



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 063 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, September 19, 2017

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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone, and welcome to the Standing Committee on Justice and Human Rights and our deliberations on Bill C-46. We are delighted today to have some very distinguished witnesses appearing before us. First I want to welcome Mr. Stetski; I think this is his first time at the justice committee.

Mr. Wayne Stetski (Kootenay—Columbia, NDP): Yes.

The Chair: Welcome, Mr. Stetski, who is replacing Mr. Rankin, who is replacing Mr. MacGregor.

Mr. Anderson, welcome to our committee. It's always a pleasure to have you here.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): I'm very excited.

The Chair: Mr. Levitt, it's always good to have you, sir.

Mr. Michael Levitt (York Centre, Lib.): Thank you.

The Chair: We have a couple of other replacements who will be showing up soon.

[Translation]

From the Office of the Privacy Commissioner of Canada, we have the commissioner, Daniel Therrien, and Patricia Kosseim, Senior General Counsel and Director General of the Legal Services, Policy, Research and Technology Analysis Branch.

Welcome to both of you.

Ms. Kosseim, you have a very long title. I hope that you are not required to write it out every time you sign something.

Ms. Patricia Kosseim (Senior General Counsel and Director General, Legal Services, Policy, Research and Technology Analysis Branch, Office of the Privacy Commissioner of Canada): I try to avoid that.

The Chair: From Statistics Canada, we have Yvan Clermont, Director of the Canadian Centre for Justice Statistics.

Welcome, Mr. Clermont.

Mr. Yvan Clermont (Director, Canadian Centre for Justice Statistics, Statistics Canada): Good afternoon.

The Chair: Also from Statistics Canada, we have Samuel Perreault, an analyst in the Canadian Centre for Justice Statistics.

Good afternoon, Mr. Perreault.

Mr. Samuel Perreault (Analyst, Canadian Centre for Justice Statistics, Statistics Canada): Good afternoon.

The Chair: We will start today with the Office of the Privacy Commissioner of Canada.

Mr. Therrien, the floor is yours.

Mr. Daniel Therrien (Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada): Thank you very much, Mr. Chair.

[English]

Thank you for the invitation to appear before you today on Bill C-46. I'm accompanied by Madam Kosseim. As you may be aware, we appeared before the public safety and national security committee, SECU, on a similar private member's bill, C-226, a year ago. I would stress from the outset that our office fully understands the severity, societal impact, and clear dangers of impaired driving. For governments and law enforcement, combatting impaired driving is clearly a compelling state objective, given the tragic impact on Canadians each year.

In our testimony before SECU last September on the other bill, we acknowledged the pressing nature of the state objective but also posed three questions related to the necessity and proportionality of the new provisions. Those questions included consideration of how invasive this new power could be, how necessary it is to move away from the suspicion standard, and whether there is any concrete evidence as to how effective the proposed changes might be.

In the interim, since our last testimony and the introduction of this bill, the government published a charter statement and a legislative backgrounder, which attempt to deal with these questions. While we might disagree on some particulars, for instance on the reasonable expectation of privacy of individuals subjected to new mandatory roadside testing, on the whole we find these explanations satisfactory.

For instance, these materials provide information on the limitations of the current system in Canada and the effectiveness of models outside Canada in reducing deaths due to impaired driving. On the whole, we think that the government's answers to our questions on necessity and proportionality, if not perfect, are in most ways adequate.

[*Translation*]

All that said, however, there are some other substantive privacy issues we would like to raise, including the broadening of purposes for which test results and analyses of bodily samples can be shared and how this sensitive data would be handled.

Clause 15 of the bill, which would add subsection 320.36(2) to the Criminal Code, permits the sharing of the results of any evaluation, physical coordination test or analysis of a bodily substance for the purpose of the administration or enforcement of a federal or provincial act.

Currently, the use and disclosure of this type of information is restricted to specific Criminal Code, Aeronautics Act or Railway Safety Act offences, or to the administration or enforcement of provincial law.

As a consequence, the bill would widen the potential uses and purposes for which such results may be put by authorities.

While road safety is clearly a compelling state objective, we do not see how the numerous other administrative objectives would justify the sharing of test results.

In your study, we recommend that the committee examine which specific laws are contemplated here and consider restricting sharing to the enforcement of statutes with sufficiently compelling state objectives that justify sharing sensitive information originally obtained without grounds.

If you are not convinced, you could limit sharing under the system in the subsection in question only to federal or provincial laws dealing with transportation security.

We would also ask whether testing results are retained on individuals who are not found to be in violation of the regulatory limits.

Unrestricted retention of negative test results or false positives would represent a privacy risk if clear ground rules around their required destruction are not set in advance.

Thank you for the invitation. I look forward to answering your questions.

• (1535)

The Chair: Thank you very much.

We now move to Mr. Clermont, from Statistics Canada.

Mr. Yvan Clermont: Good afternoon.

Let me first thank you, the chairs and the members of the committee, for this invitation to present the most recent statistics on impaired driving in Canada.

Today, I am going to give you an overview of the most significant and most recent indicators, derived from various sources of data on the issue.

[*English*]

First, let me highlight some of the key and most important findings in relation to impaired driving in Canada.

Only a very small proportion of people drive while being impaired, but of those who do most are doing it recurrently. Impaired drivers also more often adopt other at-risk behaviours such as being a passenger of another impaired driver, driving faster and more aggressively, not fastening their seat belt, and using a cellphone without a hands-free device. Police report that statistics show a sharp decline in impaired driving over the last 30 years. Recent declines were more pronounced among categories frequently targeted by campaigns and policies, for example, among young drivers, males, and during the night.

Finally, drug-impaired driving incidents are less likely to be cleared by a charge, they take more than twice the time to be completed in courts than other alcohol-related cases, and they are less likely to result in a guilty finding.

[*Translation*]

First, I am going to talk about self-reported data from a sample of close to 32,000 Canadians in a sample survey.

Self-reported data on drug-impaired driving are very limited at the moment. That is why I am going to focus here essentially on impairment by alcohol.

The table on slide 3 shows the proportion of drivers who report having driven after consuming two drinks in the preceding hour, at least once in the preceding 12 months.

Overall, a little over 4% of Canadian drivers report having driven after consuming two alcoholic drinks in the hour before getting behind the wheel. That figure rises to 5% when motor boats, ATVs, or other recreational vehicles are included.

As an indication, in 2015—this is not on the table—almost 3% of Alberta drivers, the only place where that kind of data is available, reported that they have driven after consuming drugs and 9% reported doing so after consuming alcohol. In other words, in Alberta, drugs were at the origin of about one-quarter of impaired driving cases self-reported in this survey. That could indicate that current police data significantly underestimate drug-impaired driving, since they represent only 4% of cases recorded by police services.

[*English*]

In slide 4 you can see the number of times impaired drivers reported driving while impaired in the 12 months preceding the survey. A relatively small proportion of drivers reported that they had driven while impaired in the past 12 months, but of those who did, the vast majority did it more than once. On average, impaired drivers reported six occurrences of impaired driving in the previous 12 months. Our court data also show that high proportions of offenders had been previously accused even more so for the most serious offences.

• (1540)

[Translation]

Slide 5 shows the proportion of drivers who report having driven while impaired, broken down by age group. You can see that young adults between 25 and 34 years old are more likely to drive while impaired.

Impaired driving is not a behaviour in isolation. It is often one of a number of at-risk behaviours. Those who drive faster and more aggressively, without seatbelts, or while using a cellphone without a “hands free” function and, above all, those who ride as passengers of an impaired driver, all report driving while impaired in significantly higher numbers than others.

Moreover, other research also shows that the risk of accidents increases when passengers are intoxicated too. So it makes sense to target the other on-road behaviours first; being a passenger with an impaired driver could be an effective way to target impaired driving.

Slide 6 deals with police-reported data. The table traces the impaired driving rate from the mid-1980s. You can clearly see that the rate of impaired driving has declined sharply in that period, as has already been mentioned.

[English]

In 2016 about 67,000 impaired-driving incidents were reported by police forces. That translates to a rate of 186 incidents per 100,000 population, a rate that is three times lower than 30 years ago. By contrast, drug-impaired driving is on the rise, although still accounting for a small proportion of all police-reported impaired driving. Even though impaired driving has decreased sharply over the last 30 years, it remains one of the most frequent criminal offences reported by the police. In fact, when taking into consideration crimes that do not come to the attention of the police, impaired driving is likely the most frequent crime. It is one of the leading criminal causes of death.

Slide 7 shows a graph of police-reported impaired driving rates by province and territory. Like crime in general, we note important variations in impaired driving across the country. The lowest rates are recorded in Ontario and Quebec, and the highest in the territories and in Saskatchewan. As for police-reported drug-impaired driving, the variations are relatively similar, with the highest rates being recorded in the Atlantic.

In slide 8 we have a chart showing the impaired-driving rates by age of licensed drivers for 2009 and 2016. As you can see, impaired-driving rates declined amongst all age groups, but the opposite was observed for drug-impaired rates, which increased for all age groups. The greatest declines in overall rates were among the youngest age group. It is worth noting that some provinces recently implemented zero tolerance for young drivers. Coincidentally, these provinces are where the largest declines in youth impaired driving occurred.

Another large decrease was observed at night. Although almost half of all of the impaired-driving incidents still happen between 11 p.m. and 4 a.m., about 70% of the overall decrease in impaired driving in the past six or seven years occurred during that time period. Targeting peak period is known to be one of the most effective ways to combat impaired driving. Of note, though, is the

fact that our data show that drug-impaired driving does not have strong peak periods. There are just about as many drug-impaired driving incidents early in the evening as there are during the night, which may cause a potential challenge in addressing the issue of drug-impaired driving.

In slide 9 you can see a chart on the clearance status by type of substance causing impairment. As you can see, alcohol-impaired drivers are more likely to be charged than drug-impaired drivers. However, it's interesting to see that the gap between alcohol and drug impairment has narrowed, especially since the implementation of drug recognition experts in 2008.

• (1545)

[Translation]

We now move to slide 10. I would like to draw your attention to the impaired driving cases brought to court. The cases represent a significant part of the courts' workload. In 2014-2015, actually, the figure was about one case in ten, making it one of the most frequent offences brought to court.

On slide 11, you can see that the median time needed varies enormously with the type of case to be heard. You can see here that the median time for alcohol-impaired driving is 114 days. This is shown by the pale blue line. The dotted red line, showing all other offences, shows a similar level. However, a median time of 245 days, more than double, is required to settle a case involving drug-impaired driving. That is the dark blue line.

[English]

On slide 12, you can see that in addition to taking longer to be completed, drug-impaired driving cases are also less likely to end with a guilty verdict. At the national level, 60% of those in drug-related cases are found guilty, while it was 80% for alcohol-related cases.

[Translation]

Our data show that a small number of those driving while impaired do so repeatedly. Impaired driving is associated with other at-risk behaviours on the road, such as being a passenger of another impaired driver on other occasions.

Although a significant decrease in impaired driving can be seen in the police statistics, it is still one of the most frequent offences and the second highest cause of criminal death. The largest declines were recorded among young drivers, an age group often targeted by prevention campaigns. Drug-impaired driving could be more difficult to combat, given that there is no peak period during a day that could be easily targeted. In addition, cases lead to a guilty verdict less frequently, and take more time to be dealt with by the courts.

That concludes my presentation.

Thank you.

The Chair: Thank you very much for your presentation.

We will now move to the time for questions.

[English]

We're going to start with Mr. Nicholson.

[Translation]

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much, Mr. Chair.

[English]

Thank you very much, ladies and gentlemen. We very much appreciate having you here today.

Mr. Clermont, to begin with, how do you get this information? It's amazing to me that you have people who voluntarily start telling you how many times they've been driving drunk over the last year. I thought people would have been inclined—not that it's right—to just deny it, to say they never do this.

Give us a profile. How do you get this information?

Mr. Yvan Clermont: These are based on data from a household survey, which did not exactly ask the people if they'd been driving drunk or anything. This is not how it's being addressed. The question would be as follows, “In the past 12 months, have you driven a motor vehicle under the influence of an illicit substance such as marijuana or hashish?” That would be for the drug-impaired driving. In the case of alcohol, we would ask them if they had done so after consuming two drinks in the hour preceding their departure.

We cannot conclude necessarily that these were impaired drivers. That would vary a lot depending on their constitution and how they are built and everything, but we were able to make some associations between those behaviours, if they were repeated behaviours, because we were asking if they did it often or just once.

Hon. Rob Nicholson: These people are voluntarily giving you this information?

• (1550)

Mr. Yvan Clermont: They are.

Hon. Rob Nicholson: I'm surprised. It's interesting enough that some of them are keeping track, that they know it was seven times in the last year as opposed to nine. They must have been sober enough to at least keep track and that sort of thing. But again as you say, they're not necessarily impaired under the criminal law, with two drinks in one hour.

Mr. Yvan Clermont: You're right; they're not necessarily. This is why we hold off from specifying that as the exact question being asked to people.

It's probably the best way. When we compare it to how other countries are doing that and how we should be measuring it, it's probably best to have self-reported behaviours in order to do that properly.

Hon. Rob Nicholson: One of the interesting points that you made was that drug-impaired driving has been increasing over the last eight years or so. I guess we're going to see a real boost here with the new legislation that makes marijuana legal. Is it your prediction that it will surpass alcohol in terms of the impaired-driving charges?

Mr. Yvan Clermont: That's a very good question and this is what we'll be following very closely. It's hard to say if the legislation that is to come will have an impact on the behaviours of Canadians. However, this is certainly something we'll be looking at and be able to report back when it is legalized.

Hon. Rob Nicholson: Certainly, making something legal as opposed to illegal has to expand the consumption, and obviously, the availability of that. It will be very interesting to see that.

One of the things too, and you make the point, is that it's more difficult to get a conviction for people in the drug-impaired driving area as opposed to alcohol, but hopefully we'll be able to remedy that.

Mr. Therrien, thank you very much for all the work that you do. You made a very interesting point that I am sure others will follow up, which was that the use of the disclosure of this information currently is restricted to the Criminal Code, the Aeronautics Act, or the Railway Safety Act. This bill widens the potential to basically unlimited legislation. I guess one of the things I will ask when the department comes here to answer questions is what other pieces of legislation are necessary. I can understand the three that are covered now. Those only make sense, but I'd like to know from them if they were given any other pieces of legislation, or named them, that might require this information, or whether it is just in general.

Mr. Daniel Therrien: We were not given an explanation as to what other statutes would need to be covered. The current law already authorizes disclosure for the purpose of the administration of provincial laws, and there are certain provincial laws that are very closely related, the Highway Traffic Act being a case in point.

Interestingly, the current provision which authorizes disclosure for the administration of provincial laws is not limited to transportation legislation or regulations. I would start from the premise that if these laws, whether federal or provincial, are related to transportation safety, it makes sense. Otherwise, why is this required?

Hon. Rob Nicholson: I'm going to ask that question. I appreciate your raising it here.

Thank you, Mr. Chair. Those are my questions.

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

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Chair.

[*Translation*]

My thanks to everyone for being here today and for the presentations you have made.

Mr. Clermont, let me start with you.

You have provided statistics on driving impaired by alcohol and by drugs, but are there statistics specifically on impairment by cannabis? Do you know whether there are statistics on the convictions and the various cases involving that drug specifically?

Mr. Yvan Clermont: We can make a distinction using self-reported information from sample surveys. However, police statistics deal only with drugs as a whole. There is no way to distinguish whether cases involve cannabis or another drug like cocaine. We cannot make that distinction.

Mr. Colin Fraser: Medication prescribed by a doctor can also affect one's faculties.

Mr. Yvan Clermont: Yes, that is a possibility.

Mr. Colin Fraser: So I gather that all those substances are in the same category.

Is there any correlation between the conviction rate and the reduction in impaired driving?

•(1555)

Mr. Yvan Clermont: That is an excellent question.

We have made no direct link between the clearance rate and the rate of impaired driving. The prevalence of impaired driving cases is influenced by a number of factors. More detailed analysis would allow us to determine the impact of police intervention, but we have not done a study of that kind.

Mr. Colin Fraser: I know that statistics by province exist, but are there also statistics that compare rural and urban areas? Is there a difference between conviction rates or frequency between the communities of those two types? I know that, yesterday, we heard testimony that the frequency is higher in rural areas.

Mr. Yvan Clermont: We have statistics of that kind and we can send them to the committee analysts.

Mr. Colin Fraser: Can you do that, please?

Mr. Yvan Clermont: For example, they show the differences between metropolitan census areas and the others.

Mr. Colin Fraser: Thank you.

[*English*]

You talk about zero tolerance being one of the reasons there is a rate of sharp decline, especially amongst youth in the provinces that have implemented administrative zero tolerance.

Do you know if that's also coupled with education programs in those provinces and other measures that would assist and perhaps be part of the reason why we see a reduction in the incidence of impaired driving amongst youth?

Mr. Yvan Clermont: This is an observation, true, that we made, looking at where there was a sharp decline in cases of impaired driving by province. It was where there was a prevention campaign and also a zero tolerance program being implemented that we noticed the biggest decline. We could only make the association. We cannot say whether it is because of the prevention campaign, or because of the zero tolerance about novice drivers or youth. There is a coincidence, but we cannot disentangle for sure if it's related to either one.

Mr. Colin Fraser: I am assuming, based on the previous answer you gave me about tracking cannabis specifically, that there may not be additional statistics on mixed alcohol and drug use, or tracking of people who are charged because they are impaired from consuming both products.

Mr. Yvan Clermont: You're right. It is a difficult thing to do because, when the police are coming into contact with a person who could have been intoxicated by both alcohol and drugs, they will be reporting by the substance they think is impacting the impairedness of the driving of the individual the most. There is a likelihood that many of these cases will be reported as alcohol-impaired. That's a police practice that they are using. It might be related because it's easier to prove than drug-related impaired driving.

Mr. Colin Fraser: Monsieur Therrien, maybe this falls outside of what you're able to comment on, but yesterday in the testimony we talked about the difference between a checkpoint for mandatory alcohol screening, like what we would see around the holidays, for example, and any traffic stop.

Are there privacy concerns that you would like to comment on as a result of the difference between those two ways of doing mandatory alcohol screening?

Mr. Daniel Therrien: To the extent that the bill before you authorizes roadside testing without suspicion, and there is a link to the methods you just mentioned, this certainly raises privacy issues. In other words, submitting someone to roadside testing without any grounds for suspicion clearly does raise privacy issues. The question then becomes, is it necessary to achieve the compelling state objective to do that, and is it proportional?

We've seen the arguments made by the government in their charter assessment, and although we might quibble on some of the details, we think, on the whole, that the answers given to these questions are appropriate.

•(1600)

The Chair: Thank you very much.

Mr. Stetski, go ahead.

Mr. Wayne Stetski: Thank you.

Thank you for being here today.

My riding of Kootenay—Columbia is located in southeastern British Columbia, and my constituents are very interested in and concerned about both Bill C-45, trying to ensure that economic opportunities continue for small business, and Bill C-46, in terms of keeping us all safe.

I would start with a question for Mr. Therrien. In the material prepared by the committee, you are specifically mentioned as having raised concerns regarding random breath testing, provisions from Bill C-226, particularly concerning racial bias in the application of this law.

What sorts of conditions could you recommend to the committee to prevent arbitrariness and racial profiling in random breath testing?

Mr. Daniel Therrien: We did raise these issues with respect to the private member's bill that was before Parliament last year, but our focus, of course, is primarily privacy, according to the grid of analysis that I've just outlined. Is the stated objective compelling? We think it is. Are these measures, including automatic roadside testing without grounds, necessary and proportional? We think that on the whole the government has made a reasonable case for the necessity and the proportionality of that particular measure.

There's no question that there is a risk that in the implementation of these provisions, if they are adopted, they will be implemented in a way that would disproportionately affect certain minority groups or other groups. It's a risk. The question I would put to you is whether it is a risk that is sufficient to address in the Criminal Code federally, or is that something that should be addressed either in provincial laws or provincial or municipal practices as to how the Criminal Code is actually being implemented?

For instance—and I'll just conclude on this point—there was a police practice in Toronto called “carding”, whereby people were stopped by police officers randomly, and allegedly arbitrarily, with a view to collecting information about them and then taking adverse measures against them. That practice was criticized by a number of people—provincial privacy commissioners—and the Ontario government took action in issuing certain directives. Also, a bill is before the Ontario legislature.

That's a long answer to say, yes, there is a risk of discrimination. Is the best way to address this to have provisions in the Criminal Code to dictate how the law will be administered locally? Or should we rely on provincial and municipal authorities to do the right thing to ensure the law is administered properly?

Mr. Wayne Stetski: Thank you.

Mr. Clermont, slide 11 shows how it takes twice as long to deal with drug cases in the courts than it does alcohol-related cases. Why is that? Is that related to the lack of oral fluid testing? Do you know why?

Mr. Yvan Clermont: In the survey, we don't ask. This is based on administrative data. We look at the date of the initiation of each case in front of the tribunals. We don't have detailed information about the reasons why it took so long. We only know that it takes that long. It takes 245 days. Half of the cases would take that, less or more than 245 days, which is more than twice the time it takes for alcohol-related cases.

Mr. Wayne Stetski: Have you looked at statistics from Colorado specifically? I met with the Canadian Nurses Association and was chatting with a nurse about her views on what this could mean in terms of our future. She has a friend who works in an emergency hospital in Colorado and says the number one thing in bringing patients in is related to marijuana use, either from accidents or from a combination of drugs that leads to paranoia. Have you looked at statistics there in terms of accident rates?

• (1605)

Mr. Yvan Clermont: No.

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

Monsieur Ehsassi.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you, Mr. Chair.

My first question is for you, Mr. Therrien. As you're probably aware, yesterday we heard from Professor Hogg. His conclusion yesterday was that random breath testing is a reasonable limitation on the privacy of an individual given the objective that is being pursued. Would you agree with that?

Mr. Daniel Therrien: Essentially, yes, with the following explanation. Our position is based on privacy principles, which are informed by the charter, so we're not doing, strictly speaking, a charter analysis. We're doing a privacy analysis. Is privacy impacted? Yes. Is the measure necessary and proportional, akin to a section 1 analysis under the charter, but not quite a section 1 analysis under the charter? Using similar methods but not exactly the same method, we essentially come to the same conclusion but that requires evidence. The government needs to demonstrate that its measure is for a compelling state objective. I don't think there's much question about that.

Is it necessary to come to these methods and are they proportional? That requires an analysis of random testing versus other potential alternatives. Whether other alternatives have been effective and whether this one would be more effective, we're not experts on the matter, but we've read the government's charter assessment, and the arguments and evidence presented seem reasonable. On that basis, we come to the view that, yes, the legislation strikes the appropriate balance from a privacy perspective.

Mr. Ali Ehsassi: Thank you for that.

We had the opportunity to hear from Robert Mann, from the Centre for Addiction and Mental Health. His testimony suggested that blood tests are the gold standard for drug testing. From your perspective, what would your thoughts be on blood testing in comparison to other types of testing that are available, given that blood testing, obviously, is more invasive?

Mr. Daniel Therrien: The way in which the bill before you is constructed, unless I'm mistaken, leads to blood testing. There's a breath test to start with, which leads eventually to better evidence of impaired driving or driving over a certain limit, which is blood testing, so blood testing would be clearly more invasive physically than a breath test. I'm not an expert, but I accept the view that it's more accurate in terms of showing the proportion of alcohol or drugs in one's body. But the law before you starts with breath testing and leads to blood testing for the actual evidence that the offence has been committed. We think that's appropriate.

Mr. Ali Ehsassi: Okay. Good to hear.

Now I would ask of Mr. Clermont a few questions.

Your slide deck is incredibly interesting. It raises a number of different questions.

The first question I had was on the chart at page 15, which is the police-reported drug impaired rates across the country. There is a huge discrepancy between central Canadian provinces and the territories. What would you attribute that to?

Mr. Yvan Clermont: This is very hard to say. We always observe a trend in crime in general with smaller being in the east of the country going toward the western provinces and also going north. This is a general trend we observe. The only difference here is that drug-impaired driving on slide 15 is highest in the Atlantic, and that doesn't follow the trend. We don't have any reasons why. It could be related to a number of factors. It could be related to police intervention in those provinces, but this is counter to the general trend of crime in general.

• (1610)

Mr. Ali Ehsassi: Okay.

With regard to the chart that you provide on page 24 of your slide deck, that particular chart relates to rates of cannabis possession and trafficking. According to this chart there's a sharp decline since 2009.

Mr. Yvan Clermont: Yes.

Mr. Ali Ehsassi: Could you provide us with some reasoning as to what you would attribute that decline to?

Mr. Yvan Clermont: Once again, this is based on administrative data, and we don't have any reasons to provide with this. It could be related to many factors, such as police forces enforcing these things less than before or police practices. But if I can contrast some other results, cannabis consumption over that same period remained pretty stable.

The Chair: Your time is coming to an end, so you can ask only a tiny question.

Mr. Ali Ehsassi: I'm good.

The Chair: You're good.

Members, we don't have time to do a full round, but we have time to take some short questions from committee members who have added questions.

Mr. Anderson.

Mr. David Anderson: Thank you, Mr. Chair. I have a couple of questions here.

Commissioner, I'm a bit surprised at your position on this. I think it's a fairly radical change of the application of justice and the driving laws in this country, so I guess I'm surprised to see you taking this position.

Would you have objected if the law had said basically you could go straight from mandatory testing to blood testing? Would you have said that's too rapid an invasion of privacy? Do you need the steps in that process, or would you have been comfortable with a police officer being able to demand a blood sample right on the spot?

Mr. Daniel Therrien: It's an interesting question. The state objective remains the same. Blood testing is definitely more invasive, so it changes the balance somewhat. Perhaps the answer would be different. I would need to think about it. I'm commenting on what is before us.

Mr. David Anderson: In proposed subsection 320.12, it talks about determination of what decides whether someone is impaired or not. In terms of alcohol, it's basically by means of an approved instrument. However, when it comes to a drug, it says an evaluation conducted by an evaluating officer is a reliable method of determining whether someone is impaired.

Does that give you any privacy concerns, that the officer's opinion is going to be a valid measure of whether someone is impaired or not, and then will lead to the next step?

Mr. Daniel Therrien: It may raise issues around the validity and the reliability of that method, but not privacy issues per se.

Mr. David Anderson: Do you have any privacy issues around the fact that it depends on what is a three-hour time lag or a two-hour time lag on the requirements?

Mr. Daniel Therrien: No.

Mr. David Anderson: Okay.

If someone goes home and hasn't been drinking but they go home and drink, they can easily get to that 0.08 or 0.1 in two hours. Do you have no concerns about that?

Mr. Daniel Therrien: The privacy concerns relate to taking breath or blood samples, which deal with the integrity of the person and the privacy of individuals. The other rules that you're referring to have to do with criminal law matters, reliability of evidence and so on, but not privacy per se.

•(1615)

Mr. David Anderson: When you say you support the necessity of proportionality, you consider that to be acceptable in this situation. Why did you write that we might disagree on some particulars, for instance, on the reasonable expectation of privacy of individuals who would be subjected to new mandatory roadside testing? That seems to indicate you have some concerns and issues around that, but you've spent a good part of the hour explaining that you don't. Can you explain? What are you trying to say there that you—

Mr. Daniel Therrien: On the whole, as I said in my statement, we think that the government's answer is adequate in answering the privacy questions. When I say that we might have certain differences of opinion with the government... For instance, in the charter assessment the assessment says that the tests would not reveal any personal or sensitive information about individuals. I disagree with that. However, the assessment concludes that the privacy interest in a breath sample in this context is low. I generally agree with that.

On the whole, we agree, although we may disagree on some details, particularly the statement that the system would not reveal any personal or sensitive information.

Mr. David Anderson: I have some concerns around that as well, because it talks about that data being used later for statistical purposes, so obviously it's being held somewhere.

What should be done with that data? If you have concerns about it, should it be that if someone is not convicted it should be eliminated?

Mr. Daniel Therrien: Yes.

Mr. David Anderson: And if they are convicted then...?

Mr. Daniel Therrien: We're saying, yes, this data is sensitive and it is personal. In our view, when used for criminal law purposes to bring people to court, it is reasonable. But if it is to be used for other purposes, consider two things. First is the other purposes for which it is proposed. That's my comment about provincial or federal laws being extended. Second, if the test that is passed or that the person is submitted to indicates that the person does not have a sufficient proportion of alcohol or drugs in their body—in other words, passes the test—it should be discarded. There is no reason for it to be kept.

Mr. David Anderson: Is that an amendment that should be made to the bill?

Mr. Daniel Therrien: Yes.

Mr. David Anderson: Thank you, Mr. Chair.

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

Are there other committee members with any short questions?

Mr. Stetski, do you have a question?

Mr. Wayne Stetski: Yes. I have a quick one.

Your slides suggested 51.8% of court cases are currently related to impaired driving. It takes twice as long to deal with a drug case than it does for an alcohol case, so I guess we have to anticipate increased demand on the court system after Bill C-45 comes into effect. Would that be reasonable from a statistical perspective?

Mr. Yvan Clermont: That's a very good question.

I would caution about making a conclusion about this, because there are also a number of cases that will no longer appear in front of courts. Cannabis-related cases will no longer go in the courts, so we don't know what the net effect is going to be. That is going to be very interesting to watch.

For example, impaired driving cases represent roughly 10% of cases in provincial courts, but drug-related cases, overall, are about 7%. Of those, a little more than half would be related to a cannabis offence that will be repealed or changed in the legislation. With the introduction of the legislation, in terms of new articles in the Criminal Code, we don't know how this is going to translate in front of the tribunal.

It's a bit early to say, but it's certainly an interesting question to be followed in the future.

The Chair: Are there any other questions?

If not, if my colleagues will indulge me, I have a question, Mr. Privacy Commissioner.

Would you kindly advise us in terms of the proposed amendment that you are suggesting should be made? What section do you propose would be amended, and what would the terms of the amendment be?

Mr. Daniel Therrien: As to the location, we can perhaps suggest something to you after.

In terms of the substance of the amendment, it would say something along the lines that where a breath test or a blood test is administered and leads to the conclusion that an offence has not been committed, the record of that test should be destroyed as soon as possible.

The Chair: Okay. Thank you very much.

Would that be the only one you would offer?

Mr. Daniel Therrien: I referred to the results of the test. The sample, as well, should be destroyed.

The Chair: Yes.

Hon. Rob Nicholson: He did raise the matter, though, of the statutes to which this applies, and that's something I think we should have a look at.

Mr. Daniel Therrien: Yes.

I referred to a particular provision on the question of disclosure for the administration of provincial or federal laws. That is proposed subsection 320.36(2). That provision as it currently reads in the bill says that information can be disclosed for the purpose of the administration of federal or provincial laws without qualification.

My suggestion would be that disclosure would be authorized for federal or provincial laws related to road safety, unless government officials convince you that this information should be disclosed for other purposes. At this point, though, I have not seen an explanation as to why the information should be disclosed for purposes other than road safety.

•(1620)

The Chair: I understand.

Thank you very much.

Can I ask the same question of Statistics Canada? I know you are here to present facts as opposed to conclusions arising from the facts, but are there any amendments that you think are important to be made?

Mr. Yvan Clermont: Is that in terms of statistics or in terms of legislation?

The Chair: In terms of the legislation.

Mr. Yvan Clermont: We don't pronounce ourselves on those matters.

The Chair: Okay.

Thank you very much, ladies and gentlemen. It was a pleasure. Thank you so much for coming before us today.

[*Translation*]

It was a great pleasure to have you here. You have helped us a great deal.

[*English*]

We'll go to the next panel. Thank you, again, so much.

We'll recess until the next panel is up.

• (1620) _____ (Pause) _____

• (1630)

The Chair: All right, we will be resuming this meeting of the Standing Committee on Justice and Human Rights with our second panel of witnesses today on Bill C-46.

It is a pleasure to welcome Ms. Sheri Arseneault, director, Alberta, Families for Justice.

Welcome back, Ms. Arseneault.

Mrs. Sheri Arseneault (Director, Alberta, Families For Justice): Thank you.

The Chair: From the Insurance Brokers Association of Canada, we have Mr. Scott Treasure, their president-elect. Welcome, Mr. Treasure.

Mr. Scott Treasure (President-Elect, Insurance Brokers Association of Canada): Thank you.

The Chair: Mr. Peter Braid is their chief executive officer. Welcome, Mr. Braid.

Mr. Peter Braid (Chief Executive Officer, Insurance Brokers Association of Canada): Thank you.

The Chair: We will be starting the panel with Ms. Arseneault.

Ms. Arseneault, please go ahead.

Mrs. Sheri Arseneault: I'd like to begin with a video. They always say a picture is worth a thousand words.

[*Video presentation*]

• (1635)

I'd like to thank you for inviting me to speak to you on what to me is one of the most important decisions a government can make. I

speak to you today not as a legal expert or an organization with vast resources, but as an ordinary citizen, a real victim, and a mother.

Thank you very much for watching that video. That video means a lot to me. It goes with my presentation. It's not only my heartbreaking story, but it's also the story meant to represent what four families go through every single day here in Canada.

On November 26, 2011, my young son Brad and his two good friends were violently killed by a drunk driver. Their fender mowed through my son's car from behind at well over 200 kilometres an hour in a 70 kilometres per hour zone. He drove through Bradley's little car. There was nothing left of my son. He had to be identified by his dental records.

The impaired driver was charged with three counts of impaired driving causing death, three counts of driving over .08, and three counts of manslaughter, for a total of nine charges. He was found guilty, convicted on all nine charges, and sentenced in August 2014 to an eight-year prison term.

Attaching manslaughter to this crime is extremely rare. My son's case was only the 13th time in Canada. The offender was eligible for parole on October 28, 2016. He became eligible for full parole in April 2017, which is only a fraction of his eight-year sentence.

The Canadian public has seen that sentences are already extremely low for impaired driving crimes causing death, and I strongly believe that we are deceiving Canadians with such a reduction of sentences. An eight-year sentence equates to 2.2. That's a mere fraction, considering the severity of the crime that resulted in the horrific death of three innocent young men. Most Canadians don't know that. They believe what they read in the newspapers or see on TV. Eight years, he went to jail for eight years. That's not how it's supposed to work.

It's very difficult for me to write or speak about my son Bradley. Every parent's worst nightmare is that knock on the door by that stranger in the uniform with his hat off.

I assume that you read my "new normal" in my written presentation. I am the mother of a murdered child and there is nothing normal about my life now. It's bad enough to lose your child through absolutely no fault of their own, but to lose your young son so horrifically is something beyond words.

The pain for my loss was in itself very difficult, and it took almost three years and 31 court-related appearances to get from the date of this tragedy to the date of sentencing. I knew that I could never bring my young son back, but I thought I could possibly do something positive that would prevent other mothers from going through a similar tragedy.

I hope everybody is able to read my written brief. My written brief is very thorough in explaining my strong arguments regarding mandatory minimums and deterrence. My focus is on impaired drivers who cause death.

As I see it, our existing situation is four to five deaths a day. We all know those stats. We all know almost 200 injured every day. I try to think why. I think those who know they shouldn't be driving imagine they will get home. The fact is, they most often do get home, and this only reinforces that behaviour.

The chances of getting caught are very low, and if they do get caught, the punishment is very lenient. That's why people who drive impaired think the risk is worth taking.

• (1640)

The probability of being charged if you are a driver who caused death is only 22%, and out of the 22% of people who get charged with impaired driving causing death, only 11% are convicted. I fell into that 11%. I'm considered lucky. I don't feel that lucky. I'll be honest with you. But 78% who cause death are never even charged. They walk free because of loopholes. The case is thrown out of court in the first five minutes. Sentences, on average, are between two and three years.

It seems our justice system perceives these tragedies as just that, an unfortunate tragedy or an accident. When you compare that with other crimes that cause death, it just doesn't make any sense to me. You would be hard pressed to find a Canadian who thinks that our sentences for drunk drivers who cause death are anywhere close to where they should be.

To me, it's very simple. The time does not fit the crime. Somewhere, somehow, accountability should play a part for such a serious crime, loss of life, and not only for the victims but for the general public.

I'll turn to Bill C-46 and what I see as deficient in this bill. What I find and what is most noteworthy to me is Bill C-46 contains most of the contents of former Bill C-73 and former Bill C-226 by filling in some of the loopholes, but it has completely removed the stiffer penalties for impaired drivers who cause death. It also reduces the punishments considerably for the first, second, third, and subsequent offences from what was proposed in these former bills. A \$1,000 fine is considered a credit card fine in this day and age, and that's where this bill remains.

In Alberta, if you take one more fish than you're allowed or if you go fishing without a licence, the mandatory minimum is a \$1,000 fine. It's the same for impaired drivers.

Essentially, this is the same legislation as our existing legislation from 2008, Bill C-13 regarding impaired drivers who cause death. Shouldn't the first instance be harsh enough so there is no second and third and fourth and until possibly a death occurs?

Bill C-46 does add a small increase depending on your blood alcohol, a raise of \$500, and they did add in mandatory breath testing. On random breath testing, I recognize that there is a 20% reduction in deaths quoted by MADD and Dr. Solomon regarding other countries, but this is over a very long period of time, 10 to 20 years. I would suggest that there is more to it than just the component of random breath testing. To me, there are many sides to this coin and over all those years there have to be many other variables included that have factored in.

I would like to know what the sentences are for drunk drivers who cause death in these countries. I believe other variables over such a long period of time such as cultural change really factor in too. With the legalization of marijuana, is this government prepared to give our police forces the resources they need? How will it affect the civil liberties? How will it affect our already overflowing courtrooms? These are the questions that I wonder about.

I will tell you random breath testing would not have helped in many cases that I know. It would play no part to me in hard-core drinkers. The offender who killed my son and his two friends admitted in his parole hearing he drove drunk over 300 times in a five-year period. He drove once or twice a week. When he killed my son and his two friends, he was considered a first-time offender. First time caught is what I call that, and most hard-core ones are like him.

• (1645)

We can't expect random breath testing to be the only answer. We can't assume our police will catch everyone. In 2012, only 5% of impaired drivers who were caught tested at .08, but 64% of those tested at double or more, and those are the ones who kill. There is no certainty or severity in this bill to recognize loss of life or to deter others.

Overall, Bill C-46 is considered to be very deficient in changing the behaviours of hard-core, habitual impaired drivers. It would not significantly reduce deaths, at least not until there's a cultural change, and that could take decades. This bill does not recognize causing one or multiple deaths as a serious crime.

Because I know my time is almost up, I'll speak briefly on mandatory minimum sentences.

Five-year mandatory minimum sentences would greatly strengthen the deterrence goals in sentencing. It would provide a level playing field for judges, prosecutors, and defence lawyers, while still leaving a wide area of discretion between minimum and maximum for consideration, such as mitigating and aggravating factors, rehab, etc. A five-year mandatory minimum sentence would not be considered too severe or cruel, considering parole and statutory release dates. Sentences for impaired driving causing death would be commensurate with other serious offences, so it would not be viewed as an accident or an unfortunate tragedy.

On deterrence, the five-year mandatory minimum sentence for impaired drivers causing death is needed, because I believe it would provide a strong general deterrent example to the public that saving the lives of our loved ones is significant, and both the certainty and the severity of the punishment are effective in deterring crime. Deterrence is critical.

Finally, we all know that impaired driving is the number one cause of criminal deaths in Canada: four a day. A car is a deadly weapon. Safety is a non-partisan issue and protecting Canadians should be our government's priority.

On June 16, 2015, the day that Bill C-73 was introduced, the former justice minister, the Honourable Peter MacKay, sat me down in a private office here in Ottawa, looked me in the eye, assured me he did not anticipate much opposition to this legislation, no matter who formed government in the fall, and said, "It's a good bill, Sheri."

I was very optimistic when the new government was formed in 2015. I wrote to all 184 Liberal MPs in January 2016 by email and I hand-delivered a letter. I even blogged my optimism on my website. I have this letter and my blog to hand out. I received six replies. Truthfully, that alone was heartbreaking.

To me, it's inconceivable that impaired driving causing death is not taken more seriously when it comes to punishment. I ask that you review Bill C-46 with an open mind and with a particular reflection on the impacts: the deaths, the injuries, the victim impacts, the costs on our society, and the respecting of Canadians' clear demands for harsher penalties. I strongly recommend that the committee support an amendment for the reinstatement of the mandatory minimum sentence for impaired drivers who cause death, as was provided in Bill C-73 and Bill C-226. We are all just sitting ducks, every one of us here, including our children and our friends. We are candidates for the next horrific death at the hands of an impaired driver. This is 2017, and it's a choice. In fact, it's wilful.

Sadly, I feel like a nobody. Every day I wake up with the realization my son is gone and it seems that victims don't matter. We have no accountability, no justice, and no deterrence.

I'll close with the hope that special attention be paid to the words of the late Arnold Chan, MP for Scarborough—Agincourt, who stated that all MPs should forget their ideologies and work together to get things done for Canadians.

Thank you very much.

• (1650)

The Chair: Thank you very much, and of course our deepest condolences on the loss of your son and all that you and your family have gone through. I know that it's on all our hearts.

We will go to Mr. Treasure and Mr. Braid.

Mr. Peter Braid: Thank you very much, Mr. Chair.

Good afternoon, honourable members. I'm very pleased to be here today on behalf of the Insurance Brokers Association of Canada, or IBAC, to contribute to our public discussion on Bill C-46. As a former member of the House of Commons, I must say it's a pleasure to be here although somewhat strange being on this side of the table. Let me also take the opportunity to thank each of you for your public service.

IBAC is the national voice of property and casualty insurance brokers and a strong advocate for insurance consumers. Through our 11 member associations, we represent over 36,000 brokers who are small-business owners and community builders in virtually every city and town across the country. IBAC also has the important role of advocating on public policy issues that affect insurance brokers and consumers, and it is through this lens that we appear before you today.

I would like to state at the outset that IBAC strongly supports the objectives of this bill: reducing impaired driving and improving road safety. Every day insurance brokers deal with the aftermath of traffic accidents caused by impaired driving and they can attest to the physical, emotional, and financial devastation that result from such incidents. Ms. Arsenault has just shared her own very personal and powerful story.

We are optimistic that the measures contained in Bill C-46 will make a difference in road safety. Bill C-46, as you know, proposes mandatory alcohol screening, which has proven to be very effective in several jurisdictions, for example, Australia, which brought in random breath testing over 30 years ago. The results speak for themselves. In the state of Victoria alone, the proportion of impaired driver fatalities has dropped dramatically from 49% in 1977 to 15% in 2014.

We are also in favour of measures to close loopholes, which allow some impaired drivers to avoid penalties, and in favour of the enforcement of stiffer penalties to act as deterrents. The legalization of marijuana of course raises a number of concerns with respect to drug-impaired driving. Many in society expect that marijuana use may become more prevalent and socially acceptable, so there could potentially be a corresponding increase in drug-impaired driving.

There are still many questions surrounding the impact of drug-impaired driving on the insurance industry. Specifically we look forward to seeing further research and testing of reliable detection tools to support the enforcement of this legislation. As the policy picture becomes clearer, the insurance industry will make the necessary adjustments.

Again, we support the initiatives that will reduce the number of deaths and injuries caused by impaired drivers and believe that the following considerations will be of utmost importance: one, increased penalties and the removal of defence loopholes; two, further research into roadside tests for drug impairments; and, three, public awareness campaigns. We are confident that with stronger laws and regulations in place, real progress can be made.

Thank you for your time and your attention. It is now my pleasure to pass the presentation to Mr. Scott Treasure, the president-elect of IBAC.

• (1655)

Mr. Scott Treasure: Thank you, Peter.

Before I start, I want to thank Sheri for sharing her difficult and moving story in relation to the topics we're discussing tonight. It puts my own trepidation about coming before you guys into the proper light, considering the challenges that she goes through every day.

I'm here today representing IBAC as president-elect. I've been an insurance broker and active in my professional association in Alberta for many years. Our members see first-hand what our clients go through as a result of impaired driving. That's why emphasizing road safety and driver responsibility is an important part of the work we do.

Brokers in Alberta and across the country participate in a number of initiatives against impaired driving of any kind. For example, many brokers support and volunteer with Operation Red Nose during the holiday season, ensuring that drivers have access to a safe and sober ride home. Since its creation in 1984, Operation Red Nose has become the most important road safety campaign against impaired driving in Canada.

In Ontario, brokers sponsor the Ontario Association of Chiefs of Police drive safe campaign, aimed at increasing public awareness on impaired and distracted driving. In addition to the devastating injuries, loss of life, and serious criminal penalties, there are also significant financial and insurance-related consequences, which provide additional deterrents.

While auto insurance coverage varies from province to province, if you are illegally operating a vehicle, as is the case with impaired driving, all policies limit the liability to the statutory minimums and accident benefits. All other coverages are denied. You will also be subject to drastically higher insurance premiums, and in the case of repeat offences, you may find it hard to even get insurance coverage at all.

When coverage is denied, it is important to have supporting evidence. Alcohol-impaired driving is relatively easy to quantify through a Breathalyzer test. Drug impairment is more subjective. It is not clear that there is an accurate and reliable test currently available, and until the science evolves and precedents are set, there could be a period of uncertainty in the insurance world.

I only call a couple of examples into play here. Obviously, you're aware of other jurisdictions that have legalized and have gone slightly different ways when it comes to the blood concentration level of THC. Within those, I believe the fear is that there could be significant court challenges with that blood concentration level. Oregon, I believe, is not using the blood concentration level at all. I think Colorado is looking to more roadside safety.

The other pieces are statistical uncertainties and stressing the importance of accurate data collection in those jurisdictions where it has been legalized. On the idea of marijuana-related deaths or marijuana-related accidents, in my industry the more important piece would be who's at fault in those accidents. That's an important piece that we need to keep in mind.

In the meantime, education is critically important, and I encourage the government to put as many resources into this as possible. I know that brokers will continue to actively contribute to increasing public awareness of the dangers of both alcohol-impaired and drug-impaired driving. Like everyone else, we want to get impaired drivers off the road and, better yet, prevent them from driving in the first place. We believe the proposals contained in Bill C-46 will contribute to that outcome.

Ultimately, whatever the legislation is, our industry and the thousands of brokers across Canada are equipped to help Canadians with these changes.

Thank you for your time. We would be happy to answer any questions you may have.

The Chair: Thank you very much for your testimony as well.

Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you to the witnesses. Most especially, thank you to Ms. Arsenault for her powerful testimony.

We've had an opportunity to meet a number of times. It is difficult to imagine a more horrific set of circumstances than those that resulted in the death of your son and two others in 2011. Three young men who had bright futures ahead of them were taken away in an instant by an impaired driver. I know, coming from Edmonton, that incident really has had a lasting impact on our entire community and northern Alberta. I want to commend you for your advocacy. It takes a lot of courage in the face of such a tragedy to be able to come here and speak publicly about this important issue that obviously has forever changed your life and the life of your family. Thank you for that.

I want to express my concurrence with your recommendation that this legislation be amended to include a mandatory minimum sentence of five years for impaired driving causing death. That is actually one year less than the six years provided for in Bill C-73.

I was going through the Criminal Code and I noticed that there are at least 50 mandatory minimums currently operative in the Criminal Code. They include, among other things, a five-year mandatory minimum for discharging a firearm recklessly, which is very serious, but at the end of the day, no one is dead necessarily in that incident. Here we have impaired driving causing death, which would obviously seem to be more serious. I note in your written report that you quote the Minister of Justice in answer to a question in question period wherein she says that her government is not opposed to mandatory minimum sentences for the most serious of crimes.

Would you not say the fact that there is a noticeable absence of a mandatory minimum is inconsistent with that statement? The government in a lot of ways copied and pasted what was in Bill C-73 but then removed one of the most important provisions to hold those responsible accountable.

● (1700)

Mrs. Sheri Arsenault: Absolutely. That's one of the main things that I and many others who are in my shoes cannot figure out: why the loss of life by an impaired driver by vehicle is not considered serious. It is not commensurate with other crimes where there is loss of life. It's perceived as an accident and that it won't happen again. Well, there are four a day and close to 200 instances every day where people are rushed to the hospital. It should equal other serious crimes where there is loss of life.

Mr. Michael Cooper: In response, one might say the maximum sentence is life. However, in the death of your son and two others, based upon the conviction on impaired driving causing death, it was what, a three-year concurrent sentence?

Mrs. Sheri Arsenault: It was a three-year concurrent sentence.

Mr. Michael Cooper: That's a big difference from life.

Mrs. Sheri Arsenault: It's a big difference. The maximum is life for impaired driving causing death. I know of only one instance of it, and four or five other instances over many years. I could pass this information out. We're talking about people on their 19th time, and then they finally kill someone. It's hard to understand why it happens over and over again. They never get even close to giving a life sentence in this case.

Mr. Michael Cooper: In essence, when we're talking about the most serious offences involving impaired driving, this bill actually doesn't strengthen the Criminal Code; it maintains the status quo, and in some cases, actually rolls back.

Mrs. Sheri Arsenault: Yes, to me in this bill it stays exactly the same as legislation from 2008 regarding penalties and fines, except for that increase of \$500. If you are double over, a \$1,000 to \$1,500 fine, to me, in this day and age is a credit card fine. It's what people call a joke. They can borrow that money from their friends to pay that.

Mr. Michael Cooper: Yesterday we heard the powerful testimony from Markita Kaulias. She, like you, is a mother who lost a child to an impaired driver, and like you, she came before our committee to implore this committee to amend Bill C-46 to include at least a minimum mandatory of five years for impaired causing death. Another recommendation that she brought forward was to change the term for that offence from "impaired causing death" to "vehicular homicide".

I see my friend Mr. Sikand is here, and Mr. Sikand introduced a private member's bill that's a little more complicated than that, but it included amending the Criminal Code to change the definition to "vehicular homicide". Is that something that you would like to see in the amendments to this bill?

• (1705)

Mrs. Sheri Arsenault: I would like to see it called what it is. That's what it is: vehicular homicide, or manslaughter. It's a tragedy, but it's not an accident. For people who drive drunk, and when they're caught, whether they've killed someone or they just get caught at a roadside stop, it is not the first offence. Most people are habitual; they drink and drive, and when something bad happens, it should be called what it is. I would completely agree with that.

The Chair: Thank you.

Mr. Fraser.

Mr. Colin Fraser: Thank you all for being here today and sharing your thoughts with us. It's much appreciated.

Ms. Arsenault, I want to associate myself with the comments of Mr. Cooper, in particular in extending my most profound sympathies to you and your family for all you've been through, and to express the thanks of all Canadians for the advocacy that you do in bringing attention to this important matter, and the courage it took to turn a tragedy into something that you are going to try to get some results on. I think it's important that you continue to do the work you're doing. I just wanted to let you know how much I appreciate it as a member of this committee.

Mrs. Sheri Arsenault: Thank you.

Mr. Colin Fraser: You raised a really important point regarding mandatory minimums and you talked about other countries. I'm wondering if there has been a comparative study in other countries on mandatory minimums and the impact they would have on impaired driving convictions causing death. Do you know if that exists right now or if that kind of research has been done?

Mrs. Sheri Arsenault: No. I did fire off an email to the CEO of MADD once, and he didn't reply. I wanted to know, because I believe that the random breath testing, when it's been in place for 20 or 30 years, other factors go along with that, and cultural change. I want to know; I'm curious too, but I have limited resources. I have the Internet. I keep looking. I'm very curious to know if there's stiffer sentencing in Australia, New Zealand, Ireland, Switzerland, that work hand-in-hand with mandatory screening or random breath testing.

The Chair: I'm going to ask the analysts if they can try to find that out for members of the committee, and we'll let you know.

Mrs. Sheri Arsenault: Yes, please let me in on it.

Mr. Colin Fraser: Yes, I'm sure that if we find that information, we'll be happy to share it with you and hear your thoughts on it.

Mrs. Sheri Arsenault: That would be great.

Mr. Colin Fraser: I think you're quite right. It's so important to make sure that we have all the best information available, because I think everyone here agrees that the incidence of impaired driving in this country is unacceptable and that we have to do what we can to reduce the incidence and, of course, the tragedies such as the one you've so powerfully described to us. We have to be thoughtful about it to make sure that we get it right, and that we are doing it in all aspects of the criminal law, but also with public awareness, education campaigns, working with the insurance industry, so I think your thoughts are very helpful in that regard. We'll find out about the comparative—

Mrs. Sheri Arsenault: As I said, there are many sides to this coin. There are many sides. It's not only one thing. That's how I look at it.

• (1710)

Mr. Colin Fraser: Looking at the bill as a whole, I guess leaving aside mandatory minimums, and I totally understand what you're saying, what are your thoughts on aspects of the bill in general, leaving aside for a moment the sentencing aspect? Do you see positive attributes in the bill helping to reduce impaired driving?

Mrs. Sheri Arsenault: I hate to be negative, but no. What I saw when I studied the bill was that besides the mandatory being completely removed, it also reduced the punishments considerably for the first, second, and third time. When you are caught at a road check, say, they're leaving those exactly the same as in 2008, where they had gone up in Bill C-73 and Bill C-226. The only difference that they're making in this bill is in adding that \$500 increment, depending on how much alcohol you're over limit. I think if you're almost double, you'll pay another \$500.

In this day and age, I don't understand it.

Mr. Colin Fraser: Ms. Arsenault, I really want your answer and I'd like to hear your thoughts on the mandatory alcohol screening or random breath test. Are you in favour of that and think that's a good measure in order to reduce impaired driving?

Mrs. Sheri Arsenault: The random breath testing, to me, will not help the hard-core habitual drivers, and those are the ones who cause death. The person who goes out and has a beer or two with their dinner and may blow .06 or .07, they're not typically the ones who did the devastation, like what happened to my son. It's usually the people who are more than twice over.

Mr. Colin Fraser: What are your thoughts on, as Mr. Braid and Mr. Treasure alluded to, the closing of the loopholes with regard to legal defences that are available, the bolus defence, the intervening drink defence? I assume you support measures to close those loopholes.

Mrs. Sheri Arsenault: I mentioned that. I'm very happy they've plugged those loopholes. As I said, many aren't even charged because of those loopholes. They cannot prove one way or the other if they were impaired at the time of the collision. That's one thing, I'm very happy they've plugged those loopholes .

Mr. Colin Fraser: Thank you so much, Ms. Arsenault.

May I ask one quick question?

The Chair: If we have time at the end of the round we'll do a short snapper, but let's try to get everybody in.

Mr. Stetski.

Mr. Wayne Stetski: I'd like to join with my colleagues in offering my sincere condolences and thank you for your advocacy and your courage.

I'm going to focus my questions on the insurance industry. I have three questions and I'll roll them all out at once.

The insurance industry is renowned for collecting statistics on all kinds of things. First of all, have you seen statistics that show that the stiffer the penalty, whether it's a case of drunk driving or other crimes, leads to a reduction in that crime, particularly around auto accidents? That's the first question.

The second question is whether or not insurance rates have gone up for vehicles in Washington and Colorado as a result of legalizing the recreational use of marijuana, and if you've looked at that.

The third question is that some of my constituents from Kootenay—Columbia have asked whether, when filling in an assessment for home insurance, one of the future questions will be whether they are growing the four plants that the law allows, and whether that would change the insurance rates on their house if they check "yes".

Those are my three questions.

Mr. Peter Braid: Thank you very much for those questions.

Perhaps to help provide some context, the Insurance Brokers Association of Canada, of course, represents insurance brokers across the land. We don't represent insurance companies per se. We work closely with insurance companies, but our brokers we represent work and advocate for insurance consumers. Therefore, while some

of these questions may be more appropriately directed to insurance companies, I think Mr. Treasure, who is of course the broker between the two of us, the insurance broker, may be able to provide some perspective from a more technical standpoint.

In terms of statistics and deterrents, I can't point to any specific statistics that I have before me. I will defer to the wisdom of the committee to continue to consider and be open to appropriate deterrents and penalties. I think they play an important role in reducing incidents. As part of your openness, I hope that you continue to consider the testimony of individuals like Ms. Arsenault as well.

At this point, I will turn it over to my colleague, Mr. Treasure, who can perhaps address some of the most technical aspects.

● (1715)

Mr. Scott Treasure: —or at least touch on them or promise to get you information.

It was interesting in listening to the previous testimony, I had the same thought with regard to stats about the effectiveness of stiffer penalties. It's certainly something of interest, but not anything that we have access to or any information on right now.

With regard to the question about insurance rates in Oregon and Denver, I tried to make a few calls, as the president-elect of IBAC. I spoke to the Insurance Bureau of Canada and asked some questions, and they didn't have a lot of information. It is an interesting thing to be looking at. When something is going to affect our numbers, we're all about it, and there doesn't seem to be a lot of panic over this particular issue, just as a consequential piece, but we can look into that. We have annual meetings where we get together with the group the Big "I" in the United States, and we can definitely look into that and provide some more information about insurance rates in Oregon and Denver with regard to recreational marijuana.

I'm a commercial broker. I'm not a personal lines broker, but I was in a previous life. With regard to the question of growing in the house, in the end it's not illegal to have a hydroponic operation for your grandma's heirloom tomatoes in your house. That is allowed. It's a material change in risk, so the insurance company is generally going to want to know that you have the proper venting and the proper equipment set up in order to make sure that it's not affecting the house long term, risk-wise. Generally speaking, that would likely be the answer in that case.

Mrs. Sheri Arsenault: I would just add something, because you asked him the question about whether stiffer sentences do or do not deter. I skipped that out, because I knew I didn't have a whole lot of time left. From my studying and everything I've been reading, with a lot of help from my family, my father especially, and from everything we could find about whether they deter or not, everything was inconclusive. There was as much support for mandatory minimums as there was against, so it's just inconclusive.

Mr. Wayne Stetski: Thank you.

The Chair: Thank you very much.

I'm going to turn it over to Mr. Ehsassi.

Mr. Ali Ehsassi: Madam Arsenault, I'd like to join all my colleagues in thanking you from the bottom of my heart for the amazing advocacy that you are doing. Thank you for your compelling testimony and, rather than cursing the darkness, for lighting a candle that we can all use. I'll take advantage of your presence here to ask you a couple of questions.

As you know, the majority of impaired drivers are repeat offenders. That's something that the StatsCan representative who was here before you was highlighting, and I think you were actually here when he was testifying. Given that reality, are you in favour of interlock devices? Do you think that would be an effective means?

Mrs. Sheri Arsenault: Yes, I would be in favour of that. As someone who witnessed first-hand the devastation impaired driving does, I'd pretty much be in favour of anything. Yes, I would be in favour of that being offered, but there still has to be some punishment. For me, if somebody keeps driving drunk and keeps getting caught, that might put the level playing field on. If a guy or a girl has money, they can afford the interlock, whereas if another person doesn't make the same kind of money, they may lose their job. There are a lot of things to consider with interlock. I always try to put myself in the shoes of everybody, and I've thought of that.

• (1720)

Mr. Ali Ehsassi: Absolutely to your point, it's a very complex challenge that we're dealing with. There are a number of different elements that would certainly help deal with this challenge.

Another thing you may have heard is that the government recently announced that they would provide \$81 million of funding to prevent drug-impaired driving, and that's for the purposes of providing training to officers. Do you think that's an effective measure?

Mrs. Sheri Arsenault: It's hard for me to judge that. It seems like a lot of money to me. Canada is a large country, all the little towns and the big cities. For all our police, the RCMP, and city police, to have that training in place by the summer will be quite a task.

You know what I always ask, why weren't we doing this before? Marijuana has been around forever. People were driving on marijuana already, but now all of a sudden we're going to train our police. I kind of wonder why we haven't been doing this all along.

Mr. Ali Ehsassi: Following in the same vein about all of the various things that can be done, I would ask Mr. Treasure and Mr. Braid a question.

Looking at the various options that are available when it comes to drug-impaired driving, where do you think the emphasis should be? Should it be on creating effective screening devices, or would it be consequences that follow the commitment of impairment...?

Is it sentencing or coming up with better technology resources?

Mr. Peter Braid: I would suggest it would be both. I think both are very important.

Mr. Scott Treasure: I would say, in this particular instance, determining intoxication is the key piece. You have prescription driving occurring. You have distracted driving occurring.

I think what ultimately needs to be looked at is the level of risk and the level of intoxication. We need to be able to identify that, and I think that's a training issue for sure.

Mr. Ali Ehsassi: Okay.

Speaking of resources and training that's being provided to law enforcement officers, do you have any opinion as to how that should be provided to law enforcement? Do you think the federal government is supposed to go through the provinces and municipalities to make sure that is put to effective use?

Mr. Peter Braid: I remember from my previous job that municipalities are creatures of the provinces. That would appear to be the appropriate approach.

It's clear that we're moving into a new world, and change is coming. I think it's important that our police services who do such excellent work across the country are supported through this process, have the right training and the tools, and that consumers and members of the public are also educated about the change that's coming.

Mr. Ali Ehsassi: Okay, thank you.

Are there any further comments? No?

Okay, those are my questions.

The Chair: We have approximately five minutes left with the panel, so I'm going to take some very short questions from different members.

I know Mr. Nicholson, Mr. Cooper, and Mr. Fraser identified short questions that they wanted to ask.

Mr. Nicholson.

Hon. Rob Nicholson: Thank you very much.

Thank you to all those giving testimony today.

Ms. Arsenault, over the years I've had the opportunity to talk to a lot of victims of crime. One of the consistent things they would tell me—it was pretty consistent—when they were told that the individual who was convicted of committing a horrific crime against them or their family was getting out in a few months, or they had to start attending the parole hearing to try to keep the person in, is that they were being victimized again by the judicial system.

Would you agree that unless there are substantial penalties for people who commit these horrific crimes that this will have the effect of victimizing the victims again?

• (1725)

Mrs. Sheri Arsenault: I've been revictimized for three years, not even counting the loss of my son—the court dates, everything.

Just when you think you can start forgetting about the man who killed your child, you get that letter from the Parole Board that they're up for parole. You're thinking, "What?" It's hard to make sense of it even in your head.

Victims only have one right; we have one right. Well, the real victims have no rights—they're dead. As victims' families, we have but one right, and that is to write and prepare a victim impact statement. Just doing that is revictimizing. Everything about it is revictimizing.

That is probably one of the things that I hear the most about from parents I attend court and sentencing and trials and all that with. It is the revictimization in court and then through the parole system.

Hon. Rob Nicholson: I want you to know, and everyone agrees, that you have made a difference in this area. Thank you.

Mrs. Sheri Arsenaault: Thank you.

The Chair: Mr. Fraser and then Mr. Cooper.

Mr. Fraser.

Mr. Colin Fraser: Thanks.

Mr. Treasure, maybe you can help me. I think you indicated in your testimony that insurance rates go up pretty significantly if people are convicted of impaired driving. I'd like to hear some examples. I'm assuming that in some way this information being made aware to the public will act, at least in a small measure, as perhaps a deterrent, or make somebody think before engaging in such activity.

I'd like you to give an example, because I've heard anecdotally about how that can impact people's ability to get insurance, or the cost. I'd like to have on the record how much we're talking about here.

Mr. Scott Treasure: I think that's a specific piece of information that's going to vary from province to province and if you're looking for a specific example, we will get that to you. We will have to provide that to your analyst after our testimony.

Ultimately, an impaired conviction has an immediate impact on the insurance rates of the individual. Depending on the province, you're looking at potentially a doubling of those rates, and then ultimately, you can have a really difficult time finding insurance rates at all, which ultimately would impact your employability and your ability to drive at all.

Mr. Colin Fraser: With regard to the interlock device, with this bill, there would be no waiting time in order to install the interlock device for those who choose to do so or at least it's an option instead of the three-month waiting period.

Do you have any comment on that or how insurance rates could be impacted based on the fact that the interlock device is there in the vehicle?

Mr. Scott Treasure: Obviously, those types of devices that don't allow for drinking and driving or impaired driving are going to reduce risk, so that would definitely play into the premium rates available and the ability to get coverage, and that would definitely impact rates.

Mr. Colin Fraser: Thank you.

The Chair: If you could get us the rates, that would be very much appreciated. You could send that to the clerk.

Mr. Cooper, please.

Mr. Michael Cooper: Thank you, Mr. Chair.

Mr. Braid, in your testimony, you cited general statistics about the impact of mandatory breath testing in deterring impaired driving. You cited, in particular, the Australian experience and particularly cited statistics from Victoria. I'm a little skeptical about the Australian example inasmuch as it was one of the first jurisdictions where mandatory breath testing was imposed. It was one of the first measures that was taken to crack down on impaired driving and, yes, it did have an impact in reducing impaired driving.

Mr. Treasure referred to a 1984 Operation Red Nose and other checkstop campaigns that occurred in this country that also saw, following the establishment of those sorts of checkstops and breath testing, a real reduction in impaired driving. Yesterday, Mr. De Luca from the Canadian Civil Liberties Association—and it's not often I agree with the position of the Canadian Civil Liberties Association—made a very valid point, which was to say the question is not whether mandatory breath testing has an impact in reducing impaired driving, because statistics show that it does, but the question really is does it reduce or have a benefit compared to the existing system, which is selective breath testing.

When you look at Victoria, not only are you looking at the fact that it was introduced a long time ago, but also in Victoria, I understand they have booze buses and other measures wherein the police are out on the roads every single day, with seven or eight of these vehicles, and literally millions of people are stopped and go through these checks. That, again, is very different from anything that is likely to occur in Canada if Bill C-46 becomes law with mandatory breath testing.

I'd be interested in your comments.

●(1730)

Mr. Peter Braid: I understand your question. As the Insurance Brokers of Canada, we're part of an international network. We have peers in other countries, including Australia, the United Kingdom, and the United States. I took the opportunity to reach out to some of my colleagues from those other associations and I found the information and the background from my colleague in Australia was particularly compelling.

I appreciate concerns from the Civil Liberties' perspective. All I can say is that based on the reading and the research I've done where jurisdictions have implemented mandatory breath testing, it has had a positive impact on reducing rates of impaired driving and deaths resulting. As a result, I would suggest that there are public policy reasons to strongly consider random breath testing in Canada as well.

The Chair: We have time for one short question.

Mr. Sikand, do you have one last question?

Mr. Gagan Sikand (Mississauga—Streetsville, Lib.): Yes. Thank you, Mr. Chair.

Hi, Sheri.

Yesterday you and Markita raised the banner—the same one I have on my wall in the office but it was longer—and both of you made a very poignant statement, that you can't change your situation but you're here because you want to help us. That really resonated, because we're here as well because we want to keep Canadians safe. We still know this is the leading cause of criminal death, but I really believe the measures in this bill will help capture more people and get them off the roads.

Do you agree that this is a good first step?

Mrs. Sheri Arsenault: As I said already, when you wear my shoes and you've been through the court system and you've been through it all, you look at anything that would help and you're kind of thankful for that. Again, just for accountability, there needs to be some form of justice in this great country of ours. When it comes to this, there is no more horrific way to die than the way my son died. That's why as much as I don't want to see these tragedies occur in the first place, when they do—and they will—there has to be something on the side of deterrence to tell the general public to expect a harsh sentence or penalty if they engage in this behaviour.

I'm happy with anything and everything, but there's that one side that a lot of families are missing, the justice piece.

The Chair: Thank you, Ms. Arsenault, Mr. Treasure, and Mr. Braid, for your testimony today. It was very helpful and very compelling.

We thank you for your time and your service.

We're going to break briefly and ask the other panel to please come up so we can hear from our final panel of the day.

• (1735) _____ (Pause) _____

• (1740)

The Chair: We will reconvene this session of the Standing Committee on Justice and Human Rights with our third panel of the day on Bill C-46. We welcome today Mr. Douglas Beirness, who is the senior policy adviser, subject matter expert on impaired driving from the Canadian Centre on Substance Use and Addiction.

Welcome, Mr. Beirness.

Dr. Douglas Beirness (Senior Policy Advisor, Subject Matter Expert Impaired Driving, Canadian Centre on Substance Use and Addiction): Thank you.

[Translation]

The Chair: We also have with us three witnesses from the Quebec Bar. Please welcome Ana Victoria Aguerre, a lawyer with the Secretariat of the Order and Legal Affairs, and Pascal Lévesque, the President of the Civil Law Committee.

Good afternoon.

Mr. Pascal Lévesque (President, Criminal Law Committee, Barreau du Québec): Good afternoon.

The Chair: We also have Benoît Gariépy, a member of the Criminal Law Committee. Good afternoon.

Mr. Benoît Gariépy (Member, Criminal Law Committee, Barreau du Québec): Good afternoon.

The Chair: Let us now hear the testimony from the Quebec Bar.

Ms. Ana Victoria Aguerre (Lawyer, Secretariat of the Order and Legal Affairs, Barreau du Québec): Thank you, Mr. Chair.

Mr. Chair, vice-chairs, and members of the committee, good afternoon.

The Quebec Bar thanks you for inviting us today to share our views with you on Bill C-46.

My name is Ana Victoria Aguerre. I am a lawyer and secretary to the Quebec Bar's criminal law committee. Today, I am accompanied by Pascal Lévesque, the president of the criminal law committee, and by Benoît Gariépy, a member of the criminal law committee, but also a lawyer who specializes in impaired-driving cases.

As you know, Bill C-46 introduces a series of major amendments to the Criminal Code, specifically by proposing a new impaired driving offence, new powers for the police in order to test for it, and new rules for the administration and admissibility of evidence in such cases.

At the outset, we must stress that the Quebec Bar supports the lawmakers' intent that led to the introduction of Bill C-46. Impaired driving is a major issue of public safety that clearly must be addressed. Nevertheless, the solutions that Bill C-46 proposes in this respect seem to us to be problematic in their implementation and, in our view, go far beyond what is reasonable in terms of the basic rights of the accused.

Given the amount of time we have been allowed for our presentation, we will move directly to the crux of the matter.

The Quebec Bar is opposed to a number of the proposed amendments in the bill and is concerned that some of those amendments will be challenged in the courts. We are concerned about the potential impact of these amendments, the majority of which seem disproportionate against the background of deterrence and awareness that the bill seeks. The concerns are specifically about the fundamental rights that everyone enjoys to be presumed innocent and to make full answer and defence.

I will now step aside to allow Mr. Lévesque to continue.

• (1745)

Mr. Pascal Lévesque: Our analysis of Bill C-46 focused on part 2. We identified two themes. I will deal with the first theme and Mr. Gariépy will deal with the second theme.

My theme deals with the reliability and precision of results from the approved screening devices, and with issues related to admissible evidence and defence.

First of all, we understand the lawmakers' intent in clarifying the status of the law in the light of the Supreme Court of Canada's decision in *St-Onge Lamoureux*. Nevertheless, the implementation of that intent is problematic: it could have the effect of unreasonably limiting the defence on the reliability of the results of the devices and, ultimately, on the right to be presumed innocent.

The bill establishes the premise that, when certain conditions are met, the results of the test of the samples conclusively demonstrate the person's alcohol level at the moment the test was taken. The bill requires prosecutors to disclose only information related to those conditions. For other information, the accused have to apply to the court and demonstrate the likely relevance of the information they wish to obtain.

This mechanism concerns us. First, it reveals a fragmented reading of the Supreme Court's teachings in *St-Onge Lamoureux*. Of course, information about the maintenance and the operation of the devices at the moment of the tests is relevant and must be disclosed, but there is also information on the maintenance and use of the same devices in the past, which can also raise reasonable doubt as to the reliability of their results.

By placing the burden of demonstrating to a judge the likely relevance of other information on the shoulders of the accused, we risk requiring expert testimony in order to have the evidence communicated, which is a fundamental right to justice recognized in the charter. As the law currently stands, judges have previously required expert testimony to obtain that communication. The bill runs the risk of worsening that trend. The risk is that the result will be two tiers of criminal justice: the accused who can pay for expert testimony, and everyone else. Basically, the results would be so difficult to challenge that there would be a danger of ending up, in practical terms, with a presumption that is impossible to refute.

I will now let Mr. Gariépy talk to you about the second theme.

Mr. Benoît Gariépy: The second theme pertains to the modified offence of driving while impaired to any degree, the new mandatory screening power for police, and the new power allowing the police to take samples of bodily substances on the basis of suspicion alone.

According to the Quebec Bar, the modified offence of driving while impaired to any degree is for all practical purposes a disguised zero-tolerance regime. The notion of impairment to any degree is tantamount to saying that, unless the person is sober while driving a motor vehicle, they can easily be accused of driving while impaired. If the person has consumed even a single glass of wine or one beer, a police officer can stop them and lay charges if they have observed what they deem to be less than perfect driving. This criterion is therefore much too broad and, in our opinion, is clearly excessive as regards the stated objectives of public safety and deterrence. It leaves too much room for subjective opinion of what constitutes impaired ability to drive a motor vehicle.

In this regard, I would like to mention two points made by the Court of Appeal of Quebec. First, the court noted, roughly translated, that:

[...] poor judgment on the part of an automobile driver does not necessarily indicate alcohol impaired driving [...]

The court goes on to state, roughly translated, that:

The criminal offence is not driving while impaired—impairment which can be caused by fatigue, stress, a physical or mental disability, etc.—but rather driving while impaired by the consumption of drugs or alcohol.

Through its criminal law committee, the Quebec Bar, which as you may recall is made up of lawyers as well as crown prosecutors, has expressed concern that such a broad and subjective criterion could lead to a criminal record for an individual, with all the attendant negative life consequences.

Still with regard to clause 320.14 of the bill, the Quebec Bar has reservations about this amendment owing to the period of time during which a person may be accused of this offence. The bar notes further that driving while impaired by drugs or alcohol can be evaluated up to two hours after the person has driven. Once again, we question how proportional this new criterion is as regards the presumption of innocence, in particular, since subclause 320.14(5) significantly reverses the burden of proof.

Moreover, in addition to this new zero-tolerance regime, there are provisions for screening and sampling that are just as worrisome for the rights of accused persons. The bill gives police mandatory screening powers in exercising their power to intercept a vehicle. Clearly, the police officer has full discretion to ask any driver to submit to a breath test.

The Quebec Bar is once again very concerned by the extent of the discretionary power afforded police officers under this new regime. Of course, we take it for granted that police officers receive and will receive the necessary training to manage this formidable discretionary power, but the fact remains that there are still risks of profiling, be it racial or demographic, based for instance on the lifestyle or consumption habits of a certain part of the population.

To properly express our concern, we refer to the Supreme Court of Canada decision in *Bain*, 1992, which says the following.

Unfortunately it would seem that whenever the Crown is granted statutory power that can be used abusively then, on occasion, it will indeed be used abusively. The protection of basic rights should not be dependent upon a reliance on the continuous exemplary conduct of the Crown, something that is impossible to monitor or control.

If this undertaking applies to the crown, in our opinion it applies equally if not more so to police officers in the field.

Finally, in addition to this power, police officers will also be able to require a blood sample if they have reasonable grounds to believe that the person is driving while impaired to any degree owing to the effects of a drug, therefore even if the driver is nearly sober.

Once again, we are worried about the possible consequences of the exercise of such powers, but also about the consequences of how law enforcement views this amendment. Clearly, driving that deviates to the slightest degree from what the police officer deems to be normal driving could be considered an offence and open the door to the exercise of major and very intrusive sampling powers on the part of the police, as well as, ultimately, charges being laid against persons for conduct that is incompatible with the perception of a criminal offence.

• (1750)

Thank you once again for this opportunity to share our thoughts on Bill C-46. We hope they will be useful to you in your considerations.

We are of course available to take your questions.

The Chair: Thank you very much for your presentation.

[*English*]

We will move now to Mr. Beirness.

The floor is yours, sir.

Dr. Douglas Beirness: Mr. Chairman and committee members, thank you for the opportunity to address you today.

My name is Doug Beirness. I am a senior research associate and subject matter expert on impaired driving with the Canadian Centre on Substance Use and Addiction, known as CCSA. CCSA was created by Parliament as a non-governmental agency to provide national leadership and evidence-informed analysis and advice to address substance use in Canada. I am also a member of the Canadian Society of Forensic Science's drugs and driving committee, the DDC. The DDC will make a presentation to this committee separately next week.

Today I speak to you from my position with CCSA and my many years of experience in research in the area of impaired driving. Rather than concentrate on statistics, just let me say that over the 35 years I have been doing research in this field, I have witnessed tremendous reductions in the number of Canadians killed each year in motor vehicle crashes involving an impaired driver. Still, a third of traffic fatalities in this country involve alcohol. In addition, as we have developed the tools and the means to investigate appropriately, a great deal has been learned about the dangers associated with the use of drugs by drivers. Today drug use rivals alcohol as a major contributor to serious crashes in this country.

In the time I have today, I would like to address several issues that are mentioned in Bill C-46. I'll start with mandatory alcohol screening.

Forty years ago, Parliament gave police the power to stop vehicles to check drivers for alcohol use. However, the power to demand a breath test was contingent upon the officer having a reasonable suspicion that the driver had consumed alcohol.

Although the threshold for suspicion is not high, it's been demonstrated that police officers vary considerably in their ability to detect alcohol and assign the symptoms of alcohol use. I don't say this to discredit the work of our police officers. I raise it to illustrate the fact that the detection of alcohol can be difficult, especially in a

brief checkpoint at the side of the road. If a driver escapes detection, it serves to reinforce the behaviour and increases the likelihood of its reoccurrence.

As you heard earlier today, the Australians pioneered the concept of random breath testing, or RBT, as part of a large-scale effort to reduce drinking and driving that included a very intense year-round program of police checkpoints, during which virtually every driver was tested for alcohol. The goal was, and remains, to test every driver in a state at least once a year.

The strategy worked. When used in this fashion, mandatory breath testing increases the rate of detection of impaired drivers and serves to increase the perceived and the actual probability of apprehension, both of which are key factors in general deterrence.

In the past, any suggestion of random or mandatory breath testing was quickly dismissed as a violation of our rights. Perhaps it's time to reconsider that position. Think for a minute of what we go through to simply board an airplane. By comparison, providing a simple breath test at the side of the road is a small sacrifice to help ensure the safety of all road users. The need is great, the benefits are substantial, and the sacrifice is really minimal. The evidence strongly supports providing police officers the opportunity to test drivers for the presence of alcohol at any time, regardless of suspicion.

Oral fluid drug screening is the next topic I'd like to address. Approved alcohol-screening devices, that is, portable Breathalyzers, have been widely used throughout Canada since the 1970s to provide a quick and valid assessment of drivers who have been drinking. Over the past few years, there have been increasing calls for a similar device that could be used at the roadside to quickly and reliably assess drug use by drivers.

Such a device simply does not exist. Oral fluid screening provides a partial solution. A small sample of oral fluid can be collected and screened in a matter of minutes to provide an indication of whether a driver has ingested a potentially impairing substance. The Canadian Society of Forensic Science's drugs and driving committee tested three such devices, and determined that they were able to detect cannabis, cocaine, and methamphetamine with a high degree of accuracy.

Oral fluid screening devices have the potential to be a valuable tool for officers engaged in drug-driving enforcement, but they're not the solution to the problem.

•(1755)

Although oral fluid screening can reliably detect three of the most common substances used by drivers, there are many other substances that are not detected, for example, opioids and benzodiazepines. More important, the devices only provide an indication of drug presence, not a drug concentration nor an indication of impairment.

As is currently the situation for alcohol, the officer would need to have a reasonable suspicion of drug use before requiring a driver to submit to oral fluid drug screening. Establishing suspicion of drug use can be significantly more challenging than it is to detect the presence of alcohol. It requires that officers be trained to recognize the signs and symptoms of various types of drug use.

The current training course for the standardized field sobriety test should be expanded to include training in the common signs and symptoms of drug use as well as the use of oral fluid screening devices. These training programs need to be developed and implemented as soon as possible to help ensure that our police are prepared for the legalization of cannabis.

The implementation of oral fluid screening devices will not eliminate the need for the drug evaluation and classification, or DEC, program. In fact, providing officers with oral fluid screening devices and enhanced skills in the recognition of signs and symptoms of drug use may actually enhance the need for the DEC program.

An important point I would like to convey is that a strong DEC program is an essential component in the enforcement of drug-impaired driving laws. More officers will be needed to ensure that all suspected drug-impaired drivers can be evaluated within a reasonable time following arrest.

Bill C-46 also reaffirms the recent Supreme Court decision on the admissibility of evidence provided by a DRE on impairment by type of drug without the necessity of qualifying the officer as an expert. This strengthens the value of the DEC program and reinforces the requirement to maintain the stringent standards established for the program by the International Association of Chiefs of Police.

We believe the DEC program is an important element in the enforcement of drug-impaired driving laws in Canada. It requires strong national leadership to ensure the fidelity of the program, to coordinate and facilitate training with provincial and municipal police agencies, to share information, to monitor progress, and to ensure that there's ongoing education and training.

In essence, per se limits such as 80 milligrams per decilitre for alcohol are a legal shortcut. In theory, they negate the necessity to prove the driver was impaired. Showing that the driver had an alcohol or drug concentration in excess of the prescribed limit is usually sufficient. Such laws rely on the scientific evidence demonstrating the relationship between the concentration of alcohol or drugs in the blood and the extent of impairment and/or risk of crash involvement.

The value of alcohol per se laws, however, goes beyond the apparent advantages to adjudication. Per se laws have been shown to have a general deterrent effect as well, reducing the likelihood that people will operate a vehicle after consuming too much alcohol.

There's no reason to believe that a general deterrent effect would not be evident with drug per se laws as well.

Unfortunately, the research on which to base per se laws for drugs is not as definitive as it is for alcohol. Drug effects can be quite variable. Studies assessing the risk of crash involvement also reveal variable results.

Our current focus is on cannabis. Cannabis is also the substance about which it is most difficult to make definitive statements on the relationship between concentration, impairment, and crash risk.

Whereas breath testing has become the standard for assessing the concentration of alcohol in drivers, blood samples are required to measure the concentration of drugs. Because the concentration of some drugs, particularly cannabis, decreases rapidly, it's essential that blood samples be drawn as close as possible to the time of the offence.

Currently, blood draws require the oversight of a licensed physician in a hospital emergency department, where collecting blood samples from suspected impaired drivers may be given low priority, resulting in substantial delays. Allowing blood samples to be taken by licensed technicians provides the opportunity for police to obtain samples in a timely manner. We support the inclusion of qualified technicians among those who will be able to draw blood for analysis.

•(1800)

Regarding alcohol ignition interlocks, 10 years ago, in a report for Transport Canada and the Canadian Council of Motor Transport Administrators, it was recommended that impaired driving offenders be given the opportunity to participate in an interlock program at the earliest opportunity, in particular, immediately upon conviction. The recommendation was based on evidence that convicted offenders often continued to drive while prohibited, and often under the influence of alcohol. The earliest possible entry into an interlock program would allow offenders the opportunity to drive legally with insurance while providing the public with the assurance that these individuals will be unable to drive after consuming alcohol.

To sum up, over the years we've learned a great deal about the issue of driving while impaired by alcohol. Still we continue to deal with this complex problem. The legalization of cannabis poses additional challenges. Although many of the lessons learned about dealing with drinking and driving can inform our approach to drugs and driving, we must recognize and take account of the fact that the issues involved in drugs and driving differ in many ways from those involving alcohol.

We'll need new strategies and tactics. The public, for one, needs to be informed of the dangers. The police will need new training and tools. While the measures included in Bill C-46 will assist in tackling the problem, they're not a solution but the beginning of a solution. In this context, we'll need to collect the appropriate data to monitor and evaluate the various elements of the legislation to enable evidence-informed decisions regarding the impact on the system for dealing with impaired driving, and ultimately, on road safety. These data would greatly enhance the value of the database and would allow investigations of the role of cannabis and other drugs in all deaths, provided we have the toxicology data available to us.

In closing, we would like to reinforce the statement in the legislation that recognizes that driving is a privilege, not a right, and as such, it's subject to rules, regulations, obligations, and responsibilities. The public expects a safe and effective roadway system, free from the risks imposed by drivers who use impairing substances. Bill C-46 takes the next steps to meet this expectation.

Thank you.

• (1805)

The Chair: Thank you very much for your testimony.

We'll now go to questions, starting with Mr. Nicholson.

Hon. Rob Nicholson: Thank you to both groups for your testimony.

Mr. Beirness, let me start with you. You said that cannabis goes very quickly out of the body, yet I'm seeing material which says that you can detect marijuana for quite a while after you've consumed it. What you said seems to be a little inconsistent with that, that it goes quickly out of your body. Can you elaborate on that?

Dr. Douglas Beirness: Yes. The level of cannabis decreases very quickly. I didn't say it got completely eliminated. In some cases, it can be shown to stay within the body for a substantial period of time.

Hon. Rob Nicholson: You said there's quite a bit of work to be done in terms of preparing for this. The government has indicated that it's coming in, come hell or high water, in nine and a half months or something. Are you confident that everything that's necessary to handle this is going to be in place?

Dr. Douglas Beirness: It would be nice if it was, but I'm not sure that everybody will be ready. I'm sure it will be a learning process.

Hon. Rob Nicholson: My next question is for my colleagues from the Barreau du Québec.

Monsieur Gariépy, you said you're concerned about the fact that people who possibly are sober or not impaired are getting convictions. This bill doesn't actually start from ground zero. This is a modification. Has it been your experience that there are people

now being convicted of impaired driving who in fact were not impaired? Is that what you're saying?

[Translation]

Mr. Benoît Gariépy: It is not difficult for a crown prosecutor to respect the criterion in section 253 of the present Criminal Code that allows a judge to convict someone for impaired driving once the judge is convinced that the person consumed alcohol and notes certain symptoms, which incidentally are not the clearest. According to the Supreme Court's interpretation, this can be a minimal difference that affects a person's driving.

For parliamentarians here, note that there might not be much to distinguish a minimal difference from impairment of any degree, but this difference is huge in practice.

[English]

Hon. Rob Nicholson: Has it been your experience that under the present law as it's been interpreted by the courts innocent people are being convicted of impaired driving? Is that your testimony?

[Translation]

Mr. Benoît Gariépy: I am not saying that people are being wrongly convicted, even though that is always a risk. In my opinion, however, the amendment proposed in the bill will increase the risk of that happening.

[English]

Hon. Rob Nicholson: One of the things you are concerned about is racial profiling. If there is mandatory roadside testing where everybody gets tested, do you think that would assuage your fears of that?

[Translation]

Mr. Benoît Gariépy: I mentioned profiling earlier, which can be either racial or demographic.

In my opinion, giving police officers an ultimate discretionary power to stop anyone at any time can lead to completely abusive situations. For example, when a bar closes, there could be 20 or 30 people leaving the premises at the same time. Who will the police officer choose to stop? They may decide to stop someone because they are dressed a certain way, because their skin is a certain colour, or because they talk a certain way. In my opinion, that can lead to excesses.

• (1810)

[English]

Hon. Rob Nicholson: Somebody exiting a bar is not somebody who's necessarily operating a vehicle. If you're operating a vehicle and they stop every vehicle, you're then....

[*Translation*]

Mr. Benoît Gariépy: No. Once a vehicle is stopped by the police, the system does not pose any problem, in the view of the Quebec Bar.

In the opinion of the Quebec Bar, allowing a police officer to stop a vehicle without a valid reason or allowing them to use their discretionary power can lead to abuses.

[*English*]

Hon. Rob Nicholson: Fair enough, and thank you.

I have one more question, Mr. Chairman.

Mr. Beirness, you said there are a number of ways we can detect both alcohol and drugs. In detecting levels of cannabis in somebody's system, can it be detected through their sweat?

Dr. Douglas Beirness: You can detect presence through sweat, yes. A system is being pilot tested now whereby essentially they use a person's sweat from their fingerprint to detect certain substances.

Hon. Rob Nicholson: It's good to know that.

Thank you very much, Mr. Chair.

The Chair: Thank you very much, Mr. Nicholson. I'm sure you're always giving your blood, sweat, and tears to everything.

Voices: Oh, oh!

[*Translation*]

The Chair: Mr. Boissonnault now has the floor.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thank you, Mr. Chair.

Thanks also to everyone who has testified today.

To begin, I have some questions for Mr. Lévesque and Mr. Gariépy, three procedural questions and one constitutional one. Since I have six minutes, I will begin right away.

Mr. Gariépy, in your opinion, could mandatory breath tests reduce the number of traffic accidents and the number of deaths caused by impaired drivers?

Mr. Benoît Gariépy: That is hard for me to say because I have not necessarily read the same studies as you have.

Let me paraphrase one of the witnesses. As he said, for a police officer to be able to require a person to submit to screening, they must at least have reasonable grounds for suspicion. In practice, it is easy for a police officer to come up with those grounds. The threshold is already quite low and, if it is lowered even further, that would open the door to situations that could become abusive, such as searches that are in violation of section 8 of the charter.

Mr. Randy Boissonnault: Yesterday, we asked the eminent Professor Hogg the same question. We asked him whether he considered the proposed amendments to the law constitutional. In his opinion, the proposed amendments would make the law very effective in cities. He noted, however, that it is very important for police officers working in certain settings, such as in rural areas or in the evening, to have some flexibility.

Unless I am mistaken, you are opposed to giving police officers that kind of flexibility.

Mr. Benoît Gariépy: Yes and no. Let me explain.

We at the Quebec Bar are not opposed to virtue. We are not opposed to reducing the scourge of impaired driving. We are simply saying that the measures taken by the legislator must respect the individual rights set out in the Constitution. I do not intend to contradict Professor Hogg's opinion, but the Quebec Bar is nonetheless worried about this flexibility.

Mr. Randy Boissonnault: We appreciate that.

Your colleagues may also answer the following question.

The police already have powers, which some people consider intrusive, allowing them to question a driver about their alcohol consumption or stick their head in a driver's car and use a flashlight to see if there is any alcohol inside.

In your opinion, are these powers more or less intrusive than what is proposed in Bill C-46?

• (1815)

Mr. Pascal Lévesque: We are talking about powers given to police officers in the bill and we are wondering whether the police will use them systematically. Now, it is as though we were warning about police powers. The bar would be less concerned about this, except that it does not appear in the bill and we do not know what the regulations will contain. We are raising a red flag here: giving very broad powers to the police and believing they will use them correctly and systematically assumes many things and leaves everything in their hands.

We are all parents and all want to do the right thing. We want to solve the problem of impaired driving, but we must not throw out the baby with the bathwater, as the saying goes.

Mr. Randy Boissonnault: Thank you.

There are also aunts and uncles. I am Uncle Randy. My nephews and my niece are now 16, 14 and 9 years old. The one who is turning 16 in a few days will get his driver's licence shortly thereafter. Uncle Randy has already had this conversation with him, as his parents have. I want to protect my nephew and other young people.

Let us now turn to the constitutional aspect. We asked Professor Hogg some questions when he was here yesterday. In his opinion, clauses 1, 8, 9, and 10 of the bill are consistent with the Constitution and the Canadian Charter of Rights and Freedoms. For your part, you raised questions about part 2.

If passed, will these proposed changes be problematic with regard to the Constitution?

Mr. Benoît Gariépy: Perhaps I can answer that question.

I do not think the Quebec Bar is here today to examine the constitutionality of the bill. Trial judges and later on the justices of the Supreme Court of Canada will certainly have the opportunity to do that.

The eminent Professor Hogg gave his opinion yesterday. Once again, who am I to contradict what a constitutional expert told this committee? I am not saying that the entire bill is completely unconstitutional, but I think some of its clauses might be considered excessive in their scope.

You will remember Bill C-2 which, once it was passed, became the subject of constitutional challenges for four and a half years. Bill C-46 is Bill C-2 to the power of 22 and will also be the subject of challenges. They will not necessarily come from the Quebec Bar, but I know criminal lawyers who are aware of Bill C-46 and who are already sharpening their tools. If the bill is passed in its current form, there will be constitutional challenges.

Mr. Randy Boissonnault: Do your colleagues wish to make any comments?

Is my time up, Mr. Chair?

The Chair: Yes, your seven minutes are up. Perhaps we can return to this at the end of the meeting.

Mr. Stetski, you have the floor.

[English]

Mr. Wayne Stetski: Thanks for being here today. I'll start with you, Mr. Beirness.

Two nanograms of THC per millilitre of blood equals impairment. At least, I think that's part of the proposal. What evidence can you share with us concerning THC levels and the difference in rates of impairment in habitual users of cannabis versus, say, first-time or occasional users?

Dr. Douglas Beirness: There are indeed some differences you can identify in terms of the level of impairment you see in habitual and novice users. It really depends on the individual. The one thing we've learned in doing studies is that it is very difficult to set a threshold at which impairment occurs in most people and does not occur in other people.

In fact, if you look at the data, you'll see that the best point of discrimination is zero. People who have no cannabis in their system perform better than people who have levels of even one nanogram in their system. Also, you cannot discriminate in terms of people who have different levels of cannabis in their systems. That's been done a couple of times now with real people who have consumed cannabis ad lib, on their own, that is, in the real world. Two nanograms can be a level of impairment in a lot of people. There's no question about that.

•(1820)

Mr. Wayne Stetski: I have a question for the Barreau du Québec.

You've identified a number of concerns, including presumption of innocence, reliability of measurement instruments, sampling, including blood sampling, and abuse of powers. Is the association putting forward a proposal on what you think will help keep Canadians safe with the approval of Bill C-45 and recreational use of marijuana?

[Translation]

Mr. Pascal Lévesque: I see that a part has been done. With regard to the communication of information, it says that if that information

is provided, the results of devices are reliable. Very well. That is a step in the right direction in that this requires the prosecutor to provide those documents to the accused person.

We have a different interpretation, however, from that of our departmental colleagues as to the Supreme Court of Canada decision in *R. v. St-Onge Lamoureux*. For our part, we think more documents should be provided. The results from the device and the documents pertaining to its use at the time of testing are of course important. We would also have added the documents pertaining to the past performance of the device. In preparing for this appearance, I read that the deputy minister did not consider this relevant. I respect his opinion, but the fact remains that many legal experts will disagree and in fact consider it relevant, since the Supreme Court of Canada found in *R. v. St-Onge Lamoureux* that a reasonable doubt about the maintenance of a device can be raised when the test is conducted, but also before the test.

Rather than closing the door and focusing exclusively on the list, we suggest that it be expanded and that the burden of proof not be placed on the accused if one wishes to obtain that list. The communication of evidence is a basic principle recognized in the charter. The prosecutor has a duty to provide it to the accused.

I understand that a good many prosecutors consider it tedious and rather complicated. However, people also said that getting the evidence was complicated prior to the Supreme Court decision in *R. v. Stinchcombe*, in 1991. It might be complicated, but we are bound by the law. That is not rooted in the charter but in common law. It took decades to refine this.

To answer your question quickly, I would say that, to protect Canadians, the Quebec Bar is suggesting that the list be expanded and that accused persons not be made responsible for asking for information about the devices.

[English]

Mr. Wayne Stetski: You're suggesting that there is a different way to help keep Canadians safe, other than what's being proposed.

[Translation]

Mr. Pascal Lévesque: Yes, sir.

The list must be expanded and greater latitude must be given as to the documents and information about breath-testing instruments and approved screening devices.

Mr. Benoît Gariépy: I would like to add something if I may.

The Quebec Bar intervened in *R. v. St-Onge Lamoureux* in 2012. At trial court, it presented expert evidence to show that there were 10 possible errors or manipulation errors related to the internal operation of the machine. I am not familiar with all the technical details of the machine's operation, but I remember very well that the Supreme Court found in its decision that there were nine possible errors and that it was very much inclined to state that the documents must be disclosed.

We could discuss this in another place, but under the Canadian system it is preferable to acquit nine guilty persons than to convict one innocent person. Assuming that the machine is accurate and reliable and reducing the volume of information to which the accused is entitled increases the possibility of one day convicting an innocent person.

• (1825)

Ms. Ana Victoria Aguerre: I would like to add something.

The provisions that we are discussing are applied after an act has been committed. It is a question of evidence, the reliability of the evidence, and the accuracy of the results. Does this approach really protect Canadian citizens in a direct way? We do of course need measures to criminalize certain behaviour. The Quebec Bar, on the other hand, is seeking to emphasize all aspects of prevention, education, and awareness. It is true that certain things have to be done after the offence is committed, but the damage has already been done in such cases. A strong emphasis must be placed on everything that happens before the offence occurs.

The Chair: Thank you very much.

Mr. Fraser, you have the floor.

[English]

Mr. Colin Fraser: Thanks very much to the witnesses for being here today.

Mr. Beirness, we've already discussed the per se limits. In putting a number on what a limit would be, it does, as best we can in law, set a clear demarcation point at which the person is impaired or not, or I guess it takes the impairment out of it and actually says scientifically we can show that they've committed an offence because they're over that limit.

I'd like to hear your thoughts on how you see this comparing to the per se limits in alcohol. When those per se limits first came in, was there the same sort of uncertainty about how that would actually be enforced and what that would mean, and whether people would know what .08 would mean? How would you compare that to the per se limits in this proposed legislation?

Dr. Douglas Beirness: There are many parts to that question.

Way back when the 80 limit was introduced, there was very clear evidence that was very consistent across studies that when you looked at experimental studies that looked at impairment, there was very little doubt that people who were over a limit of 80 were impaired. You could demonstrate it on virtually any task you wanted to.

The other piece of that is the epidemiological literature which showed that at the point of 80, the risk of crash involvement increased exponentially. It was very clear, and that's been demonstrated repeatedly over the years. There is no question about the alcohol limit. We can play with the actual number a little bit, but there's no question about the evidence that supports it.

When it comes to other drugs, in particular, cannabis, it's a little more difficult. We can do studies where we give people cannabis and watch their performance, but the first thing we have to recognize is that the impairment due to cannabis doesn't look like the impairment due to alcohol. It can be very, very different. In particular, cannabis

has a lot of cognitive impairments that are very difficult to see. In that context what we're looking at are things like decision-making, risk taking, executive functioning, memory, concentration. People who use cannabis will often say they concentrate better when they use cannabis, and maybe they think they do, but they're concentrating on one thing. Driving is a multi-modal task that requires you to concentrate on numerous different things at the same time. You need to pay attention, and they're unable to do that very well. They do not show the same kind of impairment as alcohol-impaired people do. At some point, you will see the kind of physical impairments, like the loss of balance and the inability to touch one's nose and fine motor discrimination, things like that, but we have to recognize that they're very different.

The other problem we have is that the epidemiological literature is a bit mixed when it comes to at what point cannabis increases the risk of crash involvement. In fact, we really don't have any information on that at all. What we have is a number of studies that look at the difference between non-cannabis-using drivers and cannabis-using drivers, so it's a positive or negative thing. Most of those studies, most but not all, show that there's increased risk associated with cannabis use while driving.

The situations are very different. There's a lot of work to do to help refine that scientific evidence over the next several years.

• (1830)

Mr. Colin Fraser: In comparing it to alcohol, and I know that's difficult to do and I accept what you say, I guess that's the experience we have, so that's a natural comparison that we're making when thinking about this. People may know that while it may not be advisable, you could go out for dinner and have a glass of wine and drive home, and you're probably not over the legal limit. If you go out and have 10 glasses of wine and drive home, you're probably over the legal limit.

Is there a similar way to understand, while maybe not advisable, how much an individual can consume and be able to drive a motor vehicle without being impaired? Would there be a way to do that, similar to the one glass of wine? Can you smoke a little bit of weed and be able to drive under the legal per se limit thus proposed? How would a person know?

Dr. Douglas Beirness: There's a very simple way to know. None. That's the only way to know. The question that I've received from the general public and other people over the years that I've been doing this kind of work has been, "How much can I drink and still drive?" We can do calculations and we can look at time and sex and those kinds of things and sort of say, "Yeah, probably keep it under two, maybe three you're okay, and you'll be under the limit." I didn't say you weren't impaired, but you'd probably be under the limit.

I dread the day somebody comes to me and says, “How much cannabis can I smoke and still drive”, because the only answer to that question is none. I don't believe that there's any amount of cannabis that you can smoke, and at some point not be above two. Because the level of THC rises so quickly, you will rise above two at some point, and you will come back down at some point, too. There really is no amount of cannabis that we can recommend that a person could smoke and still be below the limit and be unimpaired.

Mr. Colin Fraser: Fair enough. That's a helpful answer. Thank you.

The Chair: Thank you very much.

You're out of time, but I want to know if anybody has any short questions.

Mr. Colin Fraser: I have a very quick question.

[*Translation*]

I have a question for the representatives of the Quebec Bar.

I don't think you mentioned the use of an ignition interlock system in your presentation. The bill proposes to eliminate a minimum prohibition period, which would reduce the number of charges contested.

Are you in agreement with that? Do you think that is a good idea and why?

Mr. Benoît Gariépy: In our brief, we said that was one of the very good aspects of the bill. People who approach my firm after being charged would probably contest those charges much less often if they were able to drive right away after their conviction. I am not minimizing impaired driving, but if people had an ignition interlock system as proposed in this bill, I am confident that this would greatly reduce the number of charges contested, although I could not give you a figure. The previous group of witnesses said that the ignition interlock system is a very good thing.

The Chair: Thank you very much.

Are there any other questions? I see there are not.

Thank you very much. You made a very good presentation.

Before we end the meeting, we have to elect the first vice-chair of the committee.

[*English*]

Mr. Falk has been replaced on the committee. I believe it's going to be Mr. Nicholson.

• (1835)

Mr. Michael Cooper: I would like to nominate Rob Nicholson.

The Chair: Perfect. I think the clerk has to read something.

The Clerk of the Committee (Mrs. Julie Geoffrion): Yes.

[*Translation*]

Thank you, Mr. Chair.

[*English*]

Pursuant to Standing Order 106(2), the first vice-chair must be a member of the official opposition.

I'm now prepared to receive motions for the first vice-chair.

The Chair: Mr. Cooper.

Mr. Michael Cooper: I would like to nominate Rob Nicholson.

The Clerk: It has been moved by Mr. Cooper that Mr. Nicholson be elected as first vice-chair of the committee.

Are there any further motions?

Is it the pleasure of the committee to adopt the motion?

Mr. Colin Fraser: Yes, unanimously.

The Clerk: I declare the motion carried, and Mr. Nicholson duly elected first vice-chair of the committee.

(Motion agreed to)

Hon. Rob Nicholson: Thank you very much.

The Chair: This is definitely a happier moment for him than when he was named minister of justice, a huge moment.

Hon. Rob Nicholson: I have to tell you, I believe it was 30 years ago this month that I became vice-chair of a justice committee here, but I liked the spot I had on that side of the—

The Chair: It's the circle of life, right?

Hon. Rob Nicholson: Exactly. The circle of life. What comes around goes around.

The Chair: Thank you very much everyone.

The meeting is adjourned.

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