

**MOTHER'S DAY REPORT  
ON FEDERAL PRIORITIES FOR  
NEW IMPAIRED DRIVING LEGISLATION**

**May 9, 2006**

*On Sunday, Canadians will celebrate a day with their mothers. On this day, MADD Canada wants Members of Parliament to think of those 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 has taken 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 grieving for a loved one who is forever gone or forever changed as a result of an impaired driving crash.*

*There are initiatives that our Federal Parliament can consider and implement to make our impaired driving laws more effective. On what all hope is a mother's most special day, we ask MPs to consider the crime of impaired driving as a justice priority issue and pass new impaired driving legislation in this Parliament.*

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To put this *Mother's Day Report* into perspective, it is important to remember that impaired driving is Canada's number one criminal cause of death.

On average, each and every day, 4 Canadians are killed and nearly 190 Canadians are seriously injured as a result of alcohol-related crashes.

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

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## ■ Observations on the Federal Parliament

### *The genesis of this report*

Four years ago, Mothers Against Drunk Driving (MADD Canada) began a practice of releasing a *Mother's Day Report* to inform its membership, supporters and the public, of the advances made by the Federal Parliament in the fight against impaired driving.

MADD Canada's goal in this effort is to significantly decrease the number of Canadians killed and injured as a result of impaired driving crashes. It has produced a set of priority policies that can readily form the basis of new federal legislation. MADD Canada strongly believes more effective impaired driving laws will result in safer roads and a reduction in impaired driving incidents, fatalities and injuries. The priority policies and recommended legislation contain within is our country's best opportunity to produce more effective impaired driving laws.

As Canadians who know something about impaired driving and the devastating impact it can have on families, friends and community, MADD Canada supporters are again asking Parliamentarians this year -- through this *Mother's Day Report* -- to look at the realistic solutions MADD Canada is presenting, and to introduce new impaired driving legislation that will make a difference.

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***Look-back to the past twelve months***

From the time of last year's reporting-out, MADD Canada has been involved in the following activities relating to its policy priorities at the federal government level.

- MADD Canada met with then, Liberal Government Justice Minister Irwin Cotler and discussed the over 33,500 Canadian signatories who were part of the petition to eliminate the use of conditional sentences for violent impaired driving crimes where a Canadian has been killed or seriously injured. The Justice Minister responded in the Fall Session by introducing Bill C-70, which would have required judges to produce a written rationale whenever handing down a conditional sentence for a violent crime.
- MADD Canada representatives worked closely with the Canadian Professional Police Association, and other police organizations and forces, to raise public awareness regarding the need for Bill C-16, the drugs and driving legislation. Bill C-16 was debated in the House of Commons and received great support from all Parties. However, this drug impaired driving legislation failed to pass Parliament before the House of Commons prorogued for the General Election.
- In the Fall 2005 Session, new legislation that would introduce a new 0.05% BAC federal 253(c) *Criminal Code* offence, was introduced both in the Senate by Senator Marjory LeBreton and in the House of Commons by MP Mark Warawa. 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. The objective of the 0.05% BAC legislation is to reduce the number of drinks a person can consume and then legally drive. Neither Bill was debated before the call of the General Election.
- Canada went to the polls. Before, during and after the election, MADD Canada reiterated its priority policies designed to save lives and make Canada's roads safer from impaired driving incidents. MADD Canada received support in varying degrees for its policy agenda from the Conservatives and the Liberals.
- MADD Canada attended a Justice Canada consultative workshop in March relating to 'evidence to the contrary.' The workshop suggested that the Federal Government is seriously considering introducing new legislation to counter the *Carter Defence* (a.k.a. 'two-drink defence'). The report of the day's proceedings is to be delivered to the Justice Minister.
- The Conservative Government's Justice Minister Vic Toews made repeated promises to introduce new conditional sentencing legislation that would eliminate the option of a conditional sentence for those convicted of a violent crime, including the crimes of impaired driving causing death and impaired driving causing bodily harm. This new legislation was tabled on Thursday, May 4.

Change in leadership in Ottawa always brings new perspectives to bear on issues. This is particularly true when there is a change of the Governing Party. MADD Canada hopes that the new Government and new Parliament will tackle impaired driving issues in a non-partisan manner and that they will take action to pass new legislation where previous administrations and Parliaments did not.

## ■ Priority Impaired Driving Initiatives

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 number 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 Federal Justice Minister and for this Parliament.

MADD Canada supporters are looking for a commitment from all MPs to initiate a comprehensive plan that will answer for the loss of lives, loss of quality of life, and the social costs of this crime.

MADD Canada urges Parliamentarians to introduce necessary changes to federal impaired driving legislation within the first 18 months of this Government's mandate.

The organization's priority policy initiatives are the following:

- Eliminate the use of conditional sentences for violent crimes, including impaired driving causing death and impaired driving causing bodily harm.
- Re-introduce drug impaired driving legislation that will provide police with the legal framework to apprehend and charge drug impaired drivers.
- Strengthen the presumptions regarding the use of breath or blood test evidence so as to narrow 'evidence to the contrary' defences; referring specifically to the *Carter Defence* (or 'Two-Drink Defence') and the 'Last Drink Defence.'
- Provide authorities with the statutory authority to demand a breath (or blood) sample at the scene of a crash where a person has been killed or seriously injured. This authority to demand breath (or blood) samples should be extended to a hospital or medical office.
- Amend the *Criminal Code* to establish a new 253(c) 0.05% BAC law.

With respect to the first three policy initiatives, MADD Canada is encouraged by promises made by Conservative MPs both before and during the General Election, as well as by the general support of all MPs. MADD Canada membership and supporters have reiterated, at every opportunity, clear statements on these policy initiatives and herein are the core statements regarding each of the policies.

**1. *Eliminate the use of conditional sentences for violent crimes, including impaired driving causing death and impaired driving causing bodily harm.***

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.

**2. *Re-introduce drug impaired driving legislation that will provide police with the legal framework to apprehend and charge drug impaired drivers.***

Today in Canada, there is no drug impaired driving law that allows police to properly detect and charge those people who take drugs and drive impaired. Bill C-16 of the previous Parliament would have established the necessary legal framework for police to properly apprehend drug impaired drivers. MADD Canada calls on the Government to re-introduce, and for Parliamentarians to pass this needed legislation soon.

MADD Canada also believes that, with the establishment of a new legal framework to charge drug impaired drivers, the Government also needs to provide adequate resources and training dollars for timely implementation by police forces, and appropriate public relations dollars to raise awareness of the new drugs and driving safeguards in the public. A specific awareness effort needs to be aimed at young Canadians, given the dramatic increase in cannabis use and the rising incidents of toking and driving.

**3. *Strengthen the presumptions regarding the use of breath or blood test evidence so as to narrow ‘evidence to the contrary’ defences; referring specifically to the Carter Defence (or ‘Two-Drink Defence’) and the ‘Last Drink Defence.’***

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, will 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.

MADD Canada recently participated in a Justice Canada consultative workshop on 'evidence to the contrary.' This is a problem with Canadian laws that federal officials have been apprised of since the 1999 House of Commons hearings on impaired driving. Action on the 'evidence to the contrary' issue is long overdue. The organization is hopeful -- encouraged by the recent workshop -- that the Government will bring new legislation to counter these 'made-in-Canada' spurious defences during the life of this Parliament.

***4. Provide authorities with the statutory authority to demand a breath (or blood) sample at the scene of a crash where a person has been killed or seriously injured. This authority to demand breath (or blood) samples should be extended to a hospital or medical office.***

Police must be given appropriate statutory authority and a streamlined charging process to ensure effective enforcement of impaired driving laws. To provide the authority for police to demand a breath and/or blood sample in a situation where someone has been killed or seriously injured would ensure impaired drivers will not go undetected.

Almost 40 percent of all traffic fatalities involve a person who has consumed alcohol. There is also a rising number of incidents involving those who have taken drugs. Therefore, it is reasonable and in the best interests of the public to provide this authority to obtain a sample at a fatality scene.

Furthermore, a recent BC study showed only 11 % of impaired drivers taken to the hospital were convicted of an impaired driving offence. For this reason, MADD Canada contends this authority to obtain a sample should include the right to demand the evidentiary blood samples from hospitals or medical offices.

**5. Amend the Criminal Code to establish a new 253(c) 0.05% BAC law.**

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* 253(c) offence (as detailed in recent Senate and House of Commons Bills) 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, and 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.

## ■ The Next Steps

Impaired driving needs to be a Federal Government priority. This crime affects far too many Canadians – it is a regular occurrence in our communities and has, unfortunately, 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 enhance the police's ability to enforce the law, rethink the *Criminal Code* offences for the crime, and eliminate certain spurious defences and conditional sentences where someone has been killed or seriously injured as a result of impaired driving.

The organization's membership and supporters will work with Parliamentarians over the next twelve months to advance its priority policies. In this way, MADD Canada strives to ensure there are more effective impaired driving laws and, as a result, safer roads throughout Canada.

## ■ Contact Information

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

Canadians can also access general impaired driving information, programs as well as victims support services by calling the MADD Canada's National Office toll-free line -- **1-800-665-6233**

The MADD Canada spokespersons on the release and content of this *Mother's Day Report* can be reached via phone or e-mail.

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