

**MADD CANADA'S
MOTHER'S DAY REPORT
on the Federal Parliament
Sunday, May 9, 2004**

Today, Canadians celebrate a day with their mothers. MADD Canada asks Members of Parliament to think of the mothers across the country who can only remember their children – those who will not have a chance to share this day with their loved ones because an impaired driver took away the joy and the warmth of a mother-child embrace.

MADD Canada members do not want any more mothers – or fathers, children, family and friends – to feel the pain of losing a loved one.

There are initiatives that our Federal Parliament can consider and implement to make our impaired driving laws more effective. On this, a mother's most special day, we ask MPs and all candidates in the impending election to consider impaired driving as a justice priority issue in the next Parliament.

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■ Observations on the Federal Parliament in 2003/04

Genesis of the report

Mothers Against Drunk Driving (MADD Canada) promised to its membership, supporters and the public to report this Mother's Day on the follow-through activities of the Federal Parliament arising from the meetings and commitments made in Ottawa one year ago.

In May 2003, mothers from across the country, representing MADD Canada, made the trek to MPs' and Senators' offices to relate their hopes for new legislation involving enhanced police powers, the elimination of certain defences, conditional sentencing, and Parliament's review of impaired driving laws. They also shared their personal observations about the meaning of Mother's Day for parents who have lost their children to impaired driving.

The mothers' mission was to call on MPs to introduce new legislation that will ensure more effective impaired driving laws, safer roads, and a reduction in the numbers of deaths and injuries as a result of impaired driving.

As mothers who know something about impaired driving and the devastating impact it can have on families, the delegation asked Parliament to look at the realistic solutions MADD Canada has presented and to introduce new legislation.

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To put this report into perspective, it is important to remember that impaired driving is Canada's number one cause of criminal death. On average, more than 4 Canadians are killed and nearly 200 Canadians are seriously injured each and every day as a result of alcohol-related crashes.

Because MADD Canada believes that the status quo is unacceptable, our organization and its supporters see it as critical that Parliament review current impaired driving laws and practices with a goal to save lives and to make our roads safer.

Look-back to the past twelve months

From the list of commitments made last year, MADD Canada reports that all items were acted on, albeit with dissatisfying results. To recall, the action items from last year's meetings on Parliament Hill were:

- MP Leon Benoit will introduce a Private Members Bill in the coming weeks.
- Senator Marjory LeBreton will introduce a Senate Bill(s) to enhance police powers in the apprehension, gathering of evidence, and charging of impaired drivers.
- Members from every Party are committed to raising the issue in the respective Caucuses and initiating a discussion about what can be done about the crime.
- Members promised to write and contact the Minister of Justice to raise the issue of new impaired driving legislation.
- Members promised to look into the introduction of Private Members Bills.
- MADD Canada representatives also held a working breakfast with the Canadian Police Association's Executive Officer, David Griffin, and there was a renewed commitment for the organizations to work together.

In the past twelve months, Leon Benoit did introduce a Private Members Bill, C-452, that was debated in the House of Commons. This is a significant piece of legislation for it introduces measures to eliminate two spurious defences -- the '*Last Drink*' and '*Carter*' defences -- used all too often in Canadian courts. MADD Canada supporters were pleased to see the Conservative, NDP and Bloc MPs support the legislation; there is disappointment that the Liberal Government MPs did not.

Of the MPs' discussions in the various caucuses, and the correspondence that went to the Justice Minister on behalf of MADD Canada's initiatives, little materialized to advance the cause of improving Canada's impaired driving laws. All policy issues seemed lost to the political agendas playing themselves out -- the Party Leaderships campaigns, and the MPs' planning for the impending election.

The organization's dealings with the Federal Justice Minister have been disappointing in the last year. Former Minister Martin Cauchon did not want to discuss any impaired driving issues, and was slow to see the need for drug-impaired driving laws. Current Minister Irwin Cotler has yet to meet with MADD Canada's National President despite numerous requests to discuss policy issues.

Having said that, MADD Canada's continuing work with Senator Marjory LeBreton to develop legislation that addresses Canada's blood alcohol concentration (BAC) legal

limit has resulted in a new piece of legislation. The Senator is prepared to introduce a 0.05% BAC Bill at the first opportunity of the new Parliament (*see the Addendum*). As the federal impaired driving law is enforced today, a person can drink a considerable amount of alcohol and then drive without the expectation of being charged. MADD Canada's objective is to reduce the number of drinks a person can consume and then legally drive – and the Senator's legislation will focus necessary debate on the inadequacies of the current federal BAC law and its enforcement.

On the issue of drug impaired driving, MADD Canada has been very vocal through this past year with its concerns relating to Bill C-38 (now Bill C-10) and the Government's intention to pass cannabis legislation without first addressing drug impaired driving enforcement issues. The organization worked closely with national police associations – at the Parliamentary Committee, in the media, and in making submissions to Justice officials. MADD Canada is very pleased to see the Government introduce new drug impaired driving legislation and we urge the Government to enact this legislation along with, or before, the new cannabis law comes into effect.

Champions of impaired driving issues

MADD Canada thanks Alberta MP Leon Benoit who, in the last twelve months, has highlighted the need to eliminate spurious defences with his Private Members Bill. Thanks also go to Senator Marjory LeBreton and her staff for their on-going support.

MADD Canada would like to especially recognize three MPs who will be greatly missed in the next Parliament. We wish to thank these representatives for championing the debate for changes to Canadian impaired driving laws throughout their years in Ottawa.

*Chuck Cadman
Deborah Grey
Elsie Wayne*

■ Priority Impaired Driving Initiatives

It is MADD Canada's contention that the Federal Government must do more to eliminate impaired driving. The country's impaired driving laws are not working; they are not deterring people from drinking and driving. Canadians need a comprehensive strategy to decrease the numbers of drinking drivers and to reduce the crashes, injuries and deaths that result from drinking and driving.

The crime of impaired driving should be a priority for the new Government. MADD Canada supporters are looking for an active commitment from all MPs to initiate a comprehensive plan that will answer for the loss of lives and the social costs of this crime.

Looking ahead – past the election and to Canada's next Parliament – MADD Canada urges Parliamentarians to introduce necessary changes to federal impaired driving legislation within the first 18 months of the new Government's mandate. MADD Canada supporters call on the Federal Government and all Members of Parliament to act on three important policy initiatives.

1. Introduce a new 0.05% BAC *Criminal Code* offence and sanctions that will reduce impaired driving fatalities and create safer roads for all motorists.

A federal 0.05% BAC makes good sense for a number of reasons. *Foremost, it saves lives.* According to a Centre for Addiction and Mental Health study, a 0.05% BAC will result in a decrease of between 185 and 555 fatalities a year in Canada. A 0.05% BAC will bring down the BAC levels of all drivers – making *roads safer for all motorists.* Moreover, a 0.05% BAC legal limit is more in keeping with recent real-world experience in fighting impaired driving, leading medical evidence on the affects of alcohol on driving, and what is internationally recognized as a reasonable limit to safeguard the public against the risks of an impaired driving incident. Lastly, a vast majority – four in five Canadians – support a 0.05% BAC limit.

The MADD Canada proposal for a new *Criminal Code* offence would introduce measures that would get impaired drivers with 0.07 % BAC readings and higher off the roads. The impaired motorist would be ticketed as a summary conviction offence (First offence would carry a \$300 fine and a 45-day federal driving prohibition. Subsequent offences would carry a \$600 fine and a 90-day federal driving prohibition.) A person can pay the fine and not drive for 45-days without going to court. After two years, if the offender has no additional driving convictions, the 0.05% BAC offence would be dropped from his/her record.

The new 0.05% BAC offence will allow police to take impaired drivers off the road in an effective and efficient manner and it will ensure courts are not overwhelmed with impaired driving cases. It sets the federal legal limit at the internationally recognized level. This 0.05% BAC offence sends the right message to those who drink and drive: the Federal Government is serious about road safety.

2. Enhance police powers to better enable Canadian law enforcement to effectively apprehend and charge impaired drivers.

Today, there are still too many Canadians driving while over the legal limit. A prime reason for this behaviour is that the fear of being caught and charged with impaired driving is non-consequential. It is estimated that 1 in every 445 impaired driving trips results in a criminal charge.

Police must be given the necessary tools (including current technology) to detect and apprehend impaired drivers. Police must be given appropriate statutory authority and a streamlined charging process to ensure effective enforcement and prosecution.

MADD Canada also specifically calls on Parliament to provide the authority for police to demand a breath and/or blood sample from any driver involved in a crash where someone has been killed or seriously injured. This authority should extend to any person who may need medical treatment; police should be given the authority to demand the evidentiary blood samples from hospitals. (A recent BC study showed only 11 % of impaired drivers taken to the hospital were convicted.) This is a reasonable demand given that 40% of all traffic fatalities involve alcohol.

3. Address sentencing issues for impaired driving that are making a mockery of our Canadian judicial system.

MADD Canada wants conditional sentences eliminated for the crimes of impaired driving causing death and impaired driving causing bodily harm. Canadian courts have frequently been handing out conditional sentences for violent crimes. Parliamentarians never intended conditional sentences to be used for violent crimes. In an impaired driving crash, where a person has been killed or seriously injured, there needs to be an appropriate sentence handed down that both reflects the seriousness of the crime and the value of a life.

MADD Canada also calls for the elimination of the *Last Drink* and the *Carter* defences for impaired drivers. Canada is the only country that has these two self-serving defences, in which the burden of proof for the accuracy of BAC samples rests with the Crown. The *Carter* defence employs a toxicologist to confirm the accused's testimony ("*I only had two drinks.*") and this negates the police BAC evidence. The *Last Drink* defence uses a toxicologist to dispute BAC readings, where the accused states he/she consumed a great deal of alcohol just before driving – and that alcohol would not have been absorbed into the blood stream at the time police stopped the vehicle. In both defences, the accused's testimony, along with the defence toxicologist's confirmation, negate the police evidence. These are spurious defences that allow those who can afford a lawyer and toxicologist to walk without consequence for drinking and driving.

■ The Next Steps

Impaired driving needs to be a Federal Government priority. This crime affects far too many Canadians – it is one of those regular occurrences that has numbed our law-makers to discount its seriousness. The fact is, for decades, impaired driving has been far more deadly in Canada than the annual totals of homicide (almost three times). For these reasons, MADD Canada will continue its work to place impaired driving on the federal justice agenda.

MADD Canada will press for the changes to the Canadian law as outlined in this *Mother's Day Report*. We want Parliamentarians to consider a comprehensive plan for fighting the crime of impaired driving. Parliamentarians need to rethink the *Criminal Code* offences for the crime, enhance the police's ability to enforce the law, and eliminate certain spurious defences and conditional sentences where someone has been killed or seriously injured as a result of impaired driving.

In the weeks and months ahead, MADD Canada will request of all National Political Party Leaders where they stand on making impaired driving a priority justice issue in the next Parliament. MADD Canada will look for an early signal from the new Government that it is prepared to address the crime of impaired driving. The organization's membership and supporters will work with Parliamentarians to advance the priority impaired driving issues cited herein. In these ways, MADD Canada strives to prompt changes to our country's laws.

■ Contact Information

Canadians can get more information on impaired driving and on this specific federal policy initiative by visiting MADD Canada's website – **www.madd.ca**.

Canadians can also access information, programs and victims' services from the MADD Canada's National Office by calling its toll-free line -- **1-800-665-6233**

The MADD Canada spokespersons on the content of this *Mother's Day Report* can be reached via phone --

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| Louise Knox , MADD Canada's National President | 1-866-900-6233 |
| Senator Marjory LeBreton | (613) 943-0756 |
| Karen Dunham , MADD Canada's National President-Elect | (506) 635-5800 |
| Theresa-Anne Kramer , MADD Montreal Chapter Past-President | (514) 729-6233 |
| Andrew Murie , MADD Canada's Executive Director | 1-800-665-6233, ext. 224 |

■ **Addendum: A 0.05 % BAC proposal**

**THE SECTION 253(c) PROPOSAL:
THE CASE FOR A *CRIMINAL CODE* 0.05% BAC OFFENCE**

R.M. Solomon

S.J. Usprich

G. Dingle

(of the Law Faculty of University of Western Ontario)

INTRODUCTION

MADD Canada has proposed amending the *Criminal Code*, R.S.C. 1985, c. C-46 to create a new impaired driving offence. The amendment would make driving with a concentration of 50 milligrams or more of alcohol per 100 millilitres of blood a federal summary conviction offence. The offence would include streamlined procedures for processing cases, discourage needless court appearances and trials, carry lower penalties than the 0.08% BAC offence, and protect first-time 0.05% BAC offenders who do not re-offend from having a permanent criminal record. The new offence would complement the existing *Criminal Code* impaired driving offences, which would remain unchanged. Moreover, the proposed offence would be compatible with the existing provincial and territorial short-term licence suspension legislation.

The remainder of this paper sets out the rationale for, and the suggested elements of, the proposed 0.05% BAC offence. It also addresses the common arguments that have been raised in opposition to the proposal. Further, we include as an Appendix a draft bill appropriately amending the *Criminal Code* to enact the proposed offence. For a more detailed analysis of the 0.05% issue, see E. Chamberlain and R. Solomon, “The Case for

a 0.05% Criminal Law Blood Alcohol Concentration Limit for Driving” (September, 2002), 8 (Supp. III) Injury Prevention iii 1; J. Fell and R. Voas, *The Effectiveness of Reducing Illegal Blood Alcohol Concentration (BAC) Limits for Driving: Evidence for Lowering the Limit to .05% BAC in Canada* (Calverton, Maryland: Pacific Institute for Research and Evaluation, 2003); and R. Mann *et al.*, “The Effects of Introducing or Lowering Legal Per Se Blood Alcohol Limits for Driving: An International Review” (2001), 33 Accident Analysis and Prevention 569.

SECTION 1: THE RATIONALE FOR THE PROPOSED *CRIMINAL CODE* 0.05% BAC OFFENCE

The current 0.08% BAC offence is simply not having a sufficient deterrent impact. While the situation has improved since the 1980s, millions of Canadians continue to drink immoderately and then drive, many on a routine basis. Moreover, surveys indicate that millions of Canadians drive when they believe they are impaired. Based on even the most conservative estimate, impaired driving remains the single largest criminal cause of death in Canada, and one of the country's largest criminal causes of injury. According to a 2001 Transport Canada report, Canada ranked highest among eight selected OECD countries in terms of the percentage of fatally-injured drivers who were impaired, despite the fact that most of these countries have far higher rates of per capita alcohol consumption. For example, while Germans consume 70% more alcohol than Canadians, only 11% of Germany's fatally-injured drivers were impaired compared to 32% of Canada's fatally-injured drivers.

The current 0.08% BAC offence allows individuals to drive after drinking large amounts of alcohol in a relatively short period of time. Given the margin of error accepted by our courts, most police will not consider laying impaired driving charges unless both of the driver's evidentiary breath-test readings are 0.10% or higher. This real-world threshold for criminal charges permits an average 200-lb. man to drink over six bottles of regular beer (12 ounces at 5% alcohol by volume) or considerably more than a bottle of wine (26 ounces at 12% alcohol by volume) in a two-hour period and then drive, largely immune from criminal sanction.

Research has established that key driving-related skills are significantly impaired at BACs well below 0.05%. For example, the authors of a recent comprehensive study concluded that "a majority of the driving population is impaired in some important measures at BACs as low as 0.02%". Research from Canada and abroad has also established that the relative risk of a fatal crash rises significantly at BACs above 0.05%,

particularly for young drivers. Consequently, it is not surprising that virtually every leading traffic safety, medical and accident prevention organization in the world supports a BAC limit of 0.05% or lower. Moreover, the clear international trend has been to reduce legal BAC limits. The countries that already have a BAC limit of 0.05% or lower include: Argentina, Australia, Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Israel, Italy, Japan, Macedonia, Malaysia, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Saudi Arabia, Slovenia, Spain, Sweden, and Turkey.

The traffic safety benefits of lowering BAC limits have been repeatedly demonstrated in studies from numerous countries. Almost every jurisdiction that has lowered its BAC limit has experienced reductions in impaired driving, and related crashes, injuries and deaths. The research has also established that lowering the BAC limit deters drivers at all BAC levels, including the so-called “hard-core” drinking driver. Indeed, in Sweden and the Australian Capital Territory, those in the highest BAC levels had among the greatest decreases in impaired driving when the BAC limits were lowered. A recent Canadian study, reviewing the inter-national experience, reported that creating a federal 0.05% BAC offence would save between 185 and 555 lives per year. While caution is necessary in making exact estimates from the international experience, the evidence clearly indicates that creating a 0.05% BAC offence would contribute to significant safety benefits.

SECTION 2: THE ARGUMENTS RAISED IN OPPOSITION TO A FEDERAL 0.05% OFFENCE

(a) A *Criminal Code* 0.05% BAC would criminalize conduct that poses only trivial risks.

Studies conducted over the last 40 years have consistently established that drivers with BACs in the 0.050% to 0.079% range are at a substantially greater risk of death, than drivers with a zero BAC. Moreover, these relative risks rise sharply in the 0.080% to 0.099% range, a level at which most police will not even consider laying a criminal charge under the existing 0.08% offence. It is true that, in terms of any one trip, the likelihood of being in a fatal crash is very small even for drivers with BACs in the 0.050% to 0.099% range. However, given that millions of Canadians continue to drink immoderately and then drive, this risk is commonly taken and imposed on others. Like the proponents of seatbelts, airbags, bicycle helmets, and airport screening, MADD Canada believes that the mere fact that the risk per occasion is small does not justify ignoring it. A *Criminal Code* 0.05% BAC offence is demonstrably justifiable in terms of the risk that it addresses.

**Relative Risk of Fatal Single-Vehicle Crash
for Males at Various BACs**

| | .020% -.049% | .050% -.079% | .080% -.099% |
|-----------|--------------|--------------|--------------|
| Age 16-20 | 4.64 | 17.32 | 51.87 |
| Age 21-34 | 2.75 | 6.53 | 13.43 |
| Age 35+ | 2.57 | 5.79 | 11.38 |

Source: P.L. Zador, S.A. Krawchuk & R.B. Voas, "Alcohol-Related Relative Risk of Driver Fatalities and Driver Involvement in Fatal Crashes in Relation to Driver Age and Gender: An Update Using 1996 Data" (2000) 61 J. Stud. Alcohol 387 at 392.

(b) A *Criminal Code* 0.05% BAC law would overwhelm police and court resources, and generate unacceptable costs.

While more drivers would theoretically be liable to prosecution, it does not follow that the criminal justice system would be inundated. First, a 0.05% BAC offence would have a major general deterrent effect, reducing the numbers who drink excessively and then drive. Second, given current police and court practices, suspects are unlikely to be charged under the proposed 0.05% BAC offence unless they register BACs of 0.07% or higher on their evidentiary breath tests. Third, other jurisdictions that have lowered their BAC limits have not reported such problems, including the American states that have recently reduced their criminal BAC limits from 0.10% to 0.08%, and the Australian states some of which have had 0.05% BAC limits for as long as 20 years.

Even if demands on the criminal justice system and related costs did increase, these would be more than offset by the accompanying traffic safety benefits. For example, a study from the Stanford Institute for Economic Policy Research estimated that reducing the criminal BAC limit to 0.08% in New York State would increase police and court costs by \$8 million a year, but would also save between \$900 million and \$1.1 billion a year in medical, property, employment, and other costs.

(c) A federal *Criminal Code* 0.05% BAC offence is unnecessary because the provinces have already created provincial 0.05% offences.

In fact, none of the provinces or territories has made it an offence to drive with a BAC of 0.05% or higher. Rather, with the exception of Quebec, all the provinces and territories have enacted some form of short-term (6 to 24 hours) licence suspension for such conduct. Moreover, in many jurisdictions, no formal record is kept of these administrative suspensions and the drivers are generally not subject to any long-term licensing consequences. The *Criminal Code* 0.05% BAC proposal would not conflict with the existing provincial or territorial laws. It would create a criminal offence applicable across Canada and would have a considerably greater deterrent impact than the existing short-term administrative licence suspensions.

(d) A 0.05% BAC offence would criminalize social drinking.

Contrary to what its critics contend, a 0.05% BAC law would not trigger a flood of criminal charges against people who drove after having two glasses of wine with dinner, or two beers with friends after work. As indicated, given current police and court practices, charges are unlikely to be laid unless a suspect's BAC is 0.07% or higher. This means that a 200-lb. man could drink four regular bottles of beer (12 ounces at 5% alcohol by volume) in two hours without exceeding the BAC level at which he would likely face criminal charges. Even a 130-lb. woman could have a little more than two glasses of wine (5 ounces at 12% alcohol by volume) in two hours and be below the likely threshold for being charged under the proposed 0.05% BAC law. Obviously, MADD Canada is not endorsing drinking and driving, or suggesting that such consumption before driving is socially responsible.

BACS FOR MALES IN RELATION TO TIME, WEIGHT AND STANDARD CANADIAN DRINKS*

| | 2 hours | | 3 hours | | 4 hours | |
|-------------------|---------|---------|---------|---------|---------|---------|
| | 185 lbs | 200 lbs | 185 lbs | 200 lbs | 185 lbs | 200 lbs |
| 3 standard drinks | 0.04% | 0.03% | 0.02% | 0.02% | 0.01% | 0.00% |
| 4 standard drinks | 0.06% | 0.05% | 0.04% | 0.04% | 0.03% | 0.02% |
| 5 standard drinks | 0.08% | 0.07% | 0.07% | 0.06% | 0.05% | 0.04% |
| 6 standard drinks | 0.10% | 0.09% | 0.09% | 0.08% | 0.07% | 0.06% |
| 7 standard drinks | 0.13% | 0.11% | 0.11% | 0.10% | 0.10% | 0.08% |

**BACS FOR FEMALES IN RELATION TO TIME, WEIGHT
AND STANDARD CANADIAN DRINKS***

| | 2 hours | | 3 hours | | 4 hours | |
|-------------------|---------|---------|---------|---------|---------|---------|
| | 130 lbs | 140 lbs | 130 lbs | 140 lbs | 130 lbs | 140 lbs |
| 2 standard drinks | 0.05% | 0.04% | 0.03% | 0.02% | 0.02% | 0.01% |
| 3 standard drinks | 0.08% | 0.07% | 0.07% | 0.06% | 0.05% | 0.04% |
| 4 standard drinks | 0.12% | 0.11% | 0.11% | 0.09% | 0.09% | 0.08% |
| 5 standard drinks | 0.16% | 0.14% | 0.14% | 0.13% | 0.13% | 0.11% |
| 6 standard drinks | 0.20% | 0.18% | 0.18% | 0.16% | 0.17% | 0.15% |

*In Canada, a “standard” drink contains .60 ounces of alcohol. Thus, a 12-ounce bottle of beer (5% alcohol by volume), a 5-ounce glass of wine (12% alcohol by volume), and A 1½-ounce serving of liquor (40% alcohol by volume) all constitute a standard drink.

(e) A 0.05% BAC offence would not deter “hard core” drinking drivers who are largely responsible for impaired driving crashes in Canada.

Granted, there are a small number of people who frequently drive with high BACs, and they are, no doubt, dramatically over-represented in impaired driving crashes. However, given the sheer number of “social drinkers” who occasionally drink excessively before driving, this much larger group is probably responsible for a majority of the alcohol-related crashes, injuries and deaths in Canada. Indeed, research indicates that such occasional heavy drinkers are at a much higher relative risk of death per trip than frequent drinking drivers with the same BACs.

Moreover, even if the rhetoric about the “hard core” drinking driver were accepted, it does not follow that such drivers cannot be deterred. As indicated, after Sweden lowered its BAC limit to 0.02%, the average BAC of convicted impaired drivers, as well as the percentage of impaired drivers with BACs above 0.15%, fell substantially. Similarly, drivers with high BACs were strongly affected by the 0.05% BAC limit in the Australian Capital Territory. In particular, there was a 34% decrease in the percentage of drivers with BACs between 0.15% and 0.199%, and a 58% decrease in the percentage above 0.20%. These studies suggest that high BAC drivers might still drive illegally, but a large number of them will drive at lower BAC levels than before.

In summary, it is misleading to attribute Canada’s alcohol-related crash problem to a small number of “hard core” drinking drivers, as there is a much larger population of so-called “social drinkers” who occasionally drink excessively before driving. However, in so far as high BAC drivers do contribute disproportionately to the impaired driving problem, international research indicates that lower BAC limits would significantly reduce impaired driving by such drivers.

SECTION 3: THE SPECIFICS OF THE PROPOSED *CRIMINAL CODE* 0.05% BAC OFFENCE

As indicated, the amendment would create a new summary conviction offence for driving with a concentration of 50 milligrams or more of alcohol per 100 millilitres of blood. The *Criminal Code* provisions relating to demanding breath tests, the consequences of refusing such demands, and the admissibility of the breath-test results would apply to the proposed 0.05% BAC offence. In addition to the BAC limit, the 0.05% offence would differ from the existing 0.08% offence in three significant ways.

First, the 0.05% BAC offence would contain ticketing provisions. The ticket would explain the consequences of pleading guilty and the process for contesting a charge. The accused would be given 21 days to decide whether or not to plead guilty. If the accused decided to plead not guilty, the case would proceed like any other federal summary conviction offence. However, an accused who decided to plead guilty could do so without making a court appearance. The ticket would have explained the obligation to pay the fine and that he or she would be subject to a 45-day (90 days for a subsequent offence) federal driving prohibition, starting at midnight on the date the payment was made. The proposed legislation actually specifies 11:59 p.m. to avoid the confusion that would otherwise surround determining to which date “midnight” refers. The driving prohibition resulting from an out-of-court guilty plea would be treated similarly to a current court-ordered prohibition so that notice of it would be sent to the appropriate provincial or territorial licensing authority and the national police information system. Finally, the ticket would explain that driving in violation of the federal driving prohibition constitutes a *Criminal Code* offence.

Second, in keeping with the lower risks involved, the penalties for the 0.05% BAC offence would be lower than those for the 0.08% offence. A first conviction would be punishable by a \$300 fine and a 45-day federal driving prohibition. Subsequent convictions would be subject to a \$600 fine and a 90-day federal driving prohibition. Provincial and territorial licensing authorities would be free to consider these offences in deciding whether to require a driver to enter a remedial program.

Third, the 0.05% BAC offence would be subject to special criminal record provisions. First offenders, who did not have a subsequent *Criminal Code* driving conviction within two years, would automatically be deemed not to have a criminal record for this offence. If asked, they could then honestly deny having a criminal record. Nor would they be subject to the disabilities that result from having a criminal record. Similar provisions already exist in the *Youth Criminal Justice Act*, S.C. 2002, c. 1.

The 0.05% BAC offence has been designed to deter drinking and driving, but without being unduly punitive or creating unacceptable burdens on the police and courts. The option of being able to plead guilty without having to go to court should discourage accused persons from needlessly challenging the charge. The offender can pay the fine and serve the driving prohibition before a contested case would likely get to court. Similarly, the special criminal record provisions would not require an accused to go to trial in an effort to avoid having a permanent criminal record. These features of the proposed offence should encourage accused persons to plead guilty where there is no credible basis for challenging the charge.

CONCLUSION

The current 0.08% BAC law shields drivers who have consumed large amounts of alcohol from criminal liability, and exposes safe, sober and responsible drivers to significant risks. MADD Canada has proposed creating a 0.05% BAC offence because the weight of evidence indicates that doing so will reduce impaired driving and its tragic consequences. When specifically asked, 85% of Canadians indicated that they either support or strongly support a 0.05% BAC limit. Moreover, MADD Canada believes that as the significant risks associated with the current criminal limit become more widely known, public support and demands for a 0.05% BAC offence will increase.

THE CASE FOR A 0.05% BAC OFFENCE: THE SECTION 253(c) PROPOSAL

BACKGROUND:

- As demonstrated by research and real-world experience, a *Criminal Code* 0.05% offence would significantly reduce impaired driving, and the deaths and injuries that it generates.
 - It would bring Canadian law into line with the international trend to reduce permissible BAC levels to 0.05% or lower.
- It would also bring Canadian law into line with public opinion, which overwhelmingly supports the introduction of a *Criminal Code* 0.05% limit for driving.
- While it would be compatible with the existing patchwork of provincial and territorial short-term roadside licence suspensions, a federal 0.05% law would provide a single, national criminal standard. The current provincial and territorial suspensions are triggered at BACs of 0.04%, 0.05%, 0.06%, and 0.08%, and last for as little as 4 and as many as 24 hours. It should be noted that Quebec currently has no short-term roadside licence suspension law.
- The proposed offence would allow the federal government to demonstrate leadership on a national scale and help meet its pledge to make Canada a world leader in the traffic safety field.

OFFENCE:

- The proposal would create a summary conviction *Criminal Code* offence for operating, or having care or control of a motor vehicle with a concentration of 50 milligrams or more of alcohol per 100 millilitres of blood.
- Aside from the BAC level, the elements of the offence would be identical to those of the current 0.08% offence in section 253(b).
- The breath and blood-testing provisions and related procedural and evidentiary rules applicable to the current 0.08% offence would apply with necessary modification to the 0.05% offence.

PROCEDURES:

- Breath testing on an approved screening device.
 - If the driver's BAC was 0.05% or higher but below 0.07%, the driver would only be subject to a provincial or territorial short-term suspension.
 - If the driver's BAC was 0.07% or higher, the driver would be asked to accompany the officer to provide breath samples on an approved instrument (i.e., to submit to evidentiary breath tests).
- Breath testing on an approved instrument.
 - If the driver's BAC was 0.07% or higher, but below 0.10%, the driver would be charged under the proposed 0.05% offence.
 - If the driver's BAC was 0.10% or higher, the driver would be charged under the existing 0.08% offence.

- Ticketing under the 0.05% BAC law.
 - (i) The ticket would explain the consequences of pleading guilty and the process of contesting the charge. The accused would be given 21 days in which to decide on his or her plea.
 - (ii) If the accused decided to plead not guilty, the case would proceed like any other federal summary conviction offence.
 - (iii) If the accused decided to plead guilty, he or she would simply follow the instructions on the ticket, which explains fine, the start date of the federal driving prohibition, and the consequences of driving while prohibited.

SANCTIONS:

- Summary conviction offence.
- First offence : a \$300 fine and a 45-day federal driving prohibition.
- Subsequent offences: a \$600 fine and a 90-day federal driving prohibition.

CRIMINAL RECORD CONSEQUENCES:

- The criminal record consequences of the 0.05% BAC conviction would be identical to those of any comparable *Criminal Code* conviction in the two years following a plea or finding of guilt.
- If the offender had no additional *Criminal Code* driving convictions in the two years following the 0.05% conviction, he or she would be deemed not to have been convicted of the 0.05% offence. The record of that offence would be automatically removed from the offender's criminal record and from any federal criminal data bases.
- If the offender had a subsequent *Criminal Code* driving conviction within two years, the 0.05% conviction would remain on his or her record like any other prior conviction.

ADVANTAGES:

- An accused has an incentive to plead guilty to commence the driving prohibition as soon as possible.
- Pleading guilty without a court appearance reduces or eliminates the cost of hiring counsel.
- An accused does not have to go to trial in an effort to avoid having a permanent criminal record.
- If an accused pleads guilty without going to court, it results in considerable savings in police, crown and judicial resources.
- The proposed 0.05% offence does not interfere with the provincial and territorial short-term licence suspensions or with their existing remedial measures programs.
- The proposed 0.05% offence is also compatible with the existing federal interlock and other remedial measures programs.