon: We have, over the last several years, made the penalties higher. The evidence is overwhelming, not only in the impaired driving field but in other fields, that increasing the severity of the penalty is not what has the deterrent impact. What has the deterrent impact is an increase in the perceived risk of apprehension, and clearly that would be done with a lower blood alcohol level and also with random breath testing. What we often hear in Canada is that we have the toughest laws. It's not about tough laws; it's about effective laws. When we looked at effective laws—there are people who have spent their lives reviewing all kinds of traffic safety measures—they are consistent, whether the study came out of Oxford, Washington, Australia, or Europe: the things that work and have the most effect are random breath testing, which is the highest, and lowering permissible blood alcohol levels.

Let me just say one thing. I'm not opposed to streamlining the current criminal law. The current federal impaired driving law is horrifically complex and convoluted. It takes forever to process even a simple impaired driving case. So we can do much better administratively in terms of the process. But that alone won't get you substantial reductions. I think we have to understand that the rates of binge drinking are increasing in this country, particularly among young people. The rates of driving after drug use are increasing. So we have to take effective measures, and it appears to us that there are effective measures that have worked in countries similar to our own.

What MADD Canada is proposing in terms of a 0.05 offence is not simply lowering the limit. We've actually drafted legislation, which was introduced in the House of Commons, that would streamline procedures, would allow an individual to plead guilty without making a court appearance, and would have an automatic expungement of the criminal record after two years. It would address some of the concerns about the backlog in courts.

• (1715)

Mr. Brent Rathgeber: Thank you for that very good answer.

The Chair: Thank you so much.

To all our witnesses, thank you for appearing. You've helped us wind up our study. We're now going to see if we can put together a draft report that's actually going to move us forward on this issue. So again, thank you to all of you.

I have a question for my fellow members of the committee. Is it your will that we go in camera to briefly discuss a work plan? Seeing no objection, I'll suspend for three minutes as we clear out the room.

[*Proceedings continue in camera*]

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