House of Commons
CANADA

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

JUST • NUMBER 048 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, June 23, 2005

Chair

Mr. John Maloney

Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

Thursday, June 23, 2005

● (0905)

[*English*]

The Chair (Mr. John Maloney (Welland, Lib.)): I'd like to call the meeting to order.

This is the 48th meeting of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness.

Our witnesses this morning are as follows: from the Canadian Professional Police Association, David Griffin, executive officer, and Tony Cannavino; from the B.C. Civil Liberties Association, Mr. Larry Cohen; from the Canadian Centre on Substance Abuse, Patricia Begin—it's nice to have you back, Patricia—and John Weekes; and from the Centre for Addictions and Mental Health, Robert Mann.

Mr. Griffin, are you going to lead off, or is Tony?

Mr. David Griffin (Executive Officer, Canadian Professional Police Association): Tony.

The Chair: We have roughly 10 minutes for presentations of all intervenors.

Mr. Tony Cannavino (President, Canadian Professional Police Association): Thank you, Mr. Chair.

[*Translation*]

The Canadian Police Association welcomes the opportunity to appear today before the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness concerning Bill C-16, an Act to Amend the Criminal Code (Impaired Driving) and to Make Consequential Amendments to Other Acts. The CPPA is the national voice for 54,000 police personnel serving across Canada. Through our 225 member associations, CPPA membership includes police personnel serving in police services from Canada's smallest towns and villages as well as those working in our largest municipal cities, provincial police services and members of the RCMP.

We are pleased to have the opportunity today to comment on the provisions found in Bill C-16. Drug use constitutes a significant traffic safety issue, particularly for young drivers, who have the highest rates of both illicit drug use and fatal crashes per kilometre driven. Bill C-16 is a necessary and justified response to this public safety concern.

Recent public debate surrounding changes to Canada's drug laws have reinforced the need to adopt a national approach to drug use in Canada, and to ensure that young people have accurate information concerning the harms associated with the use of drugs, including marijuana. Unfortunately, the debate surrounding cannabis reform has sent mixed messages to young Canadians. While Canadians, including our young people, have been positively influenced by measures to reduce alcohol-impaired driving, the perceptions differ concerning drug use and driving. Studies consistently show that young people are more likely to “toke and drive” than “drink and drive”.

Driving while intoxicated by drugs presents significant risks due to impaired judgment and motor coordination. Canadians share our concerns regarding drug-impaired driving, and support the implementation of legislative measures to detect and prosecute drug-impaired drivers. In a 2003 public opinion survey conducted by the Traffic Injury Research Foundation, Canadians identified driving after the use of illegal drugs second only in importance to drinking and driving on the list of important road safety issues. Almost 82 per cent of the respondents believe that drivers suspected of being under the influence of alcohol or drugs should be required to perform sobriety tests.

There is ample cause for such concern; countless studies and indicators confirm that drug use constitutes a significant traffic safety issue, particularly for young drivers.

The current law is inadequate. While section 253(a) of the Criminal Code prohibits driving while one's ability to do so is impaired by a drug, it does not provide any practical means of gathering the evidence necessary for such charges. As a result, those who drive while impaired by drugs alone or by a combination of drugs and alcohol are largely immune to criminal prosecution.

Unlike the breathalyzer test used for alcohol, there is no objective test to measure drug impairment. In order to support a prosecution for drug-impaired driving, a police officer must demonstrate impairment and the presence of drugs active in the body. Police officers must rely on symptoms of drug impairment such as erratic driving behaviour and witness testimony when investigating a suspected drug-impaired driver. The present law does not allow a police officer to demand sobriety testing, nor demand a body-fluid sample. While suspected alcohol-impaired drivers can be compelled, by demand, to provide a breath sample to measure the concentration of alcohol in their blood and determine if it exceeds the statutory level, this does not apply in the case of suspected drug-impaired drivers.

Drug evaluation tests are admissible as evidence in court, but only if the driver participates voluntarily in a drug evaluation.

[*English*]

Bill C-16 will provide the necessary statutory authority to compel a suspected drug-impaired driver, on demand, to undergo a standard field sobriety test or to complete a drug recognition expert evaluation, and upon failing these tests, to provide a bodily-fluid sample—urine, oral fluid, or blood. This new legislation affords police authorities similar to those that currently exist to deal with alcohol-impaired drivers.

● (0910)

Standardized field sobriety tests and drug recognition expert evaluations provide the only reliable methods for police to gather the evidence necessary to determine if a subject is impaired and what the cause of that impairment is. While DRE evaluations have been accepted in Canadian courts, a legislative framework is required to compel suspected drug-impaired drivers to submit to tests. This form of testing is widely used in Australia, New Zealand, and some European countries. At present, 38 American states use this process to detect and prosecute drug-impaired drivers; the process has survived court challenges up to the United States Supreme Court.

Canadian police forces are currently only using DRE evaluations in cases when the driver has participated voluntarily. This process was first implemented in the province of British Columbia in 1995 with the support of the Insurance Corporation of British Columbia. It has been of limited success in terms of drug-impaired driving convictions due to the lack of field sobriety testing and body fluid demands. It has, however, enabled suspected impaired drivers to be removed from the road through the use of the province's 24-hour roadside suspension provision.

To obtain DRE certification, an officer must undergo a rigorous training program and pass eight exams and two practical tests. This includes the requirement to perform 12 DRE evaluations on four different classes of drugs that are subsequently confirmed by toxicology results. The program has been scientifically validated, both in the laboratory and at roadside.

The DRE program also assists police in identifying persons suffering from medical conditions that may impair driving ability, such as uncontrolled diabetes, epilepsy, and stroke. DRE procedures are designed to help police officers identify medical disorders causing impairment. A DRE-trained officer encountering a person suffering from a medical condition would seek medical assistance for the driver involved.

Bill C-16, which proposes amendments to the Criminal Code and other acts, is intended to strengthen the enforcement of drug-impaired driving offences in Canada. As a first step, police officers will be authorized to administer standardized field sobriety tests at the roadside if the officer has a reasonable suspicion that the driver has a drug in his or her body.

Second, if the driver fails the standardized field sobriety test, the officer will then have reasonable grounds to believe that a drug-impaired driving offence has been committed, and can escort the driver to a police station for administration of a drug recognition expert evaluation.

Third, a qualified DRE officer will conduct an evaluation involving a combination of interviews and physical observations.

Fourth, if the DRE officer identifies that a specific family of drugs is causing impairment and has reasonable grounds to believe that the driver's ability to operate a vehicle is impaired by a drug or a combination of alcohol and a drug, the DRE officer may demand that the driver provide a saliva, urine, or blood sample. Samples of blood may be taken only by a medical practitioner or technician who is satisfied that taking samples would not cause injury to the individual.

Charges will not be laid without confirmation of preliminary DRE results through a toxicology report, but the results of such tests can then be used as evidence in drug-impaired driving prosecutions. A driver's refusal to comply with an officer's request for a physical sobriety or bodily fluid sample test constitutes a criminal offence punishable under the same provisions that are currently applicable for refusing to perform an alcohol, breath, or blood test. Bill C-16 will not have the desired and required effect if sufficient front-line police officers are not afforded the necessary training to implement it. There must be sufficient laboratory and toxicology resources available to process the blood and other samples seized under Bill C-16 in a timely fashion.

● (0915)

Canadian judges must be educated concerning standardized field sobriety tests and drug recognition expert evaluations to develop an appreciation of the rigorous elements and scientific underpinnings of these tests. The federal government also needs to support research on standard field sobriety and drug recognition testing and ensure that this information is widely disseminated in Canadian legal and traffic safety communities.

In conclusion, driving while intoxicated by drugs presents significant risk due to impaired judgment and motor coordination. Drug use constitutes a significant traffic safety issue, particularly for young drivers. Bill C-16 is a necessary and justified response to this public safety concern. The Canadian Professional Police Association supports the bill and urges Parliament to amend and pass this legislation without delay. It must be passed and fully implemented before an action is taken on Bill C-17.

The CPPA recommends the following amendments: first, a comprehensive and adequately resourced implementation strategy; second, authorize police to videotape field sobriety and drug recognition tests; third, extend the presumptions of temporality from two hours to three; fourth, authorize licensed health practitioners to collect blood samples under the impaired driving provisions; and fifth, permit field sobriety and drug recognition test results to be used in the provincial and territorial highway traffic safety programs.

The federal government must ensure that funding is available to train sufficient numbers of police officers, expand toxicological services, and support research on standard field sobriety and drug recognition testing.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Cannavino.

Mr. Cohen is next, from the B.C. Civil Liberties Association.

Mr. Larry Cohen (Member, Board of Directors, B.C. Civil Liberties Association): Our organization supports Criminal Code sanctions against impaired driving for any reason, whether because of alcohol, drugs, any other impairment, or a combination of drugs or alcohol.

The present Criminal Code requires a person to submit to a breathalyzer or, if that's not possible, to blood testing to determine the proportion of alcohol in their blood on the demand of a police officer who has reasonable and probable grounds to believe that their ability to drive is or has been impaired within the preceding three hours. This Bill C-16 proposes to require saliva, urine, and/or blood testing for drugs in the body of a person who, on reasonable and probable grounds, is suspected by a specially trained evaluating officer of driving while impaired by a drug or drugs or combinations with alcohol.

All of these tests constitute an invasion of privacy, increasing in degree from breath sampling through saliva testing and urine sampling to the most invasive test, blood testing. The testing is required in the name of the benefit achieved in successfully convicting those who drive while impaired because they are a hazard to other persons and because they need punishment and they need rehabilitation.

The existing legislated test for alcohol can, with acceptable scientific probability, determine the level of alcohol in the blood at the relevant time of driving. Science has also provided the limit of alcohol in the blood this law permits, above which a driver is effectively deemed impaired. This precise level, a specific number, 0.08%, provides certainty, with respect to all persons accused of impairment by alcohol, for the police, for the Crown, for the judge, and for the general public. It provides certainty that the law is fair and convictions are just. The offence for refusing to submit to a test is also thereby justifiable.

Our association is very concerned that the proposed drug testing under Bill C-16 fails to provide the same certainty of results. We are concerned that drug testing cannot provide evidence that a driver has been driving while their ability to drive was impaired by a drug or drugs or combinations with alcohol. Bill C-16 would then require a person to submit to a significant invasion of their personal physical privacy with no additional evidentiary benefit achieved. The law and the process will therefore not be justifiable.

We say this because it is our understanding of the research available that the result of testing for relevant possible drugs in a driver's body cannot with any acceptable scientific certainty relate the results to the level of the drug or drugs in the body of the driver at the time of driving. For instance, a single marijuana use is generally detectable by drug testing three days after the physical effects have disappeared. In frequent marijuana users it is detectable two to three weeks after its effects are no longer significant. There are the same scientific difficulties with test results of all relevant drugs. The time of impairment cannot be determined by drug testing as it is by the test for alcohol.

Secondly, the danger of false positives in drug testing is high. For instance, heroin use and ingesting poppy seeds or cocaine from pain medicine have similar test results. Passive and active marijuana exposure will both result in positive test results.

Thirdly, most importantly, there is no agreed-on level of any drug or drugs or combinations with alcohol that the science or this legislation establishes as a limit above which driving is prohibited because it is properly and scientifically deemed that the driver's ability to drive is impaired.

● (0920)

Given this lack of scientific certainty in relating the test results to the time of driving, the danger of false positives that can misidentify the source of the test result, and the lack of a specific level of allowable drug in the body at the time of driving, we have no additional reliable evidence to prosecute the offence of impaired driving. This will result in successful defences against the drug test results. Crown prosecutors will be predictably reluctant to rely on or even use the test results because of evidentiary unreliability. Nonetheless, the police officers, because of Bill C-16, will probably proceed to collect the evidence under the Criminal Code provisions, and invasive testing will have occurred for no relevant purpose.

Our association supports the current privacy-invasive alcohol breath and blood testing because of the scientific certainty this test is accurate and relevant to the level of impairment at the time of driving. This evidence results in a high rate of convictions for impaired driving as a result of the specific level of prohibition of alcohol in the blood and the scientific reliability of that testing. But if drug testing does not result in scientifically supportable evidence of impairment at the time of driving, then testing that is invasive of the privacy of citizens, as the proposed testing surely is, is surely not warranted.

Further, the predictable lack of success in prosecuting impaired drivers based on the results of invasive drug testing will predictably bring the particular law, and by implication the criminal justice system relating to impaired driving, into some disrepute.

That is not to say that suspected driving while the person is impaired by a drug or drugs or a combination with alcohol should be ignored. Our association, in conjunction with the police association, supports the precautionary principle of providing peace officers with the power to order a 24-hour driving prohibition, as provided by the Motor Vehicle Act of British Columbia. This power accomplishes the task of making the roads safe from suspected drug and alcohol impairment without irrelevant, inconclusive, and invasive drug testing. The Alberta highway act is similar legislation.

Until the science can relate the result of drug testing to the relevant time of driving and set specific limits to acceptable levels of drugs or combinations of drugs and alcohol in the body as an index of impairment, then invasive, mandatory drug testing is not justified, nor is this crime of refusal to submit to such testing justified, and those parts of Bill C-16 should not become law.

Finally, in any event, the BCCLA recommends that legislation mandating the testing of bodily fluids under the current or any future Criminal Code provisions require the destruction of those samples after the resolution of any proceedings arising and also that the retention of those samples after proceedings are complete constitute an offence.

Thank you.

● (0925)

The Chair: Thank you, Mr. Cohen.

From the Canadian Centre on Substance Abuse, we have Ms. Begin.

Ms. Patricia Begin (Director, Research and Policy, Canadian Centre on Substance Abuse): Mr. Chairman and committee members, the Canadian Centre on Substance Abuse appreciates the opportunity to meet with you today to share our views on the issue of drugs and driving in Canada as you consider Bill C-16.

With me is Dr. John Weekes, a senior researcher with CCSA, who has recently been investigating the area of drugs and driving.

As you may know, CCSA is Canada's national non-governmental organization, formed in 1988 by an act of Parliament, to address research and policy on substance use and abuse in Canada. Accordingly, the issue of drugs and driving is of great interest to our organization, and we believe we are well positioned to contribute meaningfully to the discussion.

In general, CCSA supports the proposed legislation, particularly with respect to the requirement for drivers who are suspected of driving under the influence of drugs other than alcohol to provide a body fluid sample for analysis. However, there are a number of important considerations regarding the bill that we would like to bring to the committee's attention.

My colleagues and I at CCSA believe drugs and driving is an area of serious concern in Canada and elsewhere. As a matter of fact, we included the theme as one of six key priorities facing Canadians in our recent publication, entitled *Substance Abuse in Canada: Current Challenges and Choices*. I've left copies of that report with the clerk. The chapter on drugs and driving in *Substance Abuse in Canada* provides a high-level overview of this topic and identifies key points for consideration in the development of public policy around drugs and driving.

Studies conducted both in Canada and elsewhere confirm that drugs are implicated in a significant number of crashes involving fatally and seriously injured drivers. However, what we do know is minimal. As such, there is a dire need for credible scientific research to shed light on the true nature and magnitude of the problem of drugs and driving in Canada.

The 2002 *Road Safety Monitor*, published by the Traffic Injury Research Foundation, indicated that almost 18% of drivers reported taking either illegal drugs, prescription drugs, or over-the-counter medications within two hours of driving, within a 12-month period. The same study revealed that almost 4 million Canadians admitted to driving after taking a drug that could impair their ability to drive safely. Young males were the most likely to drive after using marijuana and other illegal drugs. TIRF's *Road Safety Monitor* also demonstrated that Canadians rank drugs and driving a close second behind the issue of drinking and driving as important road safety concerns.

Indeed, Canadians rate driving under the influence of illegal drugs a serious problem. However, as the committee is no doubt aware, prescription drugs and a wide variety of over-the-counter medicinal preparations have the potential to impair attention, judgment, coordination, and reaction time and can seriously compromise an individual's ability to drive safely.

Whereas mechanical devices exist to easily and accurately detect the presence and quantity of alcohol through breath analysis, no such device exists for other drugs. Moreover, unlike alcohol, where agreed-upon levels of blood alcohol content consistent with impairment exist, simply identifying that a drug is present, regardless of whether the drug is legal or illegal, does not necessarily mean that consumption occurred recently, nor does it mean that the person's ability to drive was impaired at the time the sample was taken. Research and development work should continue to develop comparable devices to detect the presence and quantity of popular drugs of abuse.

CCSA is an evidence-driven organization. Not surprisingly, then, we would argue strongly that legislation and the development of public policy must be driven by convincing, high-quality scientific evidence. From our perspective, much additional research is needed to explore patterns of drug-impaired driving among various subpopulations of users. Clearly, as various researchers and organizations have pointed out, the situation, context, and circumstances around drug-impaired driving are both quantitatively and qualitatively different from alcohol-impaired driving, and few direct comparisons can be made. Indeed, fewer Canadians use all classes of drugs combined, compared with alcohol.

Our research colleagues at TIRF have convincingly argued that the risk for drugs is less than the risk to public safety that alcohol-impaired driving poses to Canadians. I would hasten to add that research and accident statistics suggest that combinations of various types of drugs, both legal and illegal, in combination with alcohol pose a serious risk to traffic safety. Accordingly, research and policy development initiatives on drug-impaired driving should not jeopardize parallel efforts regarding alcohol.

● (0930)

In addition, CCSA recommends additional research to determine the efficacy of roadside detection measures such as the standard field sobriety test and the drug recognition expert procedures, the preventive effect of the use of administrative licence suspensions by police, and the efficacy of treatment programs and services currently available in the marketplace for those who drive under the influence of drugs and who have a substance abuse problem. For example, as you may know, a number of prominent and credible Canadian organizations have debated the value of administrative licence suspension versus enhanced criminal sanctions for those who are caught driving while impaired by drugs. From our perspective, as with alcohol, both options combined hold promise in deterring Canadians from consuming drugs and driving.

In addition, we feel that a candid and objective review of approaches to roadside assessment and detection is needed. It's important to bear in mind that the drug recognition expert procedure is both costly and cumbersome. Some components are delivered at the roadside while others must be undertaken at a police station or other suitable facility.

The two available studies of the DRE suggest that the approach can accurately identify classes of drugs when administered correctly by trained officers. It is unclear that the administration of the DRE in its present form is necessary to provide officers with reasonable grounds to require a sample of body fluid...without opening the doors to charter challenges.

We recommend additional research to assess the efficacy of the DRE procedure and to confirm its value-added benefit over other methods and approaches as they become available. Although the DRE appears to be the most systematic identification and assessment procedure currently available, we would hope that the proposed legislative changes would be flexible enough to allow less cumbersome and costly approaches to be developed and implemented for a fluid sample to be taken.

We would respectfully recommend that the impact of legislative changes on the criminal justice system be considered in your deliberations. As we know, there is currently a backlog of impaired driving cases in Canada to be prosecuted. Therefore, by facilitating the arrest and conviction of drug-impaired drivers, Bill C-16 may flood an already overburdened court system with cases involving drug-impaired driving. We recommend that this should be anticipated by the government, resourced appropriately, and monitored after the implementation of the bill.

We feel it is also important to add that relatively little is known about various treatment programs and services available to treat drug-impaired drivers with substance abuse problems. Additional work is needed in order for us to determine the effectiveness of treatment services and intervention models and the extent to which programs embrace the characteristics of effective programs and agreed-upon best practices.

Initiatives to develop the treatment workforce and to transfer knowledge regarding evidence-based best practices are needed. The development of a national research agenda on substance abuse, of which CCSA was one of the broad number of key stakeholder organizations, is a suitable vehicle for fostering this research and for helping to put new knowledge into practice.

In closing, I can say it seems clear that any change in Canadian legislation that will result in an increase in the number of individuals who drive under the influence of drugs will have profound effects on the criminal justice system and related services. These include the number of front-line officers who need to be trained; the number of forensic laboratories, both public and private, that analyze samples; court-related resources to prosecute cases; and the strain on an already overburdened treatment resources in the community.

I'd like to reiterate that our organization has appreciated the opportunity to present our views on drugs and driving in Canada to the committee. Thank you for your interest, and we look forward to your questions.

● (0935)

The Chair: Thank you, Ms. Begin.

From the Centre for Addictions and Mental Health, Mr. Mann, please.

Dr. Robert Mann (Senior Scientist, Centre for Addiction and Mental Health): Good morning. My name is Robert Mann. I'm a senior scientist with the Centre for Addiction and Mental Health in Toronto and an associate professor of public health sciences at the University of Toronto.

The Centre for Addiction and Mental Health is an organization with a provincial mandate to conduct research, engage in public education, and participate in the development of healthy public policy in the area of addictions and mental health. Our organization has many years of health promotion, treatment, and research experience in issues related to the use of recreational or illicit drugs like cannabis, cocaine, and opiates. We have access to the most current evidence about, for example, drug effects on health, the epidemiology of drug use in Canada, and the effects of measures designed to reduce health and social problems created by drug use.

Based on this information, for example, the Centre for Addiction and Mental Health supports Bill C-17, which is designed to reduce criminal penalties for simple possession of small amounts of cannabis.

While Bill C-16 is designed to address driving by people impaired by a wide variety of drugs, my comments will focus specifically on the scientific evidence on the issue of cannabis and driving. One reason for this is that after alcohol, cannabis is the psychoactive drug most often detected in drivers who have been seriously injured or killed in collisions.

A substantial body of research assessing the effects of cannabis on human performance exists, and several authoritative reviews of this literature have been published. The evidence is clear that a moderate or higher dose of cannabis impairs driver performance and several of the skills necessary for safe driving. Some authors have reported that the largest degree of impairment is observed with tasks involving attention, tracking, and psychomotor skills. The effects of using cannabis in combination with alcohol, which seems to occur frequently among cannabis users, appear to be either additive or multiplicative, where the effects of the drugs taken together are greater than a simple addition of the effects of the drugs.

After alcohol, cannabis is the most widely used psychoactive drug in Canada. Information on cannabis use and driving has been rare, but researchers have been able to obtain Canadian information on this topic more recently. In the general driving population, the proportion who recorded driving after cannabis use in the previous year is low, with recent estimates ranging from about 1.5% to 1.9%. However, it is clear that there are subgroups of the driving population for whom driving after cannabis use is much more common. When sampling is restricted to cannabis users, the proportion who reported driving after cannabis use is substantial, and among heavy users of cannabis entering treatment about 50% reported driving after cannabis use in the past year.

Younger drivers are much more likely to report driving after cannabis use, and a recent study of Ontario students found that 19.3% of drivers in high school reported driving within an hour of cannabis use at least once in the past year. It is interesting and important to note that the proportion who reported driving after cannabis use was higher than the proportion who reporting driving after alcohol use.

As noted above, after alcohol, cannabis is the psychoactive drug most commonly found in dead and injured drivers in Canada and many other countries. However, for many years researchers did not have a clear answer to the question of whether cannabis use increased collision risk. While the research designs necessary for assessing the impact of cannabis on collision risk are in principle the same as those used to assess the impact of alcohol on collision risk, in practice it is much more difficult to determine the collision-enhancing effects of cannabis. There are many reasons for this, including the fact that after use, cannabis is found in the body in far smaller quantities than alcohol. However, more recent studies, which can be characterized by the use of much improved research methods, report increases in collision risk associated with cannabis use in a dose-related manner, and thus more recent summaries of that scientific literature have concluded that driving under the acute effects of cannabis does increase the likelihood of collision involvement.

Thus, it is reasonable to conclude that driving after cannabis use presents traffic hazards and contributes to collisions and the resulting injuries and deaths on our roads. Motor vehicle collisions are a leading cause of preventable death, injury, and disability in Canada, and thus efforts to prevent driving after cannabis use are clearly justified.

● (0940)

Bill C-16 would permit a police officer at the beginning of the process to require a motorist suspected of driving while impaired by any substance, including cannabis, to submit to standardized field sobriety testing, with refusal being punished by conviction of an offence with similar penalties. Thus, this bill is modeled on Canada's laws to prevent drinking and driving, which include a "per se" law that makes it an offence to drive with a blood alcohol level above the threshold of 80 mg%, and a law that makes it an offence, with similar consequences, to refuse to provide a breath sample. In this context, it is therefore important to consider whether or not these alcohol laws have demonstrated any success in preventing alcohol-impaired driving.

There is now substantial evidence that these per se laws in general, and Canada's per se laws in particular, have been very successful in preventing drunk driving in the general population in reducing drunk-driving collisions and fatality rates. The international evidence is very strong, with evidence demonstrating the effectiveness of these laws from Scandinavian countries, Australia, and the United States.

A recent analysis of the effects of the introduction of Canada's legal limit law indicates that in Ontario this law has been associated with an ongoing reduction of 18% in the rate of drinking drivers killed in collisions. Thus, the general strategy of attempting to prevent deaths and injuries resulting from impaired driving using legal measures that improve the ease of detection and processing receives strong research support. No law is perfect, however. For example, even though Canada's current legal limit of 80 mg% has had a very important and positive effect on drinking-driving fatalities, current evidence now indicates that hundreds more fatalities might be prevented each year in this country if the legal limit were lowered to 50 mg% from 80 mg%.

Our understanding of the effects of laws and their likely impacts will always be imperfect, but available evidence indicates that introducing laws to prevent impaired driving by drugs that are modeled on those designed to prevent driving while impaired by alcohol are very likely to save lives on our highways.

As well, if the law is introduced, it is important that government remain committed to supporting the implementation of the law. Research shows that laws can be unsuccessful in achieving reductions and collisions and fatalities if they are not enforced or if resources are not available to support their implementation and enforcement. Thus, in order to achieve a positive impact with Bill C-16, it is essential that the government provide the resources necessary for successful implementation. As well, if the Government of Canada chooses to introduce Bill C-16, it is also important that this law receive a rigorous and long-term evaluation. It is important to determine whether or not the law is successful in preventing driving while impaired by cannabis and other drugs and how it might be improved. Evaluation should be conducted throughout the process of implementation of the law, and over an extended period of time following implementation, in order to assess its effectiveness.

In summary, the available scientific evidence indicates that the acute effects of cannabis and other drugs increase collision risk. The Centre for Addiction and Mental Health supports the Government of Canada in its efforts to prevent deaths and injuries resulting from drug-impaired driving. Bill C-16 appears to be based on principles that have proven to be effective in preventing alcohol-impaired driving, and thus has substantial promise in preventing needless deaths and injuries on our roads.

Thank you very much for inviting me to be with you today.

● (0945)

The Chair: Thank you very much, Mr. Mann.

Mr. White, five minutes, questions and answers.

Mr. Randy White (Abbotsford, CPC): I thank you all for coming. I have a great number of questions, but I'm not going to get all of them in, so I'll just make one comment.

I think we have a very poor articulation in this country of a national drug strategy, if there really is one, and how it works. And I think that in and of itself is part of the reason why today we're trying to find our way through the muddle of various aspects of drug policy.

I want to know if any of you would disagree with this comment: there is no relationship between Bill C-17 and Bill C-16. Would anybody disagree with this, that one is not contingent on the other?

[*Translation*]

Mr. Tony Cannavino: I cannot tell you that one is not contingent on the other, but I can tell you that one has already had a devastating effect. I am not going to debate Bill C-17 this morning, but ever since the tabling of the well-known report by Senator Nolin, we have seen—and I travel regularly all across the country—that young people have been thinking we were heading toward legalizing marijuana and trivializing the effects of cannabis. I listened very closely to Mr. Mann's comments this morning. He was basically explaining the effect of cannabis and the current context. Clearly, we have certain apprehensions. The 54,000 members I represent hope the debate will eventually take place or that Bill C-17 will simply be forgotten.

The fact remains, however, that Bill C-16 is essential. There is a carnage on the highways. We have found that the majority of accidents involving serious injury or death are caused by alcohol-impaired driving, but also by drug-impaired driving. I agree with you there. At all of our meetings with government officials, we pressure them to adopt a sustained national drug strategy.

Bill C-16 is more than urgent in our view. If you pass it before the end of this session of Parliament—even if that is a pipe dream—the police forces and associations I represent would have to wait at least three or four years to have enough resource people. The training process is lengthy and we need even more funding in order to ensure we have drug-recognition experts in all detachments.

You are right that one bill may have a considerable effect on the other. That is in fact the case, Mr. White.

[*English*]

Mr. Randy White: Thank you.

The reason I actually brought that up—it's been brought up here a number of times at committee—is that I did find a contradiction, Mr. Mann, in what you said. You mentioned how dangerous and serious cannabis-impaired driving is, and yet you advocated Bill C-17.

I just want to move on to something else here, to defining the word “drug”. I hear it almost every time a witnesses comes here; there's much discussion about having too much coffee, too many aspirins, and so on and so forth. This bill does not define drug. Would any of you care to take a stab at defining what a drug is, and where this bill might go with that?

In particular, I think there are two things that have potential here, and that is a schedule of drugs, as we would have anywhere else, or some kind of category of impaired substances or something like that. I think we're all struggling with exactly what drugs we are talking about, how much, whether or not people are impaired by them, whether or not they just have a quantity in their body at the time from some other use at some other time.

CCSA, perhaps.

● (0950)

Ms. Patricia Begin: You're correct that the bill does not define what a drug is, but I would hazard a guess that it would be referring to something that would have a psychoactive effect on the driver, in the case of this bill, that would lead to impaired judgment, attention, and ability to control a vehicle.

Mr. Randy White: Anybody else? David.

Mr. David Griffin: I think we need the latitude to have it open-ended. We're talking about not only the illicit drugs that are in vogue today but also the potential for legal drugs to be abused—prescription drugs or over-the-counter drugs that could be taken in excess quantities and cause impairment. So we would support leaving it the way it is. Really, the issue here is impairment.

I'd like to contradict the point made by Mr. Cohen concerning the comparison with alcohol and the suggestion that we have a precise limit for alcohol, and that because we don't have a precise limit for drugs, we can't adequately respond on the issue of impairment. In order to convict somebody of impaired driving, the precise limit is of limited value. One driver's tolerance and one driver's ability to function at a certain blood alcohol level may be a lot different from another driver's. A driver who's modestly over 0.08%, or 0.05% even, may be much more severely impaired than a driver with a much higher reading, depending on their own personal tolerance levels, their use of alcohol, or how the alcohol affects them.

So from our perspective, the focus in this bill is quite appropriately on the issue of impairment and the fact that through a series of tests, it can be demonstrated that this driver is not fit to drive, and the blood tests or saliva tests or urine tests then more or less confirm that analysis by demonstrating that there was in fact a presence of that drug in the driver's blood. That is not unlike what we do with impaired drivers right now. We first assess their ability to drive and then confirm, by the blood alcohol test, that the impairment is due to alcohol

Mr. Randy White: Thank you.

The Chair: Mr. Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I would like to thank all of the participants for the insight they have given us. It has been particularly helpful, given the field you work in. Furthermore, I always appreciate presentations that are scientifically rigorous, like Mr. Mann's, among others.

I don't have much time, so I'm going to ask you a few specific questions so that you may, shed some light on them.

First of all, Mr. Cohen, I noticed that you referred to a number of tests, but you didn't mention sobriety tests.

From a civil liberty perspective, do you feel that putting drivers who are suspected of being too impaired to drive through reliable sobriety tests is problematic?

[*English*]

Mr. Larry Cohen: From a civil liberties perspective, I see no reason why they should not be submitted to sobriety tests. I think that's perfectly agreeable, perfectly acceptable, considering that the benefit achieved is that of assessing the driver's ability to drive on the road and not be impaired. So I have no problem with that from a civil liberties perspective. We'd have no issue with the current practice of police to conduct sobriety tests.

[*Translation*]

Mr. Serge Ménard: They are not currently mandatory. So you are in favour of these improvements to the legislation. I see.

● (0955)

[*English*]

Mr. Larry Cohen: I have no problem with it.

[*Translation*]

Mr. Serge Ménard: Let's talk about the sobriety tests now. Different individuals taking some of these tests may react differently depending on their level of nervousness. In some cases, however, nervousness has very little influence and the tests may produce reliable results.

You appear to agree. Shouldn't we focus on these tests? Apparently, it has something to do with the eyes not being affected.

As for the police, do you prefer the use of these tests?

Mr. Tony Cannavino: I believe it happens in two stages, Mr. Ménard. In the first stage, of course, sobriety tests, commonly known as roadside tests, are administered. These provide the first indications of whether or not the person is impaired.

In the following stage, drug recognition experts go further and there are other tests for signs of impairment. There is also a discussion, a sort of interview where the coherence of the speech of the individual who has been stopped is assessed.

I am not a civil liberties expert, but the Supreme Court recently handed down two decisions on the issue of detention in two cases relating to impairment in Manitoba. We see that the Supreme Court also looked at the purpose of the legislation. Can some liberties be limited in order to ensure the safety of citizens? It was held that for Canadians, impaired driving was a major problem. It's one tool.

Mr. Serge Ménard: Mr. Cannavino, I think you are straying from the question I asked, and my time is limited.

I would like to ask you another question. I would really like to know your opinion and the opinion of the others. We have been told that it was technically and scientifically possible to provide a sealed sample to individuals submitted to the test. They can keep it and have it analyzed by another lab if they don't trust the government labs.

Do you think that would improve the legislation? I would remind you that in terms of alcohol, that is already possible, under the current legislation, but that provision has never come into force, even though, since its enactment, a way has been found to store samples. Do you feel that this requirement to provide a sample of the substance to be analyzed to the individual submitted to the test would improve the legislation?

Mr. Tony Cannavino: I have a short answer to that question. To date, the lab tests done by Health Canada—in drugrecognition cases—are efficient and uniform across Canada. The tests are analyzed in the same way. Police officers are satisfied with the work done by those labs.

If a person were suddenly to be allowed to send a sample to another lab, the methodology used in those analyses would have to be investigated. That would mean embarking on an incredibly cumbersome process that would complicate these cases. It is recognized throughout Canada that the labs are efficient. Their methodology has been recognized across the board.

[*English*]

Mr. Larry Cohen: In our submission, it doesn't assist the question of impairment at the time of driving to have the drug results that we're talking about here. It wouldn't help either the accused or the police to have these results any more than the professional opinion of a police officer, or the drug recognition expert, as to whether the person is impaired. You're not adding anything to the pot here, because there's no agreement.

So one way or the other, it doesn't matter in the legislation to add an additional ability of the accused to have his own sample taken. I don't think it affects the civil liberties position.

● (1000)

The Chair: Does anyone else care to answer that question?

If not, thank you, Mr. Ménard.

Mr. Comartin, please.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thanks to all of you for being here.

Mr. Cohen, we heard some other testimony—and I think it was brought up today by both you and the Professional Police Association—about the use of DRE in the United States. In your paper you talked about cases in the states of Nevada and Washington, and about how the courts have treated that.

I'm not quite clear on this. Up to this point, from the evidence we've heard—and I think that's what the police were saying today—the U.S. courts have basically just accepted it. But the two cases you cite here seem to suggest otherwise.

Mr. Larry Cohen: Yes, they do. My understanding of the law in the United States is that there is an acceptance of the drug recognition experts in their ability to assess impairment, but there is also acceptance that it is not scientifically certain. In other words, there is no certainty about this, because it's a person's opinion. It's like a doctor who opines that you may have a certain disease and you may prove him wrong at a certain point in time because of other tests, or because you may not have it. So it's not scientifically certain; it's a matter of opinion, which I respect.

The problem, as was pointed out in our paper, is that some scientific studies show, for instance, that a drug recognition expert can have a rate of 34% false positives. In other words, they identify a person as having drugs in their system, because of their symptoms, when in fact they don't.

So there is a problem.

Mr. Joe Comartin: I don't mean to interrupt you, but we're always short on time.

What I'm trying to get at here is do those two states, or any others, have the right to ask for a sample?

Mr. Larry Cohen: I'm afraid I'm not aware of that.

Mr. Joe Comartin: I think Mr. Weekes has a comment.

Mr. John Weekes (Senior Resarch Analyst, Canadian Centre on Substance Abuse): The DRE process is structured around 12 steps, ironically. The twelfth step is the provision of a specimen sample, either urine, saliva, or blood. In a sense, then, the confirmation step is the analysis. I think that's standardized procedure.

I'd like to add that the research I've looked at around the DRE, including the two early studies—one was a 1995 study at Johns , among the first studies after the LAUD developed this process—shows quite a variability in terms of accuracy rate for impairment, particularly for identifying the class of drug. In fact, the identification was around 50%. That's chance. And that included two DRE instructors.

Mr. Joe Comartin: I guess what's been bothering me throughout this has been the.... Pretend I'm a judge. I'm sitting there, I hear the DRE expert, and I hear the toxicology report that's in support. But nobody can tell me how much THE—or cocaine, or any of the other drugs, prescription or otherwise—you need to have in your system to be impaired.

I'm trying to figure out what happens in the U.S. if it's a state that has both the DRE and the toxicology demand granted and submitted. What's the impact?

Mr. John Weekes: My sense is that the cases have been upheld through to conviction, because the toxicology report was consistent with the DRE analysis that suggested impairment.

Mr. Joe Comartin: I guess what's bothering me as a lawyer, Mr. Weekes, is that because the causal connection cannot be drawn, why do I rely on, say, this percentage of so many parts per billion in their blood of this particular drug as any support for the DRE testimony?

● (1005)

Mr. John Weekes: Yes, it's a tough connection to make between the assessment and the analysis. As has been mentioned here, and by other witnesses you've had previously, what is the impairment for a particular kind of drug? I know the concerns around civil liberties, and my sense is that you almost need to have the drug analysis support, the assessment of impairment, which I think the DRE might be reasonably good at. I think it's not particularly good at identification of a particular class of drug. And I'm not so sure it needs to be.

Mr. Joe Comartin: The bottom line for me...and again, I'm going back to the U.S., because it seems to me that's the closest jurisdiction we can look to for any accuracy in terms of the way we approach our evidentiary laws. Is there an overreliance on the confirmatory nature of the toxicology report?

Let me put it this way: you're sitting there as a judge and you're thinking, "I'm not really that sure about the DRE testimony, but here I have this scientific evidence, and that's going to clinch it for me". Are there any studies that show an overreliance?

Mr. Tony Cannavino: If I may, Mr. Comartin, I think it's a three-step thing. There's the roadside test, then there's a little bit of confirmation with the DRE evaluation, then there's the sample of saliva or urine or blood. There are three steps. It wasn't just because he was tired, say, or was distracted because he had a cellphone. Those three steps, combined, allow the judge to appreciate the nature of the evidence.

So it's all of that. I think it has to be sustained by those three steps.

Mr. Joe Comartin: But if I'm sitting there as a judge, why should I have any comfort level that this third stage confirms the first two?

Mr. Tony Cannavino: For one reason: even if the person refuses the third step, I think it becomes obvious for the judge. It's more than reasonable doubt.

The first step: reasonable doubt that he is impaired. The DRE evaluation goes further. The third step: no doubt, there's a presence of drugs in the body.

Mr. Joe Comartin: On that third step, we've heard from everybody, including Mr. Mann today, that we just don't know the impact of the drugs—

Mr. Tony Cannavino: Oh, no.

Mr. Joe Comartin: —as we do with alcohol, or not to the same degree of certainty.

Mr. Tony Cannavino: For one thing, if the report of the blood or urine or saliva test indicates that there are some drugs in the body, or determines a certain level of drugs, then, as I said, the roadside test is the first indication that the person is impaired. The second part is not only physical tests but also an interview between the DRE and the person arrested. It will go a little bit further—confirming, let's say, that the dialogue isn't too coherent. The third one, with the presence of drugs—

Mr. Joe Comartin: That's what's bothering me—

The Chair: Mr. Comartin, I think we're going to have to move on. I gave you a little bit of leeway.

Mr. Joe Comartin: Thank you for that, Mr. Chair.

An hon. member: Do we have to go and vote?

The Chair: I think that was just the opening of Parliament. We'll continue until the bells start to ring. If it's a MD-minute bell, we'll probably go maybe into the first 15 minutes.

Mr. Macklin.

Hon. Paul Harold Macklin (Northumberland—Quinte West, Lib.): Thank you very much, Chair.

Thank you, witnesses, for being with us today. You've raised so many questions, but I'd just like to go back to one issue.

More and more people are coming here saying research, research, research. I say that's fine, except—and I'd like this clarified—how do you research with illegal drugs, giving them to people and then testing them for this process? How do you go about that?

● (1010)

Dr. Robert Mann: We don't necessarily have to administer the drugs in order to look at the epidemiology of drug use and their impact on collision risk. The standard design for assessing impact of a drug like cannabis or alcohol on collision risk might be something like this: you look at a sample of injured or dead drivers, you assess the presence of, say, cannabis in their system, and then you collect a control sample. You could match the individual collision victim to a control person. So you go to the same place where the collision occurred, at roughly the same time of day, and you find someone who's willing to provide a control sample. You then look at the presence of in their system.

Hon. Paul Harold Macklin: But in theory, when we did the alcohol process, people took alcohol over a period of time and did certain motor tests, and we ultimately arrived at an arbitrary figure, a designation that said, okay, once you've crossed that line, for the most part you're impaired.

How are we ever going to develop that sort of baseline if in fact we're dealing with illegal drugs?

Dr. Robert Mann: It is possible to obtain permission to administer cannabis in laboratory situations.

Hon. Paul Harold Macklin: I'm thinking stronger drugs as well.

Dr. Robert Mann: Opiates as well.

Hon. Paul Harold Macklin: What you're saying, then, is that you can obtain permission to do the testing you require, even with the hardest of illegal drugs.

Dr. Robert Mann: I believe it is possible, in principle. It is difficult, and you have to go to great lengths to prove that you are not harming anybody by doing this. But it is possible.

Hon. Paul Harold Macklin: Everyone says we need to have more research, more research, and I'm saying, how are you really going to be able to get that without "harming" individuals—that is, the individuals who are going to be taking these drugs?

Mr. Tony Cannavino: We'll have a lot of volunteers, I'm pretty sure.

Mr. Larry Cohen: I think your question goes to the heart of the problem. Without that scientific research, what you're left with is the officer's opinion as to impairment, which is what we have now. So you don't add anything unless you do get that scientific research done.

Hon. Paul Harold Macklin: Well, if we were trying to establish a baseline test, I'd agree with you, but going back to Mr. Cannavino's point, what we're really doing here is just getting an affirmation. In other words, we've already gone through a couple of steps to make certain that this individual, for all intents and purposes, is impaired, and likely by a drug. That final test is really just to identify the drug or drugs that are in the system, not necessarily the quantity. There may be a relationship that then has to be established as to whether that connectivity, as Mr. Comartin was making, is really a relevant one.

Some of the evidence we've received at this committee suggests that, for example, in cannabis, there is a certain period of time within which you can test for a certain active ingredient that would be there, that would specify that there was some impairment, and that you were dealing with an active drug, not just the residue of a drug, within the system.

Could you confirm that, Mr. Mann?

Dr. Robert Mann: I'm not a pharmacologist, but to my understanding, the pharmacology of cannabis, for example, is much more complex than the pharmacology of alcohol. There are metabolites of cannabis that can be detected for a long time in the system. Certainly some cannabinoids can be detected in the urine for a long time after use. On the other hand, there are other metabolites that show much more promise of being a marker of the behavioural effects of the drug while they're in the system.

So just to confirm, then, yes, that is the case.

Hon. Paul Harold Macklin: Thank you.

Mr. Cannavino, with respect to the concept of training the trainers and the certification process for DRE, do you believe the DRE program and the training process being set out, the certification and so forth, is adequate such that when you complete the course you truly will be a drug recognition expert?

Mr. Tony Cannavino: Because of the quality of the training and because of all those tests and exams—I think there are eight exams, plus 12 examples of confirmed cases—it really proves to be solid training, yes.

● (1015)

Hon. Paul Harold Macklin: David.

Mr. David Griffin: I'd like to add to that. I formerly was a breathalyzer technician, and I did more than 400 tests.

The biggest confirmation process is when you give evidence in court. So not only do those officers have to meet the training standard, they're ultimately going to have to stand in front of their local judiciary and local defence bar and satisfy them of their competency. I find a little frustrating the suggestion that, on the one hand, we want to argue that the DRE process is not scientifically certain, but we want to take away the confirmation process that demonstrates that, yes, the officer's assessment was correct, because there was found to be a quantity of that drug in that person's blood. One of the first questions the defence counsel is going to ask of that officer is, how many inaccurate tests have you had? If that officer does not perform and have an adequate percentage of tests confirmed over time, then that officer is no longer going to be credible and able to put those cases forward.

So I think there's an important protection in the confirmation process that's there to ensure that we're not relying only on an individual officer's assessment but also on the scientific proof that there was in fact that drug found in that person's system.

The Chair: Mr. Weekes.

Mr. John Weekes: I would add that a 1992 national highway transportation safety association study—I have it with me here—showed that although the training may be adequate, the extent to which officers used the DRE dropped off significantly over time, with notable exceptions. You really have to wonder, then, about the notion...or build into the whole process the potential need and resourcing around bolstering maintenance training for officers who are trained in this relatively complex technical process.

I would also like to add that another way of confirming the presence of a drug roadside is by asking the person. Maybe it's just because I'm a psychologist, and I work with correctional service clients, but we have a lot of technical things—lateral nystagmus around the eyes, and vertical nystagmus—when oftentimes, especially around drugs, if you simply ask a person, particularly if you have them walking straight down a line and touching their nose and so on, "Come on, what's going on here?", they'll frequently just tell you.

The Chair: Mr. Mann, do you have a comment?

Dr. Robert Mann: Yes.

We need to remember that in every kind of measurement we take, there is some error involved. And you have to look at the type of error. It's my understanding that in the proposed process, as with the breath test and so on, you have measures with very good specificity. For instance, at the end of this process, if you're saying this person is impaired by a drug, we have the scientific evidence that tells us they likely are. The error is likely to be that the process will miss people who are impaired by drugs.

I guess from a civil liberties perspective, that's an error that may be more acceptable than if you have a high false-positive rate.

The Chair: Thank you, Mr. Macklin.

Mr. Toews, five minutes, please.

Mr. Vic Toews (Provencher, CPC): Thank you very much.

I appreciate the evidence. As I listen to all of the evidence we're hearing in front of the committee here, I'm growing increasingly more anxious about our ability to actually determine impairment by drugs.

I know that in respect of alcohol, obviously we can confirm that with some kind of objective testing. I'm not discounting the testimony of officers here, but we have objective scientific tests, in the form of alerts or breathalyzers, that not only will tell us the amount of alcohol but that we can correlate with impairment. Generally speaking, everyone over 0.04% is impaired in their ability to drive a motor vehicle, when we're talking about alcohol, but we don't have that kind of certainty with drugs. We heard that from our last panel of witnesses over and over again, that we can detect the presence of drugs but not necessarily impairment. So we then have to rely on the testimony of officers.

My concern, speaking as a former prosecutor, is that prosecutors have long given up on trying to prosecute impaired driving charges without breathalyzers. They simply don't work. More often than not, it's the exceptional case, when a guy is literally puking drunk, where you get him on a straight impaired. He's just too drunk to even blow into the breathalyzer.

But I'm wondering whether this bill might be focusing on the wrong issue. Why are we focusing on impairment? I'm just throwing this out as a suggestion, but if we can detect the presence, in a substantial amount, of an illegal drug, whether it's an opiate or cocaine or marijuana, in the system of a person behind the wheel driving a motor vehicle, whether it's impairment or not—and that's to discount any kind of casual, second-hand smoke—might that not be an answer? We'd simply say, "We don't care whether you're impaired or not; you've got an illegal substance in your body, you're behind the wheel of a motor vehicle, and that is the offence". Or when someone found to be in possession of an illegal drug on his body—like marijuana or cocaine or heroin—is behind the wheel of a motor vehicle, that's the offence. It's irrelevant whether he's impaired or not.

Is there any merit in following an idea like that?

● (1020)

Mr. Larry Cohen: I have just a couple of comments on that.

It would resolve certain civil liberty problems in the sense that the law would be certain, so certainly there are no civil liberty problems. The other problem that I think you have to wrestle with is that you're introducing basically a prohibition against a drug into a law that has nothing to do with the drugs. I'd have to really look at this to understand whether it's possible under the Criminal Code jurisdiction—

Mr. Vic Toews: But recognizing the danger of a particular drug, of ingesting a particular drug...whether that drug is ingested or they simply have it in their possession. So the officer would have to prove possession and being behind the wheel of a motor vehicle. That, I think, would act as a disincentive for people to get into a motor vehicle carrying any drugs.

That would be one form, and the other form would be simply forgetting about impairment: there is a substantial amount of illegal drugs in this person's system and that's the offence, we don't care whether he's impaired or not.

Mr. Larry Cohen: I think the civil liberties concerns would be alleviated subject to an examination of the particular limits one would impose, and whether they have a scientific base to them. If they don't have a scientific base to them, I'm not sure the civil liberties...would agree with that. But if they do, I think we would. I think that's exactly what we're looking for, the same kind of certainty as 0.08%.

Ms. Patricia Begin: I think one of the things that one would want to bear in mind is that while you may want to discount impairment and simply focus on the possession or ingestion of an illicit substance, there are many licit substances that can produce significant impairment.

Mr. Vic Toews: Yes, that's the concern I share in terms of codeine in a cough medicine that somebody has taken.

Ms. Patricia Begin: Precisely.

Mr. Vic Toews: That's why I say there has to be some kind of a substantive amount. Even if somebody is drinking bottles of codeine, they can still be impaired and therefore have that escalated level, so I don't know.... But that is a particular problem.

The other issue is simply possession, let's say of heroin, while driving a motor vehicle. Whether the person has injected or ingested the heroin or not, that's the offence.

Ms. Patricia Begin: With respect to possession, of course, Criminal Code provisions already exist.

Mr. Vic Toews: Yes, but what I'm concerned about is getting them from driving a motor vehicle. We could bring in the fact that he or she is behind the wheel of a motor vehicle, and therefore there should be an automatic prohibition against driving. All licence suspension provisions of the code would follow.

● (1025)

Ms. Patricia Begin: So this would go beyond the existing provisions in the Criminal Code with respect to the prohibition of driving after having ingested a drug?

Mr. Vic Toews: Yes. As soon as you are found in possession, and essentially in care and control of a motor vehicle, that's the offence. The offence is made out, and then the prohibitions and suspensions under the Criminal Code and the provincial highway traffic acts would apply.

The Chair: Thank you, Mr. Toews.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: It wouldn't be a crime to use a small amount of marijuana, but I can't help thinking that if you were to use some, you would have to wait two or three weeks before driving a car. That would be great for public transit!

Mr. Mann, you did a good job of explaining the relationship between using marijuana and driving a car. Do we know how much marijuana may affect us, and in what proportions? We know that for alcohol, and even though it may vary from one individual to the next, we know for sure that the more we drink, the more we are affected.

Anyway, I think you understood my question.

[*English*]

Dr. Robert Mann: I would say that the existing evidence does tell us that the impairment increases in a dose-related fashion. As you increase your consumption of cannabis, say, or other drugs, the amount of impairment you see will increase.

People often try to say, well, what amount of cannabis, for instance, would be the equivalent of alcohol? Some studies in the literature suggest that the kind of overall effects of cannabis on someone who is using a quantity that a social user might use achieve the impact on behaviour, and potentially impairing effects, equivalent to blood alcohol content of roughly 50 mg% to 100 mg %. Some studies in the literature have tried to equate with alcohol the amount of impairment you see from the social use of cannabis. There is some literature to suggest that in the social use of cannabis, not necessarily using huge amounts, you'd see the kind of impairment that you'd see at blood alcohol levels of 50 mg% to 100 mg%.

Mr. Serge Ménard: Yes, but “social use of cannabis” is a very imprecise measurement.

Dr. Robert Mann: Sure.

Mr. Serge Ménard: Do we have something precise, just as we do with 0.08%? I think we measure it in four parts per billion. Is there a way to measure that in the blood of a person, that it's precisely over four parts per billion? And is it true that if it's below four parts per billion, it does not have enough effect?

Dr. Robert Mann: My understanding of the literature is that it is not as precise as the literature for alcohol. From the figures I've seen, I believe you typically see impairment when you see levels of something 5 nanograms per millilitre, or something like that. So it's a fairly small amount, but you will see impairment at those levels.

I'm not sure; I'll ask my colleagues at CCSA if that sounds familiar to them.

[*Translation*]

Mr. John Weekes: Unfortunately, we have no idea.

Mr. Serge Ménard: Can the effect of marijuana be precisely measured by sobriety tests?

[*English*]

Dr. Robert Mann: Just as an example, one recent study looked at the ability of standardized field sobriety tests to detect moderate marijuana usage. They found that the standardized field sobriety tests had, again, good specificity in identifying impairment related to cannabis use. Sensitivity was less, so they missed a number of cases where a number of the individuals had used cannabis. But the specificity was excellent.

● (1030)

[*Translation*]

Mr. Serge Ménard: There is one last problem that concerns me, Mr. Cohen. In conducting a drug assessment, the assessor speaks to the individual, who answers. Shouldn't the assessor be limited as to the questions can be put to the individual? That is a violation of the principle according to which an individual cannot be compelled to contribute to his or her own conviction. You cannot force a person to make a statement against himself or herself, right? That would be self-incrimination.

[*English*]

Mr. Larry Cohen: As I understand it, the person would be required to submit to the tests. The proposed tests, I believe, have already been outlined. There is a very specific outline of those tests. I'm not sure, but I think they would include the question or questions that you can ask.

I haven't examined the specific questions that are in that test, I must admit, but we would have concerns if the wrong questions were asked, and we would not have concerns if the right questions were asked. An open-ended questioning process that is mandatory to answer, with consequences of being charged if you don't, would be objectionable.

The Chair: Thank you, Mr. Ménard.

Mr. Cullen, please.

Hon. Roy Cullen (Etobicoke North, Lib.): Thank you, Mr. Chair.

Thank you to all the presenters today.

You know, in this complicated world, we sometimes look for simple solutions. We desire simple solutions. Sometimes, in the search for the simple solutions, we tend to oversimplify. But I must say, just speaking for myself, I want to thank the CPPA for bringing me back to some fundamental basics as I understand this law.

While I'm interested in the scientific debate, it seems to me if we look at it as a three-stage process.... First of all, there's evidence of some erratic driving, Secondly, there is some field sobriety testing that confirms that the person is not sober in some description. That's followed on with the testing of blood or saliva or whatever to either confirm or reject, but probably in many cases to confirm. So it's sort of three strikes.

Knowing what the appropriate levels are or aren't, and how long the drug has been in the system, while interesting—and maybe I'm oversimplifying it—seems to me to be a confirmation process. So while we need to do more research into what levels and what length of time and what residues and all that kind of important stuff, I like to think about it in the terms that you presented it.

If we have time—we probably won't—I'd like to get back to my favourite theme, and that is the chronic and repeat offenders. I know the CCSA would have some research on this. A lot of it, I think, lies with provincial authorities to sanction those who reoffend and reoffend and reoffend. But that may be outside the scope of this particular bill.

Mr. Cannavino and Mr. Griffin, you talked about some specific changes or recommendations. Your number two item was to authorize police to videotape field sobriety and drug recognition tests You say that right now Bill C-16 doesn't allow that, although you don't say that in this particular context.

What would be the problem with including that in Bill C-16? Or what are the bottlenecks, what are the constraints—if there are any—to allowing the police to videotape and use this as evidence?

Mr. David Griffin: Some police services are using videotape. There are issues as to whether or not that will be allowed into evidence. We'd like to see it clarified that it is acceptable to introduce this as evidence.

● (1035)

Hon. Roy Cullen: Can we do that in Bill C-16, in your judgment?

Mr. David Griffin: Yes, we think that's an appropriate place to do it. We believe it provides both exculpatory evidence and inculpatory evidence, depending on the situation. Generally, the surveying that's been done suggests that judges, police, and the defence bar all welcome this type of evidence because of its higher degree of certainty, or at least supporting what's there.

We're concerned about making it obligatory, because it does have resource implications, and there may be circumstances where it's not practical to videotape. Therefore, we don't want to see a prosecution disabled simply on that basis. However, we do believe it is a technology that supports not only these situations but also other officer safety and prosecutorial opportunities.

Certainly it's something that we encourage strongly as an amendment.

Hon. Roy Cullen: Okay, thank you.

Your fifth item says that Bill C-16, as presently drafted, would prevent provincial and territorial officials from using field sobriety and drug recognition tests to issue short-term roadside or 90-day administrative licence suspensions, etc. Is that something that could be changed, in your judgment, by making an amendment to Bill C-16? And are there any bottlenecks or hooks there that we need to be aware of, if we did that?

Mr. David Griffin: Yes, and this issue was flagged, I believe, by previous witnesses from Mothers Against Drunk Driving. We certainly support the concern, given the restrictions that are placed on how this information that's collected can be used. Although we understand the need for those restrictions, we don't think it should prohibit the use of this evidence for such provincial regulatory processes as suspending a driver's licence, or driver's licence prohibitions.

I understand from speaking with the officials in the department that they have also flagged this and understand the concern that's being brought forward.

Hon. Roy Cullen: Thank you.

Do I have a couple of more minutes?

The Chair: No, you're right on the mark, Mr. Cullen.

Hon. Roy Cullen: Right on the mark? Okay, another day.

The Chair: Mr. Breitkreuz.

Mr. Garry Breitkreuz (Yorkton—Melville, CPC): Thank you.

I would like to zero in on two different issues. One of the issues raised was that a review would be necessary. We feel that should be mandated in the legislation, and I'd like to get your response to that.

In a review of the effectiveness of this legislation, what would you like to see? How comprehensive should that be? Some of you alluded to the fact that we need more resources for enforcement. If we're doing a review, does the effectiveness of this law depend on how many resources are available for effective enforcement of it? Does the support by the courts have to be part of the review? If we pass Bill C-17, that may change the dynamics of drug driving in Canada. How comprehensive should this review be, and how soon should it follow the passage of the legislation?

I think, or hope, you can all respond to that.

Ms. Patricia Begin: When we look at the impact of legislative changes, I think it's important to look at both the implementation and the outcome, or the impact. Clearly, resources play a significant role in how a legislative change such as this would be implemented. We're talking about a significant amount of training for front line officers as well as for DRE officers, as well as the need to ensure that there can be a fairly quick turnaround time in terms of toxicology testing, and then the impact this would have on the administration of justice in terms of prosecuting these cases.

So I would argue that both an implementation process and an impact evaluation should be considered.

● (1040)

Mr. Larry Cohen: I would certainly agree with the impact evaluation. I'm not a scientist, so I can't speak to the other end, but our prediction is that the defence bar will be focusing on the scientific uncertainty of the drug test results. That will be the focus. My prediction is that they will be quite successful, considering the lack of scientific support here.

So the question in a review should be on what reliance the convictions have on the drug testing result after they are put through the shooting gallery by defence lawyers. That would be my suggestion.

Mr. Tony Cannavino: We would support a five-year review. I think it would be important to see what the impact of the legislation would be and if we should amend part of the legislation or not.

I'm not sure what's going to happen with the first review in five years. As I said, what's going to be important is the funding to make sure that we could, in a short time, have as many police officers as possible trained to become DRE experts. It's very important training, very demanding, and it takes time. The first review maybe won't be that accurate because of the lack of resources for certain years, but it would indicate a trend.

I would look very favourably at another five years for the review, because that's when we would have a real picture of the impact of this legislation.

Mr. Garry Breitkreuz: Thank you for that. I'm sure we'd have to include how well the courts have supported the work of the police and all that. I mean, this has been a problem in other areas as well.

I have one more question I'd like to put on the record, and I hope I have enough time here to do that.

Is it possible to develop tests for impairment that are not based on body samples? For example, previous witnesses have told us that there are other signs of impairment. Some of you have indicated that it's difficult to link impairment to certain levels of a drug in somebody's system. Others have indicated possible eye movement, performing certain simple motor skills, response to stimuli and the environment—all could be signs of impairment.

Do you think it's possible to develop scientifically valid tests that may be based on something else besides body fluids to indicate impairment? Is it possible to go that way, and is anybody doing research in this area?

Dr. Robert Mann: I think it is possible, and I think there is ongoing research addressing that topic. But I would also comment that the kind of measures we see in this bill, standardized field sobriety testing and drug recognition expert programs, are based on that kind of knowledge. We do have knowledge now about how these substances affect the kinds of functions involved in this testing. That's the basis for these—

Mr. Garry Breitkreuz: Is it strong enough evidence to hold up in court?

Dr. Robert Mann: My understanding is that in other jurisdictions, it is. That's the best I can comment on that.

The Chair: Thank you, Mr. Mann.

Mr. David Griffin: On its own, I'm not sure it would be. I think Mr. Toews made the point in his questions earlier.

From our perspective, I'd liken it to an emergency room physician who makes an assessment based on certain physical symptoms, but still then uses the test to confirm whether or not that assessment was valid.

Mr. Larry Cohen: I would refer to Mr. Comartin's problem, that if you can't relate the test results to the time or the level of impairment, what have you added to the assessment of the drug recognition expert or the field sobriety test? I would argue that you haven't added a thing except an invasion of privacy.

● (1045)

The Chair: Thank you.

Ms. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thanks to all of you for being here. We're all sitting and watching and waiting for the bells to ring, so to speak.

I have two lines of questioning.

First, to Mr. Cohen, I read your brief carefully, and on page 6 you talked about the DRE evaluation. Your concern is that it's not based just on physiological data, but also incorporates moral or other judgment as to abnormality, which is unacceptable. Then later on you speak about the fact that the only real basis for judging impairment is behavioural.

I guess I'm interested in how you reconcile the two statements. You don't welcome the subjective part of the DRE, and yet you're saying it's behavioural. So I'd appreciate some explanation on that.

Mr. Larry Cohen: My explanation of that, or my understanding of what is meant by that, is that as a person judging a situation, you bring to bear everything you have to the situation. The more expert you are, the more you are able to exclude the matters that are irrelevant, that are part of your own personality. The psychology is a much more inexact science than whether a person can walk a line or not.

You have levels of certainty within your own expert judgment. If you're trained, as a police officer, in the psychology of impaired drivers, that's a less exact decision judgment than it would be for the training you need to ask a person to walk a straight line.

So it's a combination of different things that have different values in terms of the decision or the result you come up with. It's the difficulty that officers have and courts have in deciding whether a person is impaired.

I don't have any answer to it. I have been a defence lawyer, and I have recognized this, and I don't have any answer to it. That was an attempt to explain what I was talking about in that paper. That's the best I can do.

Ms. Anita Neville: Thank you.

Go ahead.

Mr. Tony Cannavino: Thanks.

I'm listening to the question of why we really need that last step. Well, it's like when somebody kills a person; even if the killer admits he has killed, police officers and the court have to prove it. First of all, there's the ballistics report, and all the experts have to go to court to make sure everything is covered. Otherwise, it's not enough to convict that person, even when the person admits it and gives a statement.

It's the same thing here: we need all those steps. The courts demand a lot. They want to make sure their decision is based on the global picture. They want all the information. I think taking that part off will be a mistake, because we're going to be struggling. How can we prove that person had some drugs and did drugs? If it's proved they had it in their body, that person cannot say in court, no, I never had drugs.

Ms. Anita Neville: The issue I was concerned with, what I saw as the inconsistency, was the use of subjectivity.

Let me move to another question, though, and it's for Mr. Weekes and Mr. Mann.

Somebody here referenced the fact that the bill does not list drugs. In your research, have you determined combinations of drugs that affect impairment? We haven't talked about that. We're hearing about all of the difficulties of this, but it strikes me that combinations of drugs, as well as life circumstances, can impact. It is the combination that I'm interested in.

● (1050)

Mr. John Weekes: That's one area where it's lacking. For better or worse, the first foray into the area of drug interactions has been the obvious one, and that is global interactions or basic interactions between various types of illegal drugs, and prescription or legal drugs, and alcohol. I think there's a lot we don't know.

I don't know if you want to comment.

Dr. Robert Mann: Yes. We had a question earlier about the challenges involved in administering illegal drugs in a laboratory situation, and I can say that you can imagine how much more challenging it is if you're administering two illegal drugs or more in a laboratory situation. The research is difficult. The evidence we do have tells us that the drugs have additive effects typically, and sometimes they appear to be multiplicative, so that the effects of the two drugs combined can be more than just the two added together.

Ms. Anita Neville: Presumably one could include not only illegal drugs but legal drugs in combination as well.

Dr. Robert Mann: That's correct.

Ms. Anita Neville: Thank you.

The Chair: Thank you.

The only one who has indicated again is Mr. Cullen, for round four.

Mr. Cullen.

Hon. Roy Cullen: Thank you.

I wanted to come back to this question of the chronic or repeat impaired driver. It seems to me, just like everyone else, I'll pick up the paper and read about someone who was drunk. We hear more about drunk drivers, of course, that they've run into someone and killed them, and when they check their record they find that their licence has been suspended maybe five or six or seven times. Often they're driving when their licence is suspended, and I'm not sure how you deal with that, because you have to deal with it mostly after the fact.

It's probably more in the area of provincial jurisdiction, but to the CCSA and others who want to comment—maybe the CCSA could start the discussion—what has your research shown with respect to the chronic or repeat offender of driving while impaired with either drugs or alcohol? Is there strong evidence to suggest that the worst cases are always repeated?

I'm sure all of us, if we were honest, would say there's been once or twice in our lives when we probably shouldn't have driven our car, but whether we'd get beyond the tolerances that are tested, I doubt. The person who makes the odd mistake once in their lifetime still needs to have a sanction, but it seems to me it's the people who keep doing it who are the real risks to society.

I wonder if you're prepared to comment on that.

Ms. Patricia Begin: Some of the research we've looked at would suggest that the percentage of drivers who are chronic and repeat offenders is quite small, but they account for a very large proportion of accidents and injuries on the roads.

Also, when you look at subpopulations of, for example, cannabis users—I'm thinking of young males—I think there you would probably find a higher incidence also of repeat driving under the influence of a drug.

Hon. Roy Cullen: Does anyone else want to comment?

Dr. Robert Mann: Just to note that if you look at alcohol-impaired drivers, the data tell us that by the time an individual is charged and/or convicted with an alcohol offence, they've probably driven impaired several hundred times.

Hon. Roy Cullen: Some of the evidence we've heard suggests that it's very hard to get a conviction under impaired driving, because the case law has been built up in a very strong way. People who get charged sometimes have the resources to hire high-priced lawyers, and the case law is very complicated and hard to beat.

The other issue is that I'm wondering if it's a matter of provincial sanctions or jurisdiction. What is preventing provincial highway authorities from...not putting these people away necessarily, but just yanking their licences, a progressive staging? If they drive when they don't have a licence, there's nothing much you can do about that. It's usually after the fact, I suspect, unless they're interdicted on the highway.

Is this a matter of provincial jurisdiction, Tony or David?

● (1055)

Mr. David Griffin: I think concern has been expressed, certainly, but I'm not convinced it's such a significant risk that it overrides some of those other groups, such as the younger driver who may be using alcohol in combination with drugs.

I think it's a challenge for all levels of government. You can have lifetime driver prohibitions, you can have alcohol interlocking devices that prevent a car from being used; every solution does have an alternative. But if that person is determined that they're going to drive a motor vehicle, short of putting these people under surveillance or incarcerating them, it's very difficult to keep them off the roads.

Hon. Roy Cullen: Thank you.

The Chair: A final word to Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you.

To the CPPA, I was actually really surprised by the numbers in the Quebec study. You said that 22.6% of the fatally injured drivers were positive for alcohol, 17.8% were positive for drugs, and 12.4% were positive for both. So drugs are involved in a very significant percentage of these individuals who are fatally injured.

There's evidence there that drug impairment is detrimental, but there's also evidence that it's difficult to determine the impairment through these tests. I'm wondering what your thoughts were on....

Mr. Toews had raised the idea that, okay, there's a suspicion there that you've been using drugs; you perhaps failed some sobriety test on the roadside. What do you think of the idea that if you have any measurable traces in your system and you are in care and control of a motor vehicle, that alone, rather than proving impairment, should be the offence?

Mr. Tony Cannavino: One of the problems we would probably have—and this is why we say the impairment is important—is that when we stop a car, we have to have some reasonable motives for thinking the person is impaired. It may be the way they were driving. If we stopped somebody and tested him just because he's one of the people we often see with druggies, I'm pretty sure we'd be challenged at all levels. If there's one place we'd be challenged, it would be there.

That's why we think we have to stick with the impairment. That is the basic thing, impairment.

Mr. Rob Moore: It just seems there are a lot of difficulties around the measurement. I mean, obviously you've stopped them for a reason. You have a suspicion that they're having some problem with driving. It seems, even with this bill, there are still quite a few hoops to jump through.

I did want to focus in on one of your recommendations, “Extend the presumptions of temporality from two to three hours”, because I've often wondered about that. When it's two hours, with maybe limited resources, and you're at the scene of a major accident, with perhaps a fatality, two hours is a pretty compressed timeframe. Do you think three hours is enough?

If we have time, Mr. Chair, does anyone else have a problem with extending it from two to three hours?

Mr. David Griffin: From our perspective, the three-hour limit would make the presumption consistent with the demand period. You have three hours in which to make the demand, but only two hours.... It would be presumed the result would be the reading at the time of the accident, or the time the person was stopped. So we're just looking to combine and coordinate that.

We believe it may just have been an oversight that the demand period was extended and not the presumption as well. And we don't see that as really being a disadvantage to an individual, because ultimately, the longer the period of time, the lower their reading is going to be, particularly when you compare two hours to three hours versus one hour to two hours.

● (1100)

Mr. Rob Moore: Does anyone else have any concerns with that recommendation?

All right. Thank you.

The Chair: Thank you.

This will conclude our hearing this morning. Thank you very much for your presence.

I would ask members to just hold on. We have 19 minutes yet, and we have a few housekeeping matters.

Again, to our witnesses, thank you very much. We appreciate your comments.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
http://www.parl.gc.ca
