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**A Review of the Traffic Injury Research
Foundation's Analysis of Random Breath Testing in
*Canada's Impaired Driving Framework: The Way Forward***

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Section I: Introduction

Despite numerous federal, provincial and territorial legislative reforms, awareness programs, and other initiatives, impairment-related crashes remain Canada’s leading criminal cause of death. The progress made in reducing impaired driving deaths and injuries from the early 1980s until the late 1990s has largely stalled,¹ leaving Canada with one of the worst impaired driving records among comparable jurisdictions.² The persistence of impaired driving is a challenge that is not unique to Canada. In response, most “developed and developing countries” have implemented comprehensive random breath testing (RBT) legislation,³ typically as a key feature of their overall enforcement strategy. The introduction of RBT in these countries has consistently resulted in sharp and sustained reductions in impaired driving deaths and injuries.

Relying in part on this information, the House of Commons Standing Committee on Justice and Human Rights unanimously recommended in 2009 that the federal government enact RBT legislation.⁴ The federal government accepted the Committee’s recommendation in principle, and the Department of Justice issued a discussion paper and convened a two-day workshop

¹ D Mayhew, D Beirness & H Simpson, “Trends in Drinking-Driving Fatalities in Canada – Progress Stalls” in P Williams & A Clayton, eds, *Proceedings of the 17th International Conference on Alcohol, Drugs and Traffic Safety*, CD-ROM (Glasgow: International Council on Alcohol, Drugs and Traffic Safety, 2004); and S Pitel & R Solomon, *Lives Saved 1982-2010: 36,642* (Oakville: MADD Canada, 2013) at 2.

² For example, Canada’s per capita rate of alcohol-related crash deaths in 2008 was more than five times that of Germany, a country that consumes over 46% more alcohol per capita. While Canadians tend to drink less than residents of comparable countries, they are far more likely to be killed in an alcohol-related traffic crash.

For the Canadian and German crash data, see respectively D Mayhew, S Brown & H Simpson, *The Alcohol-Crash Problem in Canada: 2008* (Ottawa: Transport Canada, 2010) at 14; and G Jost et al, *Road Safety Target In Sight: Making up for lost time – 4th Road Safety PIN Report* (Brussels: European Transport Safety Council, 2010) at 97 (Table 15). For the population data, see respectively Statistics Canada, *CANSIM TABLE 051-0001, Estimates of population, by age group and sex for July 1, Canada, provinces and territories, annual (persons)* (Ottawa: Statistics Canada, 2011), online: <<http://www5.statcan.gc.ca/cansim/a05?lang=eng&id=0510001>>; and Federal Statistical Office, *Germany’s Population by 2060: Results of the 12th coordinated population projection* (Wiesbaden: Federal Statistical Office, 2009) at 5. For consumption data, see Organization for Economic Co-operation and Development (OECD), *Non-Medical Determinants of Health: Alcohol Consumption*, online: <http://stats.oecd.org/index.aspx?DataSetCode=HEALTH_STAT>.

³ A 2008 study and earlier international reviews indicate that 46 of 56 countries (82%) had an RBT program established under national or, in a few cases, state/territorial legislation. E Chamberlain & R Solomon, *The 2012 Federal Legislative Review* (Oakville: MADD Canada, 2012) at 7.

⁴ Canada, House of Commons Standing Committee on Justice and Human Rights, *Ending Alcohol-Impaired Driving: A Common Approach* (Ottawa: House of Commons Standing Committee on Justice and Human Rights, 2009) at 13-16.

endorsing RBT in March 2010.⁵ To date, the government has failed to introduce the necessary *Criminal Code* amendments.

In May 2012, the Traffic Injury Research Foundation (TIRF) held a one-day symposium on drinking and driving. RBT was one of the issues addressed in the subsequently published proceedings.⁶ TIRF made the following four claims in opposition to RBT:

- (i) When stopped by police, drivers are selectively tested for alcohol based on reasonable suspicion, “due to constitutional protections.”⁷ These protections are an impediment to implementing RBT in Canada.
- (ii) Existing research “does not provide evidence that RBT is more effective than SBT” (selective breath testing).⁸
- (iii) Current “safety protocols for conducting roadside stops” would make it “challenging, if not impossible” for police officers to conduct RBT in the way that it is conducted in other jurisdictions.⁹
- (iv) There are significant financial costs associated with implementing RBT.¹⁰

However, as explained below, these claims are not consistent with the available traffic safety research or relevant legal scholarship. As with many other current impaired driving countermeasures, RBT is consistent with the *Canadian Charter of Rights and Freedoms* (*Charter*).¹¹ RBT has repeatedly been shown to be far more effective than SBT. RBT can be conducted safely in Canada in the same way that it is conducted in Australia, New Zealand, Europe, and other jurisdictions. The available evidence indicates that implementing RBT will save hundreds of lives, prevent tens of thousands of injuries and reduce the social costs of impaired driving by billions of dollars each year. Moreover, these substantial benefits can be achieved without overburdening the courts or otherwise significantly increasing demands on public resources.

⁵ Department of Justice Canada, *Discussion Paper: Modernizing the Transportation Provisions of the Criminal Code* (Ottawa: Department of Justice Canada, 2010) at 10-13.

⁶ RD Robertson & WGM Vanlaar, *Canada’s Impaired Driving Framework: The Way Forward* (Ottawa: Traffic Injury Research Foundation, 2013).

⁷ *Ibid* at 16.

⁸ *Ibid*.

⁹ *Ibid* at 17.

¹⁰ *Ibid* at 15.

¹¹ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

Section II: The Constitutionality of RBT

TIRF makes two points that relate to the constitutionality of RBT. First, it observes that under SBT:

drivers are selectively tested at the checkpoints due to constitutional protections. This means that police officers must have a legitimate reason (“reasonable suspicion” is the legal standard in Canada) to suspect that a driver stopped at the checkpoint has been drinking before they can legally administer a breath test. In essence, this means that SBT uses checkpoints to stop all drivers who are driving by, but only a selection of them will be asked to deliver a breath sample, i.e., those who are suspected of having consumed alcohol as evidenced by noticeable signs such as their demeanor, responses or the odor of alcohol.¹²

Second, TIRF argues that implementing RBT would “result in delays in testing all drivers that may be considered unreasonable from the perspective of constitutional protections.”¹³ TIRF appears to suggest that drivers awaiting testing at RBT checkpoints would be delayed for sufficiently lengthy periods of time as to infringe their *Charter* rights. As will be discussed in Section IV of this memorandum, wait times at RBT checkpoints are comparable to those at SBT checkpoints. Moreover, the Supreme Court of Canada has held that the delays that drivers experience at SBT checkpoints do not violate their *Charter* rights.¹⁴

The first point more directly questions whether RBT is constitutional. TIRF is correct in stating that “reasonable suspicion” is the current statutory standard for undertaking SBT. However, TIRF further claims that this standard is constitutionally mandated, such that new statutory provisions could not be based on any lesser standard. TIRF does not expressly state that it considers RBT to be unconstitutional, but that appears to be the conclusion it wants its readers to draw.

TIRF’s comments on the constitutionality of RBT are difficult to accept, as it fails to provide any legal authority or analysis. In essence, TIRF’s position on RBT’s constitutionality rests on its bare assertion. TIRF does not refer to any particular section of the *Charter* or other part of the Canadian Constitution, nor to any of the relevant jurisprudence (i.e. the binding decisions of the appellate courts) interpreting those important provisions. TIRF cites no constitutional scholars who agree with its position.

Moreover, in the absence of such authoritative sources, TIRF’s failure to provide any substantive analysis in support of its position is problematic. It is unfortunate that TIRF has not

¹² Robertson & Vanlaar, *supra* note 6 at 16.

¹³ *Ibid* at 17.

¹⁴ See *R v Hufsky*, [1988] 1 SCR 621; and *R v Ladouceur*, [1990] 1 SCR 1257. For a more detailed discussion of RBT and the *Charter*, see R Solomon et al, “The Case for Comprehensive Random Breath Testing Programs in Canada: Reviewing the Evidence and Challenges” (2011) 49:1 *Alta L Rev* 37 at 60-77.

addressed the research on this issue. Prior to TIRF’s symposium, a detailed analysis of the constitutionality of RBT was published in the *Alberta Law Review*, a less technical version of which appeared in *Traffic Injury Prevention*.¹⁵ These articles analyzed the relevant provisions of the *Charter*, notably sections 8, 9, 10(b) and 1, and the jurisprudence governing their interpretation. The authors concluded that, as with many current impaired driving counter-measures, RBT would be challenged under the *Charter*, but would most likely be upheld by the Canadian courts as a “reasonable limit ... [that] can be demonstrably justified in a free and democratic society.”¹⁶ The Supreme Court of Canada has repeatedly acknowledged that driving is a heavily regulated licensed activity, not a right,¹⁷ and that impaired driving is a pressing and substantial concern that warrants reasonable limits on the constitutional rights of drivers.¹⁸

The foregoing analysis of RBT’s constitutionality has been endorsed by Dr P Hogg, Canada’s foremost constitutional law scholar.¹⁹ Dr Hogg prepared a formal legal opinion, addressing the relevant *Charter* provisions and related jurisprudence. He concluded that: if the Criminal Code were amended by Parliament to replace breath testing on reasonable suspicion with random breath testing, the amendment would be constitutional. ... I am confident that a constitutional challenge would be unsuccessful and that random breath testing would be upheld by the Supreme Court of Canada.²⁰

Another problem with TIRF’s constitutional discussion is its failure to consider the context in which RBT would operate. It is instructive to compare RBT to the random screening procedures routinely used at Canadian airports, borders, courts, and many other government buildings. For example, in 2010, 106 million passengers “enplaned and deplaned”²¹ in Canada. In addition to going through a metal detector and having their carry-on luggage screened,

¹⁵ See respectively Solomon et al, *ibid*; and R Solomon et al, “Random Breath Testing: A Canadian Perspective” (2011) 12 *Traffic Injury Prevention* 111 at 116-17. Even if TIRF did not wish to refer directly to our published research on the constitutionality of RBT, it should have at least reviewed the jurisprudence to which we referred.

¹⁶ *Charter*, *supra* note 10, s 1.

¹⁷ See for example *R v Pontes*, [1995] 3 SCR 44; and *Alberta v Hutterian Brethren of Wilson Colony*, [2009] 2 SCR 567.

¹⁸ See for example *R v Hufsky*, *supra* note 14; *R v Ladouceur*, *supra* note 14; and *R v Orbanski*, *R v Elias*, [2005] 2 SCR 3.

¹⁹ Dr Hogg is Dean Emeritus of Osgoode Hall Law School and is currently a Scholar in Residence at Blake, Cassels & Graydon LLP.

²⁰ Letter from Dr P Hogg to W Kauffeldt, MADD Canada (4 August 2010), online: MADD Canada <http://www.madd.ca/english/research/rbt/Random%20Breath%20Testing%20Opinion_P-Hogg.pdf>.

²¹ Transport Canada, *Transportation in Canada: 2010 An Overview* (Ottawa: Transport Canada, 2010), online: Transport Canada <<http://www.tc.gc.ca/media/documents/policy/overview2010.pdf>>.

passengers may be required to: take off their shoes, belts and jewelry; be swabbed for explosive residue; undergo a full-body scan for weapons, contraband and explosives under their clothes; empty their pockets into a tray; and submit to a pat-down search, which can involve being touched on the neck, legs, arms, chest, hips, and buttocks over their clothes. The air traffic safety concerns that have prompted these random airport screening procedures are accepted by travellers, and apparently have never been legally challenged.²² The roughly 91 million returning Canadians and international visitors crossing into the country each year are subject to these same screening and search procedures.²³

We would venture that for many people, it is a greater intrusion on privacy to have one's purse, briefcase and luggage publicly searched, and more humiliating to be patted down in public or strip-searched in private at a busy airport or border crossing, than to provide a breath sample while sitting in one's car for two minutes at roadside like every other driver passing through an RBT checkpoint.

The Canadian courts have never found such random border and airport screening procedures,²⁴ or those routinely imposed on anyone entering their courtrooms, to violate the *Charter*.²⁵ The simple fact is that many more Canadians are killed in alcohol-related crashes every year than by terrorists on airplanes, travellers at the border or entrants to the courts. Given the diminished expectation of privacy while driving and the state interest in traffic safety, RBT will most likely be found to be consistent with *Charter* values, as have airport, customs and court screening procedures.

Section III: The Effectiveness of RBT

TIRF asserts that “existing research does not provide evidence that RBT is more effective than SBT. A systematic review of 23 studies on the effectiveness of RBT and SBT concluded that there was no evidence to suggest that the levels of effectiveness of both strategies differed.”²⁶ However, as the authors of the review and TIRF noted, the review assessed

²² P Hogg, *Constitutional Law of Canada*, 5th ed, loose-leaf (consulted on 31 March 2011), (Toronto: Thomson Reuters Canada, 2007) ch 48 at 37.

²³ Canada Border Security Agency, *CBSA National Statistics – Trade and Traveler Statistics* (18 July 2010), online: Canadian Border Security Agency <<http://news.alibaba.com/article/detail/international-trade-special/100362579-1-cbsa-national-statistics--trade-travel-ler.html>>.

²⁴ See for example *R v Simmons*, [1988] 2 SCR 495 at 529; and *R v Monney*, [1999] 1 SCR 652 at 681-82.

²⁵ See for example *R v Lindsay (DK)* (2004), 187 Man R (2d) 236 (CA); and *R v Campanella* (2005), 75 OR (3d) 342 (CA).

²⁶ Robertson & Vanlaar, *supra* note 6 at 16.

individual programs and did not directly compare SBT and RBT checkpoints.²⁷ Consequently, as the authors of the systematic review²⁸ and others comparing SBT and RBT have stated,²⁹ the results of their research have to be viewed with caution. In our opinion, the basic problem with these reviews is that they are not particularly relevant to the situation in Canada.³⁰

First, some of the American SBT studies relied upon in the preceding reviews measured the traffic safety benefits of moving from an enforcement model that relied almost exclusively on routine patrol activities to high-visibility, heavily publicized, intensive SBT. The best-known of these programs was “Checkpoint Tennessee,” which was credited with a 20.4% reduction in alcohol-related crashes.³¹ However, in this program, the number of checkpoints increased from 15 in the preceding year to 900 in the program year.³² The accompanying mass media campaign included thousands of television and radio public service announcements, print media, mobile billboards, “earned” (independent) media coverage, and public information brochures.³³ Checkpoint Tennessee and similar programs are not germane given Canada’s current widespread use of moderately intensive, well-publicized SBT programs.³⁴ While strengthening Canada’s SBT programs would have some modest traffic safety benefits, these would not come close to those reported in the American studies, where there was a sudden, massive wholesale change in the enforcement approach and its intensity. In summary, the studies of Checkpoint Tennessee

²⁷ R Shults et al, “Reviews of Evidence Regarding Interventions to Reduce Alcohol-Impaired Driving” (2001) 21(4S) Am J Prev Med 66 at 76.

²⁸ *Ibid.*

²⁹ RW Elder et al, “Effectiveness of Sobriety Checkpoints for Reducing Alcohol-Involved Crashes” (2002) 3:4 Traffic Injury Prevention 266 at 270.

³⁰ The concerns expressed about the Shults study, *supra* note 27 and Elder study, *ibid* generally apply to the following two studies assessing checkpoint programs: C Peek-Asa, “The Effect of Random Alcohol Screening in Reducing Motor Vehicle Crash Injuries” (1999) 16(1S) Am J Prev Med 57; and A Erke, C Goldenbeld & T Vaa, “The effects of drink-driving checkpoints on crashes—A meta-analysis” (2009) 41 Accident Analysis & Prevention 914. For a more detailed discussion of our concerns about these four studies, see Solomon et al, *supra* note 14 at 55-57.

³¹ JH Lacey, RK Jones & RG Smith, *Evaluation of Checkpoint Tennessee: Tennessee’s Statewide Sobriety Checkpoint Program* (Washington: National Highway Traffic Safety Administration, 1999), online: National Highway Traffic Safety Administration <<http://www.nhtsa.dot.gov/people/injury/research/ChkTenn/ChkptTN.html>>.

³² *Ibid.*

³³ *Ibid.*

³⁴ Unfortunately, there are no national statistics on the number of Canadian drivers who are currently being stopped at SBT checkpoints. However, extrapolations based on 2008 Calgary, Toronto and Hamilton data would put the total at somewhere between 4.4 and 8.3 million drivers. 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 LQ 438 at 457.

and similar American programs involving the initial implementation of SBT simply do not address the current Canadian situation.

Moreover, the authors of the review did not distinguish between the different types of SBT program, notably those that used passive alcohol sensors (PAS) and those that did not. It is well established that the use of PAS greatly increases the effectiveness of SBT programs. However, since PAS are not used in Canada, reference to the effectiveness of individual SBT programs involving sensors can be very misleading. Researchers have also questioned the deterrent impact of SBT checkpoints that, as in Canada, rely exclusively on officers' subjective judgement as to whether breath testing is warranted. As Professor R Homel, Australia's most prolific RBT scholar, noted: "any method of enforcement that relies on subjective judgments of impairment ... is unlikely to work over the long term simply because the perceived probabilities of apprehension cannot be maintained at a high level."³⁵

Finally, the review on which TIRF relied did not consider the additional traffic safety benefits achieved when jurisdictions replaced their existing SBT checkpoints with RBT checkpoints. For example, Queensland's RBT program resulted in a 35% reduction in fatal crashes whereas the previous SBT program, which operated similarly to Canada's current SBT program, had resulted in only a 15% reduction.³⁶ In Western Australia, during a three-month period shortly after RBT replaced SBT, nighttime traffic deaths and injuries decreased 23% compared to the same period during the previous year.³⁷ In commenting on the shift from SBT to RBT, Professor Homel stated: "[n]othing in the Australian experience encourages the belief that, without the use of full random testing, roadblocks or sobriety checkpoints are capable of delivering a substantial and sustained reduction in alcohol-related casualty crashes."³⁸ The

³⁵ RJ Homel, "Random Breath Testing the Australian Way: A Model for the United States?" (1990) 14:1 Alcohol Health and Research World 70 at 72. See also E Vingilis, E Adlaf & L Chung, "Comparison of Age and Sex Characteristics of Police-Suspected Impaired Drivers and Roadside-Surveyed Impaired Drivers" (1982) 14:6 Accident Analysis & Prevention 425 at 427, who reported that approximately 95% of drivers with BACs above .08% were not detected when stopped at an Etobicoke SBT program.

³⁶ J Henstridge, R Homel & P Mackay, *The Long-Term Effects of Random Breath Testing in Four Australian States: A Time Series Analysis* (Canberra: Federal Office of Road Safety, 1997) at 102 (Table 6.9). The authors stated at page ix:

In every case, the impact of RBT exceeded in magnitude the impact of de facto RBT or RID [which is the equivalent of SBT] ... It is concluded that RBT is a more effective method of enforcement than de facto RBT, even though the transition from one to the other was not marked by the kind of intensive publicity used in New South Wales, and despite the fact that the levels and methods of enforcement in some areas still reflect pre-RBT practices.

³⁷ R Homel, "Random Breath Testing and Random Stopping Programs in Australia" in RJ Wilson & RE Mann, eds, *Drinking and Driving: Advances in Research and Prevention* (New York: Guilford Press, 1990) 159 at 187.

³⁸ Homel, *supra* note 35 at 74.

comparative data from New Zealand³⁹ and Ireland,⁴⁰ both of which operated SBT programs prior to introducing RBT, are equally compelling.

These studies are particularly relevant because Canada would, like these jurisdictions, be moving from SBT to RBT. TIRF does mention some of these studies, but in our view, inappropriately discounts their significance. The international research establishes that RBT is considerably more effective in reducing impaired driving deaths and injuries than SBT, particularly SBT programs like Canada's that rely solely on an officer's unaided assessment of a driver's sobriety.

Section IV: The Feasibility of RBT

TIRF asserts that it would be difficult to implement RBT due to concerns about officer safety. It claims that federal and provincial labour legislation would make it “challenging, if not impossible”⁴¹ for officers to conduct RBT in the same way that it is conducted in other jurisdictions. More specifically, TIRF claims “safety protocols for conducting roadside stops would likely prevent police officers from standing beside a stopped vehicle on the road while dealing with the driver who is sitting at the wheel.”⁴²

This analysis suffers from some of the same problems as TIRF's discussion of the constitutionality of RBT. TIRF does not refer to any specific provisions of the labour legislation that would be violated if RBT were conducted in Canada in the same manner as in other jurisdictions. It also does not refer to any jurisprudence or analysis by any legal scholars in support of its claim. TIRF is asserting a conclusion for which it provides no support.

At RBT checkpoints, drivers are asked to provide a breath sample while seated in their vehicles. RBT checkpoints operate in a virtually identical manner to SBT checkpoints. The process of approaching and engaging the driver parallels that currently used at SBT checkpoints. The breath test itself takes approximately 30 seconds, and research indicates that drivers subjected to RBT are delayed on average a total of two minutes or less.⁴³ As in the case of SBT checkpoints, drivers at RBT checkpoints would only be subject to further processing if their roadside screening test indicated that their BAC exceeded the provincial or *Criminal Code* limit.

³⁹ T Miller, M Blewden & J-f Zhang, “Cost savings from a sustained compulsory breath testing and media campaign in New Zealand” (2004) 36 *Accident Analysis & Prevention* 783.

⁴⁰ Road Safety Authority, *Road Safety Strategy 2007 – 2012* (Ballina, Ireland: Road Safety Authority, 2007) at 7.

⁴¹ Robertson & Vanlaar, *supra* note 6 at 17.

⁴² *Ibid.*

⁴³ Miller, Blewden & Zhang, *supra* note 39 at 788. See also JA Dunbar, A Penttila & J Pikkarainen, “Drinking and Driving: Success of Random Breath Testing in Finland” (1987) 295:6590 *Brit Med J* (Clinical Research Edition) 101 at 101.

Thus, on average, RBT will result in detentions of about the same duration as those experienced at current SBT checkpoints. If officers at SBT checkpoints merely ask drivers a simple question, such as “Where are you coming from?” or “Have you had anything to drink?” before waving them on, then the SBT stops will likely be somewhat shorter or about the same duration as a typical RBT check. However, if officers at SBT checkpoints ask drivers for their licences and other documents, attempt to scrutinize them for signs of alcohol consumption, or closely question them, then the SBT stops will take much longer than a typical RBT check.

It is unclear how RBT checkpoints would pose any greater safety risk to officers than current SBT checkpoints or why RBT checkpoints would conflict with existing labour codes. No such safety concerns are evident in the published RBT research conducted in various jurisdictions over the last 40 years. It is difficult to see why Canadian police would have any greater challenge in adjusting to the change from SBT to RBT than their counterparts in Australia, New Zealand, Ireland, Europe, and other jurisdictions.

Section V: The Cost of RBT

TIRF initially states that impaired driving is one of several road safety priorities that the police must consider in addition to enforcing other criminal laws, and that “tough decisions” have to be made in allocating the limited enforcement resources that are available.⁴⁴ TIRF subsequently directly addresses the issue of RBT, claiming that “there are concerns associated with the financial cost associated with implementing RBT across Canada.”⁴⁵

First, it should be noted that cost considerations are of a different nature than the other concerns raised by TIRF. If RBT is unconstitutional or ineffective, it should not be adopted. However, even if RBT might be more expensive than current enforcement measures, it does not necessarily follow that it should not be adopted. The additional safety benefits of RBT might well justify incurring greater costs, if any. In themselves, possible increased costs do not justify rejecting RBT.

Second, the basis for TIRF’s concern about costs is overstated. TIRF indicates that the additional costs would stem from the increase in the number of tests, beyond the current level. It states that “to be effective in a country the size of Canada, the police would have to conduct anywhere between 11 to 22 million breath tests per year.”⁴⁶ It is difficult to see how TIRF generated these figures. Earlier in its report, TIRF states that between one-third and one-half of Canadian drivers would have to be tested annually.⁴⁷ Based on these percentages and Transport

⁴⁴ Robertson & Vanlaar, *supra* note 6 at 15.

⁴⁵ *Ibid* at 17.

⁴⁶ *Ibid*.

⁴⁷ *Ibid* at 16.

Canada's estimate that there are 23.5 million licensed drivers,⁴⁸ only between 7.8 and 11.8 million tests would need to be conducted each year. Increasing the number of roadside breath tests beyond these figures would indeed be desirable, but based on TIRF's own reasoning, it is not essential. Nonetheless, TIRF is correct to point out that implementing RBT would greatly increase the number of roadside breath tests that would have to be performed each year.

Third, TIRF does not take into account the many savings in enforcement costs that RBT would achieve or address any of the research on this issue. Our study of Canadian police traffic enforcement expenditures indicated that RBT would generate substantial savings in police costs due to decreases in impairment-related crashes, *Criminal Code* charges, and 90-day and short-term administrative licence suspensions.⁴⁹ In addition, the processing of all impaired-driving suspects would be streamlined under RBT, resulting in further savings.⁵⁰ A Finnish study found that the additional policing costs of implementing RBT were balanced out by these types of savings.⁵¹ The authors stated:

According to the Finnish Ministry of the Interior there has been no increase in police staffing for random breath testing and no reduction in other police activities despite a 30-fold increase in breath tests. Perhaps the reduction in road accidents and drinking and driving has freed police for other activities.⁵²

Finally, TIRF does not consider the social cost savings of implementing RBT. It is widely acknowledged that RBT is one of the most cost-effective road safety measures. In 1990, the estimated annual cost of the New South Wales RBT program, including media, was \$3.5 million. At that time, the program was conservatively estimated to save 200 lives per year, with attendant savings of at least \$140 million. Based on these figures, the program had a cost-benefit ratio of 1:40.⁵³ A 2003 European Union study concluded that increasing RBT testing levels to 1 test per 16 inhabitants would save between 2000 and 2500 lives and result in a cost-benefit ratio of 1:36 or 1:55, depending on the model used.⁵⁴ A 2004 World Health Organization study reported that each dollar spent on RBT results in an overall cost savings of \$19.⁵⁵

⁴⁸ Transport Canada, "Canadian Motor Vehicle Collision Statistics: 2010" (24 October 2012), online: <<http://www.tc.gc.ca/eng/roadsafety/tp-1317.htm>>.

⁴⁹ Solomon et al, *supra* note 34 at 455-56.

⁵⁰ *Ibid.*

⁵¹ J Dunbar, A Penttila & J Pikkarainen, *supra* note 43 at 103.

⁵² *Ibid.*

⁵³ Homel, *supra* note 35 at 70.

⁵⁴ M Mackay et al, *Cost Effective EU Transport Safety Measures* (Brussels: European Transport Safety Council, 2003) at 27.

⁵⁵ M Peden et al, eds, *World report on road traffic injury prevention* (Geneva: World Health Organization, 2004) at 130.

A 2004 New Zealand study reported a cost-benefit ratio of 1:14 for RBT alone, 1:19 for RBT coupled with a media campaign, and 1:26 for RBT in conjunction with both a media campaign and “booze buses” (large, specially equipped vehicles used for onsite evidentiary breath testing, which are typically brightly colored or otherwise distinctive to attract the attention of all nearby road users).⁵⁶ Our study, which adopted a conservative approach, concluded that implementing RBT in Canada would reduce the social costs of traffic deaths, injuries and property-damage-only crashes by more than \$4.3 billion annually.⁵⁷

Section VI: Conclusion

As with many other current impaired driving countermeasures, RBT is consistent with the *Charter*. Jurisdictions that have shifted from SBT to RBT have all achieved substantial ongoing traffic safety benefits. It is difficult to understand how RBT checkpoints would pose any greater risk to officers than the current Canadian SBT checkpoints. Officer safety has not been raised as a concern in the extensive body of RBT research published over the last 40 years. RBT can be conducted safely in Canada in the same way that it is conducted in Australia, New Zealand, Europe, and other jurisdictions. The available evidence indicates that enacting comprehensive RBT programs 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 each year. Moreover, these substantial benefits can be achieved without overburdening the courts or otherwise significantly increasing demands on public resources.

TIRF’s discussion of RBT is disappointing. It has raised concerns about RBT without supporting its position with sufficient or, in some cases, any authority or analysis. The impression that TIRF creates is incompatible with the substantial body of relevant legal analysis and traffic safety research.

⁵⁶ Miller, Blewden & Zhang, *supra* note 39 at 783.

⁵⁷ Solomon et al, *supra* note 34 at 451.