

A BACKGROUNDER ON CANADA'S NEW DRUG-IMPAIRED DRIVING LEGISLATION

- Although Canada enacted its first drug-impaired driving offence in 1925, the police had virtually no means of enforcing this provision. While drug-impaired driving was not a major problem when this prohibition was initially enacted, there has been a sharp increase in rates of drug-impaired driving. The new amendments will finally give the police the powers to collect the evidence necessary to enforce this long-standing prohibition.
- Various national and provincial studies indicate that driving after drug use is commonplace, and that the rate of driving after cannabis use is increasing particularly among the young. This research provides ample reason to view drug-impaired driving as a major traffic safety concern.
- **Drug-Impaired Driving Trends in Canada**
 - (i) In a 2002 national survey, 17.7% of licensed drivers (the equivalent of 3.7 million Canadians) reported driving, at least once in the past 12 months, within two hours of using a potentially impairing drug.
 - (ii) The percentage of individuals who reported driving within two hours of cannabis use rose in both the 2004 and 2006 national surveys.
 - (iii) A Québec study of fatally-injured drivers between April 1999 and November 2001 indicated that 22.6% were positive for only alcohol, 17.8% were positive for only drugs, and 12.4% were positive for both. The study also found that roughly 23% of 16 to 24-year-old drivers who provided urine and/or saliva samples in a night-time roadside survey tested positive for cannabis.
 - (iv) The Centre for Addiction and Mental Health reported that driving after cannabis use and accepting a ride with a driver who has been using drugs is common among Ontario high school students. For example, in a 2005 survey, 14% of licensed grade 10-12 drivers reported driving within an hour of consuming two or more drinks, while 20% reported driving within one hour of using cannabis. Moreover, 22% of grade 10-12 students reported being in a vehicle driven by someone who had used drugs prior to driving.
 - (v) In a 2005 study, 15.1% of grade 10-12 students in Atlantic Canada reported driving under the influence of cannabis, whereas 11.7% reported driving under the influence of alcohol. Students who drove under the influence of cannabis were twice as likely as cannabis-free students to report being in a collision.
 - (vi) The adverse impact of cannabis and other drugs on driving performance has been well documented. While the exact causal role of various drugs in crashes requires more research, it is clear that drug use constitutes a significant traffic safety problem, particularly for the young.

• **Canada's New Impaired-Driving Legislation**

- (i) As of July 2, 2008, the police will be given authority in specific circumstances to demand that impaired driving suspects participate in “physical coordination testing” and “drug recognition evaluation” (DRE).

(ii) Physical Coordination Testing

- (a) Although the police were permitted to ask an impaired driving suspect to participate in physical coordination tests at roadside, the *Criminal Code* did not require the suspect to do so. The amendments will permit the police to demand that a driver participate in physical coordination testing if they reasonably believe that he or she has any alcohol or drugs in his or her body. As in the case of roadside screening for alcohol, physical coordination testing will be used primarily as a screening tool to demand further testing.
- (b) The physical coordination tests are based on the internationally recognized Standard Field Sobriety Testing (SFST) protocol, which is used throughout the United States and other countries. SFST is composed of three elements – the walk-and-turn, one-leg stand, and horizontal gaze nystagmus (HGN) tests. The HGN test assesses the automatic jerking of the eyeball while following a point of light, which becomes more pronounced with increases in an individual's blood-alcohol concentration.
- (c) A driver's failure on SFST provides the police with reasonable grounds to believe that he or she is impaired and thus the requisite grounds to demand further testing for alcohol or drug impairment.

(iii) Drug Recognition Evaluation (DRE)

- (a) The police must have reasonable and probable grounds to believe that a driver has committed the offence of driving while impaired by a drug in order to demand that he or she accompany them to the police station and participate in a DRE.
- (b) The new provisions will authorize specially trained and certified officers to conduct a DRE to determine if the driver is impaired by drugs and, if so, the class of drugs involved. DRE is designed to identify the following seven classes of drugs: depressants (e.g. barbiturates), inhalants (e.g. gasoline), phencyclidine (e.g. PCP or angel dust), cannabis, stimulants (e.g. amphetamines and cocaine), hallucinogens (e.g. LSD and MDA), and narcotics (e.g. heroin and morphine).
- (c) Developed and widely used in the United States, DRE involves two major components. The first component contains 11 separate steps. If not previously done, a breath test will be conducted to rule out alcohol impairment. The remaining steps include: interviewing the arresting officer and the suspect; various eye examinations; and checking the suspect's temperature, pulse, blood

pressure, muscle tone, and body for common injection sites. The suspect is also subject to a number of physical coordination tests, similar to those done at roadside, to establish impairment. The first component ends with a written report. If the officer concludes that a suspect is impaired, the officer must identify the class of drugs involved.

- (d) It is only at this point that the officer is authorized to demand a blood, urine or saliva sample from the suspect. The test results do not provide evidence of impairment, but rather simply confirm whether the sample contains the identified class of drugs.
- (e) If no drugs are present, the impaired driving charge will be dropped. Similarly, if the class of drugs found in the sample does not match the one identified by the DRE officer, the charge will be dropped. Thus, a drug-impaired driving charge will only proceed to trial if the analysis of the suspect's sample confirms the officer's conclusion about the class of drugs involved.

• **Conclusion**

- (i) The amendments will finally give the police some ability to enforce Canada's drug-impaired driving prohibition. The drug-impaired driving provisions exactly parallel those currently used in the investigation of alcohol-impaired driving.
- (ii) Despite concerns expressed about the intrusive nature of the amendments, the approach adopted in Canada is relatively cautious. Police throughout Western Europe and Australia are given far broader powers to investigate drug-impaired driving and to demand samples from drivers.
- (iii) Thus, Canada's new amendments should be seen as a balanced and measured response to the risks posed by the increasing rates of drug-impaired driving.

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