

# **The Impact of Implementing Random Breath Testing on Criminal Justice System Resources**

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## INTRODUCTION

Despite numerous amendments to federal, provincial and territorial legislation, countless awareness programs and other initiatives, impairment-related traffic crashes remain Canada's leading criminal cause of death. Although impaired driving deaths in Canada fell significantly from the early 1980s until the late 1990s, relatively little progress has been made since. As of 2009, Canada continues to have one of the highest per capita rates of impaired driving deaths and injuries among comparable developed democracies.

The persistence of impaired driving is not a challenge that is unique to Canada. However, most developed and developing countries have chosen to respond by implementing random breath testing (RBT) programs. A 2008 study and earlier international reviews indicate that 82% of the 56 developed and developing countries surveyed had established a RBT program. Finland, Sweden and France introduced RBT in the late 1970s, followed by most Australian jurisdictions in the 1980s. New Zealand and most of the remaining Western European countries enacted RBT legislation in the 1990s. In 2003, the European Commission recommended that all member states in the European Union introduce comprehensive RBT legislation. Ireland, the most recent country to do so, initiated its RBT program in 2006.

RBT legislation authorizes the police to demand a breath sample from any driver in the absence of an individualized suspicion that he or she has consumed alcohol or is impaired. Typically, RBT is conducted at stationary (fixed) sobriety checkpoints using roadside screening devices. A breath sample is demanded from every driver who is stopped, without any preliminary questioning or document inspection. The test itself takes about 30 seconds, the driver remains seated in the car and the average duration of the entire stop is 2 minutes.

Individual studies, research reviews and meta-analyses have consistently found that well-publicized, intensive RBT programs achieve sharp and sustained reductions in impaired driving, and related crashes, deaths and injuries. For example, the most

comprehensive study on Australia's RBT programs reported reductions in total annual fatal crashes of 35% in Queensland and 28% in Western Australia, and reductions in total annual single-vehicle nighttime collisions of 26% in New South Wales and 24% in Tasmania. The introduction of RBT was found to have reduced total crashes in New Zealand by 14%. In Ireland, total road traffic fatalities fell by 19% in the 12-month period following the enactment of RBT in mid-2006. By 2011, total Irish traffic deaths stood at only 47% of the 2005 total.

Notwithstanding these impressive results, some provincial governments in Canada have expressed concern that RBT will drastically increase impaired driving arrests and prosecutions, thereby overburdening the courts. A thorough review of the published research on RBT indicates that this concern is unwarranted.

### **RANDOM BREATH TESTING AND CRIMINAL JUSTICE SYSTEM RESOURCES**

Most of the extensive body of research on RBT centres on its effectiveness in reducing impaired driving, and total and impairment-related crashes, deaths and injuries. The research on RBT's broader impacts focuses on its cost-effectiveness as an impaired driving countermeasure. For example, a 2004 World Health Organization study reported that each dollar spent on RBT results in a cost saving of \$19. Similarly, a 2003 European Union study concluded that increasing RBT testing levels to 1 test per 16 inhabitants would result in a cost-benefit ratio of 1:36 to 1:55, depending on the cost model used. However, this research provides no indication that RBT has increased the workload of prosecutors and the courts. Indeed, discussions of this possibility are notably absent from the research literature, strongly suggesting that this problem has not arisen in 40 years since jurisdictions began enacting RBT legislation.

With the enactment of RBT, the police will detect virtually all of the impaired drivers that they stop. However, this will be offset by the fact that RBT significantly reduces the number of impaired drivers on the roads. Thus, it does not follow that introducing RBT will invariably overburden the police, prosecutors and courts with

impaired driving cases. The international research data, albeit limited, indicate that RBT has not led to sustained increases in impaired driving charges and convictions. Moreover, several jurisdictions have seen significant declines in impaired driving and other traffic-related charges.

While the number of impaired driving charges may temporarily increase, charges may well fall as RBT's general deterrent impact on impaired driving takes effect. For example, the 7% increase in Ireland's impaired driving charges in 2007, the year after RBT was introduced, was followed by 3 years of significant declines.<sup>1</sup> By 2011, impaired driving charges in Ireland had fallen to 48% of the pre-RBT level.<sup>2</sup> In New Zealand, impaired driving convictions remained relatively stable in the four years after the introduction of RBT in 1993.<sup>3</sup> The available research, while limited, simply does not support the concern that RBT legislation will overwhelm the criminal justice system.

A New South Wales study reported not only reductions in impaired driving charges laid over a long holiday weekend in the year following the introduction of RBT, but also declines in charges for other traffic offences.<sup>4</sup> The author attributed the reductions in the other traffic offences to the "high visibility of police on [the] roads occasioned by random breath testing."<sup>5</sup> Similarly, there were 33% and 78% reductions, respectively in careless driving and other traffic convictions in the years following New

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<sup>1</sup> Central Statistics Office, *CJA01: Recorded Crime Offences by Type of Offence and Year*, (Cork, Central Statistics Office, 2011) online: <<http://www.cso.ie/px/pxeirestat/Statire/SelectVarVal/saveselections.asp>>.

<sup>2</sup> *Ibid.*

<sup>3</sup> T Miller, M Blewden & J Zhang, "Cost savings from a sustained compulsory breath testing and media campaign in New Zealand" (2004) 36 *Accident Analysis & Prevention* 783 at 788.

It should be noted that while impaired driving convictions in New Zealand increased by 11% between 1992 and 2011, the population rose by 25% during this period. See Statistics New Zealand, *Prosecuted Charges by ANZSOC*, (New Zealand, Statistics New Zealand, 2012) online: <<http://wdmzpub01.stats.govt.nz/wds/TableViewer/tableView.aspx>> and Statistics New Zealand, *National Population Estimates, at 30 June 1991-2011*, (New Zealand, Statistics New Zealand, 2012) online: <[http://www.stats.govt.nz/browse\\_for\\_stats/population/estimates\\_and\\_projections/national-pop-estimates.aspx](http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/national-pop-estimates.aspx)>.

<sup>4</sup> G Paciullo, "Random breath testing in New South Wales", (1983) 1:1 *The Medical Journal of Australia* 620 at 621.

<sup>5</sup> *Ibid.*

Zealand's implementation of RBT legislation.<sup>6</sup> These data suggest that the deterrent effect of RBT may reduce both impaired driving and other traffic-related offences.

Introducing RBT in Canada would greatly streamline the investigation and prosecution of all impaired driving cases. In order to demand a breath test on an approved screening device (ASD), the police must have reasonable grounds to suspect that a driver has alcohol and/or drugs in his or her body. Although this threshold for demanding an ASD test is not particularly high, the police often have difficulty convincing a court that their subjective roadside assessment of a driver met the requisite standard.<sup>7</sup> As a result, the police must carefully question drivers, closely observe them for visible signs of impairment, scrutinize their documents, and attempt to detect the odor of alcohol on their breath. The parallel process in Australia prior to the introduction of RBT was described as requiring the police "to perform an elaborate charade involving licenses and equipment, all the time 'sniffing the air' for signs of alcohol."<sup>8</sup> As noted, RBT eliminates the need for any preliminary questioning, careful observations, document inspection, or detailed note-taking. Rather, drivers stopped at an RBT checkpoint are processed in an assembly line fashion.

Furthermore, RBT would eliminate a major ground for contesting the admissibility of the evidentiary breath tests. Currently, if a court finds that there were insufficient grounds to demand an ASD test, the results of the subsequent evidentiary tests will be excluded from evidence and the driver will most likely be acquitted. As a result, it is common practice for defence counsel to aggressively challenge the officer's basis for demanding the ASD test. With the introduction of RBT legislation, police would no longer be required to prove in court that they had reasonable grounds to suspect that a driver had consumed alcohol and/or drugs. Therefore, even if the number of charges

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<sup>6</sup> P Spier, *Conviction and sentencing of offenders in New Zealand: 1988 to 1997* (Wellington: Ministry of Justice, 1998) at 63.

<sup>7</sup> Moreover, some judges have applied a very rigorous standard for making ASD demands. See for example, *R v Thompson*, 2003 SKPC 56; and *R v Sood*, 2005 389 AR 139.

<sup>8</sup> R Homel, "Random Breath Testing and Random Stopping Programs in Australia" in R Wilson & R Mann, eds, *Drinking and Driving: Advances in Research and Prevention* (New York: Guilford Press, 1990) 159 at 186.

increased, there would be a higher percentage of guilty pleas, fewer legal challenges to the admissibility of the evidentiary breath tests, and shorter, less complicated trials. These streamlined procedures would reduce whatever increased burden that RBT might impose on prosecutors and the courts.

The discussion of RBT in Canada should, as in the rest of the world, focus on its traffic safety benefits and not on whether it might possibly increase demands on the criminal justice system. If there are major problems in the existing impaired driving legislation and the processing of the resulting cases, these should be dealt with directly. Focusing on administrative issues detracts attention from the seriousness of impaired driving, a crime that in Canada claims almost twice as many lives per year as all categories of homicide combined. It is doubtful that anyone would suggest that proven measures to reduce sexual assaults should not be enacted because they might increase the burden on the criminal justice system. Nor should such considerations preclude the enactment of comprehensive RBT programs in Canada.

## CONCLUSION

As indicated, RBT programs have achieved significant and sustained reductions in impaired driving, and related crashes, deaths and injuries. The available evidence indicates that implementing a comprehensive RBT program in Canada will save hundreds of lives, prevent tens of thousands of injuries, and reduce the social costs of impaired driving by billions of dollars annually.<sup>9</sup> The courts in jurisdictions that have implemented RBT programs have not been overburdened with impaired driving cases. Rather, impaired driving cases have remained stable or, in some jurisdictions, have declined. In our view, the concern with RBT's impact on the Canadian legal system fails to take into account its major deterrent impact on impaired driving and the fact that it will greatly streamline the processing of all impaired driving cases. Consequently, the significant traffic safety benefits of RBT can be achieved without unduly increasing the demands on Canada's criminal justice system.

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<sup>9</sup> R Solomon et al, "Predicting the Impact of Random Breath Testing on the Social Costs of Crashes, Police Resources, and Driver Inconvenience in Canada" (2011) 57 Crim L Q 438.

