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# **The Canadian Association of Chiefs of Police Submission to the Standing Committee on Justice and Human Rights Regarding Impaired Driving**

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**Submitted on behalf of the CACP by:**

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## **The Standing Committee on Justice and Human Rights Regarding Impaired Driving**

Thank you for providing the Canadian Association of Chiefs of Police (CACCP) with the opportunity to provide input on this important matter. Road safety is of particular interest to Canadians and to the Canadian Association of Chiefs of Police. The Traffic Injury Research Foundation (TIRF) Road Safety Monitor reports that in a poll of social issues affecting Canadians, road safety ranks fourth overall only behind pollution, price of gas and global warming and Canadians rank road safety considerably ahead of the threat from terrorist attack, airline safety and the economy. A December 2007 Transport Canada/MADD survey found public concern for road safety was fourth highest after the price of gas, health care and climate change with 54% of respondents showing concern. In addition, focus groups viewed impaired driving as a solvable problem and think the governments should get on and solve it.

Over the years Canadian police have worked closely with our partners in the road safety community to enhance public safety on our roadways. Since 1973 we have seen the number of traffic fatalities in Canada reduced by more than one half even though the number of licensed drivers and registered vehicles has increased dramatically. However, despite years of enforcement and public education campaigns impaired driving remains the leading cause of criminal death in Canada. The number of persons killed in traffic crashes involving drinking drivers had been on the decline from 1995 until 2002, however the progress in this area has stalled and presently, approximately 1,000 people die each year due to the actions of a drinking driver. In fact, more than one-third of all fatal traffic crashes involve a drinking driver. Based on a recent study by Transport Canada and the Ministry of Transportation of Ontario, this results in an annual social cost of approximately \$21 billion.

The Canadian policing community is very concerned about the recommendations that the Standing Committee on Justice and Human Rights Regarding Impaired Driving may make in regards to the four impaired driving issues that are being reviewed. This paper will provide your Chair and committee members with the views of the CACCP Traffic Committee regarding these issues.

### **1. Lowering the Criminal Blood Alcohol Concentration Limits:**

The Canadian Council of Motor Transport Administrators (CCMTA) Committee on Strategies To Reduce Impaired Driving (STRID) reports the overwhelming majority of fatally injured drinking drivers – approximately 80% - had Blood Alcohol Concentrations (BAC) in excess of the existing legal limit of 80 mg% and a substantial portion- 53%- of all fatally injured drinking drivers had BAC over 160 mg%.

The Traffic Injury Research Foundation (TIRF) Road Safety Monitor reports only 18% of Canadians supports lowering the criminal legal limit BAC. The 2007 Transport Canada/MADD survey revealed that a majority of people know about the criminal legal limit, but many are unaware of the administrative limit. This may present an opportunity for governments to raise the level of awareness in

hopes of having a greater impact. As a result of policy planning and partnerships, all provinces except Quebec have introduced administrative processes to deal with drivers who have a BAC less than 80 mg%. These provincial administrative procedures do not require the lengthy investigative, court and criminal record system involvement of the police as do the criminal cases where the BAC exceeds 80 mg%.

During the past year, Private Member Bill C-376 proposed the lowering of the criminal BAC and invoking a two year good behavior clause to remove the criminal record. This would substantially increase the work load of the National Criminal Records system to both generate the records on conviction and then to remove the record after the expiry of the good behavior period. There would then be the question of using this removed conviction for second offence sentencing at a later date if the offender re-offended.

The intended cost savings from creating a ticketable criminal offence for drivers with a BAC between 50 mg% and 80 mg% as proposed by PMB C-376 is unlikely to be realized. The actual work load for frontline police officers would be similar to the processing of drivers with a higher level BAC and the added records management workload for adding and removing convictions would be substantially increased. A 1997 Transport Canada survey of front line police officers revealed that it takes about 4 hours to process each impaired driving charge.

**The CACP is not in favour of lowering the criminal Blood Alcohol Concentration (BAC) limit to 50 mg%. Limited police resources are best focused on the group of drivers causing the greatest harm and this is the higher level BAC drivers. The CACP believes that a mix of criminal and provincial administrative sanctions to combat impaired driving as a cause of traffic fatalities and serious injury crashes is more effective than lowering the criminal level BAC to 50 mg%.**

## **2. Randomized Breath Testing:**

Randomized Breath Testing (RBT) gives the police the ability to demand a breath sample from all drivers passing a particular point without police having reasonable suspicion to believe that the driver has consumed alcohol. This program is intended to promote general deterrence. RBT has been used in Australia, New Zealand and according to the European Transport Safety Council, RBT now exists in 23 member states of the European Union. After the introduction of RBT, New Zealand experienced a 32 % reduction in night-time and fatal crashes. After introducing RBT, Queensland Australia experienced a 35% reduction in all fatal collisions. RBT came into force in Ireland in July 2006 and was credited by the Road Safety Authority with reducing the number of people being killed on Irish roads by 23%.

The 2007 Transport Canada/MADD survey revealed that 80% of drivers surveyed had not been in a police check point for alcohol in the past 12 months and there was not a lot of confidence that an impaired driver would be stopped on the road. This same study revealed that 66% of respondents believe that police should be allowed to randomly require all drivers to give a breath test to help detect impaired driving. These are the situations that RBT are meant to address by increasing the perception of possible apprehension of impaired drivers.

As a reasonable extension to randomized breath testing, it would be very beneficial to the police to have the authority to demand a breath/blood sample from drivers involved in traffic crashes, even if reasonable suspicion of the consumption of alcohol did not exist. In cases where the driver is unable to physically provide a breath/blood sample, it could become standard practice for medical practitioners to draw blood samples for use by the police. This would be helpful to police investigating fatal and serious traffic crashes.

In all of these cases, RBT was implemented in conjunction with aggressive traffic enforcement and public education campaigns. The solution to impaired driving is as complex as the problem; however each gain is not made in isolation. The correct tools used in a multi-faceted approach have been proven to be most effective. RBT is a cornerstone to success in Europe, New Zealand, Australia and Ireland in reducing impaired driving.

**The CACP strongly supports the use of Randomized Breath Testing (RBT). By imposing RBT, the Government of Canada would be adopting a program that has been amongst the most effective methods of creating deterrence to impaired driving in other democratic societies. RBT is rationally connected to the objective of reducing the harm caused by impaired driving.**

### **3. Implications of Advances in Technology to Enforce the Laws:**

Technologies that allows the administration of justice and administrative processes to more easily monitor persons convicted of impaired driving continues to advance and will therefore become more effective. This is particularly true for ignition interlock devices. The TIRF Road Safety Monitor reports 83% of Canadians strongly support mandatory use of ignition interlock devices for persons convicted of an impaired driving offence.

Emerging technologies that allow for efficient monitoring of high risk persons subject to court imposed conditions such as alcohol abstinence are now available through Continuous Transdermal Alcohol Monitoring. This technology allows for effective monitoring of high risk offenders with alcohol addiction issues to ensure compliance with court imposed abstinence. This technology is currently being used in more than 40 U.S. States.

The TIRF Road Safety Monitor reports that 81% of Canadians agree or strongly agree with immediate impoundment of the vehicles of drivers who fail a breath test. Immobilization devices now exist that could be used to temporarily disable vehicles of impaired drivers and administratively suspended drivers. This technology can assist the police in securing the vehicles of impaired drivers and low level BAC drivers under administrative sanction in order to ensure that they do not return to their vehicles immediately after being released by the police.

**The CACP supports the use of emerging technologies such as ignition interlocking devices, transdermal alcohol monitoring devices and immobilization devices to enhance public safety and reduce incidents of impaired driving.**

#### **4. Criminal Code Sanctions for Impaired Driving and How They Interrelate with Provincial Licensing Measures:**

The CCMTA STRID Committee has developed an overall strategy to reduce impaired driving. This comprehensive strategy recognizes the multi-disciplinary nature of the problem of impaired driving. It identifies the different types of drinking drivers; the needs for education and awareness; the role of policing; policy/legislative initiatives; health promotion and linkages between stakeholders. The CACP supports the strategies adopted by the CCMTA STRID Committee and encourages the federal government to continue to work closely with provincial/territorial governments on policy and legislative initiatives to improve the effectiveness of jurisdictional administrative sanctions for drivers with lower level BAC. This approach would be preferable to criminalizing BAC's below 80mg%. In order to improve these administrative programs the CACP supports administrative sanctions that:

- Administratively deal with drivers with a BAC between 50 mg% and 80 mg%;
- Can be captured on a driver's abstract and in cases of subsequent conviction for impaired driving this abstract could be entered into the sentencing procedure as an aggravating factor;
- In cases where a person is repeatedly subjected to administrative sanctions that the level of the sanction will increase for each subsequent incident;
- Utilize technologies such as ignition interlocking devices, transdermal alcohol monitoring devices and immobilization devices;
- Upon reinstatement of driver's license following an administrative sanction or criminal conviction for impaired driving, that the driver's license be reinstated with a zero tolerance level for alcohol for a pre-determined time frame;
- Temporary impoundment or immobilization of vehicles of impaired drivers and low level BAC drivers.

**The CACP supports improved coordination between the federal and provincial /territorial jurisdictions to combat impaired driving. This support**

**includes the federal government working towards more effective criminal legislation to streamline existing practices and all provincial/territorial jurisdictions working towards a common administrative sanction system for drivers with a lower level BAC drinking drivers and includes the above recommendations.**

Effectively dealing with impaired drivers is a joint responsibility of the federal and provincial/territorial governments. Government must recognize that the problem of impaired driving is multi-disciplinary and that police require effective legislation to deal with the problem. Criminal legislation must give the police the powers to effectively detect drinking drivers, complete investigations within an acceptable time frame and eliminate loop holes for defense. The CACP believes that the sections of Bill C-2 on impaired driving are a positive move to achieve this. However, the police community is concerned over the lack of long term sustainable funding to address the training issues created by this legislation. Legislation that would support RBT would be another important move in the right direction. The CACP supports provincial/territorial moves towards instituting and enhancing administrative driving sanctions for drivers with lower level BAC. We encourage jurisdictions to work collectively to harmonize these systems including removing lower level BAC drivers from the road and effectively dealing with those who repeatedly drive with BAC levels between 50-80 mg%. In order to enable the police to be more effective, legislation and accompanying funding must be provided that will allow the police to take advantage of advancing technologies that enhance road safety.