



On June 18, 2009, a majority of the House of Commons Standing Committee on Justice and Human Rights recommended the adoption of random breath testing (RBT) in Canada. MADD Canada applauds this significant step forward in the fight against impaired driving, and looks forward to seeing the Committee's recommendation enacted into law.

RBT legislation would inevitably be challenged under the *Canadian Charter of Rights and Freedoms*. Nevertheless, if the need for RBT, its proven benefits and widespread international adoption is made clear, it should be upheld under s. 1 as a reasonable and demonstrably justifiable limit.

Despite countless education programs, increasingly onerous penalties, federal amendments, progressive provincial legislation, and the frequent use of sobriety checkpoints, impaired driving remains a persistent and serious problem in Canada.

(a) The Problem

- Millions of Canadians continue to drink and drive because they can do so with little fear of being stopped, let alone charged and convicted. Recent survey results and charge and conviction data indicate you could drive drunk once a week for more than 3 years before ever being charged with an impaired driving offence, and for over 6 years before ever being convicted. Other survey data would put the figures closer to 6 and a half years before a charge, and nearly 13 years before a conviction.
- Research indicates that even when impaired drivers are stopped at sobriety checkpoints, more than half go undetected by police.
- Police are even more likely to miss experienced drinkers, because they exhibit fewer signs of intoxication.

- The Standing Committee correctly pointed out the consequences of poor detection: “If an impaired driver escapes detection at a checkpoint, it can serve to reinforce drinking and driving behaviour and increase the likelihood of its recurrence.”

(b) The International Experience

- In response to similar problems, numerous jurisdictions around the world have introduced RBT, starting with the Scandinavian countries in the mid-1970s, most Australian states in the early to mid-1980s, and followed by New Zealand and most European Union countries. In 2003, the European Commission recommended that all member states introduce comprehensive RBT legislation.
- RBT deters impaired driving by increasing the perceived chance of detection. For example, in New South Wales, 90% of drivers surveyed thought they might be breath tested.
- There is convincing evidence that RBT has significant traffic safety benefits. For example, in Queensland, RBT was estimated to have reduced fatal crashes by 35% between 1988 and 1992, preventing an estimated 789 fatal crashes in that period.
- More recently, a systematic review of 12 RBT studies found a median decrease of 22% in total fatal crashes.
- Ireland’s introduction of RBT in 2006 was found to cut total road fatalities by 23%.
- In Canada, RBT would be used as a preliminary screening measure to determine whether there are grounds to demand evidentiary breath tests. RBT could be conducted on approved screening devices (ASDs) at roadside, thereby minimizing inconvenience to motorists.

(c) Charter Concerns

- Unquestionably, RBT would be challenged under the *Charter* as violating the right to be free from unreasonable search and seizure (s. 8) and arbitrary detention (s. 9). While a comprehensive *Charter* analysis cannot be presented here, RBT should withstand *Charter* scrutiny.

- Canadians are routinely subject to random detention and search in their daily lives. When they board a plane, enter a courtroom or observe Parliamentary proceedings, Canadians are scanned and/or subject to random physical search. If random search is justified in these circumstances, then a far more compelling case can be made for RBT, which addresses a widespread safety risk and has repeatedly been proven to sharply reduce alcohol-related crash deaths, injuries and costs.
- Driving is a heavily regulated, licensed activity occurring on public roads. Drivers are already required to stop and provide documentation when requested by police, and expect to be asked questions about their licenses and sobriety. The Canadian courts have upheld the constitutionality of this random stopping, searching and questioning of drivers in order to maintain traffic safety. RBT would simply be an extension of these court-approved interventions.
- Given that impaired driving is Canada's leading criminal cause of death, this extension is eminently reasonable. Canada's lack of progress in the last 10 years, coupled with recent increases in impaired driving rates, highlight the urgent need for RBT.

(d) Conclusion

- RBT is widely acknowledged to be one of the most effective means of deterring impaired driving, and has been adopted by most comparable democracies. While RBT will be challenged under the *Charter*, this should not deter Parliament from introducing a measure that has dramatically reduced alcohol-related crash deaths around the world and can do the same in Canada.