THE HOUSE OF COMMONS STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

Reforming the Federal Impaired Driving Legislation: Next Steps
Submission of Mothers Against Drunk Driving (MADD) Canada
Monday, March 2, 2009

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SECTION I: INTRODUCTION

- I am appearing before you on behalf of Mothers Against Drunk Driving (MADD) Canada, in my capacity as its National Director of Legal Policy.

- I have been a professor in the Faculty of Law at the University of Western Ontario since 1972. I have authored or co-authored approximately 200 articles, studies and government reports on alcohol and drug law. My research in recent years has focused on impaired driving, and reform of the related federal and provincial legislation.

SECTION II: THE NEED FOR COMPREHENSIVE AND EFFECTIVE REFORM


- The federal impaired driving law is difficult and frustrating to enforce and prosecute. The law is cumbersome and technical. A national survey of police across Canada found that it took an average of 2.8 hours to process even a simple charge of impaired driving and an additional 4.4 hours if the case went to trial.¹

- The law is so unrewarding to enforce that it discourages officers from laying charges, even if the driver is legally impaired.
  - In jurisdictions with short-term provincial/territorial licence suspensions, 30% of officers reported that impaired drivers were frequently or sometimes let off with a suspension, rather than charged criminally.²
  - About 29% of officers nationwide acknowledged that they frequently or sometimes took measures other than laying a criminal charge or imposing a short-term suspension, such as allowing a sober passenger to drive the impaired driver home.³

- This de facto decriminalization of impaired driving results from inadequacies in the Criminal Code provisions. These frustrations also help to explain why the 2006 Canadian charge rate for impaired driving offences per licensed driver in 2006 was less than 38% of the American rate.⁴

(b) Canada’s Record on Impaired Driving

- While considerable progress was made between 1980 and the mid-1990s, there has been little improvement in the interim. Impaired driving in Canada:
  - remains the single largest criminal cause of death;⁵
  - claims more than twice as many lives per year as all types of homicide combined;⁶ and
  - takes a disproportionate toll among young Canadians. For example, in 2003, 16 to 25 year-olds constituted 13.7% of the population, but 32.1% of Canada’s alcohol-related traffic deaths.⁷

- In 2006, impairment-related crashes were conservatively estimated to have resulted in 1,278 deaths, 75,374 injuries and 155,510 property-damage-only crashes (involving 249,117 vehicles).⁸ The total financial and social costs of these losses were estimated to be as high as $12.7 billion.⁹
- The number and percentage of impairment-related crash deaths and injuries has risen significantly since 1999.10

- The percentage of Canadian drivers who reported driving after drinking in the past 30 days rose from 14.7% in 2005 to 18.1% (representing over 4 million Canadians) in 2008.11

- Canada already lags far behind comparable democracies in reducing the role of alcohol in traffic deaths, although most of these countries have far higher rates of per capita alcohol consumption.12 An international study published in 2000 found that Canada had the second highest rate of alcohol involvement in traffic fatalities among 15 countries.13

- As the following 2001 Transport Canada chart illustrates, Canada had the highest rate of impairment among fatally-injured drivers of eight OECD nations.14

![Impairment Among Fatally-Injured Drivers in 1997-1998, Selected OECD Countries](chart)

*At the time, the criminal BAC limit was .08% in 15 American states and .10% in 33 states.

- The laws in these countries have deterred impaired driving and encouraged the public to separate the activities of drinking and driving. In contrast, Canada’s federal impaired driving laws have protected impaired drivers and deterred the police from laying criminal charges.15

(c) **Bill C-2 and Next Steps**

- MADD Canada supports the impaired driving amendments contained in Bill C-2, *An Act to Amend the Criminal Code and to Make Consequential Amendments to Other Acts*,16 because they will close longstanding loopholes that allowed many impaired drivers to evade criminal liability.

- However, these amendments will not significantly reduce the incidence of impaired driving or the deaths that it causes. To achieve this goal, additional *Criminal Code* changes are required – namely, laws that will have a major deterrent impact.

- While MADD Canada supports a broad range of changes to the federal impaired driving laws,17 this submission addresses three issues:
  - the enactment of a *Criminal Code* .05% BAC impaired driving offence;
- the enactment of random breath testing (RBT) provisions for screening drivers; and
- reform of the federal alcohol interlock provisions.

SECTION III: A FEDERAL CRIMINAL CODE .05% BAC OFFENCE

(a) The Problem

- The current Criminal Code BAC limit of .08% allows individuals to drive after consuming large quantities of alcohol. Given the margin of error accepted by our courts, most police will not lay criminal charges unless a driver’s evidentiary BAC readings are .10% or higher.  

- Thus, an average 200-pound man can drink over six bottles of regular beer (12 ounces at 5% alcohol by volume) in two hours, on an empty stomach, and then drive largely immune from criminal sanction. Indeed, as the following charts illustrate, it is unlikely that he would even be charged.  

<table>
<thead>
<tr>
<th>BACs in Relation to Time, Weight &amp; Standard Canadian Drinks*</th>
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<tr>
<td><strong>Males</strong></td>
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<td>Standard Drinks</td>
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<td><strong>Females</strong></td>
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* Based on 13.46 grams of alcohol, and a metabolism rate of a .015% decrease in BAC per hour.

• Our law does not prohibit drinking and driving. Rather, it only prohibits driving when one is very impaired. The current .08% BAC offence conveys the misleading and dangerous message to the public that it is safe to drink and drive unless you are obviously and visibly intoxicated.

(b) Research

• Laboratory, driving simulator and closed access roadway studies over the last 50 years have consistently established that even small amounts of alcohol adversely affect driving skills and performance.\textsuperscript{20}

• For example, a comprehensive 2004 study concluded that: there is no evidence of a threshold BAC below which impairment does not occur; and no category of drivers who are not impaired by alcohol. The authors stated that, as the research has become more sophisticated, it has become evident that significant impairment of driving skills occurs at very low BACs (<.02%).\textsuperscript{21}

• Thus, the Criminal Code permits individuals to drive with BACs that are triple or more the level at which their driving skills and performance are significantly compromised.

• Research has also established that the relative risk of a crash death rises sharply beginning at BACs of .05%, particularly for young males.\textsuperscript{22} For example, 16 to 19 year-old males with BACs .05% to .079% are 17 times more likely to die in a single vehicle crash than if they are driving with a 0% BAC.\textsuperscript{23}

• The most recent American studies, using improved epidemiological methods, have established that the relative risks of a fatal crash at BACs above .05% are far higher than what was believed when Canada enacted its .08% BAC limit in 1970.\textsuperscript{24}

(c) The International Experience with BAC Limits of .05% or Lower

• Research has established that virtually every jurisdiction that has lowered its permissible BAC limits for driving has experienced significant reductions in the number of impaired driving deaths and injuries. This holds true whether the lower limit creates a criminal or regulatory offence, and whether it applies to the general driving population, young drivers, beginning drivers, or impaired driving offenders.\textsuperscript{23}

• Lower BAC limits reduce impaired driving deaths and injuries among all categories of drivers, including the so-called “hard core drinking drivers” (\textit{i.e.} drivers with BACs of .15% or higher).\textsuperscript{26} Indeed, contrary to what the alcohol industry and its allies have suggested, research indicates that reducing BAC limits to .05% or lower has its greatest impact on high-BAC drivers.\textsuperscript{27}

• Support for these principles has come from numerous studies undertaken in various countries, including Germany, France, Austria, Belgium, Norway, the Netherlands, Sweden, Japan, New Zealand, Canada, the United States, and Australia.\textsuperscript{28}

• Virtually every reputable traffic safety, injury prevention and public health agency supports BAC limits of .05% or lower.\textsuperscript{29}

• As the following chart illustrates, the vast majority of countries make it an offence to drive with a BAC of .05% or higher.\textsuperscript{30}
# BAC LIMITS FOR DRIVING WORLDWIDE

<table>
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<tr>
<th>BAC (mg/ml)</th>
<th>COUNTRIES</th>
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<tr>
<td>0</td>
<td>Armenia, Azerbaijan, Bahrain, Croatia, Czech Republic, Ethiopia, Hungary, Jordan, Nepal, Pakistan, Romania, Saudi Arabia, Slovak Republic, and United Arab Emirates.</td>
</tr>
<tr>
<td>0.1 – 0.4</td>
<td>Albania, Algeria, China, Estonia, Georgia, India, Japan, Lithuania, Moldova, Mongolia, Norway, Poland, Russia, Sweden, and Turkmenistan.</td>
</tr>
<tr>
<td>0.5</td>
<td>Argentina, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Cambodia, Costa Rica, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Iceland, Israel, Italy, Kyrgyzstan, Latvia, Macedonia, Monaco, the Netherlands, Peru, Philippines, Portugal, Serbia, Slovenia, South Africa, South Korea, Spain, Switzerland, Taiwan, Thailand, Turkey, and Venezuela.</td>
</tr>
<tr>
<td>0.6 – 0.7</td>
<td>Bolivia, Ecuador, and Honduras.</td>
</tr>
<tr>
<td>0.8</td>
<td>Botswana, Brazil, Canada, Ghana, Guatemala, Ireland, Jamaica, Kenya, Luxembourg, Malaysia, Malta, Mexico, New Zealand, Nicaragua, Paraguay, Singapore, Uganda, United Kingdom, United States, and Zimbabwe.</td>
</tr>
</tbody>
</table>

- Canada’s .08% law is out of step with the driving laws in the rest of the world, particularly the leaders in traffic safety.

- The current patchwork of short-term provincial and territorial licence suspensions is simply no substitute for a national .05% Criminal Code limit.

(d) **The Elements of a Criminal Code .05% BAC Impaired Driving Offence**

- The Criminal Code should be amended to create a new summary conviction offence for driving with a BAC above .05%. In addition to the BAC limit itself, the proposed .05% BAC offence would differ from the existing .08% BAC offence in three significant ways:
  - The .05% offence would incorporate streamlined procedures, including ticketing provisions that would permit the accused to plead guilty without making a court appearance.
  - The penalties for the .05% offence would be less onerous than those for the .08% offence.
  - The proposed .05% offence would be subject to special criminal record provisions. Offenders without a subsequent Criminal Code impaired driving conviction within two years would be deemed not to have a criminal record for the .05% offence, and the information relating to it would be automatically destroyed.

- Bills incorporating these features have already been drafted and introduced in both the Senate and the House of Commons.

(e) **Summary**

- The current Criminal Code .08% BAC offence protects drivers who have consumed large amounts of alcohol and exposes sober, responsible road users to significant risks.

- The overwhelming weight of evidence indicates that a Criminal Code .05% BAC offence would significantly reduce impaired driving crashes, injuries and deaths.

- The proposed .05% law is designed to maximize the deterrent impact of the law, minimize the administrative burden on the criminal justice system, and appropriately sanction offenders.
SECTION IV: RANDOM BREATH TESTING

(a) The Problem

- Drinking and driving is a persistent problem among Canadian drivers. In the previously mentioned 2008 national survey, 18.1% of the respondents reported driving after drinking at least once in the past 30 days.\textsuperscript{33}

- Only a very small fraction of these drinking drivers are apprehended or charged. The 2006 criminal charge statistics and national survey data suggest that only 1 in every 168 impaired driving trips results in an impaired driving charge. Even this figure may significantly overestimate the charge rate per impaired driving trip.\textsuperscript{34}

- Studies suggest that, using current enforcement methods, police fail to detect a large percentage of impaired drivers even at sobriety checkpoints.
  - American studies suggest that among drivers stopped and questioned at sobriety checkpoints, the police miss about 50% of drivers with BACs of .10% or higher, and about 75% of drivers with BACs of .05% to .099%.\textsuperscript{35}
  - Another study reported that over 60% of drivers with BACs of .08% or higher were passed through checkpoints without detection, as were almost 90% of drivers with BACs of .05% to .079%.\textsuperscript{36}

- Police are even more likely to miss experienced drinkers and those who do not fit the impaired driver stereotype.
  - Currently, police rely heavily on behavioural clues and observations in detecting impaired drivers, such as the manner of driving, the odour of alcohol on a driver’s breath, a flushed face, a lack of coordination, bloodshot eyes, slurred or indistinct speech, and inappropriate responses to questions. Experienced drinkers often do not exhibit such obvious signs of intoxication.
  - Moreover, women are routinely missed more often than men, young drivers are missed more often than older drivers, and drivers without passengers are more likely to be missed than drivers with passengers.\textsuperscript{37}

- The deterrent effect of Canada’s laws is severely compromised because impaired drivers are stopped infrequently and, if stopped, often avoid detection. Escaping detection not only allows impaired drivers to continue driving, but also reinforces their belief that they are not really impaired. This, in turn, encourages subsequent impaired driving.\textsuperscript{38}

(b) The International Experience

- In response to similar problems, numerous jurisdictions around the world have introduced RBT to improve apprehension rates for impaired driving and, thus, strengthen the deterrent impact of their laws. The Scandinavian countries introduced RBT in the mid-1970s, and most Australian states introduced RBT in the early to mid-1980s.

- Since then, RBT has been introduced in New Zealand. Most countries in the European Union now permit RBT in at least some circumstances.\textsuperscript{39} In 2003, the European Commission recommended that all 26 member states introduce comprehensive RBT programs.\textsuperscript{40}
• RBT has been an effective deterrent against impaired driving by significantly increasing the perceived probability of detection. For example, in New South Wales, 90% of drivers surveyed believed they might be caught in a breath-testing checkpoint.\textsuperscript{41}

• There is convincing evidence that RBT has significant traffic safety benefits.
  
  - A rigorous time-series analysis of RBT in four Australian states found that it had significant initial and ongoing effects on serious, fatal and single-vehicle nighttime crashes.\textsuperscript{42}
  
  - In Queensland, RBT was estimated to have reduced fatal crashes by 35% between 1988 and 1992, preventing an estimated 789 fatal crashes during that period.\textsuperscript{43}
  
  - In New South Wales, RBT was estimated to have prevented 522 serious, 204 fatal, and 686 single-vehicle nighttime crashes in its first year.\textsuperscript{44}
  
  - Another study that evaluated RBT in New South Wales found that the number of fatally-injured drivers with illegal BACs (over .05%) dropped by 36% in the four years after RBT was introduced.\textsuperscript{45} It also reported substantial declines in the number of individuals who reported driving when they believed themselves to be at an unsafe BAC.

• Various reviews of the research literature have consistently confirmed RBT’s significant impact in reducing impaired driving deaths and injuries.\textsuperscript{46}
  
  - For example, Shults \textit{et al.} found a median decrease of 22% in total fatal crashes in the 12 RBT studies in their systematic review of the research.\textsuperscript{47}
  
  - A 2005 review stated that in “Australia, RBT programs have been found to result in as much as a 24% reduction in nighttime crashes, especially in metropolitan areas... . Results from Finland...show an even more striking decrease of 50% in drinking and driving rates and a reduction in the rates of death and injury from alcohol-related traffic crashes after implementation of RBT.”\textsuperscript{48}

• In the context of the Canadian law, RBT would be used as a preliminary screening measure to determine whether there are grounds to demand evidentiary breath tests under section 254(3) of the \textit{Criminal Code}. RBT could be conducted on approved screening devices (ASDs) at roadside, thereby minimizing inconvenience to motorists.

\textbf{(c) Charter Concerns}

• As inevitably occurs when new enforcement measures are introduced, RBT will be challenged under \textit{The Canadian Charter of Rights and Freedoms}.\textsuperscript{49} The most likely grounds for challenge are section eight (unreasonable search and seizure) and section nine (arbitrary detention). While a comprehensive \textit{Charter} analysis cannot be presented here, we are confident that, if properly implemented, RBT will withstand \textit{Charter} scrutiny.

• Canadians are routinely subject to random detention and search in their daily lives. Canadians cannot board a plane, enter many courtrooms\textsuperscript{50} or government buildings, or observe Parliamentary proceedings without being scanned and/or subject to a random physical search of their person and belongings. If random search is warranted and 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 by common law and legislation to stop and provide documentation when requested to do so by police. Drivers expect to be asked routine questions about their licences, vehicles and sobriety. The Canadian courts have upheld the constitutionality of this random stopping, searching and questioning of drivers in order to maintain traffic safety.

The introduction of RBT is merely an extension of these routine 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 ten years, coupled with recent indications that impaired driving rates are increasing, highlight the urgent need for RBT.

The primary goals of the impaired driving legislation are to deter impaired driving and to apprehend offenders before they cause a crash. The Criminal Code and provincial/territorial highway traffic legislation give the police authority to use various investigatory techniques to detect drivers who may be impaired. While these techniques inevitably encroach on individual rights, they have generally been upheld under section one of the Charter as being “demonstrably justified in a free and democratic society.”

- Impaired driving has repeatedly been found to be a “pressing and substantial” concern as required by the section one of the Charter. Most recently, the Supreme Court of Canada stated in R. v. Orbanski; R. v. Elias: “There is no question that reducing the carnage caused by impaired driving continues to be a compelling and worthwhile government objective.”

- The Supreme Court of Canada has already upheld the constitutionality of random checkpoints, both at common law and pursuant to statute. Although random stops are “arbitrary,” in that there are no criteria for selection, they have been upheld under section one of the Charter because of their importance in promoting highway safety. Without the ability to stop drivers at random, police would only be able to detect impaired drivers in the most obvious cases of erratic driving or, worse, after a crash has occurred.

- As long as RBT is conducted with minimum inconvenience and delays, and its purpose is restricted to roadside screening of drivers, there is every reason to believe that it will be justified under section one of the Charter.

There is also a potential Charter challenge under section 10(b) (the right to counsel). In order for RBT programs to operate efficiently, drivers cannot be given the right to counsel. Arranging for drivers to consult counsel would undermine the purpose of RBT programs, namely, the processing of a maximum number of drivers with minimum inconvenience to the motoring public.

- Based on similar reasoning, the Supreme Court of Canada has found that it is constitutional to deny the right to counsel to drivers who are asked to provide a breath sample on an ASD under the current Criminal Code provisions.

- Like ASD and field sobriety tests that are conducted without the right to counsel, RBT results would not be used as evidence of impairment in criminal trials. RBT would be used solely for the limited purpose of screening drivers to determine if there are grounds for demanding evidentiary breath testing.

- Consistent with current practice, drivers who are subsequently requested to provide evidentiary breath samples would be given an opportunity to contact counsel.
(d) Summary

- RBT is widely acknowledged to be one of the most effective means of deterring impaired driving and dramatically increasing police apprehension rates.\textsuperscript{59} Comprehensive RBT programs have been or will soon be 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.

- MADD Canada believes that the public interest in protecting road users from the ongoing and increasing risks of impaired driving more than justifies the minor inconveniences posed by RBT.

SECTION V: IGNITION INTERLOCKS

- Research indicates that impaired driving offenders with interlocks on their vehicles have significantly lower recidivism rates than offenders who do not.\textsuperscript{60} Given the clear traffic safety benefits of comprehensive alcohol interlock programs, MADD Canada has recommended that the provinces and territories make participation a mandatory condition of licence reinstatement for all Criminal Code impaired driving offenders.

- Currently, only a small fraction of eligible impaired driving offenders participate in such programs. Many offenders simply drop out of the system and continue to drive without a licence, albeit perhaps less frequently. However, when they do so, they are over-represented in alcohol-related crashes.\textsuperscript{61}

- There are traffic safety benefits to increasing impaired driving offenders' participation rates in alcohol interlock programs, even if this means shortening the federal driving prohibition and the provincial licence suspension that would otherwise apply. While these offenders would likely drive more than if their prohibition and/or suspension remained in place, at least they would be less likely to drive while impaired.

- Impaired driving offenders seeking to enter an alcohol interlock program are currently subject to 3, 6 and 12-month mandatory minimum federal driving prohibitions for a first, second or subsequent offence.\textsuperscript{62}

- MADD Canada recommends that the current mandatory minimum federal driving prohibitions be eliminated or significantly reduced in order to increase participation rates in alcohol interlock programs. Offenders would remain subject to whatever hard licence suspension existed in their province or territory.

SECTION VI: CONCLUSION

- Impaired driving deaths and injuries are neither accidental nor inevitable. Rather, they are the direct result of our current law, policies and practices.

- Canada's federal impaired driving laws are cumbersome, technical and, more importantly, ineffective. While some progress has been made from the record high levels of impaired driving
deaths and injuries of the early 1980s, progress has stalled over the last ten years. In fact, the most recent data indicate that impaired driving and related deaths are increasing.

- Bill C-2 will plug some of the existing loopholes in our impaired driving law. However, it will not bring about major reductions in impaired driving deaths or injuries.

- Similarly, significant progress cannot be achieved by awareness initiatives, tougher laws or crackdowns on the so-called “hard core drinking driver”. There are no quick fixes. Nor is it appropriate for Parliament to assume that provincial and territorial initiatives are all that is required. Research indicates that major new federal amendments are essential.

- MADD Canada would urge the Committee to recommend:
  - the enactment of a Criminal Code .05% BAC offence;
  - the enactment of random breath testing provisions for screening drivers; and
  - amendments to eliminate or reduce the mandatory driving prohibitions for impaired driving offenders enrolled in an ignition interlock program.
ENDNOTES


2 Ibid. at 426. At the time of the study, only Québec and Nova Scotia did not have a short-term licence suspension program. Most jurisdictions imposed a 24-hour suspension, but the suspension could be as short as 4 hours in the Northwest Territories.

3 Ibid. Similarly, a survey of police in British Columbia reported that almost half of the officers simply refused to lay Criminal Code impaired driving charges, even if they concluded that the driver was legally impaired. Police Services Division, Safe Roads, Safe Communities (Victoria: Ministry of the Attorney General, Public Safety and Regulatory Branch, 2000) at B-4.


5 It was estimated that 1,278 Canadians were killed in alcohol and/or drug-related traffic crashes in 2006. See G. Mercer, Estimating the Presence of Alcohol and Drug Impairment in Traffic Crashes and their Costs to Canadians: 1999 to 2006 (Vancouver: University of British Columbia, 2009) at 3 [Mercer].

Given certain inherent limitations in the coroners’ data upon which this estimate is based, it likely significantly understates the total number of impairment-related deaths in Canada. For example, if an impaired driver survives a crash in which he or she kills the sober driver of another vehicle and its two passengers, it is only the dead driver’s BAC that would be reported in the coroner’s fatality data. Unless the police recorded the crash as being due to the surviving driver’s impairment, all three deaths would be recorded as being non-alcohol related. Similar problems arise when intoxicated drivers survive crashes in which they kill sober passengers, pedestrians or bicyclists. Those responsible for maintaining the coroners’ traffic death data acknowledge the significant under-reporting of impairment-related deaths in these situations. H. Simpson, Drinking-Driving in Canada: Does anyone really know how big the problem is? (Ottawa: Traffic Injury Research Foundation (TIRF), 1997) at 53-56.

6 In contrast to the 1,278 impaired traffic fatalities in 2006, there were 605 homicides in Canada. The term “homicide” includes the offences of murder, manslaughter and infanticide. G. Li, Homicide in Canada, 2006 (Ottawa: Statistics Canada, 2007), Juristat Catalogue no. 85-002-XIE, vol. 27, no. 8 at 1.


8 Mercer, supra note 5 at 8.

9 Ibid. at 11.

10 Ibid. at 8.

11 W. Vanlaar, P. Emery & H. Simpson, The Road Safety Monitor 2007: Drinking and Driving (Ottawa: TIRF, 2007) at 8 [RSM 2007]; and TIRF, The Road Safety Monitor 2008: Drinking and Driving – National (Ottawa: TIRF, 2008) at 1 [RSM 2008]. Similarly, the percentage of Canadians who reported driving when they thought they were legally impaired rose from 5.6% in 2004 to 8.2% in 2007: RSM 2007 at 9. Although this figure fell to 5.2% in 2008, the authors indicated that it may be too soon to determine if there was a true decline in this variable: RSM 2008 at 2.

12 For example, while Germans consumed 64% more alcohol per capita than Canadians in 1998, Transport Canada reported that only 11% of Germany’s fatally-injured drivers were legally impaired, as defined by having a BAC of .05% or higher. In contrast, 32% of Canada’s fatally-injured drivers were legally impaired, as defined by having a BAC in excess of .08%. See respectively, World Health Organization (WHO), Adult Per Capita Alcohol Consumption (Geneva: WHO, 1998), online: <http://www3 .who.int/whosis/alcohol/alcohol_apc_data.cfm?path=whosis,alcohol,alcohol_apc,alcohol_apc_data&language =english>; and Transport Canada, Road Safety Forum: Beyond 2001, CD-ROM (Ottawa: Minister of Public Works and Government Services, 2001) [Transport Canada].
13 While such comparative data must be used with caution, it is clear that Canada has one of the highest rates of alcohol-related traffic fatalities among comparable democracies. K. Stewart et al., “International Comparisons of Laws and Alcohol Crash Rates: Lessons Learned” in H. Laurell & F. Schlyter, eds., Proceedings of the 15th International Conference on Alcohol, Drugs and Traffic Safety, CD-ROM (Stockholm: International Council on Alcohol, Drugs and Traffic Safety, 2000).

14 Transport Canada, supra note 12.

15 A federal government review of Canada’s traffic safety record, published in 2008, found that the country had failed miserably in achieving proposed targeted reductions in impaired driving deaths and injuries. P. Gutoskie, Road Safety Vision 2010-2006 Update (Ottawa: Canadian Council of Motor Transport Administrators, 2006).


17 In 2001, MADD Canada set out a 19-point plan for the comprehensive reform of the federal impaired driving law. Some of these proposals have been implemented with the enactment of Bill C-2. However, most of MADD’s recommendations remain to be addressed by Parliament. See R. Solomon & E. Chamberlain, Taking Back Our Roads: A Strategy to Eliminate Impaired Driving in Canada (Mississauga, Ontario: MADD Canada, 2001).

18 Jonah, supra note 1 at 429.


23 Zador, ibid. at 392.


27 When the Australian Capital Territory lowered its BAC limit from .08% to .05%, the greatest reductions in both impaired driving and related crashes occurred at BACs above .15%. The number of drivers with BACs of .15% to .199% fell by 34% per
10,000 roadside screening tests, and by 58% among drivers with BACs of .20% and above. Similarly, crash involvement of drivers with BACs of .15% to .199% and drivers with BACs of .20% and above fell by 31% and 46%, respectively. C. Brooks & D. Zaal, “Effects of a Reduced Alcohol Limit for Driving” in H.-D. Utzelmann, G. Berghaus & G. Kroj, eds., Proceedings of the 12th International Conference on Alcohol, Drugs and Traffic Safety (Cologne: Verlag TÜV Rheinland, 1993) 1277 at 1280-82 and 1284-85.

When Sweden lowered its BAC to .02%, the sharpest declines occurred in the percentage of offenders at the highest BAC levels. T. Norström & H. Laurell, “Effects of Lowering the Legal BAC-limit in Sweden” in Mercier-Guyon, ed., Proceedings of the 14th International Conference on Alcohol, Drugs and Traffic Safety (Annecy, France: Centre d’Études et de Recherche en Médecine du Trafic, 1997) 87 at 91.

28 See supra note 25.

29 These include the World, American and British Medical Associations, the European Commission, the European Transport Safety Council, the Royal Society for the Prevention of Accidents, the World Health Organization, the International Transportation Safety Association, the Association for the Advancement of Automotive Medicine, the American College of Emergency Physicians, the Ontario Centre for Addiction and Mental Health, the Canadian Public Health Association, and the Australian Transport Safety Bureau. See Chamberlain, supra note 25 at iii10.

30 This chart is based on data from: International Center For Alcohol Policies (ICAP), Blood Alcohol Concentration Limits Worldwide (Washington, D.C.: ICAP, 2005); E. Wren, Drunk Driving Blood Alcohol Limits Worldwide (New York: Drive and Stay Alive, Inc., 2005); and Eurocare, Drinking and Driving in Europe: A Report to the European Union (St. Ives: Eurocare, 2003) [Eurocare]. Note that there are inconsistencies in the reported BAC limits for some countries.

31 Unlike a .05% Criminal Code limit, the provincial and territorial short-term suspensions do not create any offence, or result in any fine or other penalty. In most provinces and territories, the roadside suspensions are not officially recorded and have no lasting licensing consequences.


33 RSM 2008, supra note 11 at 1.

34 An estimated 10.2 million impaired driving trips were made in 2006, and Statistics Canada reported that 60,402 individuals were charged with impaired driving offences in that year. See respectively, W. Vanlaar et al., The Road Safety Monitor 2006: Drinking and Driving (Ottawa: TIRF, 2006) at 7; and Table 252-0014, supra note 4. However, another study using national survey data estimated that Canadian drivers made over 20 million trips within one hour of consuming two or more drinks in the past 12 months. See D. Beirness & C. Davis, “Drinking After Driving in Canada: Findings from the Canadian Addiction Survey” (2007) 98(6) C.J.P.H. 476 at 477.

35 These studies involved roadside surveys conducted “downstream” from police checkpoints. Presumably, some of these undetected drivers had developed a tolerance for alcohol and failed to exhibit visible signs and symptoms of impairment, or had otherwise learned to avoid raising police suspicions. See S. Ferguson, J. Wells & A. Lund, “The role of passive alcohol sensors in detecting alcohol-impaired drivers at sobriety checkpoints” (1995) 11 Alcohol, Drugs and Driving 23; and I. Jones & A. Lund, “Detection of alcohol-impaired drivers using a passive alcohol sensor” (1986) 14 J. Police Sci. Administration 153. This earlier study found that 52% of legally intoxicated drivers interviewed by police officers at sobriety checkpoints were not apprehended.


37 Vingilis, supra note 35.


40 European Commission, Press Release, IP/03/1436, “Commission calls for better enforcement of road safety rules” (22 October 2003).

41 Solicitor General for Alberta, Impaired Driving Program (Briefing Paper) (Edmonton: Department of the Solicitor General, 1989).

42 J. Henstridge, R. Homel & P. Mackay, The Long-Term Effects of Random Breath Testing in Four Australian States: A Time Series Analysis (Canberra: Federal Office of Road Safety, 1997) at 104, Table 7.1. Since all four states introduced RBT during the 1980s, the authors had a lengthy follow-up period in which to observe the long-term effects of RBT. In addition, the authors statistically controlled for variables such as season, time of day, day of week, weather, road usage, and the effects of .05% BAC laws. RBT was found to reduce serious, fatal, and single-vehicle nighttime collisions in each state in which it was introduced.

43 Ibid. at 102, Table 6.9.

44 Ibid. at 104.


47 Shults, supra note 25 at 75-76.

48 Grube, supra note 25 at 104.


51 This has been recognized by the Canadian courts. See for example, R. v. Pontes, [1995] 3 S.C.R. 44; and R. v. Smith (1996), 28 O.R. (3d) 75 (C.A.).


54 Orbanski, supra note 52 at para. 55. See also Smith, supra note 51; Hufsky, supra note 52; R. v. Thomsen, [1988] 1 S.C.R. 640; and Ladouceur, supra note 52.

55 Dedman, supra note 52.

56 Hufsky and Ladouceur, supra note 52.

57 Thomsen, supra note 54 at 653.

58 Orbanski, supra note 52.


60 See for example, Working Group on Alcohol Interlocks, Alcohol Ignition Interlock Devices: I: Position Paper (Calverton, MD: International Council on Alcohol, Drugs and Traffic Safety, 2001) at 10; D. Beirness and R. Robertson, “Best Practices for Alcohol Interlock Programs: Findings from Two Workshops” in Mayhew and Dussault, supra note 22 [Best Practices]; and
