

Youth and Impaired Driving in Canada:

Opportunities for Progress



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Mothers Against Drunk Driving™
Les mères contre l'alcool au volant™



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EXECUTIVE SUMMARY

Despite the progress that was made between 1980 and the mid-90s, traffic crashes remain the largest cause of death among 15-24 year old Canadians, accounting for 31% of their deaths in 2003.* Young people have the highest rates of traffic death and injury per capita among all age groups, and the highest death rate per kilometre driven among all drivers under 75 years of age. In 2004, traffic crashes killed 695 young people and injured another 53,600. Even conservatively estimated, over 45% of these deaths were alcohol related. Although more research is required, it is clear that an additional percentage of youth crash deaths are drug related.

The projected increase in Canada's youth population over the next five years will, in and of itself, increase impairment-related traffic deaths and injuries among 15-24 year olds. Thus, effective action is required to achieve even the very modest goal of preventing the number of such deaths and injuries from increasing. The purpose of this study is to provide a broad survey of legislative measures that the provincial and territorial governments can implement to better protect young Canadians.

We have taken a broader perspective than some earlier studies. First, we have examined the problem in terms of not only beginning drivers (16-19 year olds), but also young adult drivers (20-24 year olds). Second, we have defined the youth crash problem as encompassing pedestrians, cyclists, and operators of snowmobiles and ATVs, as well as drivers and passengers. Third, while the majority of the report deals with alcohol-related crashes, we have also addressed the apparently increasing rates of drug-impaired driving. Fourth, in addition to recommendations relating directly to driving, we have proposed measures to reduce the hazardous patterns of alcohol and drug consumption that generate impairment-related crash deaths among youth.

In preparing our recommendations, we have been cognizant of the likely level of public and political support for various measures, as this is often a critical factor in determining if proposed reforms will be enacted. Thus, our recommendations draw heavily on current best practices in Canada and other similar democracies. We have also taken into account the requirements of the *Canadian Charter of Rights and Freedoms*. Since any law that is found to be in violation of the

* The studies we refer to in this report did not use the same age groupings for young people. While many sources divided the youth population into 16-19 and 20-24 year olds, others used a 15-19 and 20-24 year old grouping. Finally, some of the data were reported in terms of 16-19 and 20-25 year olds.

Charter will be struck down, our recommendations have been drafted to accord with *Charter* values.

The report is divided into five sections. The first provides the detailed statistical background upon which the remainder of the report is based. Among other things, information has been provided on the number of young drivers, patterns of alcohol and drug use among youth, characteristics of youth crashes, statistics on total youth crashes, and statistics on alcohol and/or drug involvement in these crashes.

Young people have the highest reported rates of drug use, and weekly, monthly and total binge drinking (typically defined as consuming five or more standard drinks on a single occasion). They also have high rates of driving after drinking and drug use, and of being a passenger of a driver who has been drinking or taking drugs. Young people exhibit driving characteristics that greatly increase their crash risks. Beginning drivers are immature, and lack both driving experience and the skills necessary to avoid potentially hazardous situations. Young people, particularly males, tend to be risk takers, in that they have relatively high rates of speeding and aggressive driving, and lower rates of seatbelt use. It is young people's patterns of alcohol and drug consumption, coupled with their driving behaviours, that explain why they are dramatically overrepresented in all categories of impairment-related traffic deaths. For example, 16-25 year olds constituted only 13.7% of the Canadian population in 2003, but accounted for 32.1% of the alcohol-related traffic fatalities. While young people are overrepresented as drivers of passenger vehicles in alcohol-related deaths, they are overrepresented to an even greater degree among passengers, pedestrians, bicyclists, and ATV and snowmobile operators. The impaired crash problem among youth is not simply a function of their immaturity and lack of driving experience; it also reflects their hazardous patterns of alcohol and drug use.

The second section examines the range of regulatory controls that the provinces and territories can implement over the availability, marketing and consumption of alcohol. Our focus is on measures that will most directly impact binge and underage drinking among youth, and the alcohol-related crash deaths that result. Research has established that levels of hazardous consumption are related to elevated rates of alcohol-related harms, including traffic crashes. Moreover, the early onset of drinking among youth is associated with increased alcohol-related problems and injuries both during adolescence and later in life.

MADD Canada recommends that the minimum drinking age be increased to 19 in Alberta, Manitoba and Québec. All jurisdictions should: increase beer prices to bring them into line with

liquor prices on a per standard drink basis; standardize prices within beverage types in terms of alcohol content; and index alcohol prices to inflation. The provinces should establish/maintain government monopolies over off-premise alcohol sales and alcohol delivery services, and implement keg registration laws. The various underage-drinking offences (*e.g.* illicit sales, provision and possession, and the production and use of forged IDs) should be more rigorously enforced and sanctioned. The provinces need to increase public awareness of the existing prohibitions against selling, giving or providing alcohol to underage or intoxicated individuals, and the potential civil liability consequences of breaching these prohibitions. A tiered program of mandatory server and management training should be introduced for all licensed establishments. Furthermore, the provinces need to enforce the existing alcohol advertising laws, particularly the regulations governing lifestyle advertising that targets youth.

Of particular concern is the need to dramatically increase enforcement of the liquor licence legislation, especially in licensed premises catering to youth. Older teens and young adults do a disproportionate share of their drinking in a relatively small number of establishments, which are typically well known to the police and licensing authorities. The underage and over-service prohibitions are routinely ignored by many of these venues. The existing licensing laws need to be far more frequently and rigorously enforced. As long as there are very large numbers of intoxicated youth leaving bars, taverns and similar licensed premises every weekend night, they will continue to dominate the statistics on alcohol-related driver, passenger and pedestrian traffic deaths.

The third section of the study examines several driver-licensing measures that have been shown to reduce youth traffic deaths and injuries. We begin by outlining the case for a minimum driving age of 16. Currently, a majority of Canadian jurisdictions permit individuals to obtain a learning permit prior to the age of 16, but in some cases, only if they are enrolled in a driver education program. Research indicates that a driving age below 16 is associated with higher crash risks, and that increasing the minimum driving age reduces crashes among younger drivers.

We also propose that all jurisdictions establish a comprehensive graduated licensing program (GLP). Studies from Ontario, Nova Scotia, Québec, the United States, and New Zealand have consistently shown that GLPs significantly reduce crash deaths and injuries among the affected population. GLPs allow new drivers to gain on-the-road experience in low-risk circumstances, and gradually introduce them to more challenging situations. Since the elevated crash risks of

beginning drivers are related to their inexperience and not just their age, the GLP should apply to beginning drivers of all ages.

MADD Canada advocates that a comprehensive three-stage GLP be established for all new drivers, irrespective of age. Stage 1 should be 12 months in length, during which novice drivers must be accompanied by a supervisor, who is at least 21 and has been fully licensed for two or more years. Stage-1 drivers should also be subject to nighttime driving, high-speed road, and passenger restrictions. Drivers should have to pass a road test before proceeding to the next stage of the program. Stage 2 should also be 12 months in length. During this stage, supervision would not be required, except for nighttime driving, driving on high-speed roads, or driving with more than one teenage passenger. In order to proceed, stage-2 drivers should be required to pass a second road test. Stage 3 should be a 24-month probationary period, during which the driver would have full driving privileges, but would be subject to closer scrutiny by the licensing authorities than more experienced drivers. All drivers and supervisors in the GLP should be required to maintain a zero BAC, and be free of potentially impairing drugs. The stages of the GLP should not be shortened for those who have taken a driver education course.

MADD Canada also recommends that all drivers under the age of 21 be subject to a zero BAC limit. This provision should apply even if the driver has successfully completed the entire GLP. Young drivers are already disadvantaged due to their inexperience, and they should not have their judgment further impaired by alcohol. This recommendation addresses the high rates of alcohol-related fatalities among 18-20 year old drivers and the fact that, under the current law, they are first permitted to drive unsupervised at about the same time they reach the legal drinking age. Such BAC limits, which have been adopted throughout the United States, have proven to be very effective in reducing alcohol-related crashes among those under the age of 21.

The fourth section examines the police enforcement powers that are required to implement effective youth impaired driving policies. If the province or territory has not already done so, it should give the police express statutory authority to stop vehicles and demand documentation from both beginning drivers and any supervising adult. Moreover, the police need to be given express statutory authority to demand roadside breath testing from drivers and supervisors who are subject to a zero BAC restriction. Such measures have been shown to have significant traffic safety benefits, in that they deter drinking and driving, by increasing the perceived risks of detection and sanction. Drivers who violate the zero BAC restriction should be subject to an immediate licence suspension and other appropriate administrative sanctions. MADD Canada

also recommends establishing systematic sobriety checkpoint programs in areas that routinely generate large numbers of young impaired drivers and pedestrians.

Measures are also needed to address the fact that young people have the highest reported rates of driving under the influence of cannabis and other illicit drugs. We recommend that the police be given express statutory authority to demand participation in a standard field sobriety test from any driver they reasonably suspect has drugs in his or her body. These and similar powers are essential if the police are to effectively enforce the existing federal criminal prohibition on driving while one's ability to do so is impaired by drugs.

The fifth section of the study begins with a summary of our recommendations, and then identifies five priorities for immediate action. Our priorities reflect the need to address both the hazardous patterns of alcohol and drug consumption among Canadian youth, and their lack of driving skills and experience. These priorities are:

- More rigorous enforcement of the existing liquor licence prohibitions against selling, serving or giving alcohol to minors or intoxicated individuals, particularly in licensed establishments catering to youth;
- Implementation of a comprehensive GLP comprised of three licensing stages;
- Enactment of a zero BAC limit for all drivers under the age of 21;
- Enactment of express statutory authority permitting the police to stop vehicles and inspect documentation, to demand breath samples from drivers and supervisors who are subject to a GLP, and to demand breath samples from drivers subject to an age-related zero BAC restriction; and
- Introduction of systematic sobriety checkpoint programs in areas that traditionally have high concentrations of young impaired drivers and pedestrians.

INTRODUCTION*

The number of 16-24 year old Canadians is increasing, a large majority of whom are licensed to drive. Despite the progress that was made between 1980 and the mid-90s, traffic crashes remain the leading cause of death and serious injury among this age group. In 2004, traffic crashes killed 695 young people and injured another 53,600. Even conservatively estimated, over 45% of these deaths were alcohol related. Although more research is required, it is clear that additional young people are killed each year in drug-related crashes. This needless loss of life should be a major cause for concern. To ensure that another generation of young drivers, passengers and pedestrians not be consigned to such preventable harm, it is imperative that comprehensive action be taken.

This study provides a broad survey of measures that provincial and territorial¹ governments can implement to reduce impairment-related traffic crashes² among Canadian youth. It is not that the federal government has no contribution to make. Rather, the provinces are in a better position to introduce the most effective measures to safeguard young road users. Under the *Constitution Act, 1867*, the provinces have legislative power over property and civil rights, the administration of justice, and matters of a merely local or private nature.³ Taken together, these powers provide the provinces with broad authority over civil liability, automobile insurance, police enforcement powers, and the regulation of roads, licensing of drivers and vehicle ownership.⁴ In addition, the provinces' power over property and civil rights gives them control

* The authors would like to thank MADD Canada and AUTO 21, a member of the Networks of Centres of Excellence Program, for funding this study. The authors also wish to acknowledge Dr. R. Mann, Centre for Addiction and Mental Health, Dr. C. Poulin, Faculty of Medicine, Dalhousie University, and A. Murie, CEO of MADD Canada, for reviewing the manuscript. Finally, the authors would like to thank J. Prior, S. Solomon and D. Vaillancourt, who provided research, editing and technical assistance throughout the project.

¹ For ease of reading, all subsequent references to the words "provincial" and "provinces" should be interpreted as including the words "territorial" and "territories" unless otherwise indicated.

² Unless otherwise indicated, the term "impairment-related crashes" is meant to include crashes involving alcohol, drugs or a combination of both.

³ 30 and 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, ss. 92(13), (14) and (16).

⁴ See, for example, *Prince Edward Island (Provincial Secretary) v. Egan*, [1941] S.C.R. 396; *Ross v. Canada (Registrar of Motor Vehicles)*, [1975] 1 S.C.R. 5; and *Horsefield v. Ontario (Registrar of Motor Vehicles)* (1999), 44 O.R. (3d) 73 (C.A.). Moreover, section 92(15) gives the provinces authority to create offences in relation to matters within their legislative competence. The Supreme Court of Canada has repeatedly upheld the constitutional validity of provincial driving offences under this head of power. See, for example, *Egan; Ross*; and *O'Grady v. Sparling*, [1960] S.C.R. 804.

of the sale, supply, consumption, and advertising of alcohol, as well as the licensing of establishments where alcohol is sold and/or consumed.⁵ Thus, the provinces have sufficient legislative authority to develop, implement and enforce effective impaired driving policies for youth.

Given our focus on legislative reform, this study does not review the various awareness, educational and programming initiatives that have been adopted to address impaired driving and hazardous drinking⁶ among young people. Nor does this report examine the assessment and treatment of substance abuse problems among youth. Needless to say, these non-legislative measures encompass an array of campaigns, programs and approaches which have had varying degrees of success in altering knowledge, attitudes and behavior. The task of analyzing these measures must, however, be left to others.

We have taken a broader perspective than some earlier studies. First, we have examined the problem in terms of both older teenagers (16-19 year olds) and young adults (20-24 year olds). Second, we have defined the youth crash problem as encompassing pedestrians, cyclists, and operators of snowmobiles and ATVs, as well as drivers and passengers. Third, while the majority of the report deals with alcohol-related crashes, we have also addressed the apparently increasing rates of drug-impaired driving. Fourth, in addition to recommendations relating directly to driving, we have proposed measures to reduce the hazardous patterns of alcohol and drug consumption that generate impairment-related crash deaths among youth.

In framing our recommendations, we have been cognizant of the likely level of public and political support for various measures, as this is often a critical factor in determining if proposed reforms will be enacted. Thus, the recommendations draw heavily on current best practices in Canada and other similar democracies. We have also taken into account the requirements of the *Canadian Charter of Rights and Freedoms*.⁷ Since any law that is found to be in violation of the

⁵ Unless specifically assigned to the federal government, the regulation of specific trades and industries within a province falls under the provinces' constitutional authority over property and civil rights. See generally, P. Hogg, *Constitutional Law of Canada*, 4th ed. (Scarborough, Ontario: Carswell, 1997) at 552-54 [Hogg].

⁶ Researchers generally use the phrase "hazardous drinking" in reference to consumption patterns that create substantial risks of either serious short-term harm (typically, trauma-related death or injury) or serious long-term harm (typically, chronic health problems). Short-term harms generally result from heavy drinking occasions, which are often referred to as "binge" drinking. In contrast, long-term harms result from high average daily consumption over a sustained period of time. Unless otherwise indicated, we are using the phrase "hazardous drinking" in its more popular sense, namely consumption that poses significant risks of serious short-term harm.

⁷ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

Charter will be struck down,⁸ our recommendations have been drafted to accord with *Charter* values.⁹

The remainder of the study is divided into five sections. The first provides the detailed statistical background upon which the remainder of the study is based. For ease of understanding, as much of this information as possible has been set out in charts and tables. Among other things, information is provided on the number of young drivers, patterns of alcohol and drug use, characteristics of youth crashes, statistics on total youth crashes, and statistics on alcohol and/or drug involvement in these crashes. Research indicates that young people have the highest reported rates of weekly, monthly and overall binge drinking (typically defined as consuming five or more standard drinks on a single occasion),¹⁰ and drug use. They also have high rates of driving after drinking and after drug use, and being a passenger of a driver who has been drinking or taking drugs. Young people, particularly males, tend to be risk takers and exhibit driving characteristics that greatly increase their crash risks.

The second section examines a range of regulatory controls over the availability, sale and marketing of alcohol, including: the legal drinking age; alcohol taxes and prices; government monopolies over off-premise alcohol sales; enforcement of the liquor licensing legislation; and alcohol advertising. Relative to criminal justice measures, regulatory approaches can be enacted quickly, are not time-consuming or expensive to enforce, raise few legal challenges, and can have a broad preventive impact. While some legislative changes are proposed, Section II focuses on more rigorous and efficient enforcement of the existing laws. Of particular concern are

[*Charter*].

⁸ *Constitution Act, 1982*, s. 52, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

⁹ Although some of our recommendations may be seen as infringing certain *Charter* rights, we believe that these infringements can be justified and thereby excused under section 1 of the *Charter*. Pursuant to section 1, laws that infringe the rights and freedoms in the *Charter* will be upheld if the infringement is “a reasonable limit prescribed by law” that “can be demonstrably justified in a free and democratic society.”

¹⁰ Consistent with most researchers, we have defined binge drinking as consuming five or more standard drinks on a single occasion for both men and women. In contrast, some authors define binge drinking as consuming four or more standard drinks for women.

In Canada, a “standard drink” is generally accepted to be a 12-ounce bottle of beer at 5% alcohol by volume, a 5-ounce glass of wine at 12% alcohol by volume, or a 1½-ounce shot of liquor at 40% alcohol by volume. All three of these servings contain the same amount of alcohol: 13.46 grams. Given differences in serving sizes and the alcohol content of various beverages, the amount of alcohol in a “standard” drink varies from country to country (*e.g.* USA – 12.60 grams, Australia – 10 grams, and UK – 8 grams). See R. Solomon and E. Chamberlain, “Calculating BACs for Dummies: The Real World Significance of Canada’s 0.08% Criminal BAC Limit for Driving” (2003) 8 *Can. Crim. L. R.* 219 at 223-224 [BACs for Dummies].

enforcement strategies to address underage and binge drinking. As long as extremely large numbers of 16-24 year olds binge drink on a regular basis, they will be significantly overrepresented in all categories of alcohol-related traffic fatalities.

The third section of the study examines several driver-licensing measures that have been shown to reduce youth traffic deaths and injuries. We outline the case for a minimum driving age of 16, and for a comprehensive three-stage graduated licensing program (GLP). GLPs permit new drivers to acquire driving skills and experience in a relatively controlled environment, while protecting them from more dangerous situations (*e.g.* nighttime driving and driving on high-speed roads). We also propose that, similar to the United States, all Canadian drivers under the age of 21 be subject to a zero BAC limit. Young drivers are already disadvantaged due to their inexperience, and they should not have their judgment further impaired by alcohol.

The fourth section examines the police enforcement powers that are required to implement effective youth impaired driving policies. If the province has not already done so, it should give police express statutory authority to stop vehicles, inspect documentation and demand breath samples from young drivers and any supervisors to ensure that they are complying with the GLP, and the proposed zero BAC limit. We also recommend implementing systematic sobriety checkpoint programs for areas that routinely generate large numbers of young impaired drivers and pedestrians. Furthermore, measures are needed to address the fact that young people have the highest reported rates of driving under the influence of cannabis and other illicit drugs. We recommend that the police be given express statutory authority to demand standard field sobriety testing of any driver they reasonably suspect has drugs in his or her body.

The fifth section of the study begins with a summary of our recommendations, and then identifies five priorities for immediate action. Our priorities reflect the need to address both the hazardous patterns of alcohol and drug consumption among Canadian youth, and their lack of driving skills and experience.

SECTION I: THE EMPIRICAL BASES FOR DEVELOPING IMPAIRED DRIVING POLICIES FOR YOUNG CANADIANS*

(a) Introduction

This section provides the background statistical information upon which the subsequent discussion is based. In order to develop effective preventive and remedial initiatives, we need to understand the demographic trends among 16-24 year olds, their patterns of alcohol and drug use, the general characteristics of youth crashes, and the current patterns of alcohol and/or drug involvement in these crashes. Since the levels of driving experience, drinking patterns, and peer and family relationships differ between 16-19 and 20-24 year olds, we have separated out the information on these two groups where possible. This will allow us to better tailor our subsequent recommendations.

As will soon become apparent, the studies that are referred to in this section did not use the same age groupings for young people. While many sources divided the youth population into 16-19 and 20-24 years olds, others used 15-19 and 20-24 year old groupings. Finally, some of the data were reported in terms of 16-19 and 20-25 year olds. To the extent possible, we tried to avoid jumping back and forth between sources that used different age groupings. However, as will also become apparent, this was unavoidable in many places.

(b) Demographics and Licensing

In 2004, there were nearly 4.35 million Canadians aged 15 to 24, comprising 13.6% of the total population.¹¹ The number of people in this age group is expected to increase until 2011, at which point it is expected to decline slightly. Nevertheless, it is estimated that there will still be 4.08 million Canadians aged 15 to 24 in 2026.¹² In 2004, approximately 71% of 16-24 year olds,

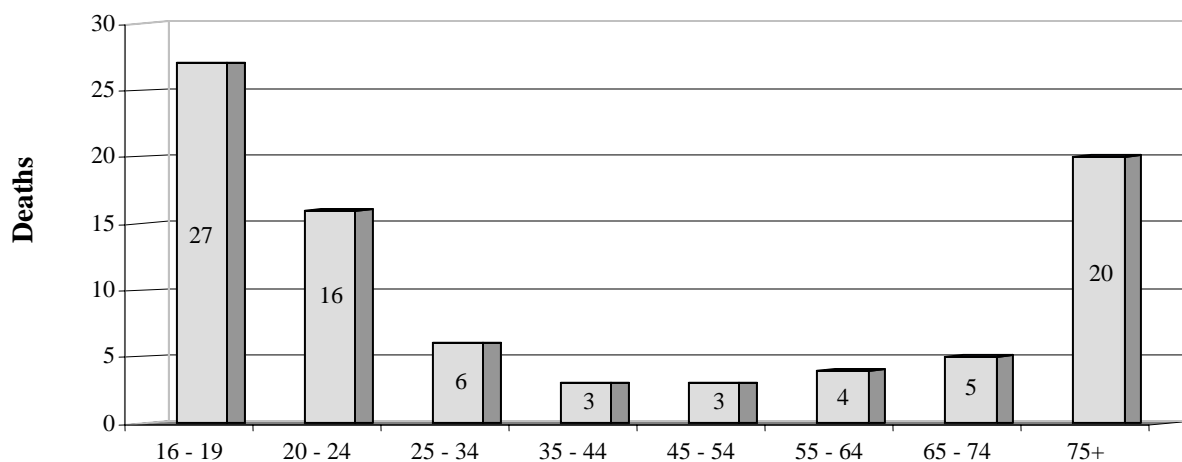
* Please note that we have used short forms in the footnotes for the following frequently used references: Insurance Institute for Highway Safety – IIHS; International Council on Alcohol, Drugs and Traffic Safety – ICADTS; Mothers Against Drunk Driving – MADD Canada; National Highway Traffic Safety Administration – NHTSA; Société de l'assurance automobile du Québec – SAAQ; and Traffic Injury Research Foundation – TIRF.

¹¹ Statistics Canada, *Annual Demographic Statistics 2004* (Ottawa: Statistics Canada, 2005) at 42. Catalogue No. 91-213 [*Annual Demographic*].

¹² Statistics Canada, *Projected population by age group and sex according to a medium growth scenario for 2006, 2011, 2016, 2021, 2026 and 2031, at July 1* (Ottawa: Statistics Canada, 2005), online: <<http://www40.statcan.ca/101/cst01/demo23a.htm>>; <<http://www40.statcan.ca/101/cst01/demo23b.htm>>; and <<http://www40.statcan.ca/101/cst01/demo23c.htm>>.

or nearly 2.8 million young Canadians, were licensed to drive.¹³ In addition to having the highest rates of traffic deaths and injuries per capita,¹⁴ 16-24 year olds have the highest rates of traffic deaths per kilometre driven among drivers under 75 years of age.¹⁵ As Figure 1 illustrates, 16-19 year olds are approximately nine times more likely to die per kilometre driven than their parents.

Figure 1: Driver Fatalities per Billion Kilometres Travelled, by Age: Canada, 2001



Source: Transport Canada, *Road Safety in Canada: An Overview* (Ottawa: Transport Canada, 2004) at 3.

The projected rise in Canada's population of 15-24 year olds over the next five years will, in and of itself, increase the total number of youth traffic deaths and injuries. Thus, effective action is essential if we are to achieve even the very modest goal of preventing the number of youth traffic deaths and injuries from rising.

(c) Alcohol Consumption

In 2005, the *Canadian Addiction Survey (CAS)*¹⁶ provided a broad range of survey data on alcohol and drug consumption across the Canadian population. Among the most troubling findings were that, among current drinkers, 15-24 year olds had the highest rates of weekly and

¹³ *Annual Demographic*, supra note 11; and Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics 2004* (Ottawa: Transport Canada, 2005) [*Collision Statistics 2004*].

¹⁴ *Ibid.* See also Figures 6 and 7 in text at page 16.

¹⁵ Transport Canada, *Road Safety in Canada: An Overview* (Ottawa: Transport Canada, 2004) [*Road Safety 2004*].

¹⁶ E. Adlaf, P. Begin and E. Sawka eds., *Canadian Addiction Survey (CAS): Detailed Report* (Ottawa: Canadian Centre on Substance Abuse, 2005) [*CAS*].

monthly heavy drinking (Figure 2),¹⁷ and of consuming five or more drinks on a typical drinking day in the past year (Figure 3).¹⁸

Figure 2: Weekly and Monthly Heavy Drinking* Among Current Drinkers: Canada, 2004

Age Group	Weekly	Monthly
15 – 17	7.6 %	35.7 %
18 – 19	16.1 %	51.8 %
20 – 24	14.9 %	47.0 %
25 – 34	6.5 %	30.4 %
35 – 44	5.3 %	24.2 %
45 – 54	6.0 %	22.0 %
All (15 – 75+)	6.2 %	25.5 %

* Males consuming 5 or more drinks and females consuming 4 or more drinks on a single occasion.

Source: E. Adlaf, P. Begin and E. Sawka eds., *Canadian Addiction Survey (CAS): Detailed Report* (Ottawa: Canadian Centre on Substance Abuse, 2005) at 31.

Figure 3: Alcohol Consumption Among Current Drinkers on a Typical Drinking Day in the Past Year: Canada, 2004

Age Group	1 - 2 Drinks	3 - 4 Drinks	5+ Drinks
15 – 17	38.3 %	32.9 %	28.8 %
18 – 19	34.0 %	23.5 %	42.5 %
20 – 24	38.4 %	30.0 %	31.6 %
25 – 34	54.5 %	23.4 %	22.0 %
35 – 44	66.1 %	19.9 %	14.0 %
45 – 54	67.6 %	19.2 %	13.2 %
All (15 – 75+)	63.7 %	20.2 %	16.0 %

Source: E. Adlaf, P. Begin and E. Sawka eds., *Canadian Addiction Survey (CAS): Detailed Report* (Ottawa: Canadian Centre on Substance Abuse, 2005) at 29.

The CAS statistics are similar to other survey data on binge drinking among Canadian youth.¹⁹ These patterns of consumption and the high BAC levels that they generate are associated with dramatically increased risks of traffic and other trauma deaths.²⁰

¹⁷ *Ibid.* at 31.

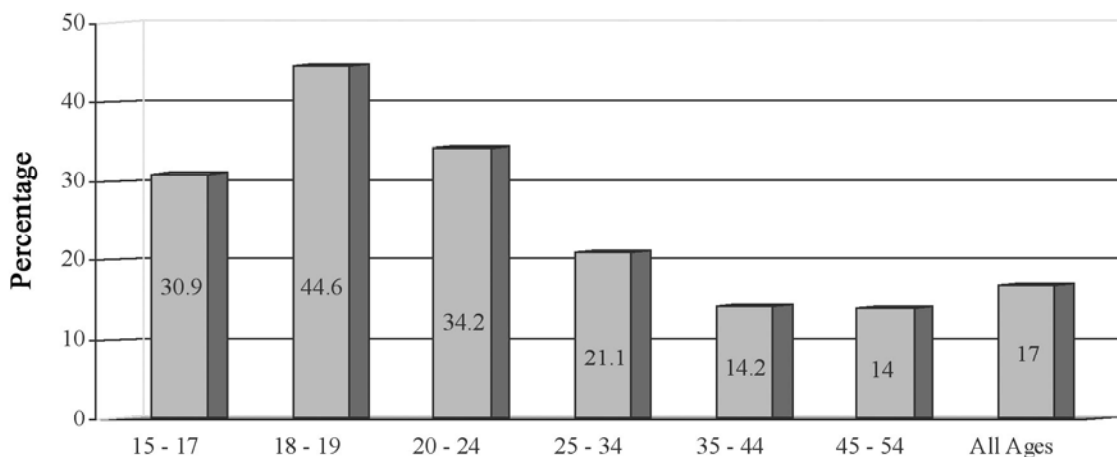
¹⁸ *Ibid.* at 29.

¹⁹ For example, Statistics Canada found that 62.4% of 15-19 year old current drinkers acknowledged binge drinking at least once in the past year, and almost 49% of these binge drinkers reported doing so 12 or more times. Among 20-24 year old current drinkers, 73.5% acknowledged binge drinking at least once in the past year, and 56% of these binge drinkers reported doing so 12 or more times. Statistics Canada, *Frequency of Drinking 5 or More Drinks...Canada, 2003* (Ottawa: Statistics Canada, 2003), online: <http://www.statcan.ca/english/freepub/82-221-IXE/00604/tables/html/2157_03.htm>.

See also P. Kendall, *Public Health Approach to Alcohol Policy: A Report of the Provincial Health Officer* (Victoria: Ministry of Health Planning, 2002) at 7-11, who reported increased rates of binge drinking among grade 7-12 students in British Columbia (*ibid.* at 9). See also E. Adlaf and A. Paglia-

In the CAS survey, 15-24 year olds also reported the highest rates of being harmed by drinking²¹ and the highest rates of hazardous drinking in the past year (Figure 4).²² The CAS study defined hazardous drinking as scoring 8 or more on the 10-item Alcohol Use Disorders Identification Test (AUDIT), which is primarily used to screen for alcohol problems in clinical practice.²³

Figure 4: Percentage of Current Drinkers who Drank Hazardously in the Past Year: Canada, 2004



Source: E. Adlaf, P. Begin and E. Sawka eds., *Canadian Addiction Survey (CAS): Detailed Report* (Ottawa: Canadian Centre on Substance Abuse, 2005) at 42.

Similar consumption results were obtained in the *Canadian Campus Survey, 2004*, which reported on alcohol and drug use, and mental health and gambling problems among Canadian undergraduate students.²⁴ While students did not drink particularly frequently (1.3 times per week), they tended to drink heavily per occasion.²⁵ Forty-one percent of students who drank within the past month reported consuming five or more drinks on a single occasion at least twice

Boak, *Drug Use Among Ontario Students 1977-2005: OSDUS Highlights* (Toronto: Centre for Addiction and Mental Health, 2005) at 9 [*OSDUS Highlights*].

²⁰ See generally, R. Solomon *et al.*, *Alcohol, Trauma and Impaired Driving*, 3rd ed. (Toronto: MADD Canada and Centre for Addiction and Mental Health, 2006) at 22-37, 54-63 and 64-84.

²¹ CAS, *supra* note 16 at 44 and 46.

²² *Ibid.* at 42.

²³ Finally, the CAS survey indicated that 15-24 year olds had the highest rates of drinking in excess of Canada's low-risk drinking guidelines (no more than 14 drinks for males and 9 drinks for females per week, and no more than 2 drinks per day). *Ibid.* at 32.

²⁴ E. Adlaf, A. Demers and L. Gliksman eds., *Canadian Campus Survey 2004* (Toronto: Centre for Addiction and Mental Health, 2005) [*Campus Survey 2004*].

²⁵ *Ibid.* at 41.

in this period (50% of males and 34% of females).²⁶ Moreover, 17% of students who drank within the past month reported consuming eight or more drinks on a single occasion at least twice in this period (26% of males and 11% of females).²⁷ Students were most likely to drink on the weekends (75% of occasions), and most drinking occasions occurred in someone's home (41.8%), or in bars/discos/taverns/pubs (35.5%).²⁸

Thirty-two percent of the students reported hazardous patterns of consumption as measured by scoring 8 or more on the AUDIT. The rate was significantly higher for: males (38%) versus females (28%); students living on campus (43%) versus those living off-campus without family (34%) or with family (25%); and students who were recreationally-oriented (54%) versus grades-oriented (27%) or intellectually-oriented (20%).²⁹

Even these disconcerting statistics may create a more positive impression than is warranted. For example, a 2005 British Columbia study noted that the CAS "greatly underestimated" alcohol use, in that total reported consumption in the CAS accounted for only 32% to 35% of known alcohol sales in Canada.³⁰ Moreover, another study noted that sales data fail to include alcohol from U-brews, U-vins, home production, lawful cross-border imports, and smuggling.³¹ It was estimated that this unreported alcohol represents about 19.5% of total consumption in Ontario.³² Thus, the actual levels of binge drinking, hazardous drinking and alcohol-related harms among 16-24 year olds may be far higher than the CAS and high school and campus surveys indicate.

(d) Drug Use

Although alcohol is the most commonly used drug among Canadians of all ages, a significant minority of the population have used cannabis (marijuana and hashish) and, to a lesser extent, hallucinogens, cocaine and amphetamines. The CAS indicated that 15-24 year olds had the

²⁶ *Ibid.* at 36.

²⁷ *Ibid.*

²⁸ *Ibid.* at 42. The students' average alcohol consumption per occasion was highest at parties (6 drinks), in university housing (5.7 drinks) and in bars (5 drinks) (*ibid.* at 37).

²⁹ *Ibid.* at 50.

³⁰ T. Stockwell, J. Sturge and S. Macdonald, *Patterns of Risky Alcohol Use in British Columbia – Results of the 2004 Canadian Addictions Survey, Bulletin 1* (Victoria: Centre for Addictions Research of BC, 2005) at 1 [Stockwell].

³¹ S. Macdonald, S. Wells and N. Giesbrecht, "Unrecorded alcohol consumption in Ontario, Canada: estimation procedures and research implications" (1999) 18 *Drug and Alcohol Review* 21 at 24-27.

³² *Ibid.* at 28.

highest rates of past-year cannabis use (Figure 5),³³ and the CAS data suggested that this age group also had the highest rates of past-year use of most other illicit drugs.³⁴ These findings are consistent with surveys of both high school³⁵ and post-secondary students.³⁶

Figure 5: Reported Past-Year Cannabis Use

Age	Reported Use
15-17	29.2
18-19	47.2
20-24	36.5
25-34	20.4
35-44	13.2
45-54	8.4
55-64	4.4

Source: E. Adlaf, P. Begin and E. Sawka eds., *Canadian Addiction Survey (CAS): Detailed Report* (Ottawa: Canadian Centre on Substance Abuse, 2005) at 53.

(i) Drug Use and Traffic Crashes

While the exact causal role of various drugs in crashes requires more research, it is clear that drug use alone, or in combination with alcohol, constitutes a major traffic safety issue.³⁷ A Québec study of automobile drivers who were fatally injured between April 1999 and December 2002 found that 24.4% were positive for alcohol alone, 16.9% were positive for drugs alone, and 15.4% were positive for both. The most common drugs, other than alcohol, were cannabis (19.7%), benzodiazepines (10.4%), cocaine (7.8%), opiates (1.8%), and PCP (1.2%).³⁸

³³ CAS, *supra* note 16 at 53.

³⁴ The CAS provides lifetime, but not past-year, use rates for these illicit drugs. *Ibid.* at 61. Given the high rates of lifetime use reported by 15-24 year olds, it appears that they would also have the highest rates of past-year use of most of these other illicit drugs.

³⁵ *OSDUS Highlights*, *supra* note 19 at 3-4; and C. Poulin, *Nova Scotia Student Drug Use 2002, Technical Report* (Halifax: Nova Scotia Department of Health, 2002) at 21-29 [Poulin].

³⁶ *Campus Survey 2004*, *supra* note 24 at 21-24 and 27-29. The highest past 12-month use rates were for cannabis (32.1%), hallucinogens (5.6%), opiates (5.0%), amphetamines (2.6%), ecstasy (MDMA) (2.5%), cocaine (2.1%), performance drugs (2.1%), and barbiturates (1.5%). The percentage of students reporting any illicit drug use, other than cannabis, in the past 12 months was 8.7% (*ibid.* at 24).

³⁷ See generally, R. Mann *et al.*, *Impacts of Cannabis on Driving: An Analysis of Current Evidence With an Emphasis on Canadian Data* (Ottawa: Transport Canada, 2003); M. Chipman, S. McDonald and R. Mann, "Being 'at fault' in traffic crashes: does alcohol, cannabis, cocaine or polydrug abuse make a difference?" (2003) 9 *Injury Prevention* 343; F. Couper and B. Logan, *Drugs and Human Performance Fact Sheets* (Washington, D.C.: NHTSA, 2004); and J. Walsh *et al.*, "Drugs and Driving" (2004) 5 *Traffic Injury Prevention* 241.

³⁸ C. Dussault *et al.*, "The Contribution of Alcohol and Other Drugs Among Fatally Injured Drivers in Québec: Final Results" in P. Williams and A. Clayton eds., CD-ROM: *Proceedings of the 17th*

Research from the Ontario Centre for Addiction and Mental Health indicates that the reported rates of driving following cannabis use have been increasing.³⁹ A Québec study found that 24.3% of 16-19 year old drivers and 22.4% of 20-24 year old drivers who provided urine and/or saliva samples in a nighttime roadside survey between April 1999 and November 2001 tested positive for cannabis.⁴⁰ In a 2005 survey of Ontario high school students, 14% of licensed grade 10-12 drivers reported driving within an hour of consuming two or more drinks, while 20% reported driving within an hour of using cannabis.⁴¹

In a recent study, 49% of grade 10 and 12 students in Atlantic Canada reported using cannabis in the past year and 63% reported using alcohol in this period. However, 15.1% reported driving under the influence of cannabis, whereas 11.7% reported driving under the influence of alcohol.⁴² Relative to students who did not drive under the influence of alcohol, students who did were six times more likely to also drive under the influence of cannabis. Students who drove under the influence of cannabis were twice as likely as cannabis-free students to report being in a collision. Moreover, it was not cannabis consumption *per se* that increased the collision risk, but rather its use just prior to driving.⁴³

A Canada-wide study estimated that in 2003, drug use alone, or in combination with alcohol consumption, contributed to approximately 402 traffic fatalities, 23,738 injuries and 51,616 property-damage only collisions. The author estimated that the total costs of these drug-related traffic crashes might have been as high as 3.5 billion dollars.⁴⁴

International Conference on Alcohol, Drugs and Traffic Safety (Glasgow: ICADTS, 2004).

Patterns of alcohol and drug use among fatally-injured 16-24 year old drivers are very similar. See J. Bouchard and M. Brault, "Link Between Driving Records and Presence of Drugs and/or Alcohol in Fatally Injured Drivers" in P. Williams and A. Clayton eds., CD-ROM: *Proceedings of the 17th International Conference on Alcohol, Drugs and Traffic Safety* (Glasgow: ICADTS, 2004).

³⁹ G. Walsh and R. Mann, "On the High-Road: Driving Under the Influence of Cannabis in Ontario" (1999) 90 C.J.P.H. 260 at 261; and Centre for Addiction and Mental Health (CAMH), *Cannabis Use and Driving Among Ontario Adults, CAMH Population Studies eBulletin* (Toronto: CAMH, 2003) No. 20.

⁴⁰ C. Dussault *et al.*, "The Contribution of Alcohol and Other Drugs Among Fatally Injured Drivers in Québec: Some Preliminary Results" in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

⁴¹ *OSDUS Highlights*, *supra* note 19 at 10. Moreover, while 28.8% of grade 7-12 students had been a passenger in the past year with a driver who had been drinking, 21.5% reported being a passenger with a driver who had been using drugs (*ibid.* at 13).

⁴² M. Asbridge *et al.*, "Motor vehicle collision risk and driving under the influence of cannabis: Evidence from adolescents in Atlantic Canada" (2005) 37 *Accid. Anal. and Prev.* 1025 at 1028-29 [Asbridge].

⁴³ *Ibid.* at 1031.

⁴⁴ These figures are based on data provided by G. Mercer, *Estimating the Presence of Alcohol and Drug*

The survey data on drug consumption, like that on alcohol consumption, may significantly underestimate the actual levels of use. As the authors of one study noted, “there is no reason to suppose self-reported consumption of illicit substances will be any more reliable [than self-reported drinking] given the greater likelihood of under-sampling of drug users and of deliberate underreporting.”⁴⁵

(e) Youth and Driving

Young people exhibit driving characteristics that distinguish them from the majority of the driving population and, most often, increase their crash risks. First, it goes without saying that young people lack driving experience. The critical role of experience is reflected in the sharp declines in crash rates within the first months of obtaining a driver’s licence.⁴⁶ Research on unsafe driving behaviour has shown that perceptual, cognitive and vehicle-handling skills are less developed in beginning drivers than in experienced drivers. In addition, beginning drivers have less ability to detect and recognize imminent hazards in the driving environment, and their inexperience makes them more likely to respond inappropriately to these hazards.⁴⁷

Young drivers also tend to be risk takers and are less cautious than their older counterparts.⁴⁸ They are more likely to speed, follow too closely, allow less time to merge with traffic, cross traffic lanes, pass other vehicles, and overestimate their driving abilities.⁴⁹ A recent Canadian survey found that 16-24 year old drivers reported the highest rates of occasionally taking a risk

Impairment in Traffic Crashes and their Costs to Canadians: 1999 to 2003 (Vancouver: Applied Research and Evaluation Services (ARES), University of British Columbia, 2005) at 8-11.

⁴⁵ Stockwell, *supra* note 30 at 7.

⁴⁶ See generally, D. Mayhew, H. Simpson and A. Pak, *Changes in Collision Rates Among Novice Drivers During the First Months of Driving* (Arlington, VA: IIHS, 2000); and A. McCartt, V. Shabanova and W. Leaf, “Driving Experience, Crashes and Traffic Citations of Teenage Beginning Drivers” (2003) 35 *Accid. Anal. And Prev.* 311.

⁴⁷ J. Groeger and I. Brown, “Assessing One’s Own and Others’ Driving Ability: Influence of Sex, Age and Experience” (1989) 21 *Accid. Anal. and Prev.* 155 [Groeger].

⁴⁸ See J. Arnett, “Developmental sources of crash risk in young drivers” (2002) 8 (Suppl II) *Injury Prevention* ii17; and D. Clarke, P. Ward and W. Truman, “Voluntary risk taking and skill deficits in young driver accidents in the UK” (2005) 37 *Accid. Anal. and Prev.* 523.

⁴⁹ J. Bergeron, “Behavioural, attitudinal and physiological characteristics of young drivers in simulated driving tasks as a function of past accidents and violations” (Paper presented at the New to the Road Symposium, Halifax, 1991); J. Arnett, D. Offer and M. Fine, “Reckless Driving in Adolescence: ‘State’ and ‘Trait’ Factors” (1997) 29 *Accid. Anal. and Prev.* 57 at 59-60 [Arnett]; and N. Gregersen, “Young Drivers’ Overestimation Of Their Own Skill – An Experiment On The Relation Between Training Strategy and Skill” (1996) 28 *Accid. Anal. and Prev.* 243.

“just for the fun of it.” They also had the highest self-reported rates of speeding and among the highest rates of occasionally speeding up to get through a light before it changed.⁵⁰

While the 2002 per capita rates of federal impaired driving charges were relatively low among 16-17 year olds, they rose sharply among 18-20 year olds, peaked among 21 year olds, and then fell gradually with age. Nineteen to twenty-four year olds had the highest charge rates among any age group, and this is most pronounced in terms of charges laid on the weekend (Friday-Sunday).⁵¹

The rate of seat belt use is lower for drivers under 25 (85.2%) than for older drivers.⁵² Males have lower rates than females, and use rates are particularly low among rural youth (81.5%).⁵³ Decreased seat belt use contributes to fatalities. Approximately two-thirds of 16-24 year old drivers killed in single-vehicle crashes on rural roads or undivided highways were not wearing a seat belt.⁵⁴ Moreover, 32% of the fatally-injured 16-19 year olds and 42% of 20-24 year olds had been both unbelted and drinking.⁵⁵

(f) Youth Crashes

It is important to acknowledge that per capita rates of traffic deaths and injuries have fallen sharply from the record high levels of the early 1980s, particularly among 15-24 year olds. For example, the 2004 per capita fatality and injury rates of 15-19 year olds⁵⁶ were roughly one-third and one-half, respectively, of the 1980 rates.⁵⁷ Nevertheless, traffic crashes remain the largest single cause of death for young people, accounting in 2002 for 34% of deaths among 15-19 year olds and 29% of deaths among 20-24 year olds.⁵⁸

⁵⁰ D. Beirness *et al.*, *The Road Safety Monitor 2004: Young Drivers* (Ottawa: TIRF, 2004) at 13-14.

⁵¹ D. Janhevich, M. Gannon and N. Morisset, *Impaired Driving and Other Traffic Offences – 2002* (Ottawa: Juristat, Canadian Centre for Justice Statistics, 2003). Statistics Canada – Catalogue no. 85-002-XIE, Vol. 23, no. 9.

⁵² Transport Canada, *Results of Transport Canada’s Survey of Seat Belt Use In Canada 2002-2003* (Ottawa: Transport Canada, 2004) at 15 [*Seat Belt Use*].

⁵³ *Ibid.* at 10-13.

⁵⁴ *Road Safety 2004*, *supra* note 15.

⁵⁵ *Ibid.*

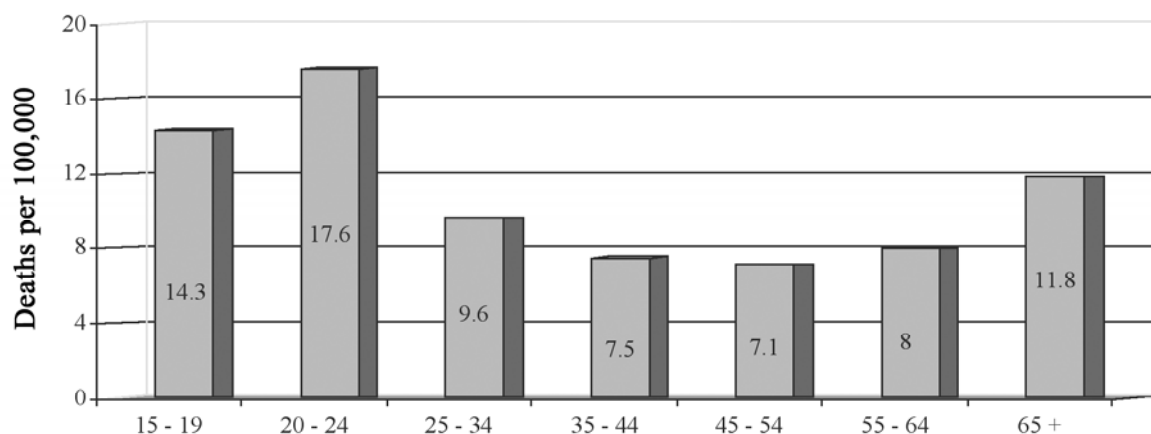
⁵⁶ *Annual Demographic*, *supra* note 11; and *Collision Statistics 2004*, *supra* note 13.

⁵⁷ D. Mayhew and H. Simpson, *Youth and Road Crashes: Reducing the Risks from Inexperience, Immaturity and Alcohol* (Ottawa: TIRF, 1999) at 8 [*Youth and Road Crashes*].

⁵⁸ Statistics Canada, *Mortality, Summary List of Causes – 2002* (Ottawa: Statistics Canada, 2006) at 67-68 and 70-71. Catalogue no. 84F0209 [*Mortality 2002*].

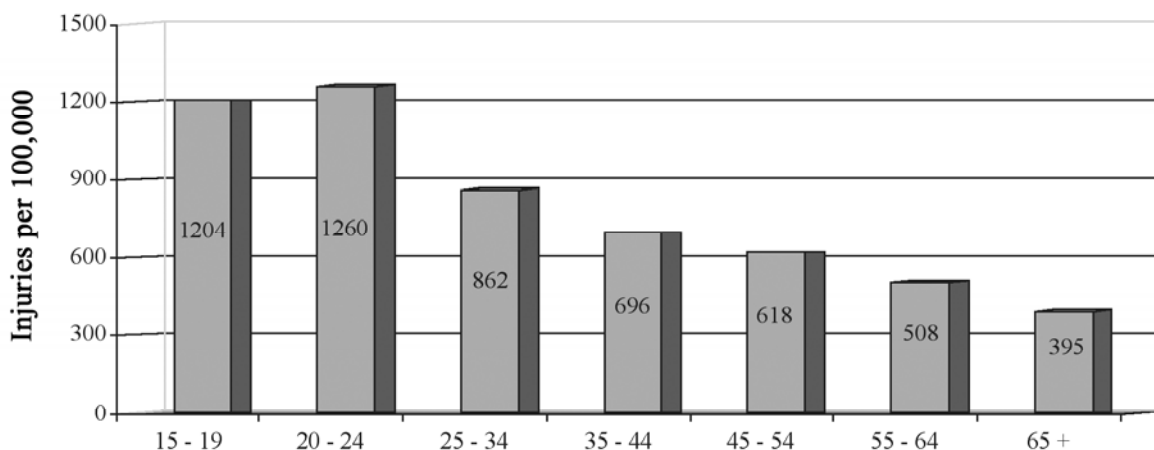
While 15-24 year olds constituted only 13.6% of the total population in 2004, they accounted for over 25% of both traffic deaths and injuries.⁵⁹ As Figures 6 and 7 illustrate, 15-24 year olds have the highest per capita rates of traffic deaths and injuries of any age group.

Figure 6: Motor Vehicle Deaths by Age Group, per 100,000: Canada, 2004



Sources: Statistics Canada, *Annual Demographic Statistics 2004* (Ottawa: Statistics Canada, 2005) at 42, Catalogue No. 91-213; and Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics 2004* (Ottawa: Transport Canada, 2005).

Figure 7: Motor Vehicle Injury Rates by Age Group, per 100,000: Canada, 2004



Sources: Statistics Canada, *Annual Demographic Statistics 2004* (Ottawa: Statistics Canada, 2005) at 42, Catalogue No. 91-213; and Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics 2004* (Ottawa: Transport Canada, 2005).

(g) Characteristics of Youth Crashes

(i) When Crashes Occur

⁵⁹ *Annual Demographic*, supra note 11; and *Collision Statistics 2004*, supra note 13.

Fifteen to nineteen year old drivers are most likely to be killed (35.7%) or seriously injured (36%) in the summer (June, July and August), and least likely to be killed (15%) or seriously injured (17%) in the winter (December, January and February).⁶⁰ The highest percentage of fatalities (22%) and serious injuries (19%) occurs on Saturday, followed by Friday and Sunday.⁶¹ Although 15-19 year olds do the majority of their driving during daylight hours, 49% of fatalities and 64% of serious injuries occur from 9 p.m. to 6 a.m.⁶² The nighttime driving restrictions common in graduated licensing programs are based on this overrepresentation of young drivers in nighttime crashes.

(ii) Types of Vehicles and Crashes

Most fatally-injured 15-19 year old drivers were driving automobiles (61%), or light trucks and vans (19.8%). Motorcycles and mopeds (8.3%), snowmobiles (3.6%), bicycles (3.4%), and off-road vehicles (2.5%) accounted for the remaining deaths. The pattern of vehicle involvement is similar in serious injuries.⁶³

A majority of the deaths (55.9%) and serious injuries (51.2%) among 15-19 year old drivers result from single-vehicle crashes. These crashes occur when the vehicle leaves the road and rolls over, and/or hits a stationary object, such as a light standard or bridge abutment.⁶⁴ Almost all single-vehicle crashes are viewed as being the fault of the driver. Fault is more difficult to attribute in multiple-vehicle collisions. Nevertheless, research indicates that young drivers are at fault in the majority of multiple-vehicle collisions in which they are involved. Typically, the young driver makes an error that directly causes the crash, or fails to respond appropriately to an unexpected situation or action by the other driver.⁶⁵

Thus, in framing recommendations for 15-19 year olds, it is important to appreciate that they are wholly or partially at fault in the vast majority of their fatal and serious injury crashes. As aptly stated in regard to American teenagers:

⁶⁰ *Youth and Road Crashes*, *supra* note 57 at 12.

⁶¹ *Ibid.*

⁶² *Ibid.* at 12-13. An Ontario study found that 16-24 year olds accounted for only 30.5% of nighttime drivers, but 47.7% of nighttime driver deaths. D. Mayhew and H. Simpson, *New to the Road: Young and Novice Drivers: Similar Problems and Solutions?* (Ottawa: TIRF, 1990) at 61 [*New to the Road*].

⁶³ *Youth and Road Crashes*, *supra* note 57 at 13.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

Crash rates for young drivers are high largely because of their immaturity combined with driving inexperience. The immaturity is apparent in young drivers' risky practices such as speeding and tailgating. At the same time, teenagers' lack of experience behind the wheel makes it difficult for them to recognize and respond to hazards. They get in trouble trying to handle unusual driving situations, even small emergencies, and these situations turn disastrous more often than when older people drive. Crashes involving young drivers are typically single vehicle crashes ... that involve driver error and/or speeding. They often occur when other young people are in the vehicle, ... so teenagers are disproportionately involved in crashes as passengers as well as drivers.⁶⁶

(iii) Demographic Characteristics of Youth Crashes

In 2002, males accounted for over 71% of total motor vehicle deaths among both 15-19 year olds and 20-24 year olds.⁶⁷ Males appear to constitute an even larger percentage of driver fatalities among these age groups.⁶⁸ These gender differences likely reflect several factors, including 16-24 year old males' higher rates of licensing,⁶⁹ driving after alcohol and drug use,⁷⁰ speeding, and aggressive driving.⁷¹ As indicated, young males also have lower rates of seat belt use than their female counterparts.⁷²

As Figure 8 illustrates, 18-19 year olds account for the majority of deaths and injuries among teenage drivers. This is due in part to the fact that older teens are more likely to have a driver's licence than younger teens. However, these elevated crash rates also likely reflect the increased freedoms enjoyed by older teenagers, the lifting of the remaining restrictions on their licence,⁷³

⁶⁶ IIHS, *Fatality Facts 2004: Teenagers* (Arlington, VA: IIHS, 2005), online: <http://www.iihs.org/research/fatality_facts/pdfs/teenagers.pdf> [*Fatality Facts*].

⁶⁷ *Mortality 2002*, *supra* note 58.

⁶⁸ *Youth and Road Crashes*, *supra* note 57 at 12, which notes that males accounted for 78% of 15-19 year old driver fatalities.

⁶⁹ *Collision Statistics 2004*, *supra* note 13.

⁷⁰ See *Campus Survey 2004*, *supra* note 24 at 52; *OSDUS Highlights*, *supra* note 19 at 13; and Asbridge, *supra* note 42 at 1031.

⁷¹ Although it is generally acknowledged that young males have higher rates of speeding and aggressive driving than young females, there is little detailed Canadian data on these issues. See generally, D. Beirness *et al.*, *The Road Safety Monitor: Aggressive Driving* (Ottawa: TIRF, 2001) at 5; and D. Beirness, H. Simpson and K. Desmond, *The Road Safety Monitor 2002: Risky Driving* (Ottawa: TIRF, 2002) at 14-15. In contrast, there are very specific American data on these gender differences. See, for example, NHTSA, *Traffic Safety Facts, 2004 Data: Speeding* (Washington, D.C.: NHTSA, 2005) at 2.

⁷² *Seat Belt Use*, *supra* note 52 at 10-12.

⁷³ In most provinces, young drivers can obtain full driving privileges at about the age of 18. See generally, R. Solomon, S. Pitel and L. Visser, *Rating the Provinces: The 2003 Report Card* (Mississauga: MADD Canada, 2003) [*Rating the Provinces*].

and their increased consumption of alcohol and drugs.⁷⁴

Figure 8: The Age Distribution of Fatalities and Serious Injuries Among Teenage Drivers.

Age	Fatally Injured	Seriously Injured
16	10%	14%
17	20%	23%
18	32%	32%
19	38%	31%

Source: D. Mayhew and H. Simpson, *Youth and Road Crashes: Reducing the Risks from Inexperience, Immaturity and Alcohol* (Ottawa: TIRF, 1999) at 11.

(h) Passengers

While 15-19 year olds constituted only 6.6% of the population in 2004,⁷⁵ they accounted for 19% of both passenger fatalities and serious injuries.⁷⁶ This overrepresentation is partially attributable to 15-19 year olds' relatively low rates of licensing and limited access to vehicles. However, a more important factor appears to be that 15-19 year olds are often passengers in vehicles driven by their peers.⁷⁷ Indeed, nearly 80% of fatally-injured teenage passengers are killed when travelling in a vehicle driven by a teenage driver.⁷⁸ Twenty to twenty-four year olds are also overrepresented in passenger deaths and serious injuries, but to a lesser extent.⁷⁹

Of particular concern is the number of 16-24 year olds who report being a passenger in a vehicle driven by someone who had been drinking or using drugs. A 2002 Nova Scotia study found that 22.8% of grade 7-12 students reported being a passenger at least once in the past 12 months of a driver who had "had too much to drink." Rates for females (25.5%) were higher than for males (20.4%), and the rates rose from 12.4% among grade-7 students to 28.8% among grade-12 students.⁸⁰ In a 2005 Ontario survey, 29% of grade 7-12 students acknowledged riding

⁷⁴ See, for example, *OSDUS Highlights*, *supra* note 19 at 4; and *CAS*, *supra* note 16 at 29, 31, 53, 64 and 66.

⁷⁵ *Annual Demographic*, *supra* note 11.

⁷⁶ *Collision Statistics 2004*, *supra* note 13.

⁷⁷ See, for example, *Fatality Facts*, *supra* note 66.

⁷⁸ *Youth and Road Crashes*, *supra* note 57 at 14.

⁷⁹ In 2004, 20-24 year olds constituted almost 7% of the population and 15% of passenger deaths and serious injuries. *Annual Demographic*, *supra* note 11; and *Collision Statistics 2004*, *supra* note 13.

⁸⁰ Poulin, *supra* note 35 at 15.

at least once in the past 12 months with a driver who had been drinking, and 22% acknowledged riding with a driver who had been using drugs.⁸¹ These rates increased with grade level.⁸² The CAS indicated that the reported rates of being a passenger with a drunk driver had increased among those 15 years of age and older from 7.5% in 1994 to 17.8% in 2004.⁸³

(i) Alcohol-Related Crashes

The number and percentage of alcohol-related traffic fatalities have fallen sharply in the last 25 years.⁸⁴ Nevertheless, in 2003, 40% of crash deaths among 16-19 year olds and 50% among 20-25 year olds were reported to be alcohol-related.⁸⁵ Moreover, even these numbers may significantly underestimate the role of alcohol in crash deaths.

These statistics are based on coroners' reports of the BAC of fatally-injured drivers, as supplemented by police reports of alcohol involvement in fatal crashes. There are limitations in these data, which tend to underreport certain types of alcohol-related crash deaths. For example, if an impaired driver survives a crash in which he kills a sober driver and two occupants, it is only the sober 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 non-alcohol related. Similar problems arise when intoxicated drivers survive crashes in which they kill sober passengers, pedestrians and bicyclists. Indeed, the organization that prepares the annual traffic fatality statistics has noted that the deaths caused by impaired drivers in these situations are often recorded as being non-alcohol related.⁸⁶

Young people are uniquely vulnerable to the risks of alcohol-related traffic deaths. They generally lack experience in both driving and drinking, and tend to be risk takers. As illustrated in Figure 9, which is based on American data, young people are at far higher relative risks of

⁸¹ *OSDUS Highlights*, *supra* note 19 at 13.

⁸² *Ibid.*

⁸³ *CAS*, *supra* note 16 at 97. See also Poulin, *supra* note 35 at 15.

⁸⁴ See *Youth and Road Crashes*, *supra* note 57 at 17; and D. Mayhew, S. Brown and H. Simpson, *The Alcohol-Crash Problem in Canada: 2003* (Ottawa: TIRF, 2005) at 15 [*Alcohol-Crash Problem*]. Note that the *Alcohol-Crash Problem* is mispaginated, in that there are two page 13s and two page 14s, which contain different content.

⁸⁵ *Alcohol-Crash Problem*, *ibid.* at 14.

⁸⁶ H. Simpson, *Drinking-Driving Statistics in Canada: Does anyone really know how big the problem is?* (Ottawa: TIRF, 1997) at 53-56. There are even greater challenges in estimating the total number of drug-related traffic deaths, as fatally-injured drivers are not consistently tested for the presence of drugs in Canada.

death at all BAC levels than older drivers with comparable BACs. These findings are consistent with earlier Canadian⁸⁷ and subsequent American studies.⁸⁸

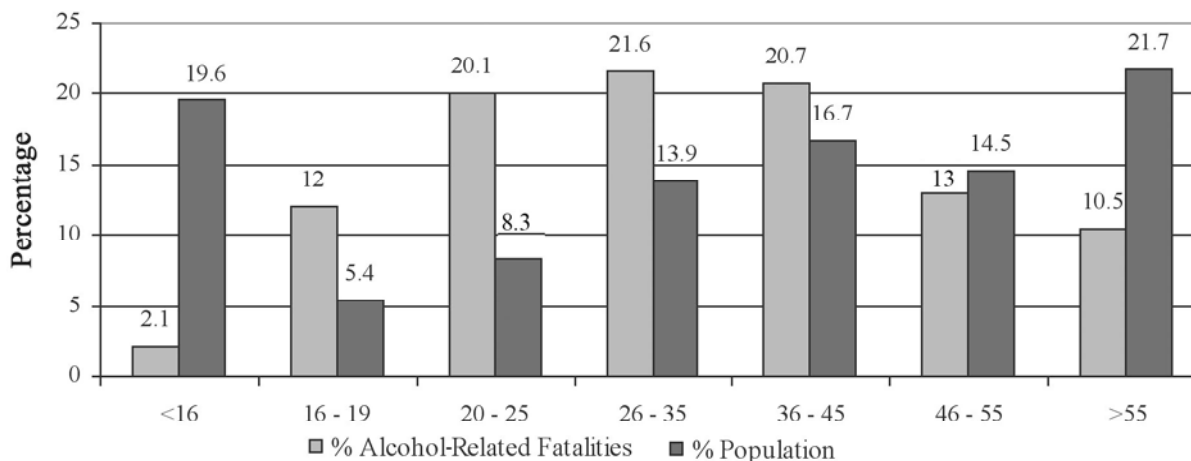
Figure 9: Relative Risk of a Fatal Single-Vehicle Crash for Males, at Various BACs

Age	.02% - .049%	.05% - .079%	.08% - .099%	.10% - .149%	.15% +
16 – 20	5	17	52	241	15,560
21 – 34	3	7	13	37	573
35+	3	6	11	29	382

Source: P. Zador, S. Krawchuk and R. 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.

As Figure 10 illustrates, 16-25 year olds are dramatically overrepresented on a per capita basis in alcohol-related crash deaths.

Figure 10: Percentage of Alcohol-Related Traffic Deaths and Population, by Age Group: Canada, 2003



Sources: D. Mayhew, S. Brown and H. Simpson, *The Alcohol-Crash Problem in Canada: 2003* (Ottawa: TIRF, 2005); and Statistics Canada, *Table 051-0001 – Estimates of population, by age group and sex, Canada, provinces and territories, annual (Persons)* (Ottawa: Statistics Canada, 2003).

(j) Vehicles

The largest percentage of alcohol-related crash deaths in 2003 involved drivers of automobiles (44.6%).⁸⁹ However, the highest rates of alcohol involvement occurred in other

⁸⁷ See, for example, D. Mayhew *et al.*, “Youth, Alcohol And Relative Risk Of Crash Involvement” (1986) 18 *Accid. Anal. and Prev.* 273 at 280-283 [Relative Risk].

⁸⁸ See, for example, D. Preusser, “BAC and Fatal Crash Risk” in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

types of vehicles. Thus, while there are fewer fatalities involving these latter types of vehicles, they are more likely to be alcohol-related when they do occur. For example, while only 38% of fatally-injured automobile drivers had been drinking, the comparable figures for drivers of light trucks/vans, ATVs, and snowmobiles were 46.2%, 56.6% and 65.2%, respectively.⁹⁰

Snowmobile and ATV crash deaths are of particular concern, because 16-25 year olds are significantly overrepresented, and alcohol is typically involved. During the late 1980s and the 1990s, 16-25 year olds accounted for 29% of fatally-injured snowmobile drivers and 36% of fatally-injured ATV drivers among those 16 years of age or older. Alcohol was involved in 75% of these snowmobile deaths and 46% of the ATV deaths.⁹¹

While the focus of this study is motor vehicles, alcohol also plays an important role in other traffic crashes. For example, 24% of 16-24 year old bicyclists who were killed in crashes from 1987 to 1999 had been drinking.⁹² The importance of maintaining a broad focus is also reflected in the statistics on alcohol-related pedestrian fatalities, which are discussed below.

(k) Pedestrians

In 2003, pedestrians accounted for approximately 13.7% of the total traffic deaths in Canada.⁹³ While 16-19 year olds constituted 5.4% of the population, they accounted for 23% of the alcohol-positive pedestrian fatalities.⁹⁴ As Figure 11 illustrates, among those tested, over 82% of fatally-injured 16-19 year old pedestrians and 41% of fatally-injured 20-25 year old pedestrians had been drinking. Almost all of the alcohol-positive pedestrians had BACs above .08%, the *Criminal Code* limit for driving, and many were double or more this limit. Over 36% of fatally-injured pedestrians under the age of 16 had also been drinking, and 75% of these pedestrians had BACs above .08%.

⁸⁹ *Alcohol-Crash Problem*, *supra* note 84 at 16.

⁹⁰ *Ibid.* at 17, 25 and 26.

⁹¹ D. Beirness, "Alcohol Involvement in Recreational Vehicle Operator Fatalities in Canada" in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002) [*Recreational Vehicles*].

Those under the age of 16 make up a significant percentage of total injuries among users of recreational vehicles. For example, Ontario data indicated that 11% of snowmobile and 22% of ATV hospitalizations involved those under 16 years of age. Smartrisk, "Off-Road Vehicle Injuries" (November 2005) 2(9) Ontario Injury Compass.

⁹² See *Recreational Vehicles*, *ibid.*

⁹³ *Collision Statistics 2004*, *supra* note 13.

⁹⁴ *Annual Demographic*, *supra* note 11; and *Alcohol-Crash Problem*, *supra* note 84 at 29.

Figure 11: Alcohol Use Among Fatally-Injured Pedestrians, by Age: Canada, 2003

Age	Percent of Tested Pedestrians by BAC				
	Zero	.01%-.49%	.05%-.08%	.081%-.016%	>.16%
<16	63.6	0	9.1	18.2	9.1
16-19	17.4	0	13	17.4	52.2
20-25	58.6	0	0	10.3	31
All Ages	61.7	1.9	2.3	8.4	25.7

Source: D. Mayhew, S. Brown and H. Simpson, *The Alcohol-Crash Problem in Canada, 2003* (Ottawa: TIRF, 2005) at 28.

It is not surprising that young, relatively inexperienced drinkers with BACs above .08% dominate the pedestrian fatality statistics. Alcohol affects important skills, including vision, depth perception, balance, reaction time, hazard recognition, and judgment,⁹⁵ making impaired pedestrians much more likely to be hit by a car than their sober counterparts. In addition to endangering themselves, impaired pedestrians pose a risk to motorists who may be forced without warning to take evasive action to avoid them.

(I) Summary

Young people have the highest rates of traffic deaths and injuries both per capita, and per kilometre driven among drivers under 75 years of age. Even conservatively estimated, over 45% of these deaths are alcohol-related. While young people are significantly overrepresented in alcohol-related deaths as drivers, they are overrepresented to an even greater extent as passengers, pedestrians, bicyclists, and snowmobile and ATV operators. The impaired crash problem among youth is not simply a function of their immaturity and lack of driving experience; it also reflects their hazardous patterns of alcohol and drug use.

Young people have, by far, the highest rates of weekly, monthly and total binge drinking. Among current young drinkers, over two-thirds acknowledge binge drinking at least once in the past year and, of these, over half report doing so at least 12 times. These reported patterns of

⁹⁵ See generally, A. Liguori *et al.*, "Alcohol Effects on Mood, Equilibrium, and Simulated Driving" (1999) 23(5) *Alcohol Clin. Exp. Res.* 815; H. Moskowitz and D. Fiorentino, *A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills* (Washington, D.C.: NHTSA, 2000); H. Moskowitz *et al.*, *Driver Characteristics and Impairment at Various BACs* (Washington, D.C.: NHTSA, 2000); and E. Ogden and H. Moskowitz, "Effects of Alcohol and Other Drugs on Driver Performance" (2004) 5 *Traffic Injury Prevention* 185.

consumption are alarming, even if one ignores the fact that they likely underestimate the actual rates of consumption. As long as extremely large numbers of young people drink at these levels on a regular basis, they will dominate the alcohol-related traffic death statistics. It can hardly be surprising that the age group with the highest rates of binge drinking and the least driving experience also has the highest rates of alcohol-related traffic deaths.

The discussion that follows addresses youth traffic deaths and injuries resulting from driving, being a passenger, walking, cycling, and operating ATVs and snowmobiles. In addition to specific traffic initiatives, the report examines measures to reduce underage and binge drinking, which play a key role in traffic deaths and injuries among Canadian youth. Finally, the report briefly reviews potential responses to the rising rates of reported drug-impaired driving among 16-24 year olds.

SECTION II: THE REGULATION OF ALCOHOL

(a) Introduction

The measures considered in this section are largely based on a “health promotion model” of alcohol-related harm. The model posits that reductions in overall alcohol consumption will lead to decreases in alcohol-related harms, including impaired driving crashes.⁹⁶ Thus, the relevant measures are not aimed directly at driving, but rather at reducing alcohol consumption within the population. Typically, the model focuses on factors that influence alcohol consumption, such as alcohol advertising, availability and cost.

We have emphasized elements of the model that are most relevant to traffic fatalities and injuries among youth. These policies address drinking patterns associated with trauma, and the unique vulnerability of young people to alcohol-related traffic deaths and injuries. Consequently, for the purpose of our study, the main alcohol policy priorities are the legal drinking age, alcohol availability and the enforcement of the provincial liquor licensing laws.

(b) Minimum Drinking Age

Currently, the minimum legal purchase age for alcohol (“minimum drinking age”) is 18 in Alberta, Manitoba and Québec, and 19 in the rest of Canada.⁹⁷ There is very strong evidence,

⁹⁶ The model is supported by a considerable body of research. For example, in Canada, every litre increase in per capita alcohol consumption between 1950 and 1998 was associated with an increase in accident mortality of 5.9 males and 1.9 females per 100,000. The association between consumption and traffic deaths was statistically significant for both genders. O.-J. Skog, “Alcohol consumption and fatal accidents in Canada, 1950-98” (2003) 98 Addictions 883 [Skog].

See generally, P. Howat *et al.*, “Preventing Alcohol-Related Traffic Injury: A Health Promotion Approach” (2004) 5 Traffic Injury Prevention 208 [Howat]; J. Grube and K. Stewart, “Preventing Impaired Driving Using Alcohol Policy” (2004) 5 Traffic Injury Prevention 199 [Grube]; H. Holder, “Population drinking and alcohol harm: what these Canadian analyses tell us” (2003) 98 Addiction 865; R. Mann and L. Anglin, “Alcohol Availability, Per Capita Consumption, and the Alcohol-Crash Problem” in R. Wilson and R. Mann eds., *Drinking and Driving: Advances in Research and Prevention* (New York: The Guilford Press, 1990) 205 at 217-18 [Mann 1990]; and R. Mann and L. Anglin, “The Relationship Between Alcohol-Related Traffic Fatalities and Per Capita Consumption of Alcohol, Ontario, 1957-1983” (1988) 20 Accid. Anal. and Prev. 441.

⁹⁷ The term “minimum drinking age” is commonly used as a convenient, albeit somewhat misleading, label to refer to a broad range of prohibitions. These may include offences for providing, selling or giving alcohol to young people, and offences banning young people from purchasing, possessing or consuming alcohol. These prohibitions are typically subject to medical, religious and employment exemptions. Moreover, in most jurisdictions parents are permitted to provide alcohol to their underage children in their home or other private places.

primarily from the United States,⁹⁸ that higher minimum drinking ages significantly reduce alcohol consumption and related crashes among both the targeted age group and younger teenagers. Many American states lowered their legal drinking ages from 21 to 18, 19 or 20 during the 1970s.⁹⁹ However, this was followed by dramatic increases in alcohol-related crashes among youth. In response, the United States federal government introduced the *Uniform Drinking Age Act*¹⁰⁰ in 1984. The Act provided for the withholding of federal highway funds from states that had a legal drinking age below 21. As a result, all states returned to the drinking age of 21 by 1988. The alterations in the minimum drinking age during these two decades provided a unique opportunity to evaluate the effects of the drinking age on youth.

Early studies indicated that increasing the minimum drinking age to 21 had significant traffic safety benefits.¹⁰¹ For example, the United States General Accounting Office reported in 1987 that the laws increasing the drinking age had significantly reduced alcohol-related traffic crashes among the affected age group.¹⁰² These traffic safety benefits were attributable to the laws' impact on reducing both teenage alcohol consumption, and teenage drinking and driving.¹⁰³ In addition, there was some evidence that the laws had a spillover effect; that is, youth in states with a minimum drinking age of 21 consumed less alcohol even after reaching legal age. This

⁹⁸ New Zealand reduced its minimum drinking age from 20 to 18 in 1999. Although there is currently only preliminary data on the effects of the change, the New Zealand experience should provide valuable information on this issue. While the American data were often confounded by the numerous changes to the impaired driving laws in the 1980s, the New Zealand data should make it easier to identify the effects directly attributable to changing the minimum drinking age. For a preliminary review, see Alcohol Advisory Council of New Zealand (AACNZ), *Assessment of the Health Impacts of Lowering the Minimum Legal Age for Purchasing Alcohol in New Zealand* (Wellington: AACNZ, 2002) [Advisory Council].

⁹⁹ This coincided with the lowering of the voting age to 18. See A. Williams, "Raising the Legal Purchase Age in the United States: Its Effects on Fatal Motor Vehicle Crashes" (1986) 2 *Alcohol, Drugs, and Driving* 1 at 1.

¹⁰⁰ 23 U.S.C.S. § 158.

¹⁰¹ See, for example, R. Arnold, *Effect of Raising the Legal Drinking Age on Driver Involvement in Fatal Crashes: The Experience of Thirteen States* (Washington, D.C.: NHTSA, 1985), which found a 13% reduction in fatal crash involvement. This study was updated by K. Womble, *The Impact of Minimum Drinking Age Laws on Fatal Crash Involvements: An Update of the NHTSA Analyses* (Washington, D.C.: NHTSA, 1989), which reported a 12% reduction in fatal crash involvement.

¹⁰² United States General Accounting Office (GAO), *Drinking-Age Laws: An Evaluation Synthesis of Their Impact on Highway Safety* (Washington, D.C.: GAO, 1987) at 39.

¹⁰³ *Ibid.* at 47. See also J. Hedlund, R. Ulmer and D. Preusser, *Determine Why There are Fewer Young Alcohol-Impaired Drivers* (Washington, D.C.: NHTSA, 2001) Section IV-A [Hedlund].

suggests that the laws had a positive influence on attitudes toward alcohol consumption and alcohol-related risky behaviours, and that this extended beyond the target age group.¹⁰⁴

Similar positive results were found in a recent comprehensive review of 241 studies published between 1960 and 1999.¹⁰⁵ The authors found that the minimum drinking age of 21 “appears to have been the most successful effort to date”¹⁰⁶ to reduce teenage drinking, and that the “preponderance of evidence” indicates that it also reduced youth traffic crashes.¹⁰⁷ They noted that these substantial benefits occurred despite survey evidence that teenagers have easy access to alcohol when underage. Thus, they concluded that minimum drinking age laws are an effective countermeasure even when enforcement levels are low, and that they could be more effective if they were actively enforced.¹⁰⁸

In another recent meta-analysis, the authors concluded that there is “strong evidence” that minimum drinking age laws, particularly those that set the age at 21, “are effective in preventing alcohol-related crashes and associated injuries.”¹⁰⁹ As illustrated by Figure 12, the United States National Highway Traffic Safety Administration (NHTSA) has estimated that, between 1975 and 2004, the minimum drinking age laws have prevented over 27,300 traffic deaths among 18-20 year olds.

¹⁰⁴ Hedlund, *ibid.*

¹⁰⁵ A. Wagenaar and T. Toomey, “Effects of Minimum Drinking Age Laws: Review and Analyses of the Literature from 1960 to 2000” (2002) Supp. 14 J. Stud. Alcohol 206 [Wagenaar].

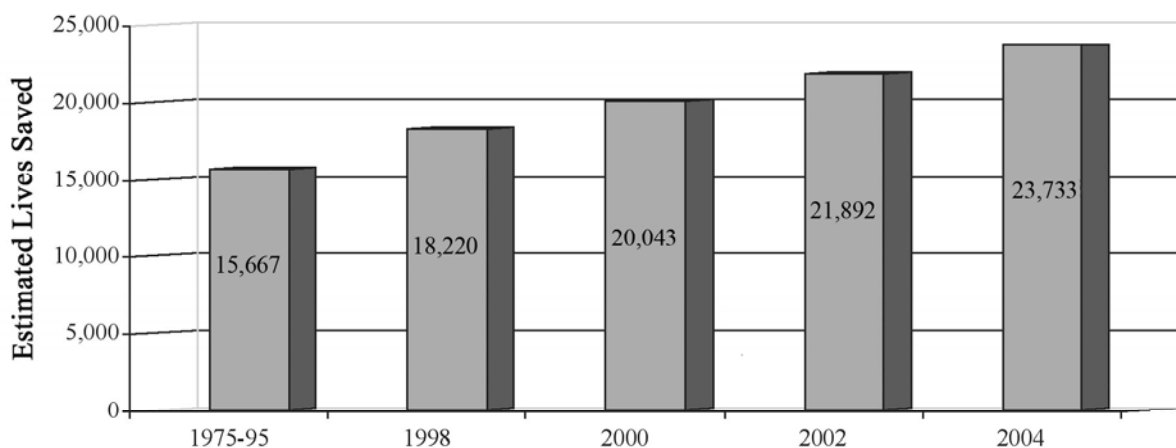
¹⁰⁶ *Ibid.* at 219.

¹⁰⁷ *Ibid.* at 213-18.

¹⁰⁸ *Ibid.* at 218. Enforcement is likely to be easier and more consistent in Canada, given the government monopoly over off-premise sales that exists in most provinces. Conversely, some American states have fully privatized off-premise alcohol sales, with alcohol available at grocery and corner stores, where enforcement of the minimum drinking age laws may be more sporadic.

¹⁰⁹ R. Shults *et al.*, “Reviews of Evidence Regarding Interventions to Reduce Alcohol-Impaired Driving” (2001) 21(4S) Am. J. Prev. Med. at 66 [Shults]. See also F. Chaloupka, H. Saffer and M. Grossman, “Alcohol-Control Policies And Motor-Vehicle Fatalities” (1993) 22 J. Legal Studies 161 at 182-84 [Chaloupka]; K. DeJong and R. Hingson, “Strategies to Reduce Driving Under The Influence Of Alcohol” (1998) 19 Annual Review of Public Health 359; Grube, *supra* note 96 at 201; and Babor *et al.*,

Figure 12: Cumulative Estimate of the Lives Saved by the Minimum Drinking Age Laws, 1975-2004



Source: NHTSA, *Traffic Safety Facts, 2004 Data, Young Drivers* (Washington, D.C.: NHTSA, 2005), online: <<http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2004/809918.pdf>> at 5.

Despite the clear evidence of the traffic safety benefits of raising the legal drinking age to 21, there does not appear to be sufficient political support in Canada for such a change. Nevertheless, MADD Canada is of the view that all provinces should enact a minimum drinking age of at least 19. In adopting this position, MADD Canada took into account that some of the traffic safety benefits of a legal drinking age of 21 can be obtained by enacting a zero BAC limit on all drivers until they reach this age. If sufficient progress cannot be made on a zero BAC limit, then MADD Canada will have to reconsider its position on the legal drinking age.

It may be argued that increasing the legal drinking age from 18 to 19 will have negligible benefits. We would first respond that the American experience indicates that the change would reduce youth crash deaths and injuries in the three provinces that currently have a legal drinking age of 18. Second, a drinking age of 19 should help keep legal alcohol out of the high school environment, decrease the likelihood of older high school students purchasing or obtaining alcohol for their younger schoolmates, and may reduce peer pressures on younger high school students to drink. Third, research indicates that a lower minimum drinking age leads to an earlier onset of drinking, which is associated with the subsequent development of a broad range of alcohol problems¹¹⁰ and increased risks of impaired traffic crashes and other trauma.¹¹¹ For

Alcohol: No Ordinary Commodity (New York: Oxford University Press, 2003) at 127-28 [Babor].

¹¹⁰ E. Gruber *et al.*, “Early Drinking Onset and Its Association with Alcohol Use and Problem Behaviors in Late Adolescence” (1996) 25 *Preventive Medicine* 293 [Gruber]; The National Centre On Addiction and Substance Abuse (CASA), *Teen Tippers: America’s Underage Drinking Epidemic* (New York: CASA, 2003) at 18-19 [CASA]; and R. Hingson, J-P. Assailly and A. Williams, “Underage Drinking: Frequency,

example, one study noted that the risk of future alcohol dependence fell by 14% for each year that the onset of drinking was delayed from the age of 15 on.¹¹² Another study found that those who began drinking before the age of 14 were seven times more likely than those who started at 21 to be in a traffic crash due to their drinking, both during their “adolescence and adult years.”¹¹³

Preliminary data from New Zealand, which lowered its minimum purchase age from 20 to 18 in 1999, is consistent with the preceding studies. The Alcohol Advisory Council of New Zealand estimated that this change resulted in an additional 16 deaths and 145 injuries per year among 18-19 year olds alone.¹¹⁴ Another study reported that emergency room cases involving laboratory-confirmed intoxication among 18-19 year olds increased 54% in the 12 months following the lowering of the purchase age. There was also a 43% increase in the number of intoxicated 15-17 year olds, but only a 1.4% increase in intoxicated individuals 20 years of age and older.¹¹⁵

The New Zealand experience is consistent with a recent study issued by the Canadian Institute for Health Information. It reported that in 2002-03, the rate of alcohol-related major injury for 18 year olds was 9 per 100,000 in provinces with a legal drinking age of 19, but 15 per 100,000 in provinces with a legal drinking age of 18.¹¹⁶

Consequences, and Interventions” (2004) 5 *Traffic Injury Prevention* 228 at 229 [Hingson 2004].

¹¹¹ Gruber, *ibid.* at 298; R. Hingson *et al.*, “Age of Drinking Onset and Unintentional Injury Involvement After Drinking” (2000) 284(12) *JAMA* 1527 [Hingson 2000]; and J. Shope and J. Zakrajsek, “Age of Drinking Onset Predicts Young Adults’ Self-Reported Drink-Driving” in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

¹¹² CASA, *supra* note 110 at 18. The study also indicated that individuals who began drinking before the age of 15 were four times more likely to become alcohol dependent than those who did not drink until they were 21.

¹¹³ Hingson 2004, *supra* note 110 at 229. In an earlier study, Hingson *et al.* found that those who began drinking prior to the age of 14 were 12 times more likely to report being injured while under the influence of alcohol, both in the past year and in their lifetime, compared to individuals who started drinking at the age of 21. The likelihood of being injured under the influence of alcohol decreased with each year that the onset of drinking was delayed. Hingson 2000, *supra* note 111 at 1530.

¹¹⁴ Advisory Council, *supra* note 98 at 51.

¹¹⁵ R. Everitt and P. Jones, “Changing the minimum legal drinking age – its effect on a central city emergency department” (2002) 115 *N.Z. Med. J.* 9 at 10.

¹¹⁶ Canadian Institute for Health Information, “More Than Half of All Alcohol-Related Severe Injuries Due to Motor Vehicle Collisions,” online: <http://secure.cihi.ca/cihiweb/dispPage.jsp?cw_page=media_22jun2005_e>.

Not surprisingly, the alcohol industry and others have opposed raising the legal drinking age on various grounds.¹¹⁷ For example, it is claimed that raising the age punishes “good” teenagers, increases the temptation to try alcohol given its status as a forbidden fruit, encourages teenagers to try other drugs instead, and is discriminatory. Although there is not sufficient space to refute all of these claims here, several comments are warranted. First, most of these claims fly in the face of the relevant research, only some of which has been outlined above. Second, researchers have specifically addressed and dismissed these claims as being unsubstantiated.¹¹⁸ Third, as a matter of constitutional law, alcohol consumption is a privilege and not a right. Finally, the authors are unaware of any successful human rights or *Charter* challenge to provincial minimum drinking age laws. Given the preceding statistics on the unique vulnerability of young people to alcohol-related trauma death, it is difficult to see how any credible argument about age discrimination could be made.¹¹⁹

(c) Alcohol Availability

Studies from various jurisdictions indicate a strong relationship between alcohol availability and both consumption and alcohol-related harms.¹²⁰ Factors affecting availability include: price and taxation; hours and days of sale; location and density of retail liquor outlets; and the existence of a government monopoly over off-premise outlets.

¹¹⁷ See, for example, International Centre for Alcohol Policy (ICAP), *ICAP Reports 4: Drinking Age Limits* (Washington, D.C.: ICAP, 2002); L. Mooney, R. Grambling and C. Forsyth, “Legal Drinking Age and Alcohol Consumption” (1992) 13 *Deviant Behaviour* 59; D. Hanson, D. Heath and J. Rudy, “The Misguided Prohibition that Governs US Colleges,” online: <<http://www.aim-digest.com/gateway/pages/underage/articles/misguide.htm>>; and Canada Safety Council, “Should Canada Raise the Drinking Age to 21?,” online: <<http://www.safety-council.org/info/traffic/impaired/age.html>>.

¹¹⁸ See, for example, Wagenaar, *supra* note 105 at 219-22; and Center For Science in the Public Interest: Alcohol Policies Project, “Talking Points/Arguments: Answering the Critics of Age-21,” online: <<http://www.cspinet.org/booze/mlpatalk.htm>>.

¹¹⁹ The Supreme Court of Canada has held that a law mandating differential treatment based on age will not constitute discrimination under section 15 of the *Charter* if it takes into account the subject’s actual capacity and circumstances. *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 at 501-02. Given the preceding data on the vulnerability of youth to alcohol-related trauma, a law increasing the drinking age is most likely to be viewed as reflecting the capacity and circumstances of youth. Thus, such laws would not violate the right to equality under section 15.

¹²⁰ There are numerous studies. For a detailed review, see Babor, *supra* note 109 at 101-56. See also R. Homel and P. Wilson, “Law and Road Safety: Strategies for Modifying the Social Environment, With Particular Reference to Alcohol Control Policies” (1998) 21 *ANZJ Crim.* 104 [Homel]; Mann 1990, *supra* note 96 at 205; and Skog, *supra* note 96.

(i) Price and Taxation

In Canada, most alcohol purchased for off-premise consumption is sold through provincial government stores or closely-regulated private outlets. The provincial governments set retail prices in their stores, and generated 70.4% of total federal and provincial government alcohol revenues in 2004 through a combination of licensing fees (9.5%), provincial sales tax (14.4%), and levies or “mark-ups” in government stores and controlled outlets (46.5%). The federal government can influence alcohol prices through excise taxes and GST, which together accounted for the remaining 29.6% of total government alcohol revenues in 2004.¹²¹ The situation in Canada stands in sharp contrast to that in many jurisdictions, where the wholesale and retail alcohol markets are in private hands, and governments can only indirectly influence prices through taxes.

International studies have shown that price is one of the most effective measures for reducing alcohol consumption and related harms.¹²² For example, British research suggests that tax increases affect the rates of cirrhosis mortality, impaired driving deaths and violent crime.¹²³ An American study, analyzing a broad range of impaired driving countermeasures, concluded that raising beer taxes was the single most effective way of reducing traffic fatalities. The authors stated that “an increase in the beer tax to its real 1951 value would decrease [total motor-vehicle] fatalities by 11.5 percent.”¹²⁴

Contrary to the view of skeptics who suggest that price has little influence on those who are alcohol dependent, research shows a consistently strong relationship between higher alcohol prices and reductions in hazardous drinking.¹²⁵ Price is particularly important in reducing alcohol consumption by youth, because they are generally more susceptible to price increases due to their low disposable incomes.¹²⁶ To illustrate, American studies suggest that doubling the

¹²¹ T. Stockwell, J. Leng and J. Sturge, *Alcohol Pricing and Public Health in Canada: Issues and Opportunities* (Victoria: Centre for Addictions Research of British Columbia, University of Victoria, 2005) at 9 [*Alcohol Pricing*].

¹²² For brief reviews of these studies, see Babor, *supra* note 109 at 108-12; Grube, *supra* note 96 at 199-200; and Howat, *supra* note 96 at 210-11.

¹²³ R. Room, T. Babor and J. Rehm, “Alcohol and public health” (2005) 365 *Lancet* 519 at 526.

¹²⁴ Chaloupka, *supra* note 109 at 184.

¹²⁵ *Alcohol Pricing*, *supra* note 121 at 6-7.

¹²⁶ In addition to the studies in note 122, see J. Mosher, “Alcohol policy and the young adult: establishing priorities, building partnerships, overcoming barriers” (1999) 94 *Addiction* 357 at 359.

extremely low tax on beer would reduce youth alcohol consumption by 3-6%, and that it would have an even greater impact on their heavy drinking.¹²⁷

Given the complex system of sales and excise taxes, levies and mark-ups that exist in the various Canadian jurisdictions,¹²⁸ it is impossible to provide a comprehensive list of recommendations. It is sufficient to highlight three general concerns. First, the current system results in liquor being taxed at a much higher rate than wine or beer per standard drink.¹²⁹ The ensuing preferential pricing of beer is of special concern, because it is the beverage of choice among young people, particularly males.¹³⁰ Steps need to be taken to increase the price of beer to bring it into line on a per standard drink basis with the price of liquor.

Second, on a related issue, the current pricing structure within beverage categories in Canada provides little incentive to purchase low-alcohol products and little disincentive to purchase high-alcohol products. The taxes and mark-ups on most beers, wines and coolers are relatively flat, with little allowance for either low or high-alcohol products.¹³¹ It is worth noting that Australia's price incentives for low-alcohol beers had health and traffic safety benefits, apparently without adversely affecting alcohol industry profits.¹³² It is recommended that pricing within the various beverage categories reflect the alcohol content of the specific products.

Third, alcohol taxes in Canada have not kept pace with inflation. For instance, while the federal excise tax on alcohol has remained unchanged since 1991, the Consumer Price Index has increased by 30.3%.¹³³ Although it may not be politically feasible to address the past erosions in alcohol taxes, alcohol prices should be indexed to inflation from this point forward. Otherwise, all things being equal, we can expect per capita alcohol consumption and its accompanying

¹²⁷ Grube, *supra* note 96 at 200.

¹²⁸ For a comprehensive review, see *Alcohol Pricing*, *supra* note 121 at 9-21.

¹²⁹ *Ibid.* at 26.

¹³⁰ R. Mann *et al.*, "Drinking-driving fatalities and consumption of beer, wine and spirits" *Drug and Alcohol Review* (in press) at 8-10. A 2003 study reported that beer accounted for 80% of the alcohol that American 12-20 year olds consumed. CASA, *supra* note 110 at 26.

¹³¹ *Alcohol Pricing*, *supra* note 121 at 27-28.

¹³² *Ibid.* at 8 and 27. Research indicates that even experienced drinkers cannot reliably distinguish variations in the strength of their preferred beverages. Nor do they, when provided with lower-strength alcohol beverages, drink more to reach their usual BAC. See E. Geller, M. Kalsher and S. Clarke, "Beer versus mixed drink consumption at fraternity parties: a time and place for low-alcohol alternatives" (1991) 52 *J. Stud. Alcohol* 197.

¹³³ *Alcohol Pricing*, *supra* note 121 at 11.

harms to increase.¹³⁴ After two decades of decline, per capita alcohol consumption in Canada has increased since 1999,¹³⁵ and may continue to do so unless prices are adjusted accordingly.

(ii) Government Monopolies Over Off-Premise Alcohol Sales

It is generally accepted that government monopolies are important in controlling access to alcohol, reducing sales to underaged and intoxicated customers, and limiting alcohol-related problems.¹³⁶ There is also evidence that replacing such monopolies with private-sector retailers increases consumption and related harms.¹³⁷ Government monopolies provide a strong measure of control over not only pricing, but also marketing, hours and days of sale, and outlet density (*i.e.*, the number of retail outlets and licensed establishments per capita). Each of these factors can contribute to reductions in alcohol consumption and related harms. For example, areas with higher outlet densities have been shown to have higher levels of consumption,¹³⁸ alcohol-related hospital admissions¹³⁹ and alcohol-related crashes.¹⁴⁰ The types of outlets are also important, in that high densities of on-premise drinking establishments are most closely associated with traffic crashes and public violence.¹⁴¹ This is particularly relevant for youth of legal drinking age,

¹³⁴ For example, the dramatic increases in per capita consumption in the Republic of Ireland between 1982-2002 have been attributed, in part, to the failure to keep alcohol taxes apace with the cost of living. Increases in the alcohol taxes in 2002-03 were reported to have had a substantial impact on the more acute forms of alcohol-related harm. *Ibid.* at 22.

¹³⁵ *Ibid.*

¹³⁶ Babor, *supra* note 109 at 120-21; and Centre for Addiction and Mental Health (CAMH), *Position Paper: Retail Alcohol Monopolies and Regulation: Preserving the Public Interest* (Toronto: CAMH, 2004).

¹³⁷ See, for example, H. Holder and A. Wagenaar, "Effects of the elimination of a state monopoly on distilled spirits' retail sales: a time-series analysis of Iowa" (1990) 85 *British Journal of Addiction* 1615; and A. Wagenaar and H. Holder, "Changes in Alcohol Consumption Resulting from the Elimination of Retail Wine Monopolies: Results from Five U.S. States" (1995) 56 *J. Stud. Alcohol* 566.

¹³⁸ E. Single *et al.*, *Review of the Literature on the Impact of Alcohol Availability, Final Report* (Ottawa: Health Promotion Directorate, Health and Welfare Canada, 1989) at 12-17; and Babor, *supra* note 109 at 124-26.

¹³⁹ J. Tatlow, J. Clapp and M. Hohman, "The Relationship Between the Geographic Density of Alcohol Outlets and Alcohol-Related Hospital Admissions in San Diego County" (2000) 25(1) *Journal of Community Health* 79.

¹⁴⁰ R. Scribner, D. MacKinnon and J. Dwyer, "Alcohol Outlet Density and Motor Vehicle Crashes in Los Angeles County Cities" (1994) 55 *J. Stud. Alcohol* 447; and P. Gruenewald and W. Ponicki, "Relationship of the retail availability of alcohol and alcohol sales to alcohol-related traffic crashes" (1995) 27 *Accid. Anal. and Prev.* 249. See also Homel, *supra* note 120 at 112.

¹⁴¹ See I. Smith, "Effectiveness of Legislative and Fiscal Restrictions in Reducing Alcohol Related Crime and Traffic Accidents" in J. Vernon ed., *Alcohol and Crime* (Canberra: Australian Institute of Criminology, 1990) 223.

because they do much of their drinking in licensed establishments and frequently drink to intoxication.

The research on hours and days of sale is somewhat mixed. In terms of off-premise alcohol sales, the evidence suggests that limiting days and hours of sale can reduce overall alcohol consumption and associated harms, and that extending days and hours can have the opposite effect. For example, when Sweden allowed the Saturday opening of liquor stores, there was a 3.2% increase in alcohol sales, and increases in domestic violence and public drunkenness.¹⁴² The evidence regarding on-premise sales is slightly more complicated. Research from Western Australia indicated that an increase in “Extended Trading Permits,” allowing establishments to stay open an additional hour until 1 a.m., was associated with an increase in violent assaults in the area.¹⁴³ However, extending closing time in Ontario from 1 a.m. to 2 a.m. had a negligible effect on alcohol-related traffic fatalities. The authors of the Ontario study noted that this was a small policy change that the industry only partially implemented.¹⁴⁴ Nevertheless, on balance, the research suggests that limiting days and hours of sale can reduce consumption and related problems.¹⁴⁵

Several principles emerge regarding drinking hours and alcohol-related harm among youth. While very early closing hours may cause a “rush” on alcohol consumption,¹⁴⁶ earlier closing times are generally preferable to later ones. Not only do earlier closing times reduce overall consumption, but they also ensure that public transportation is more readily available when

¹⁴² Babor, *supra* note 109 at 122-24.

¹⁴³ T. Chikritzhs and T. Stockwell, “The Impact of Later Trading Hours for Australian Public Houses (Hotels) on Levels of Violence” (2002) 63 *J. Stud. Alcohol* 591 at 598 [Chikritzhs]. The authors provide insight into Australia’s infamous “six o’clock swill.” To address record high levels of public drunkenness and related violence, Australia introduced a six o’clock closing on all alcohol sales during World War I. This subsequently led to great numbers of men crowding into bars after work for a frantic hour of heavy drinking prior to six. Although the six o’clock closing has long since disappeared, the alcohol and hospitality industries raise this one experience as proof that any limits on drinking hours are counterproductive, and as a justification for ever-increasing hours of sale. The authors rightly reject these exaggerated claims (*ibid.* at 591-92).

Nonetheless, England and Wales moved to a system of 24-hour openings in the hopes that it would stagger drinking, reduce overcrowding, reduce violence at closing, and encourage patrons to “pace themselves.” See “Law allowing 24-hour alcohol sales in England kicks in” *Associated Press* (23 November 2005).

¹⁴⁴ E. Vingilis *et al.*, “Final Evaluation of Extended Drinking Hours in Ontario” in P. Williams and A. Clayton eds., CD-ROM: *Proceedings of the 17th International Conference on Alcohol, Drugs and Traffic Safety* (Glasgow: ICADTS, 2004).

¹⁴⁵ Babor, *supra* note 109 at 124.

¹⁴⁶ Chikritzhs, *supra* note 143 at 591-92.

patrons leave licensed establishments.¹⁴⁷ Finally, it is preferable to have uniform closing times in adjacent jurisdictions to discourage cross-border drinking. Drinkers crossing provincial or national borders to take advantage of extended drinking hours will almost invariably be driving, which increases the risks of alcohol-related crashes.¹⁴⁸

(d) Regulatory Measures Geared To Youth

Youth will be affected by measures aimed at reducing alcohol availability among the general population. However, additional measures are needed for those under the legal drinking age. Since these youths cannot purchase alcohol legally, the focus should be on factors that facilitate underage drinking (*e.g.* illegal sales and purchases by older friends or relatives), and measures aimed at reducing underage and excessive alcohol consumption (*e.g.* keg registration laws). The following discussion is divided into policies involving the private service of alcohol and retail sales.

(i) Private Service of Alcohol to Minors

All Canadian jurisdictions have general prohibitions against selling, giving or providing alcohol to minors.¹⁴⁹ These laws are commendable and ought to be retained. Not surprisingly, the legislation is difficult to enforce, particularly when a parent or older relative merely provides the minor with alcohol at no cost. Indeed, most jurisdictions have enacted a specific exemption for parents serving alcohol to their *own children* in their own homes or other private places. This exemption is reasonable if the alcohol is served responsibly, as in the case of parents allowing a teenage child to have some wine at a family dinner. Nevertheless, there is a potential for abuse if alcohol is given in excessive quantities or without appropriate supervision. Since the enforcement of the liquor laws within the family home is extremely unlikely and generally undesirable, this problem is best addressed through parental awareness and education programs in most cases. However, enforcement is warranted if the underage laws are blatantly or routinely ignored, particularly in the case of high-risk events. Parents who purchase alcohol for large

¹⁴⁷ *Ibid.* at 598. The authors also note that earlier closing times improve access to treatment for those injured in alcohol-related incidents, because hospital emergency departments are better staffed before, as opposed to after, midnight.

¹⁴⁸ See E. Vingilis *et al.*, “The Safety Impact of Extended Drinking Hours in Ontario on Cross-Border Cities of Windsor and Detroit” in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

¹⁴⁹ See, for example, the Ontario *Liquor Licence Act*, R.S.O. 1990, c. L.19, s. 30(1) and (2) [LLA].

underage events, such as sports tournaments, high school graduation parties or “bush” parties should not be immune to prosecution.

Although perhaps not widely known, individuals may be held civilly liable for providing alcohol to a minor, or allowing underage alcohol events to be held on their property.¹⁵⁰ For example, a defendant who provided his underage and impaired friend with a bottle of rum was held jointly and severally liable with several other defendants for \$8.5 million, when the friend drove through a red light and caused a crash that left the plaintiff with catastrophic injuries.¹⁵¹ As illustrated by *Prevost (Committee of) v. Vetter*,¹⁵² hosts may also be held liable for allowing minors to become intoxicated on their property, even if they do not provide or supply any of the alcohol.

The Vettters had a history of hosting large and boisterous parties in their home. While they did not provide any alcohol, they permitted both adults and minors to bring alcohol and become intoxicated. Mrs. Vetter had often taken steps in the past to protect intoxicated minors by inviting them to spend the night, taking their car keys or driving them home. The judge, Coultas J., found that these actions created a “paternalistic relationship” between the Vettters and underage drinkers at their home. This relationship gave rise to “a duty to protect minors from the potential danger of driving under the influence of alcohol and to protect those who might drive with them.”¹⁵³ On the night in question, Mrs. Vetter made no effort to supervise or intervene, even though she knew that the police had broken up the party and that the underage drinkers were about to leave her home. Thus, Coultas J. refused to strike out the lawsuit by Adam Prevost, who was seriously injured as a passenger in Desiree Vetter’s vehicle. Desiree was an underage niece of the Vettters who had become extremely intoxicated in their home. Since the case only involved a preliminary issue of law, it meant that Prevost’s civil suit against the Vettters could continue.

The British Columbia Court of Appeal overturned the judge’s decision on largely technical grounds, ordered a new trial and refrained from expressing an opinion on whether the Vettters

¹⁵⁰ For a brief review of alcohol-related civil liability and youth, see R. Solomon, “Alcohol, Teens And Catastrophe: What Every Parent Needs To Know About Avoiding Alcohol Liability” (Mississauga: MADD Canada, 2004).

¹⁵¹ *Dryden (Litigation Guardian of) v. Campbell Estate* (2001), 11 M.V.R. (4th) 427 (Ont. S.C.J.) [*Dryden*].

¹⁵² (2001), 5 C.C.L.T. (3d) 266 (B.C.S.C.) [In Chambers] [*Prevost*].

¹⁵³ *Ibid.* at 288.

owed Prevost a duty of care.¹⁵⁴ The parties subsequently settled out of court. Although this type of lawsuit is still uncommon in Canada, it can provide a strong financial incentive for adults to prohibit or discourage excessive underage drinking in their homes.

Finally, parents need to be made aware of the potentially severe insurance consequences that arise if their children drive the family car while impaired. In most Canadian jurisdictions, at-fault drivers convicted of driving while impaired, driving with a BAC above 0.08%, or refusing to provide a breath or blood sample have their insurance coverage severely limited.¹⁵⁵ Apart from Québec, every province negates an impaired driver's collision coverage for damages to his or her own vehicle, and many provinces severely restrict the accident benefits that are payable to such drivers.¹⁵⁶ More importantly, insurance companies in most jurisdictions are entitled to recover from the at-fault impaired driver any damages that they have paid out to injured parties under the driver's third-party liability coverage. In effect, impaired drivers lose the financial benefits of their third-party liability insurance. They can be sued by their own insurance company for any claims that have been paid out, and they can be sued by the injured parties for any remaining losses in excess of the policy limit. Similar insurance consequences result from driving while one's licence is suspended, cancelled or revoked.¹⁵⁷

Unless the vehicle has been stolen, these insurance consequences apply to the owner, regardless of who was driving at the time. Thus, vehicle owners need to ensure that they lend their vehicles only to drivers who they know to be properly licensed and who can be trusted to drive sober. However, most people appear to be unaware of the drastic insurance consequences that may result if an impaired or unlicensed individual drives their vehicle. Insurance companies should have an obligation to bring these consequences to the attention of policy holders. This would encourage parents and others to carefully consider whom they permit to operate their vehicles, and the conditions under which such permission is given.

¹⁵⁴ *Prevost (Committee of) v. Vetter* (2002), 11 C.C.L.T. (3d) 127. See also J. Middlemiss, "Plaintiff beaten at drunken party gets \$700,000 from host's insurer" *The Lawyers Weekly* (7 July 1989) 1. The case was apparently settled out of court prior to the new trial.

¹⁵⁵ For a comprehensive review of the insurance consequences of impaired or unauthorized driving, see R. Solomon *et al.*, "Automobile Insurance, Impaired Driving and Victim Compensation Across Canada" (2005), 12 M.V.R. (5th) 22 at 35-38.

¹⁵⁶ *Ibid.* at 35-36. For instance, New Brunswick, Newfoundland, the Northwest Territories, Nova Scotia, Nunavut, and Prince Edward Island deny such drivers medical and rehabilitation benefits, and lost earnings. In Ontario, offenders are denied coverage for lost wages, non-earner benefits, and compensation for lost education, visitor and housekeeping expenses.

¹⁵⁷ *Ibid.* at 36-40.

(ii) Retail Sales

The government monopoly system is valuable in preventing alcohol sales and the provision of alcohol to minors. Unlike private outlets, such as grocery and convenience stores, government stores have less financial incentive to sell alcohol to minors and are more likely to take their legal obligations seriously. For example, Ontario's LCBO stores challenged 1.7 million customers during 2005-2006, 112,000 of whom were refused service.¹⁵⁸ Eighty-one percent of these refusals were age-related (*i.e.*, the customers were either unable to prove that they were of legal age or were suspected of purchasing alcohol for minors). The LCBO specifically trains employees in recognizing and managing underage purchasers and those attempting to purchase alcohol for minors.¹⁵⁹ It is much less likely that private alcohol retailers would take such steps. Thus, maintaining a government monopoly system is important in terms of preventing illegal consumption by youth. MADD Canada supports government monopoly systems and opposes their replacement with privatized liquor outlets.

In jurisdictions that permit private alcohol sales, it is imperative that there be appropriate enforcement and sanctions, including licence suspensions and revocations, for retailers selling alcohol to minors. Sanctions should also be imposed on minors who attempt to purchase alcohol with false identification, and on those who produce or sell such identification. Both retailers and government enforcement officers would be assisted in this regard by the issuance of identification cards that are difficult to falsify, such as a driver's licence with a magnetic strip.

Retail outlets, as well as licensed drinking establishments, should be properly educated about their obligations under the liquor legislation. They should also be required to implement procedures to verify the age of any potential customer who appears to be under the age of 25. If such checks were routinely made, customers would become aware of the need to provide valid identification, would not feel "singled out," and would be less likely to attempt to make illegal purchases.

Alcohol delivery services are another area of concern in terms of sales to underage patrons. Such services typically receive liquor orders from clients, purchase the alcohol from a licensed retailer, and then deliver it to the client's home for a fee. There is a risk that underage persons wishing to purchase alcohol could abuse such services. Although alcohol delivery services must

¹⁵⁸ Liquor Control Board of Ontario, "Keeping Alcohol Out of the Hands of Minors," online: <<http://www.lcbo.com/socialresponsibility/alcoholminors.shtml>>.

¹⁵⁹ *Ibid.*

be licensed by the government,¹⁶⁰ and are legally prohibited from taking orders from and delivering alcohol to underage persons,¹⁶¹ enforcement of these prohibitions is likely to be minimal. Sales occur on a relatively private basis in the client's home, and are unlikely to be monitored by police or liquor inspectors. Indeed, the provisions authorizing inspectors to enter and search premises typically do not permit access to private dwellings without a warrant.¹⁶² Thus, alcohol delivery transactions are largely exempt from official scrutiny. While homeowners' privacy obviously deserves protection, provincial governments need to develop more effective means of ensuring that alcohol delivery services comply with the underage and other key provisions of the liquor legislation.¹⁶³ The most effective way of ensuring compliance is to have delivery services taken over and run by the government monopoly.

Finally, keg registration laws have become popular in the United States in recent years. This legislation typically requires vendors to attach an identification tag to kegs containing more than a prescribed amount of alcohol.¹⁶⁴ Purchasers must then provide some personal information and a signature, so that the keg can be traced to them until returned. The legislation's intended purposes include: preventing the sale of kegs to minors; deterring adults from providing kegs to minors; and identifying adults who provide kegs to minors or host keg parties for minors. Kegs have been targeted, because they provide a relatively cheap source of alcohol, encourage binge drinking and make it difficult to monitor how much alcohol partygoers have consumed. Over twenty states have adopted some form of "keg reg" legislation, and it is supported by the American Medical Association¹⁶⁵ and others.¹⁶⁶ However, there is little research on the

¹⁶⁰ See, for example, the Ontario *Liquor Licence Act*, *supra* note 149, s. 5.

¹⁶¹ Alcohol delivery services are subject to the general prohibitions on selling or providing alcohol to those who are or appear to be underage or intoxicated. See respectively, *ibid.*, ss. 30(1) and (2), and 29.

¹⁶² *Ibid.*, ss. 43-44.

¹⁶³ As noted in a 2001 review of Ontario's private delivery system: "Currently, there is no formal complaints system and no structured inspection process. Moreover, because most transactions occur in private dwellings, there is little opportunity to assess an operator's compliance with the law. This level of governance increases the opportunity for misuse, and, in turn, the risk of alcohol-related injury." E. Chamberlain *et al.*, *A Legal Review of Alcohol Delivery Services In Ontario* (Toronto: Alcohol Policy Network and Association to Reduce Alcohol Promotion in Ontario, 2001) at 20.

¹⁶⁴ Pacific Institute for Research and Evaluation, *Alcohol Beverage Control Enforcement: Legal Research Report* (Washington, D.C.: NHTSA, 2003) at 25-28.

¹⁶⁵ J. Hill, "Alcohol pollutes: underage drinking as an environmental issue" (Address to the 2005 Annual Texas Institute on Substance Abuse and Treatment, 25 July 2005).

¹⁶⁶ See, for example, CASA, *supra* note 110 at 8; and D. Johnson, *Impaired Driving Program Assessments: A Summary of Recommendations (1991 to 2003)* (Washington, D.C.: NHTSA, 2004) at 13.

legislation's impact on underage drinking and related harms.¹⁶⁷ Nevertheless, several studies indicate that broad community action programs that include keg regulations are effective.¹⁶⁸ On these bases, MADD Canada believes that the sale of kegs warrants greater scrutiny and regulation than is currently the case.

(e) The Provincial Liquor Legislation

This section primarily addresses drinking by older teens and young adults in licensed establishments. The first subsection sets out the case for increasing enforcement of the provincial liquor legislation. In the second subsection, the role of alcohol-related liability in discouraging irresponsible practices is discussed. The section ends with a review of server training programs and their potential traffic safety benefits.

(i) Enforcement of the Liquor Legislation

The liquor legislation across Canada contains broad prohibitions, detailed regulations and potentially severe sanctions.¹⁶⁹ Among other things, the acts typically prohibit anyone from: being intoxicated in public;¹⁷⁰ drinking in an unlicensed public place;¹⁷¹ or selling, giving or supplying alcohol to a person who is or appears to be intoxicated¹⁷² or underage.¹⁷³ Those with a liquor licence or permit are also prohibited from: allowing intoxicated persons to enter or remain on the premises; permitting rowdy or aggressive conduct;¹⁷⁴ or breaching stringent room capacity

¹⁶⁷ See Grube, *supra* note 96 at 200. But see D. Cohen, K. Mason and R. Scribner, "The Population Consumption Model, Alcohol Control Practices, and Alcohol-Related Traffic Fatalities" (2001) 34 *Preventive Medicine* 187 at 192, which reports that keg registration laws were associated with decreased traffic fatality rates.

¹⁶⁸ See, for example, R. Hingson and J. Howland, "Comprehensive Community Interventions to Promote Health: Implications for College-Age Drinking Problems" (2002) *Suppl. No. 14 J. Stud. Alcohol* 226 at 235; and R. Hingson *et al.*, "Reducing Alcohol Availability and Increasing Substance Abuse Treatment in Fighting Back Communities: Effects on Alcohol Related Fatal Crashes" in P. Williams and A. Clayton eds., CD-ROM: *Proceedings of the 17th International Conference on Alcohol, Drugs and Traffic Safety* (Glasgow: ICADTS, 2004) [Reducing Alcohol].

¹⁶⁹ Although there are many differences among the provincial liquor acts, the general character and key provisions of the legislation are similar. In this subsection, we have used the Ontario *Liquor Licence Act*, *supra* note 149, to illustrate the general nature of the legislation.

¹⁷⁰ *Ibid.*, s. 31(4).

¹⁷¹ *Ibid.*, s. 31(2).

¹⁷² *Ibid.*, s. 29.

¹⁷³ *Ibid.*, s. 30(1) and (2).

¹⁷⁴ *Ibid.*, s. 34(1) and (2); and O. Reg. 719/90, s. 45(1) and (2).

limits.¹⁷⁵ The acts give police¹⁷⁶ and liquor inspectors¹⁷⁷ sweeping authority to enter licensed premises, investigate potential violations of the act or regulations, and arrest without a warrant those who are reasonably believed to be breaching the legislation.

The liquor licence boards typically have broad discretion in issuing liquor licences and permits.¹⁷⁸ In addition to, or in lieu of, instituting a prosecution against a licensee or permittee, the boards may take administrative action. The boards generally have authority to suspend or revoke a licence or permit if they reasonably believe that the operator has violated the act, regulations or terms of the licence or permit, or acted in an irresponsible manner.¹⁷⁹ The scope of penal liability under the liquor legislation is very broad. In addition to the perpetrator and the licensee, any officer or director of the corporation who permitted or authorized the violation is guilty of the offence.¹⁸⁰ The maximum penalty for a violation of the Ontario act is a \$100,000 fine and a year's imprisonment for individuals, and a \$250,000 fine for corporations.¹⁸¹ The maximum penalties for serving alcohol to minors are even more severe.¹⁸²

Alcohol-related problems do not arise uniformly throughout the hospitality industry. For example, an Ontario nighttime roadside survey found that people coming from bars and taverns accounted for only 6% of the total number of drivers on the roads, but 16% of the drivers with BACs over .08%.¹⁸³ In contrast, there was no overrepresentation of impaired drivers coming from restaurants. Moreover, even among bars and taverns, establishments catering to young patrons are most often associated with such problems. Indeed, the authors' discussions with police and liquor inspectors across Canada indicate that most problems arise from a relatively

¹⁷⁵ O. Reg.719/90, s. 12(1)-(4).

¹⁷⁶ *LLA*, *supra* note 149, ss. 47(1) and (1.1), 48 and 36.1.

¹⁷⁷ *Ibid.*, ss. 44(1) and 44.1.

¹⁷⁸ *Ibid.*, s. 6(2)(a) and (d)-(h). Note that in Ontario it is the Registrar of Alcohol and Gaming who is given these powers, not a board.

¹⁷⁹ *Ibid.*, ss. 15, 19(11)-(16) and 20.

¹⁸⁰ *Ibid.*, s. 61(2).

¹⁸¹ *Ibid.*, s. 61(3).

¹⁸² *Ibid.*, s. 61(3.01)(a) and (b).

¹⁸³ E. Single and D. McKenzie, "The Epidemiology of Impaired Driving Stemming from Licensed Establishments" (Paper presented to 18th Annual Alcohol Epidemiology Symposium, Toronto, 1992) [unpublished] at 3. The authors also stated that 36% of the impaired drivers reported doing most of their drinking that evening in a bar or tavern (*ibid.* at 4). See also K. Belton *et al.*, *Rural Alberta Nighttime Roadside Survey, 2001* (Edmonton: Alberta Centre for Injury Control and Research, 2001).

small number of known licensed establishments. Thus, from an enforcement perspective, the major issue is not identifying problem establishments.

Although licensed establishments account for only 21% of total alcohol consumption in Canada,¹⁸⁴ they play a far greater role in drinking among older teenagers and young adults. For example, in a national survey, post-secondary students reported licensed establishments most frequently as the location of their last drinking occasion.¹⁸⁵ Moreover, almost 80% of student drinking in licensed establishments occurred in “bars/discos/pubs/taverns,” as opposed to restaurants.¹⁸⁶ Finally, the students reported that, on average, they consumed 5.1 drinks per occasion when in “bars/discos/pubs/taverns.”¹⁸⁷ This pattern of frequent heavy drinking in licensed establishments greatly increases young people’s risks of traffic death and injury as they attempt to get home in their intoxicated condition.

Research indicates that increasing enforcement of the liquor legislation can reduce both alcohol sales to underage and intoxicated patrons, and impaired driving charges.¹⁸⁸ In a New Orleans study, enhanced enforcement increased compliance with alcohol sales laws from 11% to 40%, with the greatest gains occurring among establishments that were issued a citation.¹⁸⁹ A Michigan study of increased enforcement reported a rise from 17.5% to 54.3% in refusals to serve “pseudo-patrons” feigning intoxication.¹⁹⁰ The authors also reported that the percentage of impaired drivers coming from bars and restaurants from fell 31.7% to 23.3%.¹⁹¹ Other studies have reported that increased enforcement of the liquor legislation, as part of a broader community prevention strategy, is effective in reducing alcohol-related crashes.¹⁹²

¹⁸⁴ Babor, *supra* note 109 at 44.

¹⁸⁵ *Campus Survey 2004*, *supra* note 24 at 42.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.* at 37.

¹⁸⁸ See, for example, J. Grube, “Preventing sales of alcohol to minors: Results from a community trial” (1997) 92 (suppl. 2) *Addiction* S251; R. Scribner and D. Cohen, “The Effect of Enforcement on Merchant Compliance with the Minimum Legal Drinking Age Law” (2001) 31 *Journal of Drug Issues* 857; Grube, *supra* note 96 at 204-05; and Babor, *supra* note 109 at 144-45.

¹⁸⁹ R. Scribner and D. Cohen, *ibid.* at 863.

¹⁹⁰ A. McKnight and F. Streff, “Effect of enforcement upon service of alcohol to intoxicated patrons in bars and restaurants” (1994) 26 *Accid. Anal. and Prev.* 79 at 82.

¹⁹¹ *Ibid.* at 83.

¹⁹² See, for example, W. DeJong and R. Hingson, “Strategies To Reduce Driving Under The Influence of Alcohol” (1998) 19 *Annu. Rev. Public Health* 359; and *Reducing Alcohol*, *supra* note 168.

Similar to the situation with the federal impaired driving legislation 30 years ago, society generally does not view the liquor legislation and its enforcement as being important. The underage and over-service prohibitions are routinely ignored by segments of the hospitality industry. The public does not understand the disproportionately large role that licensed establishments play in alcohol-related crash deaths among older teens and young adults. As long as there are very large numbers of intoxicated youth leaving bars, taverns and similar licensed venues every weekend night, they will continue to be significantly overrepresented in alcohol-related driver, passenger and pedestrian traffic deaths.

MADD Canada believes that far more frequent and rigorous enforcement of the liquor legislation is essential, particularly in venues that cater to young people. As indicated, the existing legislation gives police and licensing officials ample authority, increased enforcement has been shown to reduce illegal sales and impaired driving, and a relatively small number of known establishments generate a disproportionate share of the problems. Moreover, the boards have sweeping administrative authority, the scope of penal responsibility is very broad and the potential penalties are severe. What appears to be lacking is a commitment to rigorously enforcing the existing law, as well as the necessary enforcement, administrative and prosecutorial resources.

(ii) Alcohol-Related Civil Liability

The number of successful alcohol-related civil suits that have been brought against commercial licensed establishments has risen sharply in Canada over the past 30 years. While the current focus is on commercial licensed establishments, similar liability principles apply to universities, municipalities and employers who provide alcohol or host alcohol-related events on their property. Moreover, the scope of alcohol-related liability in Canada is far broader than in the United States, Australia or the United Kingdom. Most of the Canadian cases arise from licensees serving alcohol to intoxicated patrons, who subsequently kill or injure themselves or others in a crash. These often million dollar suits provide licensees with a strong financial incentive to comply with the prohibitions against providing alcohol to underage and intoxicated patrons.¹⁹³

¹⁹³ For a detailed review of alcohol-related liability, see R. Solomon and J. Payne, “Alcohol Liability in Canada and Australia: Sell, Serve and Be Sued” (1996) 4 Tort Law Review 188 [Solomon 1996]; and E. Chamberlain, “Alcohol Provider Liability in Canada and the United Kingdom: Legal and Cultural Influences” (2004) 33 C.L.W.R. 103.

The liability of alcohol providers is governed by the *Civil Code* in Québec¹⁹⁴ and by common law principles of negligence in the rest of Canada. However, the *Civil Code* and common law principles are similar.¹⁹⁵ In addition to the common law, commercial licensed establishments in Ontario, Nova Scotia and the Northwest Territories may be subject to statute-based liability under the liquor legislation.¹⁹⁶ Since the current statute-based provisions are narrower in scope than the common law principles, they are rarely invoked. The common law principles governing the civil liability of alcohol providers are briefly set out below.

Although the term “provider liability” is widely used, it is somewhat misleading. No one has ever been held civilly liable for providing or serving alcohol in a reasonable manner, even if the drinker later suffered or caused injury. Rather, liability is limited to those who have provided alcohol to a person who they knew or ought to have known was already intoxicated. As indicated, such conduct is illegal under the provincial liquor legislation. Thus, providers of alcohol are only exposed to potential civil liability when they have breached the liquor legislation. Some courts have equated the term “intoxicated” with a BAC of .08%, but the successful provider liability suits typically involved drinkers whose BACs were double or more this level. In virtually all of these cases, the drinker was served even though he or she was visibly intoxicated or had already been served a very large amount of alcohol.¹⁹⁷ It is reasonable to assume that the courts will impose liability at a lower BAC threshold if the patron is underage.¹⁹⁸

The Supreme Court of Canada has held that commercial licensed establishments owe a duty of care to their intoxicated patrons and anyone they may endanger, including third-party users of the road.¹⁹⁹ Licensed establishments have been held liable despite having no knowledge of the

¹⁹⁴ *Civil Code of Québec*, Art. 1457 C.C.Q.

¹⁹⁵ Nevertheless, Québec’s no-fault automobile insurance system precludes civil suits from being brought against licensed establishments, drivers or anyone else for injuries arising from a motor vehicle crash. *Automobile Insurance Act*, R.S.Q. c. A-25.

¹⁹⁶ See respectively, *LLA*, *supra* note 149, s. 39; *Liquor Control Act*, R.S.N.S. 1989, c. 260, s. 140; and *Liquor Act*, R.S.N.W.T. 1988, c. L-9, s. 52.

¹⁹⁷ Solomon 1996, *supra* note 193 at 213-20.

¹⁹⁸ Although the courts have not addressed this specific issue, it is consistent with the courts’ expressed concerns with protecting underage and young drinkers. See, for example, *Schmidt v. Sharpe* (1983), 27 C.C.L.T. 1 (Ont. H.C.J.) [*Schmidt*]; *Jacobson v. Nike Canada Ltd.* (1996), 133 D.L.R. (4th) 377 (B.C.S.C.); and *Prevost*, *supra* note 152.

¹⁹⁹ *Jordan House Ltd. v. Menow* (1973), 38 D.L.R. (3d) 105 (S.C.C.); and *Stewart v. Pettie* (1995), 121 D.L.R. (4th) 222 (S.C.C.) [*Stewart*].

patron's susceptibility to alcohol or propensity to act irresponsibly when intoxicated.²⁰⁰ Moreover, they have been successfully sued, even when they did not serve the drinker all or most of the alcohol causing his or her intoxication, but rather simply increased the drinker's level of intoxication.²⁰¹ For example, in *Schmidt v. Sharpe*, a bar was held liable for approximately \$1,500,000 because its staff served three beers to Sharpe, an already intoxicated 18 year old.²⁰² Shortly after leaving the bar, Sharpe caused a crash that rendered Schmidt, his 16-year old passenger, a quadriplegic. Sharpe's BAC at the time of the crash was about double the legal limit for driving. The jury was also critical of the bar for serving Sharpe and Schmidt, who were underage, without once asking for proof of age.

Some of the earlier decisions indicated that over-service alone could give rise to liability, even if the provider was unaware of the patron's intoxication and intention to drive.²⁰³ More recently, the Supreme Court of Canada has narrowed the scope of liability. The Court stated that provider liability requires over-service of alcohol plus some other risk factor, such as obvious signs of intoxication or knowledge that the intoxicated drinker plans to drive.²⁰⁴

Various researchers have documented the traffic safety benefits of alcohol-related liability.²⁰⁵ The American experience with statute-based alcohol liability, commonly referred to as dram shop liability, was summarized in a recent review. The authors stated:

The available studies indicate that dram shop liability laws can significantly reduce single vehicle nighttime crash deaths, alcohol-related traffic crash deaths, and total traffic crash deaths among minors. Further, the research indicates that such laws also reduce alcohol-related traffic crashes, total traffic crashes, homicides, and other unintentional injuries in the general population. Importantly, dram shop liability has been estimated to reduce alcohol-related traffic fatalities among underage drivers by 3% to 4%. The perceived likelihood of being successfully sued under dram shop liability statutes may be important. Thus, two highly publicized successful dram shop liability lawsuits in Texas

²⁰⁰ *Canada Trust v. Porter*, [1980] O.J. No. 252 (C.A.) (QL); summarized in (1980), 2 A.C.W.S. (2d) 428 [*Porter*]. See also *Schmidt*, *supra* note 198.

²⁰¹ *Crocker v. Sundance Northwest Resorts Ltd.*, [1998] 1 S.C.R. 1186; *Hague v. Billings* (1993), 15 C.C.L.T. (2d) 264 (Ont. C.A.); and *Dryden*, *supra* note 151.

²⁰² (1983), 27 C.C.L.T. 1 (Ont. H.C.J.).

²⁰³ See, for example, *Porter*, *supra* note 200.

²⁰⁴ *Stewart*, *supra* note 199.

²⁰⁵ See A. Wagenaar and H. Holder, "Effects of alcoholic beverage server liability on traffic injuries" (1991) 15 *Alcsm Clin. Exp. Res.* 942; Chaloupka, *supra* note 109 at 180-81; and E. Stout *et al.*, "Reducing Harmful Alcohol-Related Behaviors: Effective Regulatory Methods" (2000) *J. Stud. Alcohol* 402 at 410.

were found to be related to decreases of 6.5% and 5.3% in single vehicle crashes.²⁰⁶ (references have been omitted)

The traffic safety benefits of alcohol-related liability have not been assessed in Canada. Nevertheless, the benefits have likely been at least as great, if not greater, than in the United States. First, as indicated, the scope of alcohol-related liability in Canada is far broader than in the United States. Second, unlike the situation in many American states, provincial legislation has not been enacted in Canada limiting common law negligence suits, the intoxicated patron is allowed to recover, and the defences that a licensed establishment can raise are very narrowly defined. Third, Canadian addictions, public health, liquor licensing, and traffic safety organizations, including MADD Canada, have launched extensive public awareness campaigns on the risks of being sued for alcohol-related harm. Fourth, the rapid expansion of alcohol-related liability in Canada triggered the implementation of a broad range of preventive programs by the hospitality and insurance industries, universities, colleges, municipalities, service clubs, sports associations, employers, and others. This is illustrated by the proliferation of server and manager training programs, alternative transportation policies and other strategies that are geared to minimizing the risks of alcohol-related crashes.

MADD Canada endorses government initiatives to increase awareness of alcohol-related liability within the hospitality industry. In order to ensure that there are sufficient assets to cover potential liability, MADD Canada believes that licensed establishments should be required to have compulsory liability insurance. There should be categories of coverage to reflect the range of risks associated with the different types of licensed establishments. The goal is to ensure that, for example, licensed restaurants selling relatively little alcohol are not required to carry as much insurance as large bars and nightclubs. Finally, MADD Canada opposes any legislation that would limit the scope or extent of alcohol-related liability under the common law.²⁰⁷

(iii) Server Training Programs

The expansion of alcohol-related liability in the 1980s led to sharply rising insurance costs, with predictions that liability insurance might soon become effectively unavailable for commercial licensed establishments. In response, commercial hosts sought new ways to reduce their potential liability. One of the main consequences was the introduction of “server training”

²⁰⁶ Grube, *supra* note 96 at 202.

²⁰⁷ See generally, R. Solomon and E. Single, *Civil Liability for the Conduct of the Intoxicated: A Review of the Law and Recommendations for Reform* (Toronto: Ontario Advisory Committee on Liquor Regulation, Ministry of Commercial and Corporate Affairs, 1986).

programs, sometimes referred to as Server Intervention or Responsible Beverage Service Programs.²⁰⁸ There has been a proliferation of these programs in Canada, and their scope, comprehensiveness and intensity vary substantially.²⁰⁹

The better programs teach servers and managers about their responsibilities under the liquor legislation, the penal and licensing consequences of violating the law, and their potential civil liability for serving underage or intoxicated individuals. Participants learn, among other things, how to: verify proof of legal drinking age; develop low-risk serving practices; prevent intoxication; recognize the signs of impairment; intervene in a non-confrontational manner; and safely manage intoxicated patrons. There is also an emphasis on developing comprehensive house policies and ensuring that they are uniformly followed.²¹⁰

The evaluations of server training programs have been positive in terms of participants' knowledge and attitudes, but less consistent in other regards. For example, some programs have been found to increase interventions with visibly intoxicated patrons, decrease irresponsible practices, such as pushing drinks, and reduce the number of patrons with high BACs.²¹¹ A 1994 Oregon study found that a statewide one-day mandatory server training program resulted in a 23% decrease in single-vehicle nighttime injury crashes.²¹² However, studies of other programs failed to demonstrate similar reductions in serving apparently intoxicated patrons, the number of high-BAC patrons or car crashes.²¹³ A 2006 review concluded that there was no reliable evidence that server training reduces fatal or other alcohol-related injuries.²¹⁴

²⁰⁸ See E. Single and R. Solomon, "Chapter 9: Recent Developments in Server Training in Canada and Elsewhere" in *Alcohol Regulation: Legal and Public Health Issues* (Toronto: Liquor Licence Board of Ontario, 1988).

²⁰⁹ See, for example, J. Reynolds, *The Responsible Service of Alcoholic Beverages: A Guide for the Hospitality Industry* (Toronto: Canadian Restaurant and Foodservices Association, 1985); R. Simpson *et al.*, *A Guide to the Responsible Service of Alcohol* (Toronto: Addiction Research Foundation, 1986) [R. Simpson]; H. Berberoglu, *Serving Alcohol Beverages Responsibly* (Toronto: Ryerson Polytechnical Institute, 1986); Chan Durrant Communications Ltd., *It's Good Business: A Guide to Responsible Beverage Service* (Calgary: Health and Welfare Canada, 1990); and Hospitality Industry Foundation of Ontario, *Responsible Beverage Service Training* (Ottawa: DVS Communications, 1994).

²¹⁰ The most comprehensive Canadian program was that developed by the Addiction Research Foundation, which included three separate manuals and workshops – one each for servers, managers and owners, and trainers. R. Simpson, *ibid.*

²¹¹ Babor, *supra* note 109 at 142-43.

²¹² H. Holder and A. Wagenaar, "Mandated server training and reduced alcohol-involved traffic crashes: A time series analysis of the Oregon experience" (1994) 26 *Accid. Anal. and Prev.* 89.

²¹³ Grube, *supra* note 96 at 203.

²¹⁴ K. Ker and P. Chinnock, "Interventions in the alcohol server setting for preventing injuries" 2006(2) *The*

These mixed results, no doubt, reflect variations in the quality of the programs. In the authors' experience, there has been a tendency to exaggerate the relative importance of server training, while largely ignoring management or house policies. Server training is simply a means to an end. In Canada, the legal issue is not whether the servers are trained, but rather whether they have served underage or intoxicated patrons, or engaged in other irresponsible practices. We would concur with the following conclusion of a recent review: "there is sufficient evidence that intensive, high-quality, face-to-face server training, when accompanied by strong and active management support, is effective in reducing the level of intoxication in patrons."²¹⁵

MADD Canada believes that the provinces should introduce a tiered program of mandatory training for all licensed establishments. The duration and intensity of the program should vary by category of establishment, with bars, taverns and similar venues requiring more training than licensed restaurants. An essential element of these programs is management training and the development and enforcement of house policies. There should also be a requirement for periodic retraining and certification.

(f) Alcohol Advertising and Marketing

Alcohol advertising and marketing are highly complicated issues, which cannot be adequately explored here.²¹⁶ The purpose of this subsection is to highlight several key issues of particular concern with respect to youth. The main concerns at present are that there is little or no effective regulation of alcohol advertising in Canada, and that a great deal of such advertising is geared toward youth.

Although it is not clear that alcohol advertising has a significant impact on the drinking habits of the general population, there is strong evidence that it has an effect on young people. Youth are regularly exposed to a tremendous amount of alcohol advertising on television and

Cochrane Database of Systematic Reviews, online: <<http://www.mrw.interscience.wiley.com/cochrane/cdsrev/articles/CD005244/frame.html>>.

²¹⁵ Shults, *supra* note 109 at 80.

²¹⁶ Fortunately, there has been a recent review of the regulation of alcohol advertising in Canada, and the reader is directed there for a more comprehensive analysis. See R. Fortin and B. Rempel, *The Effectiveness of Regulating Alcohol Advertising: Policies and Public Health* (Toronto: The Association to Reduce Alcohol Promotion in Ontario (ARAPO) and The Ontario Public Health Association, 2005) [Fortin]. See also J. Novak, *Alcohol Promotion And The Marketing Industry: Trends, Tactics and Public Health* (Toronto: ARAPO, 2004).

radio, and through other means.²¹⁷ As intended, this barrage of advertising has a cumulative effect on young people's attitudes toward alcohol consumption and its potential benefits.²¹⁸ American studies show that youth who are exposed to more alcohol advertising are more likely to see the typical drinker in a positive light (*e.g.* fun-loving, happy, good-looking, etc.), which increases their plans to drink alcohol in the future. As a result of advertising, youth are more likely to view alcohol as a good way to relax, socialize and be accepted among peers. For example, a New Zealand study of 10-17 year olds found that those with the highest rates of recalling alcohol advertisements also had the highest rates of perceived frequency of consumption and drunkenness among their friends. Thus, over time, alcohol advertising has the potential to normalize heavy consumption.²¹⁹

Alcohol advertising seems particularly designed for young males, as it often promotes images of masculinity, sports and sexuality. Indeed, a sample of American advertising from the early 1990s found that alcohol ads were broadcast eight times more often during professional sports broadcasts than during regular fictional programming.²²⁰ In addition to ads that are broadcast on radio or television, alcohol is often advertised in conjunction with sporting events and venues (*e.g.*, Molson Hockey Night in Canada, and until recently Labatt Blue Jays Baseball), and with rock music tours (*e.g.*, Molson Canadian Rocks). The brand logo is often predominant in promotional materials for such events, and is absorbed by attendants and viewers of all ages. Given that young males have higher rates of alcohol consumption and binge drinking, and are more likely to drink beer, much of this advertising can be seen as geared to "recruiting" a new generation of drinkers. The brand of beer does not seem to be as important as persuading young people that alcohol consumption is part of an exciting, attractive lifestyle.

In response to these concerns, various legislative proposals have been made, ranging from total or partial bans on alcohol advertising to the enactment of more effective regulatory con-

²¹⁷ For example, there were nearly 700,000 alcohol advertisements on Canadian television alone in 2003. Canadian youth were also exposed to substantial alcohol advertising on American television stations. It is worth noting that between 2001 and 2003, American teens were exposed to more beer and liquor advertising through television, radio and magazines than Americans of legal drinking age. Fortin, *ibid.* at 4.

²¹⁸ See generally, J. Grube and L. Wallack, "Television beer advertising and drinking knowledge beliefs and intentions among school children" (1994) 84 *Am. J. Public Health* 254; CASA, *supra* note 110 at 26-32; Babor, *supra* note 109 at 174-80; G. Hastings *et al.*, "Alcohol Marketing and Young People's Drinking: A Review of the Research" (2005) 26 *Journal of Public Health Policy* 296; and Fortin, *ibid.* at 4-7.

²¹⁹ Babor, *ibid.* at 174-76.

²²⁰ *Ibid.* at 177-78.

trols.²²¹ However, in Canada, any legislative restrictions on alcohol advertising would have to be compatible with the *Charter*. Section 2(b) of the *Charter* protects “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.” This is a broad protection, and virtually any restriction on advertising will be found to violate section 2(b).²²² Nevertheless, a law infringing the freedom of expression will be upheld under section 1 of the *Charter* if it is a “reasonable limit ... prescribed by law” that “can be demonstrably justified in a free and democratic society.” In order to satisfy section 1, the government must show that the impugned law is sufficiently clear, is aimed at a pressing and substantial legislative objective, and that the restriction is proportional to that objective.²²³ As the cases on impaired driving legislation illustrate,²²⁴ the Supreme Court of Canada readily accepts that laws promoting safe alcohol use serve a pressing and substantial legislative objective.

The requirements of clarity and proportionality are likely to be more difficult to satisfy. In terms of clarity, the advertising restrictions cannot be worded so vaguely that it is impossible for advertisers to know what types of advertising will comply. In addition, the regulatory scheme cannot leave too much discretion to the person or agency that makes the relevant decisions.²²⁵ Thus, any limits on alcohol advertising should be specific, and included in the legislation or regulations. Limiting alcohol advertising through guidelines or other internal government documents creates problems in satisfying the clarity requirement, because these documents are often difficult to access and can be changed by the relevant agency without public or political consultation.

The Supreme Court of Canada has held that the proportionality test requires the government to establish that an impugned law infringes the *Charter* right in question “as little as is reason-

²²¹ See, for example, B. Hovius and R. Solomon, *Alcohol Advertising: A Legal Primer*, 2d ed. (Toronto: The Association to Reduce Alcohol Promotion in Ontario, 2001) [Hovius]; Babor, *ibid.* at 180-82; and Fortin, *supra* note 216 at 19-22.

²²² For example, this includes mandatory warning labels. See *RJR-MacDonald v. Canada (Attorney General)* (1997), 127 D.L.R. (4th) 1, where a majority of the Supreme Court of Canada found that mandatory warning labels on tobacco products violated freedom of expression.

²²³ *R. v. Oakes*, [1986] 1 S.C.R. 103 at 138-39 [Oakes].

²²⁴ See *R. v. Therens*, [1985] 1 S.C.R. 613; *R. v. Hufsky*, [1988] 1 S.C.R. 621; and *R. v. Ladouceur*, [1990] 1 S.C.R. 1257.

²²⁵ For example, in *Re Ontario Film and Video Appreciation Society* (1984), 45 O.R. (2d) 80, the Ontario Court of Appeal found that the statute authorizing film censorship failed the “prescribed by law” requirement, because the Censor Board had an unfettered discretion to ban or cut films intended for public exhibition.

ably possible.”²²⁶ In *RJR-MacDonald v. Canada (Attorney General)*,²²⁷ a majority of the Supreme Court found that the government had not shown that a total ban on tobacco advertising was justified. The majority were not convinced that more limited restrictions, such as bans on lifestyle advertising and advertising aimed at youth, would be less effective. For this reason, we believe that a total ban on alcohol advertising would likely be found to be unconstitutional.

Currently, alcohol labelling and advertising is governed by a patchwork of federal and provincial laws.²²⁸ In addition to some limited power to prohibit any deceptive advertising, the federal government has broad authority over broadcast advertising, which includes the Internet. Of particular importance is the Canadian Radio and Television Commission’s (CRTC) *Code for Broadcast Advertising of Alcoholic Beverages*, which prohibits television or radio stations from airing advertisements that violate the *Code*. Among other things, the *Code* prohibits advertising that: attempts to influence non-drinkers of any age to drink or purchase alcohol; is directed at persons under the legal drinking age or associates alcohol with youth or youth symbols; portrays the product in the context of, or in relation to, an activity attractive primarily to those underage; or implies that social acceptance, social status, personal success, or business or athletic achievement may be acquired, enhanced or reinforced through alcohol consumption.²²⁹ In 1997, the CRTC removed the requirement that it pre-approve all alcohol advertisements. Broadcasters still require alcohol advertisements to be pre-approved, but this advisory service is now provided on a fee-for-service basis by private sector agencies, such as Advertising Standards Canada.²³⁰

The provinces also have broad power to control alcohol advertising and marketing, as part of their constitutional authority over trades and industries within their borders.²³¹ Unlike the federal power, the provincial power is not limited to broadcast advertising and may encompass newspapers, signs, billboards, and any other means of communicating with the public.²³² For example, the Ontario *Liquor Licence Act* prohibits all alcohol advertising unless it is specifically authorized by the regulations.²³³ In turn, the regulations permit advertising, but only if it

²²⁶ *R. v. Edwards Books and Art*, [1986] 2 S.C.R. 713 at 772.

²²⁷ (1997), 127 D.L.R. (4th) 1.

²²⁸ For a detailed discussion of the law, see Hovius, *supra* note 221.

²²⁹ *Ibid.* at 20-21.

²³⁰ *Ibid.* at 18.

²³¹ *Ibid.*

²³² *Ibid.* at 25.

²³³ *Supra* note 149, s. 38(1).

complies with the provincial guidelines.²³⁴ For the most part, the Ontario guidelines are similar to the federal CRTC guidelines.²³⁵ No conflict arises between the provincial and federal advertising regulations, because the federal legislation specifically prohibits broadcasters from airing any alcohol advertisements that would violate the provincial law.²³⁶

While there are both federal and provincial restrictions on alcohol advertising, they are interpreted and applied in an industry-friendly manner.²³⁷ Indeed, a 1989 Health and Welfare Canada study found that almost half of the alcohol advertisements on Canadian television violated the previous version of the federal advertising *Code*.²³⁸ As noted in a recent review of the Canadian law:

The authors find it difficult to reconcile the federal and provincial laws with current commercials and promotions, and existing practices within the hospitality industry. Despite significant maximum penalties for violating these laws, in practice they are almost toothless and largely ineffective. The legal rules are often vague and dependent on subjective interpretation or on the exercise of a broad discretion by the regulators. Those responsible for applying the rules interpret them leniently and, in some instances, permit practices that appear to be clearly unlawful. The regulatory scheme is largely invisible to the public and an interested layperson has difficulty even finding the rules and policies. There is no convenient or effective means under either the federal or provincial regime whereby one can file a complaint about an advertisement. One cannot help suspecting that the exceedingly complex legislative and regulatory scheme is little more than a façade to create the impression that alcohol advertising is strictly regulated.²³⁹

The federal and provincial controls on alcohol advertising are inadequate and are poorly enforced. The current situation appears to reflect the financial interests of the alcohol industry and broadcasters, and not the public interest in health and safety. While fundamental changes to

²³⁴ O. Reg. 719/90, s. 87(2); and O. Reg. 720/90, s. 5(2).

²³⁵ Alcohol and Gaming Commission of Ontario (AGCO), *Liquor Advertising Guidelines: Liquor Sales Licensees and Manufacturers* (Toronto: AGCO, 2003).

²³⁶ Hovius, *supra* note 221 at 23.

²³⁷ While complaints can be made to both the Alcohol Standards Council [ASC] and the Alcohol and Gaming Commission of Ontario [AGCO], the process is cumbersome and frustrating. Complaints are rarely made, in part because the public is largely unaware of both the advertising law and the complaint process. The ASC received only 230 complaints about the nearly 700,000 alcohol advertisements that were run in 2003, and only 24 of the complaints were upheld. Only 36 complaints were received by the AGCO between 2002 and September 2005, and none was seen as warranting a suspension or fine. Fortin, *supra* note 216 at 14.

²³⁸ Erin Research, *Alcohol and Advertising on Canadian Television: Content, Viewership, and Compliance with Regulations* (Ottawa: Health and Welfare Canada, 1989) at 3.

²³⁹ Hovius, *supra* note 221 at 34-35.

the law and its enforcement are warranted, there appears to be little political interest in such reforms. Even if the Canadian law were enforced more strictly, most Canadians are exposed to American television and radio stations, which are not subject to the Canadian guidelines. Moreover, there is no effective regulation of alcohol advertising and promotion on the Internet, which plays a significant role in the lives of young people. MADD Canada believes that, at a minimum, the current regulations governing lifestyle advertising aimed at youth need to be appropriately interpreted and enforced.

(g) Summary

The provinces' broad regulatory powers enable them to significantly reduce both underage and binge drinking among youth, and the alcohol-related crash deaths that these consumption patterns generate. As outlined in this section, the health and traffic safety benefits of raising the legal drinking age, limiting alcohol availability, increasing liquor licence enforcement, and other regulatory measures are well established. However, the most effective measures, such as introducing a legal drinking age of 21 or sharply raising alcohol prices, are unlikely to garner public or political support.

MADD Canada does not believe that any one measure alone is sufficient. Rather, the provinces will have to make choices in developing a comprehensive regulatory framework that appropriately protects youth. Moreover, a reform that works in one jurisdiction may not work in another. For example, there is far greater room to raise alcohol taxes in the United States than in Canada, where taxes and markups are already relatively high. In formulating the recommendations in this section, MADD Canada was cognizant of the need to give the provinces some leeway.

Nevertheless, MADD Canada would urge the provinces to make far greater use of their regulatory authority in an effort to reduce underage and binge drinking among youth. In the absence of fundamental changes in these consumption patterns, young people will continue to dominate alcohol-related crash deaths. Among other measures, MADD Canada recommends that the provinces consider: raising the legal drinking age to 19; indexing alcohol prices to the rate of inflation; establishing/maintaining government monopolies over off-premise alcohol sales and delivery services; increasing public awareness of alcohol-related liability; and enforcing the existing federal and provincial advertising legislation. Of particular concern is the need to

dramatically increase the enforcement of the current liquor licence legislation, especially in bars, taverns, and other venues that cater to youth.

SECTION III: THE REGULATION OF DRIVER LICENCES

(a) Introduction

As described at the outset of the paper, the provinces have constitutional authority to control the criteria for obtaining a licence, to define the restrictions on various classes of licences, and to determine when licences should be suspended or revoked. This broad authority over licensing gives the provinces ample authority to address several of the major risk factors identified in the first section of the report. This section focuses on three main recommendations: a minimum driving age of 16, a comprehensive graduated licensing program for all beginning drivers,²⁴⁰ and a zero BAC restriction for all drivers under the age of 21.

(b) Minimum Driving Age

In North America, the conventional minimum age for driver licensing has been 16. Although it is not entirely clear why this age was initially chosen, it appears to have coincided with child labour laws and the needs of rural and farming families during the era when drivers' licences were first introduced.²⁴¹ In rural jurisdictions, the minimum driving age was often younger than 16.²⁴² In contrast, most European countries, which generally have more concentrated urban populations and better public transportation, have a minimum driving age of 17 or 18.²⁴³

Unfortunately, the young minimum driving age in North America is associated with higher crash rates. This apparently occurs for several reasons. As indicated earlier, young drivers are less mature than older drivers, and are more likely to take risks and respond inappropriately to

²⁴⁰ Studies indicate that the elevated crash rates of beginning drivers are caused by both age and inexperience, such that older beginning drivers also benefit from graduated licensing. See H. Simpson and D. Mayhew, *Reducing the Risks for New Drivers: A Graduated Licensing System for British Columbia* (Victoria: Ministry of the Attorney General, Motor Vehicle Branch, 1992) at 9-11 [*Reducing the Risks*].

²⁴¹ D. Mayhew, M. Fields and H. Simpson, *Why 16?* (Arlington, VA: IIHS, 2000) at 6-10 [*Why 16?*].

²⁴² *Ibid.* at 14. For example, Colorado, New Mexico, North and South Dakota, and Texas originally had licensing ages of 14 or 15. New Zealand, a primarily rural country, has a minimum driving age of 15. K. Stewart, *On DWI Laws in Other Countries* (Washington, D.C.: NHTSA, 2000) at Table 9 [*DWI Laws*]. However, New Zealand's comprehensive graduated licensing program effectively prevents individuals from driving unsupervised until the age of 17.

²⁴³ *Why 16?*, *supra* note 241 at 18. Indeed, fewer than 10% of eligible 16-17 year olds took advantage of France's "apprentissage" system (which allows them to obtain a licence if they participate in a specified instructional program), suggesting that most youth feel no urgent need to drive. All of the Australian states also have a minimum driving age of 18. *DWI Laws*, *ibid.* at Table 9.

dangerous situations.²⁴⁴ They are more likely to speed, follow too closely, allow less time to merge with traffic, cross traffic lanes, pass other vehicles, and overestimate their driving abilities.²⁴⁵ A 2004 survey of Canadian drivers found that 16-19 year olds had the highest self-reported rates of speeding and occasionally taking a risk “just for the fun of it.”²⁴⁶ These findings are consistent with the American research.²⁴⁷ Young drivers’ immaturity leads to both deliberate risk taking, and a failure to recognize risks when they arise. Their lack of driving skills and experience increases the likelihood that these high-risk situations will result in crashes.²⁴⁸

Furthermore, the lower minimum driving age may encourage even younger teenagers to drive unlicensed. An American study examined fatal crash data for 33 states that allow youth to obtain a learner’s permit prior to the age of 16.²⁴⁹ It found that 57% of fatal crashes involving 15-year old drivers occurred among those who were unlicensed, and 16% occurred among those driving without supervision in violation of their learner’s permit.²⁵⁰ In addition, these 15-year old illegal drivers were more likely to be found culpable for the crash, and more likely to be involved in a single-vehicle crash than drivers of the same age who were either fully licensed or properly supervised.²⁵¹ This study suggests that delaying licensure reduces both illegal driving and crashes among younger teenagers,²⁵² and thereby lends support to enacting higher minimum licensing ages.²⁵³

²⁴⁴ *Supra* notes 47-49.

²⁴⁵ *Supra* note 49.

²⁴⁶ *Supra* note 50.

²⁴⁷ For example, A. Williams and S. Ferguson report that young people receive more speeding tickets than older drivers, and that a higher percentage of their crashes involve excessive speed. “Rationale for graduated licensing and the risks it should address” (2002) 8 (Suppl II) Injury Prevention ii9 at ii9 [Rationale].

²⁴⁸ *Ibid.*; and *supra* notes 48, 49 and 66.

²⁴⁹ A. Williams *et al.*, “Analysis of the Fatal Crash Involvements of 15-Year-Old Drivers” (1997) J. of Safety Research 49.

²⁵⁰ *Ibid.* at Table 1.

²⁵¹ *Ibid.* at 51-52 and Table 2.

²⁵² This is consistent with the Australian experience. See H. Ross, *Confronting Drunk Driving: Social Policy for Saving Lives* (New Haven, CT: Yale University Press, 1992) at 131.

²⁵³ A similar conclusion was reached in another American study comparing five states with differing ages of full licensure. Two of the states were Delaware, where full licensure was granted at 16, and New Jersey, where full licensure was not granted until 17. The study found that Delaware teens had the highest reported rate of driving on public roads before obtaining a valid licence (58%), while New Jersey teens had the lowest (35%). S. Ferguson *et al.*, “Differences in Young Driver Crash Involvement in States with Varying Licensure Practices” (1996) 28 *Accid. Anal. and Prev.* 171 at 172 and 174.

Raising the minimum driving age to 18 across Canada would reduce crash deaths and injuries among teenagers in several ways. Obviously, it would prevent 16-17 year olds from driving lawfully, thereby greatly reducing their likelihood of driving. It would also likely discourage unlicensed driving among very young beginners. Finally, it would ensure that lawful beginners were two years older and more mature than current beginners. However, due to various factors, such as Canada's limited public transportation systems and the role of driving in the lifestyle of young Canadians, increasing the minimum driving age to 18 is most unlikely to garner public or political support.

Given the higher crash rates among younger drivers, 16 should be the minimum age at which individuals are issued beginner permits. There is no justification for offering a "discount" for youth enrolled in driver education because, as will be discussed, such programs have limited traffic safety benefits.²⁵⁴ Nevertheless, given Canada's rural character, a limited exception may be warranted for young people operating machinery on the family farm and adjacent roadways. Such legislation is not uncommon. For example, while Ontario's minimum licensing age is 16, the *Highway Traffic Act* allows those under this age to drive farm machinery directly across a highway.²⁵⁵

The current rules governing the provincial driving ages are set out in Figure 13. As can be seen, our recommendation would require only modest changes in current practices. There are no Canadian jurisdictions that allow a driver to become fully licensed before age 16, although some will issue a learner's permit to younger drivers. These jurisdictions would need to raise the age for obtaining a learner's permit. Others would need to remove their "discount" for participating in driver education.

²⁵⁴ See *infra* notes 324-33 on the lack of effectiveness of such programs.

²⁵⁵ *Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 37(3) [HTA].

Figure 13: The Minimum Driver Licensing Ages Across Canada

Prov/Terr	Min. Age	Exceptions
AB	14	
NWT, NU & YK	15	
SASK	16	15 if the driver is enrolled in an approved driver education program.
PEI	16	15½ if the driver is enrolled in an approved driver education program.
MB	16	15½ if the driver is enrolled in a high school driver education course and has completed at least 8 hours of instruction.
BC, NB, NFLD, NS, ON, & PQ	16	

Source: D. Mayhew, H. Simpson and D. Singhal, *Best Practices for Graduated Driver Licensing in Canada* (Ottawa: TIRF, 2005) at 10.

Fortunately, while Canadian jurisdictions are unlikely to raise the minimum driving age above 16, benefits similar to a higher minimum driving age can be achieved by enacting a comprehensive graduated licensing program (GLP). While GLPs can be used to establish/maintain a minimum driving age of 16, their various driving restrictions often delay full licensure until the age of 18. An American study of crash rates between 1993 and 2003 found that the licensure rate and per capita crash rate of 16 year olds decreased as more states introduced key graduated licensing measures.²⁵⁶ Moreover, there was no evidence that the delay in licensure simply shifted the crash problem to an older age group.²⁵⁷ Similar results can be observed in Canada. In 1997, 15-19 year olds had the highest per capita rate of motor vehicle deaths of any age group (nearly 20 per 100,000).²⁵⁸ However, by 2004, when many Canadian jurisdictions had enacted at least some components of a graduated licensing program, the per capita death rate of 15-19 year olds had fallen to just over 14 per 100,000.²⁵⁹ Thus, by delaying

²⁵⁶ A. Williams, S. Ferguson and J. Wells, "Sixteen-Year-Old Drivers in Fatal Crashes, United States, 2003" (2005) 6 *Traffic Inj. Prev.* 202 at Table I.

²⁵⁷ *Ibid.* at 205.

²⁵⁸ *Youth and Road Crashes*, *supra* note 57 at 6.

²⁵⁹ See *supra* note 56. Granted, it is more difficult to determine the effects of GLPs on Canada's youngest drivers, because the rates of per capita motor vehicle death are reported in five-year age groupings.

unrestricted driving, graduated licensing appears to have had substantial benefits in terms of reduced crash deaths. Moreover, such programs are far more likely to garner public support than raising the minimum driving age.

(c) Graduated Licensing Programs

A comprehensive GLP is the cornerstone of any policy aimed at reducing crash risks among youth. Such programs were introduced in numerous jurisdictions in the mid-1990s, and remain a popular means of addressing the inexperience and risky behaviour of young and beginning drivers.²⁶⁰ Currently, 12 Canadian jurisdictions²⁶¹ and at least 46 American states have enacted at least one element of a GLP.²⁶² Typically, GLPs include some combination of mandatory supervised driving and restrictions in terms of passengers, nighttime driving, high-speed roads, and alcohol consumption.

Research from Ontario,²⁶³ Nova Scotia,²⁶⁴ Québec,²⁶⁵ the United States,²⁶⁶ and New Zealand²⁶⁷ has consistently shown that GLPs are associated with significant reductions in crash deaths and

²⁶⁰ See A. Williams, “Next Steps for Graduated Licensing” (2005) 6 *Traffic Inj. Prev.* 199 at 199. GLPs were introduced in Maryland and California during the 1980s, and more rigorous programs were subsequently introduced in, *inter alia*, New Zealand (1987), Ontario (1994), Nova Scotia (1994), Florida (1996), Kentucky (1996), and Michigan (1997). D. Mayhew *et al.*, “Specific and Long-Term Effects of Nova Scotia’s Graduated Licensing Program” (2003) 4 *Traffic Inj. Prev.* 91 at 91 [Mayhew 2003].

²⁶¹ *Rating the Provinces*, *supra* note 73; and L. Crosby *et al.*, *Rating the Provinces and Territories: The 2005 Progress Report* (Mississauga: MADD Canada, 2005) [*Progress Report*]. Nunavut, the only Canadian jurisdiction without a GLP, apparently is considering the introduction of such a program. D. Mayhew, H. Simpson and D. Singhal, *Best Practices for Graduated Driver Licensing in Canada* (Ottawa: TIRF, 2005) at 21 [*Best Practices*].

²⁶² A. Williams, “The Fall and Rise of Graduated Licensing in North America” (2003) *Transportation Research Circular #E-C072* (Jan. 2005) 143 at 143. Forty-one North American jurisdictions had the author’s recommended three stages.

²⁶³ P. Boase and L. Tasca, *Graduated Licensing System Evaluation, Interim Report ’98* (Toronto: Ministry of Transportation of Ontario, 1998) [Boase].

A recent study suggested that Ontario’s GLP was not responsible for the reported reductions in youth road fatalities, considering the downward trend in such deaths during the 1980s and early 1990s. C. Carpenter, “Did Ontario’s Zero Tolerance & Graduated Licensing Law Reduce Youth Drunk Driving?” (2006) 25 *J. Policy Analysis and Management* 183. However, the outcome measures used in the study were self-reported drinking and any driving after drinking. Neither measure directly addresses crash rates, and thus the traffic safety benefits of GLPs or zero tolerance laws. Even if teenagers admitted to driving after drinking, they may well have consumed less alcohol than they would have consumed prior to the introduction of the GLP (*i.e.* the average BAC of those driving after drinking may be lower). Given the weight of contrary evidence and the significant declines in the per capita rates of motor vehicle deaths among of 15-19 year olds between 1997 and 2004, Carpenter’s conclusions should be treated with caution.

injuries among affected drivers.²⁶⁸ However, because most jurisdictions introduced a package of GLP measures, there is less research on the safety benefits of each individual component of the program. Nevertheless, the following analysis outlines the measures that are likely to have the most significant traffic safety benefits.²⁶⁹

GLPs allow new drivers to gain on-the-road experience in low-risk circumstances, while gradually introducing them to more challenging situations.²⁷⁰ An ideal GLP includes three

²⁶⁴ A preliminary study reported a 37% reduction in the total number of collisions among 16-year old drivers during the first three years of Nova Scotia's GLP. This reduction was not limited to young drivers, as the collision rate among new drivers aged 25 and older dropped by 42.7%. D. Mayhew, H. Simpson and M. des Groseilliers, *Impact of the Graduated Driver Licensing Program in Nova Scotia* (Ottawa: TIRF, 1999).

A more recent Nova Scotia study compared the crash rates of drivers licensed immediately prior to the introduction of the GLP and those licensed under the GLP. It found that the collision rates for GLP drivers was not only 50% lower during the first six months of licensure when they were subject to significant restrictions, but also 10% lower during the first two years of licensure when the majority of these restrictions were lifted. Mayhew 2003, *supra* note 260 at 92-94. See also D. Mayhew *et al.*, *Specific and Long-Term Effects of Nova Scotia's Graduated Licensing Program* (Arlington, VA: IIHS, 2002).

²⁶⁵ See J. Bouchard *et al.*, "The Québec Graduated Licensing System for Novice Drivers: A Two-Year Evaluation of the 1997 Reform" in H. Laurell and F. Schlyter eds., CD-ROM: *Proceedings of the 15th International Conference on Alcohol, Drugs and Traffic Safety* (Stockholm: ICADTS, 2000); R. Simard *et al.*, "The New Graduated Licensing System in Québec: Impact on the Number of New Drivers and on Nighttime Single-Vehicle Crashes" in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002) [Simard].

²⁶⁶ See, for example, S. Bloch, H-C. Shin and S. Labin, "Does Graduated Driver Licensing Reduce Drinking and Driving?: An Examination of California's Teen Driving Restrictions" in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

²⁶⁷ See, for example, J. Langley, A. Wagenaar and D. Begg, "An Evaluation of the New Zealand Graduated Driver Licensing System" (1996) 28 *Accid. Anal. and Prev.* 139; A. Reeder *et al.*, "An evaluation of the general effect of the New Zealand graduated driver licensing system on motorcycle traffic crash hospitalisations" (1999) 31 *Accid. Anal. and Prev.* 651 [Reeder].

²⁶⁸ For a recent review of the literature, see T. Senserrick and M. Whelan, *Graduated Driver Licensing: Effectiveness of Systems and Individual Components* (Melbourne: Monash University Accident Research Centre, 2003) [Senserrick].

²⁶⁹ For a recent review of GLPs, see D. Mayhew *et al.*, *Reducing the Crash Risk for Young Drivers* (Washington, D.C.: AAA Foundation for Traffic Safety, 2006) [Mayhew 2006]. Unfortunately, the authors focus exclusively on 16-17 year olds, and provide virtually no discussion of alcohol or drug impairment. However, the study does contain a detailed discussion of the other elements of comprehensive GLPs.

²⁷⁰ IIHS and TIRF, *Graduated Licensing: A Blueprint for North America* (Arlington, VA: IIHS, 2002) [Blueprint].

A somewhat modified program should be introduced for novice motorcycle drivers. See Reeder, *supra* note 267; and D. Mayhew and H. Simpson, *Graduated licensing for motorcyclists* (Ottawa:

stages: an initial period during which the new driver must be supervised at all times by a licensed adult and is subject to stringent conditions; an intermediate stage during which the driver can drive unsupervised in some situations, but must be supervised in more challenging situations; and a period of full licensure, subject to probationary terms and a zero BAC restriction.

(i) Initial Stage

Those applying to the initial stage should be required to pass the conventional traffic rules and road signs test, and establish their fitness to drive in terms of eyesight and other medical criteria. As indicated above, entry to the initial stage should not occur before the age of 16. Furthermore, because the elevated crash risks of beginning drivers are related to their inexperience²⁷¹ and not just their age,²⁷² the GLP should apply to beginning drivers of all ages. This is especially important in Canada, where many new drivers are not young.²⁷³ Studies indicate that the traffic safety benefits of GLPs extend to older beginning drivers. Indeed, New Zealand, whose GLP initially applied only to drivers under 25, has extended its program to all new drivers for this reason.²⁷⁴

During the initial stage, new drivers should be supervised at all times by a front seat passenger, who is at least 21, and has held a full licence for at least two years. The adult supervisor assists in the learning process by monitoring and correcting the driver's actions. While the requirement of supervision by a licensed driver has been a feature of a learner's permit for some time, the period was typically short, and the licensed driver may well have been as young as 16.²⁷⁵ This could result in beginning drivers being supervised by newly-licensed peers. It is questionable whether such supervisors would provide suitable training for beginning drivers. As a result, we would recommend that GLP supervisors be at least 21 years of age, and have held

TIRF, 2001).

²⁷¹ See Groeger, *supra* note 47.

²⁷² For example, 30-year old beginners have a 41% higher collision rate than 30-year olds with five years driving experience. Similarly, 20-year old beginners have a 28% higher collision rate than 20-year olds with five years of driving experience. See *Reducing the Risks*, *supra* note 240 at 6. Presumably, this latter figure was drawn from jurisdictions in which the minimum driving age is 15 or younger.

²⁷³ See *New to the Road*, *supra* note 62 at 103-112.

²⁷⁴ See *Best Practices*, *supra* note 261 at 46.

²⁷⁵ Rationale, *supra* note 247 at ii10.

full driving privileges for at least two years. Further, as discussed below, the minimum duration of the initial period of supervised driving should be 12 months.

Because the purpose of this stage is to allow the new driver to gain experience in low-risk situations, several other restrictions should apply, including a restriction on late-night driving, teenage passengers, high-speed roads, and alcohol or drug consumption. Figure 14 illustrates the length, and nighttime and passenger restrictions in stage 1 of the Canadian GLPs.

Figure 14: Current Feature in Stage 1 of the Canadian GLPs*

Prov/Terr	Min. Duration	Night Restriction	Passenger Restriction
AB	12 months	12 a.m.-5 a.m.	No. of belts
BC	12 months (9 with driver's ed.)	12 a.m.-5 a.m.	Supervisor + 1 passenger
MB	9 months	None	Supervisor in front No. of belts in back
NB	12 months (4 with driver's ed.)	None	Supervisor only
NFLD	12 months (8 with driver's ed.)	12 a.m.-5 a.m.	Supervisor only
NS	6 months (3 with driver's ed.)	None	Supervisor only
NWT	12 months	11 p.m.-6 a.m.	Supervisor only
ON	12 months (8 with driver's ed.)	12 a.m.-5 a.m.	Supervisor in front No. of belts in back
PEI	6 months	None	Supervisor + family members
PQ	12 months (8 with driver's ed.)	None	None
SASK	9 months	None	No. of belts (day) Family only (12 a.m.-5 a.m.)
YK	6 months	12 a.m.-5 a.m.	Supervisor + 1 passenger

* Nunavut does not have a graduated licensing program.

Source: D. Mayhew, H. Simpson and D. Singhal, *Best Practices for Graduated Driver Licensing in Canada* (Ottawa: TIRF, 2005) at 10-11.

The restriction on late-night driving is aimed at ensuring that beginning drivers do not have to cope with the added visibility and judgment problems posed by night driving,²⁷⁶ or with the presence of fatigued, dangerous or impaired drivers, who tend to be more prevalent at night.²⁷⁷ It

²⁷⁶ The difficulties associated with nighttime driving are one of the reasons that fatal crash rates among youth are significantly higher at night than during the day. For a review of the relevant studies, see Senserrick, *supra* note 268 at 43.

²⁷⁷ See A. McKnight and R. Peck, "Graduated driver licensing: what works?" (2002) 8 (Suppl II) Injury Prevention ii32 at ii34 [McKnight].

In an 18-month study of impaired driving charges in Sudbury, Ontario, the peak time period for impaired driving was between midnight and 4 a.m. This period accounted for 58% of all charges. See

also helps to reduce recreational driving among youth, which is often associated with risk taking and alcohol consumption.²⁷⁸ Since most nighttime crashes among young drivers occur before midnight,²⁷⁹ an earlier curfew, such as 10 p.m., is preferable to a later one. North Carolina's 9 p.m. driving curfew, which is one of the earliest in North America, has been associated with a 47% reduction in nighttime crashes among 16-year old drivers.²⁸⁰ This compared to a 22% reduction in daytime crashes under that state's GLP. Thus, an additional 25% reduction in nighttime crashes was directly attributable to the early driving restriction.²⁸¹

In MADD Canada's view, this substantial traffic safety benefit justifies any accompanying minor restriction on the mobility of beginning drivers. Beginning drivers have relatively few late-night travel demands and would have to be accompanied by an adult supervisor in any event.²⁸² As shown in Figure 14, several Canadian jurisdictions already include nighttime driving restrictions in the initial stage of their GLPs, with the longest restriction being in the Northwest Territories (11 p.m. to 6 a.m.).

The initial phase of the GLP should also limit the number of teenage passengers that beginning drivers may carry. Research prior to the widespread adoption of GLPs indicated that young drivers are at increased risk when they have passengers.²⁸³ The presence of teenage

L. Anglin *et al.*, *A Study of Impaired Drivers Stopped by Police in Sudbury, Ontario* (Toronto: The Addiction Research Foundation of Ontario and Sudbury Regional Police, 1997).

²⁷⁸ See Senserrick, *supra* note 268 at 43.

²⁷⁹ An American study indicated that three-quarters of nighttime crashes and more than half of the nighttime fatalities among 16-17 year olds occur between 9 p.m. and midnight. A. Williams, *Protecting New Drivers: 10 Components of Graduated Licensing that Make Sense* (Arlington, VA: IIHS, 1996) at 5. In Canada, about half of all teenage motor vehicle deaths and 64% of all such injuries occur between 9 p.m. and 6 a.m., even though teens drive far less during nighttime hours. *Youth and Road Crashes*, *supra* note 57 at 14.

In Ontario, 16-24 year olds account for only 30.5% of nighttime drivers, but 47.7% of nighttime driver deaths. Thus, their relative risk of a nighttime crash is significantly higher than that of older drivers. *New to the Road*, *supra* note 62 at 61.

²⁸⁰ McKnight, *supra* note 277 at ii34.

²⁸¹ *Ibid.*

²⁸² Since a licensed adult would have to be present anyway, the adult can drive the teenager home from any late-night employment or extra-curricular activities.

One study found that citywide teenage curfews had traffic safety benefits comparable to late-night driving curfews for new drivers. D. Preusser, P. Zador and A. Williams, "The Effect of City Curfew Ordinances on Teenage Motor Vehicle Fatalities" (1993) 25 *Accid. Anal. and Prev.* 641. Such curfews have the added benefit of requiring schools and employers not to schedule activities or work past the time of the curfew.

²⁸³ See generally, D. Preusser, S. Ferguson and A. Williams, "The Effect of Teenage Passengers on the Fatal Crash Risk of Teenage Drivers" (1998) 30 *Accid. Anal. and Prev.* 217; and A. Williams, *Teenage*

passengers is a source of distraction and peer pressure to engage in risky behaviour. An American study conducted by the Ford Motor Company found that the relative risk of crash for 16-year old drivers increases with the number of passengers.²⁸⁴ Sixteen-year old drivers with one passenger were 39% more likely to be killed in a crash than 16-year olds driving alone. This increased to 86% for two passengers, and 182% for three or more passengers.²⁸⁵ A more recent study found that the presence of a male teenage passenger increases the likelihood that a teenage driver will speed and leave less space between the vehicle in front.²⁸⁶

In addition, several studies indicate that teenage passengers are at great risk when riding with young drivers. As noted in Section I, 15-19 year olds constituted only 6.6% of the population in 2004, but accounted for 19% of motor vehicle passenger deaths and serious injuries.²⁸⁷ The majority of these passenger fatalities occur in vehicles driven by young drivers. For example, an American study based on 1993 data found that 79% of all fatally-injured 16-year old passengers were riding in a vehicle operated by another teenager.²⁸⁸ More recently, a 1999 Canadian study reported that nearly 80% of fatally-injured teenage passengers are killed when travelling with a teenage driver.²⁸⁹ Thus, research suggests that teenage passenger limits would not only discourage risky driving by beginning drivers, but also reduce crash deaths among teenage passengers.

However, as noted, the preceding research was undertaken prior to the enactment of comprehensive GLPs. Presumably, the risks associated with passengers are much lower for beginners who are driving with their parents and siblings, than was the case for unsupervised beginners driving with a carload of teenage friends. Thus, if jurisdictions are successful in enacting comprehensive GLPs with strict supervision of beginning drivers, the passenger

Passengers in Motor Vehicle Crashes: A Summary of Current Research (Arlington, VA: IIHS, 2001).

²⁸⁴ “Study: More Deaths with Young Drivers” Associated Press (21 June 2000).

²⁸⁵ *Ibid.*

²⁸⁶ B. Simons-Morton, N. Lerner and J. Singer, “The observed effects of teenage passengers on the risky driving behavior of teenage drivers” (2005) 37 *Accid. Anal. and Prev.* 973. Interestingly, the presence of a female passenger reduced risky driving behaviour among male drivers.

²⁸⁷ *Annual Demographic*, *supra* note 11; and *Collision Statistics*, *supra* note 13.

²⁸⁸ A. Williams and J. Wells, “Deaths of Teenagers as Motor-Vehicle Passengers” (1995) 26 *J. Safety Research* 161 at 164. Also, more teenage passengers were killed when riding with a 16-year old driver than with drivers of any other age (*ibid.*).

²⁸⁹ *Youth and Road Crashes*, *supra* note 57 at 14. See also L-H. Chen *et al.*, “Potential benefits of restrictions on the transport of teenage passengers by 16 and 17 year old drivers” (2001) 7 *Injury Prevention* 129.

restriction will be less critical during the initial stage.²⁹⁰ Nevertheless, it is still prudent to limit the number of teenage passengers to one non-family member, thereby providing an atmosphere that is more conducive to concentrating on the task of driving. Currently, New Brunswick, Newfoundland and Labrador, the Northwest Territories, and Nova Scotia have even more stringent restrictions, prohibiting beginning drivers from carrying any passengers other than their supervisor.²⁹¹

Another advisable restriction during the initial stage of the GLP is a prohibition against driving on high-speed, multi-lane roads. These roads typically carry heavy traffic, including large trucks moving at high speeds, which can be overwhelming for a new driver. Moreover, crashes on high-speed roads can be catastrophic.²⁹² Since such road restrictions have not been widely implemented in GLPs, there are few studies on their effectiveness. Ontario is the only Canadian jurisdiction to include a high-speed road restriction. An evaluation of this restriction reported a 61% decrease in the collision rate of beginning drivers on these roads.²⁹³

Beginning drivers should be subject to a zero BAC restriction throughout the GLP and until they reach the age of 21, whichever is longer. This key limit is discussed in detail later in this section. Currently, all Canadian jurisdictions with a GLP impose a zero BAC restriction on drivers in the initial stage of the program. Similarly, all beginning drivers should be prohibited from driving under the influence of drugs. As indicated in Section I of this study, reported rates of driving after drug use appear to be increasing among young drivers. For example, a recent Québec study found that over 24% of 16-19 year old drivers and over 22% of 20-24 year old drivers providing samples in a nighttime roadside survey tested positive for cannabis.²⁹⁴

²⁹⁰ The passenger restriction is more critical in the intermediate stage, which allows novices to drive without an adult supervisor.

²⁹¹ *Best Practices*, supra note 261 at Table 1.

²⁹² This is illustrated by the string of multiple-vehicle collisions on the stretch of Ontario's Highway 401 known as "carnage alley" during the late 1990s. See J. Shragge, "Highway 401 – The Story" (2004), online: <<http://roadscholar.on.ca/lateststory.html>>.

²⁹³ Boase, supra note 263 at 4. Of course, had the road restriction been fully obeyed, the collision rate for beginning drivers on these highways would have been zero. This suggests that more effective measures are needed to identify beginning drivers and enforce the relevant restrictions on their licences.

²⁹⁴ C. Dussault *et al.*, "The Contribution of Alcohol and Other Drugs Among Fatally Injured Drivers in Québec: Some Preliminary Results" in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

Moreover, nationwide,²⁹⁵ Atlantic Canada²⁹⁶ and Ontario²⁹⁷ surveys indicate that young drivers have the highest self-reported rates of driving after drug use of any age group.

GLP supervisors should also be subject to a zero BAC restriction. Several provinces already impose some BAC limits on supervisors, the lowest being .00% in both the Yukon and the Northwest Territories, and the highest being .08% in Prince Edward Island.²⁹⁸ While better than nothing, these limits permit supervisors to consume significant quantities of alcohol,²⁹⁹ a situation which is not conducive to the learning experience. Alcohol consumption impairs the supervisor's ability to monitor the beginning driver and respond quickly to any urgent situation that develops. Moreover, permitting the supervisor to have consumed alcohol sets a very poor example for beginning drivers, and increases the likelihood that they will be used as "designated drivers" for their older friends.

A beginning driver should be required to spend at least 12 months in the initial stage of the GLP. Since studies indicate that the greatest safety benefits of GLPs occur during the period of supervised driving,³⁰⁰ it is reasonable to make the period a substantial length. This increases the likelihood that the beginner will gain on-the-road experience in a variety of situations, including winter conditions. It also delays entry into the intermediate stage until at least the age of 17, when the driver will likely be somewhat more mature. Although it is often difficult to separate out the effects of the various elements of a jurisdiction's GLP, research suggests that longer periods of supervised driving are beneficial.³⁰¹ There should be no discounting of the 12-month initial stage, even for drivers who have taken a driver education course. As discussed below, such courses have not proven effective in terms of traffic safety, and may be counterproductive if they reduce the beginning driver's periods of supervised and restricted driving.

²⁹⁵ D. Beirness, H. Simpson and K. Desmond, *The Road Safety Monitor 2002: Drugs and Driving* (Ottawa: TIRF, 2002) at 14-15.

²⁹⁶ Asbridge, *supra* note 42.

²⁹⁷ *OSDUS Highlights*, *supra* note 19 at 10; and *supra* note 39.

²⁹⁸ *Best Practices*, *supra* note 261 at Table 1; *Motor Vehicles Act*, R.S.Y. 2002, c. 153, s. 9(3); and *Driver's Licence Regulations*, R.R.N.W.T. 1990, c. M-27, s. 4.1(d).

²⁹⁹ For instance, a 200-pound male supervisor could consume as many as five standard drinks in a two-hour period and still not have a BAC of .08%. See BACs for Dummies, *supra* note 10 at 224.

³⁰⁰ D. Mayhew, H. Simpson and A. Pak, "Changes in collision rates among novice drivers during the first months of driving" (2003) 35 *Accid. Anal. and Prev.* 683.

³⁰¹ See generally McKnight, *supra* note 277. For a discussion of the effects of the longer minimum learner period in Québec, see Simard, *supra* note 265.

During the initial stage, it may be advisable to require beginners to “log” a specified number of hours of supervised driving. This would facilitate the goal of gaining driving experience, and discourage beginning drivers from simply “waiting out” the 12-month initial stage to avoid traffic violations and crashes.³⁰² Although many American and two Australian states include such a log requirement, the Yukon is the only Canadian jurisdiction to have this requirement. New drivers in the Yukon are required to have at least 50 hours of supervised driving, of which 10 must be in darkness and 10 in winter conditions.³⁰³ The traffic safety benefits of these requirements have not, to our knowledge, been independently investigated, and there is a possibility that some parents might be tempted to falsify the driving hours. Nevertheless, there are no obvious drawbacks to imposing a log requirement, and it would encourage at least some beginners to gain on-the-road experience in different situations. Consequently, a log requirement would appear to be an appropriate component of a comprehensive GLP.

After 12 months in the initial GLP stage, the driver would be entitled to take a road test. Road tests are a conventional requirement of most driver licensing schemes, and are required in every Canadian jurisdiction.³⁰⁴ However, research has generally failed to demonstrate the effectiveness of conventional road tests in identifying poor drivers.³⁰⁵ While drivers should be required to demonstrate their practical skills before entering the intermediate stage of the GLP, jurisdictions need to develop tests that better reflect an applicant’s ability to drive safely once the initial GLP restrictions are lifted. In particular, the research suggests that hazard recognition should be a crucial component of the practical skills test, whether performed on a computer simulator or on the road.³⁰⁶ British Columbia currently includes hazard recognition components in its stage-1 road test and stage-2 “exit” road test, in which candidates are tested orally by the examiner while driving.³⁰⁷

³⁰² *Blueprint*, *supra* note 270 at 3. See also Mayhew 2006, *supra* note 269 at 11-12.

³⁰³ *Best Practices*, *supra* note 261 at 24.

³⁰⁴ *Ibid.* at Table 2; *Highway Traffic Act*, R.S.P.E.I. 1998, c. H-5, s. 82(4).

³⁰⁵ *Best Practices*, *supra* note 261 at 38. However, another literature review found that road tests were of some use. In particular, drivers who took several attempts to pass the road test were more likely to be involved in crashes once licensed. Senserrick, *supra* note 268 at 58-59.

³⁰⁶ Senserrick, *ibid.* at 59-60. For example, the computerized “Hazard Perception Test” used in Victoria, Australia more accurately predicts drivers at risk of a crash than the standard road test examining practical driving skills (*ibid.*).

³⁰⁷ *Ibid.*; and Insurance Corporation of British Columbia (ICBC), *Tuning up for Drivers* (Vancouver: ICBC, 2006) at 113.

(ii) Intermediate Stage

After successfully completing the practical skills test, the driver enters stage 2, or the “intermediate” stage, of the GLP. Some current features in the intermediate stage of the Canadian GLPs are summarized in Figure 15.³⁰⁸ Intermediate drivers should be allowed to drive unsupervised in most situations. However, they should still be required to have a supervisor when driving late at night or on high-speed roads. As indicated, late-night driving and high-speed roads pose additional challenges for beginning drivers that warrant imposing an initial period of on-road supervision.

The passenger restriction is more crucial during this intermediate stage, because a responsible adult will not necessarily be present to discourage risky behaviour and maintain a low-risk driving atmosphere. While several Canadian jurisdictions, including Manitoba, Nova Scotia and Ontario, impose passenger restrictions during the intermediate stage, the restriction typically only prohibits the intermediate driver from having more than one passenger in the front, or from having more rear passengers than the number of seatbelts.³⁰⁹ Thus, these restrictions would readily allow intermediate drivers to have four or more teenage passengers in a vehicle, a situation that would likely encourage risky driving. Instead, intermediate drivers should be limited to one non-family teenage passenger at a time, unless there is an adult supervisor present.

Finally, the zero BAC restriction should remain in effect throughout the intermediate stage. This restriction is already in force in all 12 Canadian jurisdictions which have a GLP. The intermediate stage of the GLP should last 12 months, making the minimum age of full licensure at least 18. Bearing in mind the previously-expressed concerns about the effectiveness of skill testing, a more advanced road test should be required at the end of the intermediate stage, including some driving on a high-speed road.³¹⁰ The requirements of this “exit” road test should reflect the fact that the driver will be permitted to drive unsupervised in all situations. The test should be designed to identify drivers who need to spend more time in the GLP. Ideally, it

³⁰⁸ Because of the complexity of the various passenger restrictions in the intermediate stage, they are not included in Figure 14. For full details, see *Best Practices*, *supra* note 261 at Table 2.

³⁰⁹ *Ibid.*

³¹⁰ Since few jurisdictions have such “exit” tests, there is little research on their effectiveness. However, most researchers who have addressed the issue have recommended exit tests. Senserrick, *supra* note 268 at 60.

should also motivate new drivers to practice driving in more difficult situations and gain confidence on high-speed roads.

Currently, only British Columbia, Alberta and Ontario require an exit road test, while Nova Scotia requires the successful completion of a government-approved driver improvement course.³¹¹ In the other jurisdictions, the driver will typically “graduate” to full licensure at the end of the intermediate stage, which lasts from 12 to 24 months.³¹² In Québec, a driver will automatically graduate to full licensure after 24 months, or upon turning 25 years old, whichever comes first.³¹³

Figure 15: Current Features in Stage 2 of the Canadian GLPs*

Prov/Terr	Min. Duration	Night Restriction	Exit Road Test
AB	24 months	None	Yes
BC	24 months	None	Yes
MB	15 months	12 a.m.-5a.m. only 1 passenger in front, and no more passengers than seatbelts in back	None
NB	12 months	None	None
NFLD	12 months	12 a.m.-5 a.m. requires supervisor	None
NS	24 months	12 a.m.-5 a.m. requires supervisor	None
NWT	12 months	None	None
ON	12 months	None	Yes
PEI	24 months	None	None
PQ	24 months (or age 25)	None	None
SASK	6 months Novice I 12 months Novice II	None	None
YK	18 months	12 a.m.-5 a.m. requires supervisor	None

* Nunavut does not have a graduated licensing program.

Source: D. Mayhew, H. Simpson and D. Singhal, *Best Practices for Graduated Driver Licensing in Canada* (Ottawa: TIRF, 2005) at 16-17.

(iii) Probationary Stage

Upon completion of the intermediate stage and an exit road test, new drivers would have full driving privileges. Nevertheless, they should be subject to a one-year probationary period, during which they are subject to ongoing monitoring. Canadian jurisdictions should have some form of reduced demerit point threshold or other process for ensuring that probationary drivers are subject to greater scrutiny than more experienced drivers. This may result in earlier

³¹¹ *Best Practices*, supra note 261 at Table 2; and *Motor Vehicles Act*, R.S.N.S. 1989, c. 293, s. 70A(3)(b).

³¹² *Best Practices*, *ibid.*

³¹³ *Ibid.*

intervention, suspension or remedial education than would apply to other fully licensed drivers. Monitoring new drivers assists licensing authorities in identifying potentially at-risk drivers and in taking remedial action before they have a serious crash. In addition, the threat of suspension or other intervention generally has a deterrent impact and will likely discourage newly licensed drivers from taking risks.³¹⁴ While suspensions reduce the driver's opportunities to gain practical experience, it must be remembered that these drivers will have already had at least two years driving experience in the GLP. Thus, a short-term suspension is justifiable for newly licensed drivers who develop poor driving records at this early stage. Most Canadian jurisdictions currently have lower demerit point thresholds or closer scrutiny of drivers in the initial and intermediate stages of the GLP.³¹⁵ However, only New Brunswick provides a period of enhanced monitoring after the driver has gained full driving privileges.³¹⁶

(iv) Potential Concerns About GLPs

Despite initial fears, there is little parental opposition to GLPs arising from the inconvenience of the supervision, nighttime driving, and other licensing restrictions. For example, a survey of Ontario parents with children in the GLP found that 83% approved of the program as a whole, with 89% supporting the supervision requirement, 80% supporting the driving restriction for high-speed roads, and 100% supporting the zero BAC restriction.³¹⁷ Parents also supported an earlier nighttime driving restriction.³¹⁸ This support is crucial, given that parents are primarily responsible for ensuring that their children comply with the various GLP restrictions.³¹⁹

This raises a potential weakness in the current GLPs, namely, the inability of police to readily identify affected drivers and enforce the GLP restrictions.³²⁰ It is particularly difficult for police to identify young drivers who may be prohibited from being on the road during nighttime

³¹⁴ *Reducing the Risks*, *supra* note 240 at 16.

³¹⁵ *Best Practices*, *supra* note 261 at Tables 1 and 2.

³¹⁶ Department of Public Safety, *New Brunswick Driver's Handbook* (Fredericton: Department of Public Safety, 2005), online: <http://www.gnb.ca/0276/vehicle/english/part1_e.pdf> at 23.

³¹⁷ D. Mayhew *et al.*, *Graduated Licensing in Ontario: A Survey of Parents* (Arlington, VA: IIHS, 1997) at 5.

³¹⁸ *Blueprint*, *supra* note 270 at 5.

³¹⁹ For a brief review of parental support in the United States, see N. Chaudhary, S. Ferguson and S. Herbel, "Tennessee's Novice Driver Safety Project: A Program to Increase Parental Involvement" (2004) 5 *Traffic Injury Prevention* 356 at 356-57.

³²⁰ See Senserrick, *supra* note 268 at 77-78.

hours. Moreover, many teenagers believe that the risks of being caught while violating the GLP conditions are low.³²¹ To address these problems, some jurisdictions require a sign, such as a large “L” or “N”, to be attached to the vehicle to identify the driver as a learner or novice.³²² However, American research indicates that drivers who are willing to violate the other conditions of their licence may also ignore this identification requirement.³²³ In addition to considering a sign requirement, the provinces need to grant the police broader powers to efficiently enforce the GLP, as discussed in Section IV. If parents and new drivers conclude that the GLP restrictions can be ignored with impunity, then one can expect gradual decreases in compliance.

(v) Driver Education Programs

Although driver education programs may have potential benefits, MADD Canada has not included them as an element of the proposed GLP. Research over several decades has failed to demonstrate that the existing programs have a long-term positive impact on crash rates.³²⁴ The largest driver education study to date, the so-called “DeKalb Study,” was intended to demonstrate the benefits of enhanced high school driver education. Sixteen thousand students were divided into three groups: one received a state-of-the-art “Safe Performance Curriculum,” a program lasting 72 hours; a second group received a basic driver education course called “Pre-Driver Licensing,” lasting only 20 hours; and the third group received no formal training. The results showed that driver education had only a small, short-lived positive effect on new drivers. Although students with driver education initially had fewer crashes per licensed driver than the control group, this difference was not sustained beyond six months of licensed driving.³²⁵ Similarly, a 1999 review of nine studies on high school driver education programs concluded

³²¹ McKnight, *supra* note 277 at ii35.

³²² Such identification is required in Newfoundland and Labrador, British Columbia and the Yukon. See *Best Practices*, *supra* note 261 at 14.

³²³ Senserrick, *supra* note 268 at 77.

³²⁴ See D. Mayhew *et al.*, “Effectiveness and Role of Driver Education and Training in a Graduated Licensing System” (1998) 19 J. Pub. Health Policy 51 [Driver Education]. See also L. Robertson, “Crash Involvement of Teenaged Drivers when Driver Education is Eliminated in High School” (1980) 70 A.J.P.H. 599; L. Potvin, F. Champagne and C. Laberge-Nadeau, “Mandatory Driver Training and Road Safety: The Québec Experience” (1988) 78 A.J.P.H. 1206; and N. Gregersen, “Systematic Co-operation Between Driving Schools and Parents in Driver Education, an Experiment” (1994) 26 *Accid. Anal. and Prev.* 453.

³²⁵ J. Stock *et al.*, *Evaluation of Safe Performance Secondary School Driver Education Curriculum Demonstration Project: Final Report* (Washington, D.C.: NHTSA, 1983). The study was conducted in the late 1970s and early 1980s.

that: “there is no convincing evidence that high school driver education reduces motor vehicle crash involvement rates for young drivers, either at the individual or community level.”³²⁶

In addition, more recent studies suggest that some forms of driver education may negatively affect traffic safety, by inducing new drivers to overestimate their skills. For example, young drivers taking a mandatory skid training course in Sweden were divided into two groups: insight and skills training.³²⁷ The strategy used with the insight group was to make drivers aware of their limited and unpredictable braking and avoidance skills. Conversely, the skills group practiced braking and avoidance maneuvers repeatedly around the same course, at increasing speeds. While the groups performed equally well in terms of “actually observed skill,” the skills group had a higher subjective estimation of their driving capabilities. Consequently, the study’s author suggested that, to be effective, driver education programs must reinforce to new drivers that their skills are limited and that they need to drive with larger safety margins. He also noted that most young drivers believe themselves to be more skilled than other drivers and, therefore, underestimate the risks of their own driving.³²⁸ This problem was confirmed by other studies on skid training courses. The drivers who participated often became overconfident in their skills, and accordingly drove too fast on wet or slippery roads.³²⁹

A few provinces make mandatory driver education part of their GLP.³³⁰ MADD Canada does not encourage greater adoption of mandatory programs, given that they have not been shown to have significant traffic safety benefits. Driver education should be undertaken on a voluntary basis only. However, of greater concern, several provinces shorten the GLP for those who have taken a driver education program (e.g. British Columbia, Ontario, Newfoundland and Labrador,

³²⁶ J. Vernick *et al.*, “Effects of High School Driver Education on Motor Vehicle Crashes, Violations and Licensure” (1999) 16(1S) *Am. J. Prev. Med.* 40 at 40 [Vernick].

³²⁷ N. Gregersen, “Young Drivers’ Overestimation of their Own Skill – An Experiment on the Relation Between Training Strategy and Skill” (1996) 28 *Accid. Anal. and Prev.* 243.

³²⁸ *Ibid.* at 245-48.

³²⁹ Driver Education, *supra* note 324 at 55. See also B. Jones, *The Effectiveness of Skid-car Training for Teenage Novice Drivers in Oregon* (Salem, OR: Driver and Motor Vehicles Services, 1983); and A. Katila *et al.*, *Changes in Slippery Road Accidents as an Effect of Renewed Driver Training in Finland* (Turku, Finland: University of Turku, 1995).

³³⁰ In Saskatchewan, all new drivers must complete an approved driver education program (high school or commercial course), which includes at least six hours in a car. While driver education is technically “voluntary” in Nova Scotia, those who do not complete driver education must complete a six-hour defensive driving course before graduating to full licensure. *Rating the Provinces*, *supra* note 73. Similarly, in Prince Edward Island, novice drivers who do not take a driver education course must enroll in a five-hour knowledge course. *Best Practices*, *supra* note 261 at 13.

and Nova Scotia).³³¹ This practice should be discontinued, because it lessens the period of supervised driving and reduces the age of unrestricted licensure, which research suggests is “associated with higher crash involvement rates for young drivers.”³³²

These findings are consistent with a recent Nova Scotia study. In Nova Scotia, novice drivers who have taken a driver education course have the initial stage of their GLP reduced from six months to three months. These drivers were found to have a 27% higher collision rate during their first six months of licensure than their peers, who had not participated in a driver education course and consequently had three additional months of supervision.³³³ In MADD Canada’s view, the current driver education programs are simply no substitute for the extensive, low-risk, on-the-road driving experience provided by a comprehensive GLP.

(d) The Zero BAC Restriction for All Drivers Under 21

A key GLP component is the requirement of abstaining from alcohol. Beginning drivers are already disadvantaged because of their inexperience,³³⁴ and should not have their judgment further impaired by alcohol. This limitation should apply to all new drivers, regardless of age. While older beginning drivers may be more mature and experienced with alcohol than young beginning drivers, they still lack driving experience, and this is reflected in their crash rates.³³⁵ Thus, all beginning and intermediate drivers should be required to maintain a zero BAC when driving. All Canadian jurisdictions with a GLP now include a zero BAC restriction for drivers in the program.³³⁶

³³¹ *Best Practices*, *supra* note 261 at Table 1.

³³² Vernick, *supra* note 326 at 40. See also J. Zhao *et al.*, “The impact of driver education on self-reported collisions among young drivers with a graduated license” (2006) 38 *Accid. Anal. and Prev.* 35.

³³³ Mayhew 2003, *supra* note 260 at 95. See also Boase, *supra* note 263; and Mayhew 2006, *supra* note 269 at 16-21.

³³⁴ See *supra* note 47.

³³⁵ See *supra* note 272.

³³⁶ *Best Practices*, *supra* note 261 at Tables 1 and 2. As indicated, Nunavut does not have even a basic GLP.

Zero and low BAC restrictions have been shown to have very positive results.³³⁷ American states that introduced zero or low BAC limits for young drivers between 1983 and 1992 had a 16% decrease in the proportion of single-vehicle nighttime fatal crashes³³⁸ among affected drivers, while the proportion among this age group in the “control” states increased by 1%.³³⁹ The authors estimated that, if the remaining 21 states had introduced a zero or low BAC limit for young drivers, at least 375 fatal single-vehicle nighttime crashes would have been prevented each year among 15-20 year old drivers.³⁴⁰ The largest traffic safety improvements occurred in those states that lowered their BAC limit to zero. For example, Maine had a .02% BAC restriction on drivers under 21 from 1983 until 1995, at which point it enacted a zero BAC limit. Following the introduction of the new limit, there was an additional 36% reduction in nighttime single-vehicle injury crashes among youth under 21.³⁴¹ This likely resulted because a zero BAC limit prohibits drinking and driving altogether, whereas a .02% limit suggests to the driver that some drinking before driving is acceptable. Studies from Ontario also confirm the traffic safety and other benefits of a zero BAC restriction for beginning drivers.³⁴²

³³⁷ See generally, C. Zwerling and M. Jones, “Evaluation of the Effectiveness of Low Blood Alcohol Concentration Laws for Younger Drivers” (1999) 16(1S) Am. J. 76; and A. Wagenaar, P. O’Malley and C. LaFond, “Lowered legal blood alcohol limits for young drivers: Effects on drinking, driving, and driving-after-drinking behaviors in 30 states” (2001) 91 A.J.P.H. 801 [Wagenaar 2001]. See also, Babor, *supra* note 109 at 159-160; and Shults, *supra* note 109 at 71-72.

³³⁸ Because single-vehicle nighttime fatal crashes have such a high rate of alcohol involvement, they are often used as a surrogate measure for estimating alcohol-related crashes.

³³⁹ R. Hingson, T. Heeren and M. Winter, “Lower Legal Blood Alcohol Limits for Young Drivers” (1994) 109 Public Health Reports 738.

³⁴⁰ *Ibid.* at 744. In addition, one study concluded that BAC restrictions on young drivers have even greater traffic safety benefits if they are combined with extensive public education campaigns. For example, while Maryland’s .02% BAC restriction resulted in a 21% decrease in the number of young crash-involved drivers judged to have been drinking, the addition of a public education campaign resulted in a further 30% decrease. R. Blomberg, *Lower BAC Limits for Youth: Evaluation of the Maryland .02 Law* (Washington, D.C.: NHTSA, 1992) at 67. See also, Wagenaar 2001, *supra* note 337.

³⁴¹ J. Lacey, R. Jones and C. Wiliszkowski, *Zero Tolerance Laws for Youth: Four States’ Experience* (Washington, D.C.: NHTSA, 2000) at 24 [Lacey].

³⁴² An Ontario survey of licensed grade-11 and 12 students before and after the introduction of graduated licensing reported a 25% reduction in the number of males who reported driving after drinking any alcohol. R. Mann *et al.*, “Graduated Licensing in Ontario: Impact of the 0 BAL Provision on Adolescents’ Drinking-Driving” in C. Mercier-Guyon ed., *Alcohol, Drugs and Traffic Safety* (Annecy, France: Centre d’études et de recherche en médecine du trafic, 1997) at 1055.

Moreover, the graduated licensing system reportedly reduced attendance at heavy drinking events, such as “bush parties.” In a survey of Ontario students, only 38.4% of drivers in the graduated licensing program reported attending a bush party in the last 12 months, down from 57% prior to the introduction of the program. G. Stoduto, E. Adlaf and R. Mann, “Adolescents, Bush Parties and Drinking-Driving”

The existing research clearly supports the enactment of a zero BAC restriction for not just beginning and intermediate drivers, but also for all drivers under the age of 21. As indicated in Section I of this study, a large percentage of crash deaths and injuries among 16-20 year olds are alcohol-related. This is not surprising, given their patterns of alcohol consumption and rates of frequent binge drinking. While GLPs have significantly reduced alcohol-related crashes among young beginning drivers, the reach of these programs is limited. Part of the problem is that the BAC restriction is lifted upon completion of the graduated licensing program, which usually occurs around the age of 18 or 19. This corresponds to the legal drinking age in most provinces, a period during which alcohol consumption and rates of binge drinking increase. Moreover, this is precisely the age at which teenage drivers are currently most vulnerable to alcohol-related crash deaths and injuries. A 1999 Canadian study reported that 18-19 year olds account for almost 74% of all alcohol-related crash deaths among teenage drivers.³⁴³ It is dangerous to expose 18-20 year olds to their first experiences of unrestricted driving at the same time as their first legal use of alcohol.

Consequently, the zero BAC requirement should apply beyond the GLP, until a driver is 21. Young beginning drivers usually lack both driving³⁴⁴ and drinking³⁴⁵ experience. They tend to be risk takers and are less cautious than their older counterparts.³⁴⁶ Thus, even in the absence of alcohol, young drivers are at a greater relative risk of crash than older, more experienced drivers.³⁴⁷ Moreover, young drivers who drink are at a far greater relative risk of death than older

(1998) 59 J. Stud. Alcohol 544 at 546.

³⁴³ *Youth and Road Crashes*, supra note 57 at 21.

³⁴⁴ See Groeger, supra note 47.

³⁴⁵ Some researchers have suggested that this dual lack of experience leads to a far greater inability to drive after drinking. Relative Risk, supra note 87 at 283. Many young drivers may not have acquired a tolerance for even small amounts of alcohol and thus, cannot compensate adequately for its adverse effects on their driving. In addition, inexperienced drivers must focus more attention on the task of driving, whereas more experienced drivers perform the task automatically or instinctively. Consequently, even a small amount of alcohol can substantially decrease an inexperienced driver's ability to drive safely.

³⁴⁶ As indicated, young drivers are more likely to speed, follow too closely, allow less time to merge with traffic, cross traffic lanes, and pass other vehicles. They also tend to overestimate their driving abilities. See supra notes 47-49. Moreover, they are less likely to wear seatbelts. *Seatbelt Use*, supra note 52 at 15.

³⁴⁷ See P. Zador, S. Krawchuk and R. 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 390; and R. Stewart and R. Sanderson, "The Measurement of Risk on Canada's Roads and Highways" in S. Yager ed., *Transport Risk Assessment* (Waterloo:

drivers with comparable BACs.³⁴⁸ Given that alcohol-related crash rates do not decrease until well after the age of 21,³⁴⁹ it is justifiable to extend the zero BAC restriction until a driver reaches at least 21 years of age. As indicated, these BAC restrictions have been shown to reduce impaired driving deaths among all drivers under the age of 21. For example, Oregon experienced a 40% reduction in single-vehicle nighttime crashes among affected drivers after its zero BAC restriction was extended from drivers under the age of 18 to include drivers under 21 in 1991.³⁵⁰

In most Canadian jurisdictions, the zero BAC restriction ends upon the completion of the intermediate stage of the GLP. However, Manitoba recently announced that it was extending its zero BAC restriction from the first three years of licensure to the first five years, thereby preventing drivers from consuming any alcohol before driving until at least the age of 21.³⁵¹ This measure is scheduled to come into force in December 2006, and provides a model for other provinces to follow.

(e) Summary

MADD Canada welcomes the progress that has been made in recent years with graduated licensing and zero BAC restrictions for new drivers. Many of the preceding recommendations have already been implemented in several provinces, demonstrating that comprehensive GLPs are workable, popular and effective in reducing crashes among youth. Further, Manitoba's recent decision to extend its zero BAC restriction to the first five years of licensure illustrates the leadership that provinces can take in protecting young drivers. The provinces' broad control over driver licensing provides them with ample opportunities to reduce the extremely high crash rates among Canadian youth.

University of Waterloo Press, 1984).

³⁴⁸ Canadian researchers have also documented the greater relative risks of death among young drinking drivers. See Relative Risk, *supra* note 87 at 282-83; and R. Mann *et al.*, *Assessing the Potential Impact of Lowering the Legal Blood Alcohol Limit to 50 mg% in Canada* (Toronto: Addiction Research Foundation, 1998) at 20.

³⁴⁹ Relative Risk, *ibid.* at 281-83.

³⁵⁰ Lacey, *supra* note 341 at 29.

³⁵¹ "New drivers must forgo liquor longer under licence changes" *CBC News* (17 May 2006), online: <<http://www.cbc.ca/manitoba/story/mb-impaired-driving-20060517.html>>.

SECTION IV: LAW ENFORCEMENT

(a) Statutory Authority to Stop Drivers

The licensing measures discussed in Section III will have only a limited impact unless the police are given appropriate enforcement powers. In order to identify drivers subject to the GLP and enforce the relevant conditions, the police need to be given express statutory authority to stop vehicles and demand to see the licence of both the driver and any supervisor.

In *R. v. Dedman*,³⁵² the Supreme Court of Canada held that the police have a common law power to stop motor vehicles to conduct so-called “sobriety checkpoints” or “spot checks.” The Court held that this power is necessary if the police are to carry out their duty to prevent impaired driving.³⁵³ However, the decision was limited to organized sobriety checkpoints, and the Court did not comment on whether there was a broader common law power to stop any vehicle at random. Thus, in order to bolster the common law, provincial legislation is required to expressly authorize the police to stop vehicles during routine patrol activities, even if they are not engaged in a formal checkpoint or other impaired driving enforcement program. Given the dangers involved, a driver’s failure to stop when directed to do so and a driver’s willful attempt to evade police pursuit should be made provincial offences.³⁵⁴

Most Canadian jurisdictions already give police express statutory authority to stop vehicles at random during routine patrol.³⁵⁵ However, Nova Scotia, the Yukon and New Brunswick do not provide officers with such authority. In Newfoundland and Labrador, the police can only demand that a driver stop if they have reasonable and probable grounds to believe that the

³⁵² [1985] 2 S.C.R. 2.

³⁵³ *Ibid.* at 35-36.

³⁵⁴ In 2000, Parliament enacted the *Criminal Code* offence of flight, which applies whenever a driver, “while being pursued by a peace officer operating a motor vehicle, fails, without reasonable excuse and in order to evade the peace officer, to stop the vehicle as soon as is reasonable in the circumstances.” The offence is punishable by a maximum of five years imprisonment if no injuries result. If during the chase, the driver’s dangerous driving causes bodily harm or death, then the maximum sentence is 14 years imprisonment or life, respectively. *Criminal Code*, R.S.C. 1985, c. C-46, s. 249.1.

However, this offence is limited to situations in which a chase is already in progress. It does not encompass situations where the officer has simply signalled the driver to stop, the offender has fled on foot, or the offender was not fleeing for the purpose of evading the officer (*e.g.*, if the driver was rushing an injured party to the hospital). Nor would it apply to a driver who failed to stop for an officer who was standing at the roadside directing vehicles into a sobriety checkpoint. Given these limitations, a broader provincial offence is needed to promote respect for checkpoint programs, improve their general deterrent effect and protect law enforcement officers.

³⁵⁵ *Rating the Provinces*, *supra* note 73; and *Progress Report*, *supra* note 261.

vehicle is being driven in contravention of the highway traffic legislation.³⁵⁶ This type of restriction is unhelpful, particularly in enforcing GLPs, because very few licensing infractions will be readily observable prior to the vehicle being stopped. Further, as discussed below, such conditional police powers invite drivers to challenge any subsequent charges on the basis that they arose from an unauthorized traffic stop.

Having clear legislative authority to stop vehicles would be beneficial in several regards. First, it would remove any doubt as to an officer's authority to stop vehicles and a driver's obligation to comply. Second, it would assist the police in identifying drivers who are subject to a GLP. Even if the police can see into the vehicle, a driver's youthful appearance will likely create only a suspicion that the driver is subject to a GLP. The police need to confirm the driver's status by inspecting his or her licence. While British Columbia, Prince Edward Island, and Newfoundland and Labrador require beginning drivers to affix a letter "L" or "N" to their vehicles, this requirement is easily evaded. Moreover, the fact that the vehicle is so designated does not mean that the person currently driving is a learner or novice. An express and unqualified statutory power to stop vehicles and demand documentation is essential in determining the driver's status and ensuring that he or she is complying with the various GLP conditions.

Third, the power to stop drivers at random and demand documents assists the police in identifying: GLP drivers who are subject to a zero BAC limit; underage or otherwise unlicensed young drivers; and older drivers who are unlicensed, suspended, prohibited, or uninsured. Research indicates that both young unlicensed drivers³⁵⁷ and older unlicensed, suspended, prohibited, or uninsured drivers are overrepresented in crashes, and often have insufficient resources to compensate their victims.³⁵⁸

Finally, providing the police with express statutory authority is important in terms of the *Canadian Charter of Rights and Freedoms*. Provincial laws empowering the police to stop

³⁵⁶ *Highway Traffic Act*, R.S.N.L. 1990, c. H-3, s. 9(1)(d).

³⁵⁷ See *supra* note 249.

³⁵⁸ Although the issue of unauthorized driving falls outside the scope of this study, it is a major traffic safety issue. See, for example, J. Malenfant, R. Van Houten and B. Jonah, "A Study to Measure the Incidence of Driving Under Suspension in the Greater Moncton Area" (2002) 34 *Accid. Anal. and Prev.* 439; D. DeYoung, R. Peck and C. Helander, "Estimating the Exposure and Fatal Crash Rates of Suspended/Revoked and Unlicensed Drivers in California" (1997) 29 *Accid. Anal. and Prev.* 17; and R. Scopatz *et al.*, *Unlicensed to Kill: The Sequel* (Washington, D.C.: AAA Foundation for Traffic Safety, 2003).

vehicles at random will be held to infringe section 9, which protects individuals from “arbitrary detention.”³⁵⁹ In order to justify this infringement under section 1 of the *Charter*, the government must establish, among other things, that the random stop was “prescribed by law.” The Supreme Court has held that this test will be satisfied if the infringement: was “expressly provided for by statute or regulation;” resulted “by necessary implication from the terms of the statute or regulation or from its operating requirements;” or resulted “from the application of a common law rule.”³⁶⁰ Given the uncertainty of the common law powers of police, express statutory authority to stop vehicles would assist the government in meeting this burden. Conversely, if the police can only stop vehicles that they have reasonable grounds to believe are being driven in violation of the law, defence counsel will contest the validity of any such stop, claiming a lack of reasonable grounds. If the challenge is successful, any provincial or federal charges or administrative sanctions arising from the stop will likely be dismissed.

(b) Enforcement of the Zero BAC Restriction

In order to effectively enforce the zero BAC restriction, the police require additional enforcement powers. Some jurisdictions have already enacted legislation concerning the GLP’s alcohol restrictions. For example, police in Ontario have statutory authority to demand a breath sample from a novice driver if they reasonably suspect that the driver has any alcohol in his or her body.³⁶¹ However, this adds little to the existing *Criminal Code* provisions, which authorize

³⁵⁹ In *R. v. Ladouceur*, [1990] 1 S.C.R. 1257, the Supreme Court of Canada held that the Ontario legislation authorizing random stops violated section 9 of the *Charter*. However, the Court upheld the law under section 1, because the infringement was expressly provided for under the Ontario statute and constituted a reasonable limit that was “demonstrably justified in a free and democratic society.”

³⁶⁰ *R. v. Therens*, [1985] 1 S.C.R. 613 at 645.

³⁶¹ *HTA*, *supra* note 255, s. 48.1. Similar authority exists in other Canadian jurisdictions, including Nova Scotia, Alberta and Saskatchewan. See, respectively, *Motor Vehicles Act*, R.S.N.S. 1989, c. 293, s. 100A; *Traffic Safety Act*, R.S.A. 2000, c. T-6, s. 90; and *Vehicle Administration Act*, S.S. 1986, c. V-2.1, s. 78.1.

the police to demand a breath sample for analysis on an approved screening device (ASD)³⁶² from *any* driver they reasonably suspect has any alcohol in his or her body.³⁶³

In our view, the authority to demand breath samples from new or young drivers should not be dependent on a suspicion that they have consumed alcohol. Drivers with low BACs are unlikely to exhibit obvious signs of impairment, and it will often be very difficult for police to detect alcohol consumption in the absence of the driver's admission that he or she has been drinking. Thus, the police should be authorized to use passive alcohol sensors (PAS)³⁶⁴ and to demand an ASD test from any driver or supervisor who is subject to the zero BAC restriction. This type of legislation already exists in Manitoba.³⁶⁵

The recommended law would make enforcement of the zero BAC restriction somewhat similar to the random breath testing (RBT) legislation in Australia, New Zealand and many European countries.³⁶⁶ By allowing police to demand a breath sample from any driver at random, RBT significantly increases both the actual and perceived risks of apprehension for impaired driving.³⁶⁷ This legislation has had a strong deterrent effect in the jurisdictions in which it has been enacted, as demonstrated by significant reductions in driving after drinking,³⁶⁸ fatal

³⁶² ASDs are small, hand-held, breath-testing machines that are typically carried in police patrol cars and are generally used to administer roadside screening tests. In Canada, they are usually calibrated to register a "pass" at BACs below .05%, a "warn" at BACs between .05% and .099%, and a "fail" at BACs above .10%. The results of ASD tests are not admissible in criminal proceedings as evidence of a driver's BAC for several reasons, including current *Criminal Code* provisions, and the fact that they are obtained without giving the driver an opportunity to consult legal counsel.

³⁶³ *Criminal Code*, *supra* note 354, s. 254(2).

³⁶⁴ These devices are currently used by many American police forces. Although there are different types of passive alcohol sensors (usually built into a wand, flashlight or clipboard), the basic premise is the same. The device is held close to the driver's mouth, and a fan draws in a sample of the ambient air. The sample is then analyzed. The models can be calibrated to provide either specific BAC readings, or simply a "positive" (typically a BAC above .02%) or "negative" (typically a BAC up to .02%) reading. For the purpose of a zero BAC restriction, a positive/negative calibration is sufficient.

³⁶⁵ *Driver's Licence Regulation*, Man. Reg. 180/2000, s. 13(1).

³⁶⁶ The Scandinavian countries introduced RBT in the mid-1970s. For a brief review of RBT in selected countries, see Stewart, *supra* note 242 at Table 6. While the study's coverage was limited, it indicated that most Western European countries authorize some form of RBT.

³⁶⁷ For instance, 90% of drivers surveyed in New South Wales believed that they might be caught in a breath-testing checkpoint. Solicitor General for Alberta, *Impaired Driving Program (Briefing Paper)* (Edmonton: Department of the Solicitor General, 1989). In New South Wales, public support for RBT increased from 64% in 1982 to 97% in 1987.

³⁶⁸ A study on the first four years of the New South Wales RBT program reported substantial declines in the number of individuals who admitted to driving when they felt that they were at an unsafe BAC level. R. Homel, "Random Breath Testing and Random Stopping Programs in Australia" in R. Wilson and R.

crashes,³⁶⁹ and fatally-injured drivers with illegal BACs.³⁷⁰ Obviously, the current proposal is significantly different from typical RBT legislation. While RBT in Western Europe and Australia is used for criminal prosecution purposes, we propose that it be used solely to impose administrative sanctions on drivers violating the zero BAC restriction of their graduated licence. Nevertheless, the deterrent effect on the target population should be somewhat similar. Moreover, in the absence this breath testing provision, the actual and perceived probability of apprehension among young and beginning drivers would likely be very low.

The proposed provincial breath-testing legislation would undoubtedly be challenged for infringing a driver's right to protection from unreasonable search and seizure under section 8 of the *Charter*, and his or her right to legal counsel under section 10(b). If either *Charter* right is infringed, the government would be required to justify the infringement under section 1 of the *Charter*. If the government is unable to justify the infringement, the legislation will be struck down under section 52 of the *Constitution*.

The Supreme Court of Canada has interpreted the section 8 protection from unreasonable search and seizure as generally requiring the police to have prior judicial authorization (*i.e.*, a warrant), or reasonable and probable grounds.³⁷¹ If this test were applied, the power to demand breath samples from GLP drivers would most likely be found to infringe section 8. Nevertheless, it could be argued that such breath testing should be classified as a "regulatory inspection," for which there is a diminished expectation of privacy.³⁷² In *R. v. Hufsky*,³⁷³ the Supreme Court of Canada found that the Ontario law requiring drivers to produce a driver's licence upon a police officer's demand did not constitute a "search" within the meaning of

Mann eds., *Drinking and Driving: Advances in Research and Prevention* (New York: Guilford Press, 1990) 159 at 175 [Homel 1990].

³⁶⁹ For a comprehensive report on the Australian experience with RBT, see generally J. Henstridge, R. Homel and 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), especially Table 7.1. RBT was found to reduce serious, fatal and single-vehicle nighttime collisions in each state in which it was introduced. For example, in New South Wales, RBT was estimated to have prevented 522 serious, 204 fatal, and 686 single-vehicle nighttime crashes in its first year (*ibid.* at 104). Moreover, the positive effects of RBT were found to have extended throughout the evaluation period on most of the indicators that were examined.

³⁷⁰ In the four years after RBT was introduced in New South Wales, there was a 36% drop in the number of fatally-injured drivers with illegal BACs (*i.e.* over .05%). Homel 1990, *supra* note 368 at 175.

³⁷¹ The leading case on section 8 is *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145.

³⁷² Hogg, *supra* note 5 at 1139-40.

³⁷³ [1988] 1 S.C.R. 621.

section 8. The Court stated that there was no reasonable expectation of privacy “where a person is required to produce a licence or permit or other documentary evidence of a status or compliance with some legal requirement that is a lawful condition of the exercise of a right or privilege.”³⁷⁴

As *Hufsky* illustrates, the courts already take the view that there is a diminished expectation of privacy with respect to a driver’s licence and related documents. Further, they have repeatedly held that driving is a privilege, and not a right.³⁷⁵ Accordingly, the courts might decide that a GLP driver’s obligation to provide a breath sample on a PAS or ASD is a condition of the privilege of holding a driver’s licence. However, the statutory power would have to be narrowly defined, and the sample could only be used for enforcing the GLP’s zero BAC restriction. The sample could not be used as evidence in a criminal trial for impaired driving.

As noted, the legislation will also be challenged for infringing a driver’s right to counsel under section 10(b). This right is triggered whenever a person is “detained,” and the courts have held that a driver is detained within the meaning of this section when pulled over by the police.³⁷⁶ Obviously, providing a GLP driver with an opportunity to consult with counsel when pulled over at roadside would be impractical, and is most unlikely to be adopted as a routine practice. Thus, it is safe to assume that the right to counsel will be infringed by the proposed breath-testing power.

If the courts were to find an infringement of either section 8 or section 10(b), the government would need to justify the infringement under section 1 of the *Charter* as a “reasonable limit ... prescribed by law” that can be “demonstrably justified in a free and democratic society.” The first requirement under section 1 is that the conduct infringing the *Charter* right be “prescribed by law.” As indicated, this test would be met if the proposed breath-testing power were included in a statute. The next requirement under section 1 is that the law must address an objective that

³⁷⁴ *Ibid.* at 638. Under a similar principle, those engaged in regulated businesses and activities must submit to inspections if they wish to continue with those activities. It is often the only way that compliance with regulatory statutes can be monitored, and those affected have prior notice of the possibility of inspections. To take a routine example, airline passengers regularly agree to submit to baggage and personal searches as a precondition to boarding a flight. It is a well-known condition of flying in the modern world.

³⁷⁵ See *R. v. Pontes*, [1995] 3 S.C.R. 44 at para. 112; *Horsefield v. Ontario (Registrar of Motor Vehicles)* (1999), 44 O.R. (3d) 73 at 87 (C.A.); *Buhlers v. British Columbia (Superintendent of Motor Vehicles)* (1999), 170 D.L.R. (4th) 344 at para. 94 (B.C.C.A.); and *R. v. Elias*, *R. v. Orbanski*, [2005] 2 S.C.R. 3 at para. 24 [*Orbanski*].

³⁷⁶ *Orbanski, ibid.* at para. 31.

is “pressing and substantial in a free and democratic society.”³⁷⁷ This should be relatively easy to establish, given that the Supreme Court has repeatedly acknowledged that impaired driving is a pressing and substantial concern.³⁷⁸ For example, in the 2005 decisions of *R. v. Elias*, *R. v. Orbanski*, the Supreme Court stated that “reducing the carnage caused by impaired driving continues to be a compelling and worthwhile government objective.”³⁷⁹ The prevention of impaired driving among young people would likely be characterized in similar, if not stronger, language.

Finally, to be upheld under section 1, the *Charter* infringement must be proportional to the government objective. In determining proportionality, the courts consider: if there is a rational connection between the government objective and the means chosen to achieve this objective; if the *Charter* right has been infringed as little as possible in achieving this objective; and if the measure’s societal benefits outweigh its negative impact on the individual’s rights.³⁸⁰ The fact that there is no other effective means of enforcing the zero BAC limits in GLPs will be an important consideration in applying the proportionality test. As indicated, it is extremely difficult for the police to detect very low levels of alcohol with their unaided senses. Short of an admission from the driver, a breath test is the only practical way to determine if a driver has been drinking. Moreover, as discussed above, samples taken under this provision would be used solely to enforce the zero BAC restriction in the GLP. The driver would not face criminal prosecution, but only administrative licensing sanctions.

In accordance with similar reasoning, the Supreme Court has upheld the power to demand that a driver provide a breath sample on an ASD³⁸¹ or perform a roadside sobriety test,³⁸² without giving the driver an opportunity to contact counsel. The objective of reducing impaired driving, the impracticality of retaining counsel at roadside, and the limited use of the breath sample or other evidence, has led the Supreme Court to uphold these *Charter* infringements. Thus, a carefully drafted power to demand breath samples in order to enforce the GLP should also be

³⁷⁷ *Oakes*, *supra* note 223 at para. 69.

³⁷⁸ See *R. v. Therens*, [1985] 1 S.C.R. 613; *R. v. Hufsky*, [1988] 1 S.C.R. 621; and *R. v. Ladouceur*, [1990] 1 S.C.R. 1257.

³⁷⁹ *Orbanski*, *supra* note 375 at para. 55.

³⁸⁰ *Oakes*, *supra* note 223 at para. 70.

³⁸¹ *R. v. Thomsen*, [1988] 1 S.C.R. 640.

³⁸² *Orbanski*, *supra* note 375.

upheld under section 1 as a justifiable limit on a driver's *Charter* rights under sections 8 and 10(b).

If GLP drivers breach the zero BAC restriction, their licences should be immediately suspended, and they should be required to complete a remedial alcohol education program before being allowed to apply for reinstatement. Once reinstated, they should be required to recommence the relevant stage of the GLP. The authority to demand breath samples should also apply to any supervisor. If the supervisor breaches the zero BAC restriction, his or her licence should be suspended for 24 hours. The beginning driver should not be allowed to continue driving unless someone else is able to take over as the qualified supervisor.

Several jurisdictions already impose significant sanctions on GLP drivers and supervisors who breach their BAC restrictions. For example, novice drivers in New Brunswick who breach their zero BAC restriction are subject to a 12-month licence suspension.³⁸³ A novice driver who wishes to regain his or her licence must complete a drinking driver re-education course and restart the entire GLP.³⁸⁴ In the Yukon, supervisors convicted of breaching their .00% BAC limit face a maximum penalty of a \$1,000 fine and six months imprisonment.³⁸⁵

(c) Systematic and Targeted Sobriety Checkpoints

Provincial legislation should authorize the police to establish systematic sobriety checkpoints. Checkpoints are already used in most Canadian jurisdictions.³⁸⁶ Typically, all drivers approaching a checkpoint are stopped and engaged in a brief conversation by the police, who may ask to see their licence and other documents. During the conversation, the police attempt to determine whether the driver has been drinking by asking the driver directly, looking for visible signs of impairment or attempting to detect the odour of alcohol. As noted above, the

³⁸³ *Motor Vehicle Act*, R.S.N.B. 1973, c. M-17, s. 84(11).

³⁸⁴ *Ibid.*, s. 84(12). In Newfoundland and Labrador, novice drivers who breach their zero BAC restriction receive a two-month suspension for the first occurrence, a four-month suspension for a second occurrence and a six-month suspension for a third occurrence. Once the suspension ends, the driver must restart the GLP level they were in at the time of the suspension. *Highway Traffic Act*, R.S.N.L. 1990, c. H-3, s. 60.4(6) [NFLD HTA].

³⁸⁵ *Motor Vehicles Act*, R.S.Y. 2002, c. 153, ss. 9(3)-(4). In Newfoundland and Labrador, the licence of a supervisor who has a BAC above .05% will be suspended for 24 hours. NFLD HTA, *ibid.*, ss. 60.5(2)-(5).

³⁸⁶ TIRF, *Strategy to Reduce Impaired Driving 2010 – STRID Monitoring Report: Progress in 2003 and 2004* (Ottawa: Canadian Council of Motor Transport Administrators and Transport Canada, 2005) at 16-17.

Criminal Code authorizes the police to demand a breath sample on an ASD from any driver they reasonably suspect has any alcohol in his or her body.

Systematic sobriety checkpoints have two major objectives. First, they increase the deterrent impact of the federal and provincial impaired driving laws through publicity and the accompanying increased perceived risk of apprehension. Second, the checkpoints greatly increase the detection and apprehension of impaired, unfit, suspended, uninsured, and unlicensed drivers.³⁸⁷ More pertinent to this study, systematic sobriety checkpoints would assist the police in identifying drivers and supervisors who were subject to a GLP, and in enforcing the GLP restrictions.

Studies show that well-publicized sobriety checkpoints have a significant general deterrent effect. A recent systematic review of the research reported that sobriety checkpoints using selective breath-testing (SBT)³⁸⁸ resulted in median decreases of 20% in fatal and personal injury crashes, and 24% in property damage crashes.³⁸⁹ The authors concluded that there was “strong evidence” that checkpoints “are effective in preventing alcohol-impaired driving, alcohol-related crashes, and associated fatal and nonfatal injuries.”³⁹⁰

The National Highway Traffic Safety Administration (NHTSA) funded a demonstration project of sobriety checkpoints in Tennessee.³⁹¹ The program, known as *Checkpoint Tennessee*, lasted for one year and consisted of at least 576 individual checkpoints in different regions of the state. In addition, at five times during the year, weekend “blitzes” were held in each of the

³⁸⁷ A recent survey of impaired driving offenders in the United States found that over half (54.5%) thought that the likelihood of being caught driving while suspended was “not at all likely.” Another 21% thought that being caught was “unlikely.” MADD USA, *Sanction Issues Compendium* (Irving, TX: MADD USA, 2002) at 15.1. Given this low perceived risk of apprehension, it is not surprising that so many offenders continue to drive while suspended.

³⁸⁸ In such programs, a driver can only be asked for a breath sample if the police have the requisite grounds to believe that he or she has been drinking or is impaired. This is the type of checkpoint program that is currently used in Canada and the United States, where constitutional issues have precluded the introduction of RBT at sobriety checkpoints. In RBT programs, every driver stopped at the checkpoint is asked to provide a breath sample, and the police need not suspect that the driver has been drinking or is impaired. As indicated, Australia, New Zealand and most Western European countries have RBT programs. See *supra* notes 366-370.

³⁸⁹ Shults, *supra* note 109 at Table 9.

³⁹⁰ *Ibid.* at 78. See also Babor, *supra* note 109 at 160-62; National Highway Safety Administration, *The Nation’s New Strategy to Stop Impaired Driving* (Washington, D.C.: NHTSA, 2004) at 2-3; and J. Lacey, R. Jones and R. Smith, *Evaluation of Checkpoint Tennessee: Tennessee’s Statewide Sobriety Checkpoint Program* (Washington, D.C.: NHTSA, 1999), online: <<http://www.nhtsa.dot.gov/people/injury/research/ChkTenn/ChkptTN.html>> [*Checkpoint Tennessee*].

³⁹¹ For full details, see *Checkpoint Tennessee, ibid.*

state's 95 counties. The program was also accompanied by a widespread public information campaign, which included 720 minutes of televised public service announcements, as well as print, radio and billboard advertising. Police had brief conversations with drivers passing through the checkpoints, but only demanded breath tests when they had the requisite probable grounds. Researchers found that the checkpoint program reduced fatal impaired driving crashes (*i.e.* fatal crashes in which one driver had a BAC of .10% or more) by 20.4%, or approximately nine fatal crashes per month. They concluded that "it is incumbent on policy makers and administrators to find ways to implement similar programs in their states."³⁹²

Checkpoint programs are most effective when combined with widespread media coverage, because it increases the perceived probability of arrest. A study of a five-month intensive checkpoint campaign in British Columbia found a 45% decrease in the number of drivers who had been drinking.³⁹³ There was also a 65% reduction in the proportion of drivers with a BAC above .08%. The effectiveness of the campaign may have resulted in part from its high visibility – 90% of the drivers surveyed at a checkpoint reported that they were aware of the campaign.³⁹⁴ Conversely, the deterrent impact of checkpoint programs that are not well-publicized tend to fade over time. This is likely due to the fact that the objective risk of apprehension is too low, in all but the most intensive programs.³⁹⁵

Thus, the provinces must not only introduce explicit authorizing legislation, but also invest resources in publicizing³⁹⁶ and operating the checkpoints. Studies indicate that this investment will be cost effective. For example, an American cost-benefit study concluded that every dollar spent on sobriety checkpoints, including enforcement, travel delay and criminal justice costs,

³⁹² *Ibid.* See also J. Fell *et al.*, "Why are sobriety checkpoints not widely adopted as an enforcement strategy in the United States?" (2003) 35 *Accid. Anal. and Prev.* 897.

³⁹³ D. Beirness, R. Foss and B. Mercer, "Roadside Breath Testing Surveys to Assess the Impact of an Enhanced DWI Enforcement Campaign in British Columbia" in C. 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) at 955.

³⁹⁴ Furthermore, 62% of drivers surveyed stated that they had already been through a checkpoint during the five-month campaign.

³⁹⁵ E. Vingilis, "Problems in Detecting DWIs" in *Alcohol, Drugs and Driving*, vol. 7 (Los Angeles: UCLA Brain Information Service/Brain Research Institute, 1991). See also Shults, *supra* note 109 at 75.

³⁹⁶ For guidelines on effective checkpoint programs, see Office of Enforcement and Emergency Services, *The Use of Sobriety Checkpoints for Impaired Driving Enforcement* (Washington, D.C.: NHTSA, 1990). See also U.S. Department of Transportation, *Low-Staffing Sobriety Checkpoints* (Washington, D.C.: NHTSA, 2006); and *Checkpoint Tennessee*, *supra* note 390.

will save the community six dollars in medical care, public emergency services, property damage, future earnings, and insurance.³⁹⁷ Thus, in addition to reducing deaths and injuries, systematic sobriety checkpoints can be independently justified on economics grounds. Finally, as discussed above, sobriety checkpoints would have other benefits, including increased apprehension of unlicensed, uninsured, suspended, and drug-impaired drivers.

Consideration should be given to establishing targeted sobriety checkpoints in areas containing a high concentration of bars, taverns and similar licensed establishments catering to 19-24 year olds. This age group is significantly overrepresented in alcohol-related crash deaths and does a significant percentage of its drinking in licensed establishments, often located in identifiable and relatively small areas.³⁹⁸ Not only would establishing targeted sobriety checkpoints increase apprehension rates in such areas, but it would also provide a strong deterrent for this vulnerable population.

(d) Enforcing Drug-Related Provisions

As indicated in Section I, drug-impaired driving is a significant problem among young people. In addition to the zero BAC restriction, GLP drivers should be prohibited from driving while impaired by drugs. Unfortunately, testing for drug impairment is not as straightforward as testing for alcohol impairment. Not all drugs cause impairment of driving-related skills, and many drugs remain in the body long after their impairing effects have ceased.³⁹⁹ Thus, a simple blood, saliva or urine test is not sufficient to show that a driver is impaired by drugs.⁴⁰⁰ Instead, police must be authorized to perform some form of co-ordination or other physical test on suspected drug-impaired drivers, such as a standardized field sobriety test (SFST), or the more formal drug evaluation classification test (DECT), both of which are described below. The results of these tests could then be confirmed by a blood, urine or saliva test, if necessary.

The SFST was developed in 1975 with funding from NHTSA. Early studies examined various roadside tests to determine which were most predictive of BACs above .10%. Based on

³⁹⁷ T. Miller, M. Galbraith and B. Lawrence, “Costs and Benefits of a Community Sobriety Checkpoint Program” (1998) 59 J. Stud. Alcohol 462. See also Shults, *supra* note 109 at 77-78.

³⁹⁸ *Campus Survey 2004*, *supra* note 24 at 42.

³⁹⁹ Depending on the drug, a positive test may simply indicate that the driver had used that drug sometime in the recent past. S. Karch, *The Pathology of Drug Abuse* (Boca Raton, FL: CRC Press, 1993) at 18.

⁴⁰⁰ See generally, M. O’Keefe, “Field Impairment Tests – A Survey of Members of the Association of Police Surgeons” in J. Oliver, P. Williams and A. Clayton eds., CD-ROM: *Proceedings of the 17th International Conference on Alcohol, Drugs and Traffic Safety* (Glasgow: ICADTS, 2004).

the results of these studies, a set of roadside tests were developed which are now used in all 50 states to detect impaired drivers.⁴⁰¹ The SFST has three components: the Horizontal Gaze Nystagmus (HGN), Walk-and-Turn,⁴⁰² and One-Leg Stand⁴⁰³ tests. Nystagmus, which refers to the rapid involuntary movement of the eyes, occurs naturally as the eyes gaze to the side. This eye movement is visibly affected by central nervous system depressants. The HGN test is the most reliable of these tests in detecting impairment by alcohol, accurately detecting 77% of drivers with a BAC above .10%.⁴⁰⁴ However, it will be less helpful in detecting impairment by drugs, other than depressants. The other two components, which test the driver's ability to divide attention between mental and physical exercises, identify impairment on a more basic level. While these three tests are not perfect indicators of impaired driving ability, they provide the best evidence at roadside of drug impairment currently available to police on a time-efficient and practical basis.

A recent Australian study has found that SFSTs are reliable in detecting cannabis impairment, at both moderate and high levels.⁴⁰⁵ Participants in the study were asked to perform an SFST and a driving simulator test, so that researchers could compare impairment on the SFST to impairment of driving-related skills. Some participants were administered a placebo, while others were administered THC (the active ingredient in marijuana) in a low or high dose. The study found a linear relationship between THC levels and impairment on both the SFST and driving simulator test. The One-Leg-Stand test was the best predictor of driving impairment.⁴⁰⁶

⁴⁰¹ See M. Burns and H. Moskowitz, *Psychophysical Tests for DWI Arrest* (Washington, D.C.: NHTSA, 1977); and J. Stuster and M. Burns, *Validation of the Standardized Field Sobriety Test Battery at BACs below 0.10 Percent* (Washington, D.C.: NHTSA, 1998) [Stuster].

⁴⁰² This test requires the suspect to take nine steps, heel-to-toe, along a straight line, after the officer has provided verbal instructions and a physical demonstration. After taking the steps, the suspect turns on one foot and returns in the same manner in the opposite direction. The test is easily performed by most unimpaired people. *Stuster, ibid.* at 33-34.

⁴⁰³ This test is also performed easily by most unimpaired people. After listening to the instructions and watching the officer's demonstration, the suspect stands with his or her heels together and arms down. The suspect is then instructed to stand on either leg, raising the other foot six inches off the ground and holding it out in front, while counting out loud for 30 seconds. *Ibid* at 34.

⁴⁰⁴ *Ibid* at 33.

⁴⁰⁵ K. Tzambazis and C. Stough, "The SFST and Driving Ability. Are they related?" in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

⁴⁰⁶ See also M. Boorman, "Detection of Drug Impaired Drivers – Standard Field Sobriety Tests" in D. Mayhew and C. Dussault eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

These results are important for present purposes, as cannabis is the drug most commonly used by young people before driving.

The SFST is crucial in establishing that a driver's ability to drive is impaired by drugs, or a combination of alcohol and drugs. While there is currently nothing preventing police officers from requesting that a driver perform an SFST, only Québec and Manitoba impose sanctions on drivers who fail to comply.⁴⁰⁷ Moreover, until recently the courts were divided on whether police had to inform suspects of their right to counsel before conducting the test.⁴⁰⁸ This conflict appears to have been resolved by *R. v. Orbanski*, which indicated that suspects can be asked to participate in an SFST without being informed of their right to counsel, provided the test is used for screening purposes only.⁴⁰⁹ Finally, a federal bill to include SFSTs and DECTs in the *Criminal Code* to assist in the prosecution of drug-impaired drivers fell victim to the early dissolution of Parliament in late 2005.⁴¹⁰ Currently, police in Canada have little to no authority to gather evidence of drug-impaired driving.

Nevertheless, this study is not focused on impaired driving generally, but rather on youth crashes and the prohibition on drug-impaired driving under provincial GLPs. The police should be authorized to demand an SFST from any GLP driver they reasonably suspect has consumed alcohol or drugs.⁴¹¹ The consequences for failing or refusing to take the SFST should be the same as those for violating the zero BAC restriction. However, a driver who wishes to challenge the officer's conclusion that he or she is drug-impaired should be entitled to request a confirmatory blood, saliva or urine test, or a DECT, if such tests are available.

The DECT has been used in American jurisdictions for several decades. It has many steps, beginning with preliminary questioning and a physical examination. This stage is meant to ensure that the suspect is not suffering from a medical condition that has symptoms similar to drug impairment. Next, the officer conducts various tests of the suspect's eye movements,

⁴⁰⁷ See *Rating the Provinces*, *supra* note 73; and *Progress Report*, *supra* note 261.

⁴⁰⁸ For example, the Ontario and British Columbia courts have held that an SFST can be conducted without providing the right to counsel: *R. v. Smith* (1996), 28 O.R. (3d) 75 (C.A.); and *R. v. Bonin* (1989), 47 C.C.C. (3d) 230 (B.C.C.A.). In contrast, the Alberta and Nova Scotia courts required the police to provide the right to counsel prior to conducting the test: *R. v. Gallant* (1989), 48 C.C.C. (3d) 329 (Alta. C.A.); and *R. v. Baroni* (1989), 49 C.C.C. (3d) 553 (N.S.C.A.).

⁴⁰⁹ *Orbanski*, *supra* note 375 at para. 58.

⁴¹⁰ Bill C-16: *An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts*, 1st. Sess., 38th Parl., 2005.

⁴¹¹ This provision would also assist in identifying alcohol-impaired drivers in situations where an ASD was not available.

including both horizontal and vertical gaze nystagmus. This is done because certain drugs are known to cause nystagmus or to impede an individual's ability to cross his or her eyes. The suspect is then asked to perform divided attention tasks, such as the Walk-and-Turn and One-Leg Stand tests, which require him or her to balance, co-ordinate body movements, remember instructions, and perform more than one task at once. During the next phase, the officer examines the suspect's blood pressure, body temperature and pulse, and also tests the suspect's pupils for reaction to varying light levels. The officer will then examine the suspect's muscle tone, since certain drugs can cause an individual's muscles to become either rigid or flaccid. The officer will also visibly inspect the suspect's arms and ankles for injection sites. Finally, the officer conducts a structured interview with the suspect about the use of drugs. Based on all the above tests, the officer forms an opinion regarding the suspect's possible drug impairment, and attempts to determine the category of drugs causing the impairment (*e.g.* depressants, hallucinogens, etc.).

Since the Los Angeles Police Department introduced DECT in the 1970s, it has spread to almost all American states. This is due, in large part, to the reported accuracy rates of its practitioners. A study conducted by Johns Hopkins University found that drug recognition officers were over 90% accurate in determining impairment and the category of drug causing it.⁴¹² A later NHTSA study reported a 94% accuracy rate in identifying impairment by a drug other than alcohol.⁴¹³ The participating officers correctly identified at least one drug other than alcohol in 87% of the cases.

Of the two types of physical drug-testing, SFST is far more appropriate for enforcing the prohibition on drug-impaired driving under the GLP. The SFST can be conducted at roadside in a short period of time by officers who have had relatively little training. Conversely, the DECT is typically conducted at the police station, takes several hours, requires special equipment, and can only be conducted by officers who have had extensive training. It is unlikely that every police station, particularly those in more remote areas, will be staffed or equipped to perform DECTs. Moreover, the DECT is designed to provide detailed evidence for criminal trials, and is too cumbersome a procedure for the administrative framework of the GLP. Beginning drivers

⁴¹² G. Bigelow, *Identifying Types of Drug Intoxication: Laboratory Evaluation of a Subject Examination Procedure* (Washington, D.C.: NHTSA, 1984).

⁴¹³ R. Compton, *Field Evaluation of the Los Angeles Police Department Drug Detection Procedure* (Washington, D.C.: NHTSA, 1986).

who wish to challenge the SFST results could be given the right to demand either a confirmatory blood, urine or saliva test, or DECT (if available).

Like the authority to demand breath samples, the authority to demand SFSTs from GLP drivers may be challenged as an unreasonable search and seizure and a denial of the right to counsel under sections 8 and 10(b) of the *Charter*. As a result, this authority must also be carefully drafted. Fortunately, the right to request an SFST from *any* driver has recently been upheld by the Supreme Court of Canada.⁴¹⁴ However, the decision was limited to situations where the SFST was used solely for screening purposes, and the results were not admissible as evidence of impairment at a criminal trial. Consequently, results of the SFST should only be used to enforce the drug-impaired driving prohibition under the GLP. This would result in licensing sanctions, but no criminal prosecution.⁴¹⁵

(e) Summary

Effective enforcement powers are crucial if the recommendations in Sections II and III are to have their desired effects. Unless police are authorized to stop drivers, inspect their licences and test for alcohol and drugs, many of the provisions in the GLP will go unenforced. If beginning drivers learn that GLP conditions can be breached with little risk of apprehension, compliance will likely decrease, and the controlled learning atmosphere will be undermined. The provinces need to enact broader police powers and provide sufficient resources to maximize the effectiveness of their GLPs.

Many of the proposed enforcement provisions will have additional traffic safety benefits. For instance, the ability to stop vehicles will assist police in identifying unlicensed, suspended, prohibited, or uninsured drivers, who are overrepresented in crashes. Further, the use of sobriety checkpoints has a general deterrent effect, especially if well-publicized. Thus, the enforcement powers recommended in this section should be beneficial to the general motoring public.

⁴¹⁴ *Orbanski, supra* note 375.

⁴¹⁵ Officers wishing to use the results for the purposes of criminal prosecutions would need to comply with the right to counsel under section 10(b) of the *Charter*.

SECTION V: SUMMARY, RECOMMENDATIONS AND PRIORITIES FOR ACTION

(a) Introduction

Although major strides were made in reducing the record high levels of youth crash deaths of the early 1980's, progress has stalled in recent years. Traffic crashes remain the leading cause of death among Canadian youth. In 2004, traffic crashes killed 695 young people and injured another 53,600. Even conservatively estimated, over 45% of these deaths were alcohol related. While no official estimates appear to be available, it is clear that an additional percentage of youth crash deaths are drug related.

The projected increase in Canada's youth population over the next five years will, in and of itself, increase impairment-related traffic deaths and injuries among 15-24 year olds. Thus, effective action is required to achieve even the very modest goal of preventing such deaths and injuries from increasing. The purpose of this study is to provide a broad survey of legislative measures that the provincial governments can implement to better protect young Canadians.

The impaired crash problem among youth is not exclusively a function of their immaturity and lack of driving experience, but also reflects their hazardous patterns of alcohol and drug use. Young people have the highest reported rates of drug use, and weekly, monthly and total binge drinking. They also have high rates of driving after drinking and drug use, and of being a passenger of a driver who has been drinking or taking drugs. Granted, young people also exhibit driving characteristics that greatly increase their crash risks. Beginning drivers are immature, and lack both driving experience and the skills necessary to avoid potentially hazardous situations. Young people, particularly males, tend to be risk takers, in that they have relatively high rates of speeding and aggressive driving, and lower rates of seatbelt use. It is young people's patterns of alcohol and drug consumption, coupled with their driving behaviours, that explain why they are dramatically overrepresented in all categories of impairment-related traffic deaths.

The following recommendations and priorities for action address both young Canadians' hazardous patterns of alcohol and drug consumption, as well as their lack of driving skills and experience.

(b) The Regulation of Alcohol

Our focus is on measures that will most directly impact binge and underage drinking among youth, and the alcohol-related crash deaths that result. Research has established that levels of hazardous consumption are related to elevated rates of alcohol-related harms, including traffic crashes. Moreover, the early onset of drinking among youth is associated with increased alcohol-related problems and injuries, both during adolescence and later in life.

MADD Canada recommends that the minimum drinking age be increased to 19 in Alberta, Manitoba and Québec. All jurisdictions should: increase beer prices to bring them into line with liquor prices on a per standard drink basis; standardize prices within beverage types in terms of alcohol content; and index alcohol prices to inflation. The provinces should establish/maintain government monopolies over off-premise alcohol sales and alcohol delivery services, and implement keg registration laws. The various underage-drinking offences (*e.g.* illicit sales, provision and possession, and the production and use of forged IDs) should be more rigorously enforced and sanctioned. The provinces need to increase public awareness of the existing prohibitions against selling, giving or providing alcohol to underage or intoxicated individuals, and the potential civil liability consequences of breaching these prohibitions. A tiered program of mandatory server and management training should be introduced for all licensed establishments. Furthermore, the provinces need to enforce the existing alcohol advertising laws, particularly the regulations governing lifestyle advertising that targets youth.

Of particular concern is the need to dramatically increase enforcement of the liquor licence legislation, especially in licensed premises catering to youth. Older teens and young adults do a disproportionate share of their drinking in a relatively small number of establishments, which are typically well known to the police and licensing authorities. The underage and over-service prohibitions are routinely ignored by many of these venues. The existing licensing laws need to be far more frequently and rigorously enforced. As long as there are very large numbers of intoxicated youth leaving bars, taverns and similar licensed premises every weekend night, they will continue to dominate the statistics on alcohol-related driver, passenger and pedestrian traffic deaths.

(c) The Regulation of Driver Licences

Several of the major risk factors faced by novice drivers can be addressed through provincial driver licensing. All jurisdictions should implement a minimum driving age of 16, regardless of whether applicants are enrolled in a driver education program.

MADD Canada advocates that a comprehensive three-stage GLP be established for all new drivers, irrespective of age. Stage 1 should be 12 months in length, during which novice drivers must be accompanied by a supervisor, who is at least 21 and has been fully licensed for two or more years. Stage-1 drivers should also be subject to nighttime driving, high-speed road, and passenger restrictions. Drivers should have to pass a road test before proceeding to the next stage of the program. Stage 2 should also be 12 months in length. During this stage, supervision would not be required, except for nighttime driving, driving on high-speed roads, or driving with more than one teenage passenger. In order to proceed, stage-2 drivers should be required to pass a second road test. Stage 3 should be a 24-month probationary period, during which the driver would have full driving privileges, but would be subject to closer scrutiny by the licensing authorities than more experienced drivers. All drivers and supervisors in the GLP should be required to maintain a zero BAC, and be free of potentially impairing drugs. The stages of the GLP should not be shortened for those who have taken a driver education course.

MADD Canada also recommends that all drivers under the age of 21 be subject to a zero BAC limit, even if they have successfully completed the GLP. Young drivers are already disadvantaged due to their inexperience, and they should not have their judgment further impaired by alcohol. This recommendation addresses the high rates of alcohol-related fatalities among 18-20 year old drivers and the fact that, under the current law, they are first permitted to drive unsupervised at about the same time they reach the legal drinking age.

(d) Law Enforcement

The preceding licensing measures will have only a limited impact unless the police are given appropriate enforcement powers. If the province has not already done so, it should give the police express statutory authority to stop vehicles and demand documentation from any drivers or supervisors in the GLP. Moreover, the police must be given authority to demand roadside breath tests from drivers and supervisors who are subject to a zero BAC restriction. Those who violate the zero BAC restriction should be subject to an immediate licence suspension and other appropriate administrative sanctions. MADD Canada also recommends establishing systematic

sobriety checkpoint programs in areas that routinely generate large numbers of young impaired drivers and pedestrians.

Measures are also needed to address the fact that young people have the highest reported rates of driving under the influence of cannabis and other illicit drugs. We recommend that the police be given express statutory authority to demand participation in a standard field sobriety test from any driver they reasonably suspect has drugs in his or her body. These and similar powers are essential if the police are to effectively enforce the existing federal criminal prohibition on driving while one's ability to do so is impaired by drugs.

(e) Priorities for Action

While MADD Canada would like the provinces to adopt all of the preceding recommendations, the following five measures warrant immediate consideration. In MADD Canada's view, these measures will garner broad public support and, more importantly, contribute to significant reductions in impairment-related crash deaths among Canadian youth. Thus, our priorities for immediate action are:

- More rigorous enforcement of the existing liquor licence prohibitions against selling, serving or giving alcohol to minors or intoxicated individuals, particularly in licensed establishments catering to youth;
- Implementation of a comprehensive GLP comprised of three licensing stages;
- Enactment of a zero BAC limit for all drivers under the age of 21;
- Enactment of express statutory authority permitting the police to stop vehicles and inspect documentation, to demand breath samples from drivers and supervisors who are subject to a GLP, and to demand breath samples from drivers subject to an age-related zero BAC restriction; and
- Introduction of systematic sobriety checkpoint programs in areas that traditionally have high concentrations of young impaired drivers and pedestrians.



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