House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 076 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Tuesday, June 12, 2007

Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

Tuesday, June 12, 2007

● (0905)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I call the Standing Committee on Justice and Human Rights to order on Tuesday, June 12, 2007. This committee is deliberating on Bill C-32, An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts.

Our witnesses today are the Canadian Society of Forensic Science, Mr. Brian Hodgson, Louise Dehaut, and Shirley Treacy, chair of the drugs and driving committee; the Canadian Centre on Substance Abuse, Mr. Douglas Beirness and Jacques LeCavalier; and the Canadian Bar Association, Mitchell MacLeod and Tamra Thomson.

I'm going to start, as they appear in the order of our agenda, with the Canadian Society of Forensic Science. Who will be presenting?

Mr. Hodgson, the floor is yours.

Mr. Brian Hodgson (Chair, Alcohol Test Committee, Canadian Society of Forensic Science): Thank you, Mr. Chairman.

Ladies and gentlemen, I sent a letter to the chair of the committee, Mr. Hanger, on May 24. I hope it's been distributed in both French and English. It sets out our views and our concerns with respect to one particular aspect of Bill C-32, and that's the change of the interval between successive breath tests, reducing it from 15 minutes down to three minutes.

Just as a preliminary background, I should indicate that the alcohol test committee is a special committee of the Canadian Society of Forensic Science. This committee was established way back in 1967 at the time when the first legislation was being introduced, the “over 80” legislation. The committee deals specifically with issues related to alcohol testing.

The committee is responsible for creating protocols for breath-testing programs across Canada, developing performance standards, evaluating breath-testing equipment, and establishing training standards for police officers using this equipment. In addition, the committee is the principal scientific advisor to the Department of Justice on matters relating to breath alcohol testing. I would add that any new instrument or device that's meant for police use here in Canada under the Criminal Code must be approved by the Minister of Justice, who will do so only upon the recommendation of our committee.

The committee standards for evaluating instruments are found at the website for the society, www.csfs.ca. The committee has a very rigorous protocol for evaluating instruments and devices for accuracy, precision, reliability, and specificity.

In regard to the current Bill C-32, the committee has a concern about reducing the interval between successive breath tests from 15 down to three minutes. The alcohol test committee recommends retaining the 15-minute interval between successive breath alcohol tests. This procedure produces two readings that are independent of each other but close enough in time to achieve acceptable reproducibility. The courts can be assured that the subject's blood alcohol concentration is truly what it is when two independent tests reveal the same conclusion within the acceptable boundaries of variability.

An interval of only three minutes, as proposed by Bill C-32, produces two readings that are interrelated or, in scientific terms, are duplicates of each other. Thus an external factor, such as mouth alcohol, that may contaminate the first sample can also affect the second sample, since it is taken so soon after the first sample.

Although some approved instruments have a built-in mouth alcohol detection system, these systems are not foolproof. They may be able to detect high concentrations of mouth alcohol, but low residual amounts may go undetected. Thus a mandatory 15-minute pre-test waiting period is required before the first test. But Bill C-32 contains no such provision.

The current 15-minute interval is ample time for any potential mouth alcohol to dissipate. If the first sample is contaminated by residual alcohol, this residue will be gone completely 15 minutes later when the second sample is taken.

Some researchers have argued recently that better agreement can be achieved between successive tests if they are taken close together, such as three minutes apart. They argue that a longer time period, such as 15 minutes, can result in wider discrepancies between readings, because alcohol is being eliminated, thereby changing the blood alcohol concentration, leading to a discrepancy greater than normally permitted and necessitating a third sample from the subject.

However, the amount eliminated during the 15 minutes is forensically insignificant and is not likely to be a major factor when a third sample is required.

Indeed, this research has demonstrated that the larger variable by far in duplicate testing lies with the quality of the breath samples provided by the subject. Over 80% of the variability can be attributed to the quality of the breath sample, which is called the “biological” or “sampling” component.

On a practical level, very little will be gained by reducing the interval to three minutes.

For example, in my own personal experience, in the last five and a half years I have examined over 600 files—621 to be exact—for the City of Ottawa Crown Attorney's office. I found that only 10 of those cases, which is less than 2% of the total, involved three or more readings. A shorter time interval might have alleviated the need for a third reading. I stress that it might have, since it was not at all certain that the discrepancy could be attributed to the time interval and not to the major variable of biological or sampling problems with the subjects themselves.

Finally, touching on the other change proposed in Bill C-32, under the category of "evidence to the contrary", as you know, Bill C-32 proposes to eliminate the so-called two-beer defence. An accused person will stand and testify that he or she only had three bottles or four bottles of beer over the course of a period of time. If by calculation the blood alcohol concentration is under 80, he or she is therefore not in violation of the Criminal Code. We suggest that the 15-minute interval offers a more rigorous determination of a person's blood alcohol concentration when confronted with questions under the "evidence to the contrary" provisions of section 258 of the code.

Two independent tests, both confirming that the blood alcohol concentration is over 80 milligrams per 100 millilitres, offer more reassurance to the courts than two closely linked duplicate or interrelated readings when the validity of the test procedure is being challenged and defence counsel allege that the blood alcohol concentration may be under 80 either at the time of the testing or even back at the time of the offence.

I want to add that I realize the two-beer defence causes a lot of consternation, because it's the opinion of an accused person versus what instruments say in terms of the blood alcohol concentration. The committee is supportive of the new changes to Bill C-32 in that regard because the recollection of a subject is completely unscientific. It's the subjective recall of a person as to what he or she may think he or she drank during the evening in question.

Things came to a head in the Supreme Court of Canada decision Regina v. Boucher in which the emphasis was apparently placed on what the evidence is from the accused person. In my viewpoint, the Supreme Court almost ignored the readings from the approved instrument. To my mind, it is an unscientific approach to matters and, from our viewpoint, it's untenable.

We welcome the changes in terms of the "evidence to the contrary" aspect. But it doesn't necessarily solve anything because the new creation of evidence to the contrary will now shift focus on to the instruments, the way they operate, and the way they are operated by personnel.

Mr. Chairman, I brought an approved screening device here today, called the Alcotest 7410 GLC, which is widely used here in Canada. I also brought one of the approved instruments used here in Canada, the Intoxilyzer 5000C, which is used here in Ontario and in some other parts of Canada. I also brought some brochures on that instrument, plus another instrument called the BAC DataMaster C, which is used here in Canada. I've also brought brochures on two new instruments that are currently before the minister awaiting approval. Those are the current generation instruments.

These instruments are all automated instruments. They require operator involvement. But when strict protocols are followed and the instrument is working properly as per the recommended procedures, then the tests obtained, especially when they're 15 minutes apart, provide conclusive proof of the person's blood alcohol concentration at the time of testing. Of course, it raises the question of what the blood alcohol concentration was at the time of the offence, but that becomes another issue.

● (0910)

Finally, in terms of the current situation in the courts with the two-beer defence, from our viewpoint that is a legal issue, it's not a scientific one, because the recollection of a person who obviously is going to have an interest in what he or she can remember is not scientific.

Thank you, Mr. Chairman.

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

I see that there are two presenters from the Canadian Society of Forensic Science.

Shirley Treacy, you're going to be presenting in what capacity? Dealing with the drug issue?

Ms. Shirley Treacy (Chair, Drugs and Driving Committee, Canadian Society of Forensic Science): Yes, that's right. I'm the chairman of the drugs and driving committee, so my presentation will be more on the DRE program.

● (0915)

The Chair: Okay. Well, why don't we move over to the DRE program and your presentation then?

Ms. Shirley Treacy: All right.

Good morning. My name is Shirley Treacy. As I indicated, I am the current chair of the drugs and driving committee of the Canadian Society of Forensic Science.

The drugs and driving committee is an advisory committee to the Department of Justice on drug-impaired driving matters. I am a forensic toxicologist with more than 20 years of experience in analytical lab work as well as court testimony. I am the section manager for toxicology services for the RCMP forensic laboratory in Winnipeg and I am the former national operational support manager for toxicology services for the RCMP forensic laboratory. I'm also trained in standardized field sobriety testing and in the drug recognition, evaluation, and classification program.

The drugs and driving committee of the Canadian Society of Forensic Science has appeared twice before, in both 1999 and 2005, when similar drug-impaired driving legislation was introduced. Now, as on these previous occasions, the Canadian Society of Forensic Science drugs and driving committee wholeheartedly supports the legislation contained in Bill C-32.

The role of drugs in causing drug impairment as well as injury and fatal motor vehicle accidents in Canada and throughout the rest of the world is well documented in the scientific literature. The brief that was provided as part of this lists a number of those references.

Currently there are two offences in the Criminal Code that relate to impaired driving. One of them is in paragraph 253(b), which has to do with the illegal per se law, the "over 80" charge as it relates to alcohol. Here the police can demand that a person blow into a screening device at the roadside when they suspect alcohol in the body. If the person fails that screening device, the police then have reasonable and probable grounds to demand a breath sample for an evidentiary device—a breathalyzer, an Intoxilyzer, a DataMaster—and these readings can be used as evidence in court.

In the case of injury or if the person is unable to provide a breath sample, police can make a demand for a sample of blood, which is then collected by a medical practitioner and analyzed by the forensic laboratory for the presence of alcohol.

The second offence is in paragraph 253(a) of the Criminal Code, which has to do with driving impaired by alcohol or a drug, so in fact there is already a provision in the Criminal Code for drug-impaired driving. However, it is not as effective as it could be, since the police officer must provide evidence of both impaired driving behaviour as well as the presence of the drug causing impairment. You need both of those things.

Currently the second piece of information—the presence of a drug causing impairment—can only be determined through the driver's voluntarily participating in roadside sobriety testing, voluntarily giving a statement as to his drug consumption or voluntarily providing a bodily fluid sample for drug analysis. Most often this would be blood or urine. Note that I am emphasizing that these are all voluntary, and therefore few are compelled to comply.

Unlike the situation with regard to alcohol, there is no per se law for drugs, and there is no simple comprehensive roadside testing available to prove the presence of drug in a suspected drug-impaired driver. Available existing roadside screening tests conducted on urine or saliva are limited to the possible detection of just a few classes of drugs. These tests are presumptive only, non-specific, and do not measure impairment.

The drugs and driving committee does not support roadside testing for drugs by police officers. We feel that all drug testing, both screening and confirmation, should be conducted in a forensic laboratory by skilled analysts.

A drug-impaired driving case can only be proven by the totality of the following: one, observed and documented altered driving behaviour that alerts the police; two, roadside sobriety and drug recognition testing; and three, the demand for the collection of a bodily fluid. This bodily fluid sample would then be analyzed for the presence of drugs in a forensic laboratory.

Bill C-32 will give the police the authority to demand that the person perform the roadside sobriety test and drug recognition test, if appropriate, as well as to demand the collection of a bodily fluid. With these three things in place, these proposed legislative changes would safeguard and exclude those drivers who use prescribed medication correctly for therapeutic uses. Ethical use of drugs prescribed by a physician and dispensed and monitored by a pharmacist should not lead to impairment.

● (0920)

It is important to note that the mere presence of a drug in the driver, whether it be a prescription, a non-prescription, or an illicit drug, would not lead to a charge of impaired driving, since his or her driving would not have alerted police. Please remember that not all drugs will cause impairment, nor will they affect one's ability to safely operate a motor vehicle.

In the United States, the issue of drug-impaired drivers has led to the establishment of the drug recognition evaluation or DRE program in most states. The DRE program was adopted in 1988 by the National Highway Traffic Safety Administration, NHTSA, and is managed by the International Association of Chiefs of Police. It represents a structured 12-step procedure for assessing suspected impaired individuals and allows for the detection and documentation of symptoms of drug use and the effects.

The DRE program is based on the scientific fact that each family of drugs has its own set of clinical indicators. There are seven classes. They look at things like pulse, blood pressure, body temperature, muscle tone, and examination of the eyes. These can be learned, and tests can then be administered to look at the set of clinical indicators. This then allows the DRE-trained officer to identify a particular family or families of drugs causing impairment.

In addition, part of the DRE protocol is to have the individual complete a number of divided attention tasks to check for a deterioration in the ability to perform these tasks. Because driving is a complex task, it requires persons to divide their attention to do both physical and mental functions at the same time. Persons under the influence of drugs or alcohol will have difficulty in dividing their attention. In fact, they have a tendency to focus on one task, while ignoring others. For example, a person might concentrate on maintaining speed but would have trouble or be negligent in monitoring a lane position. Any deterioration in the ability to perform the divided attention tasks will be documented as part of the DRE protocol. This is used to assess whether or not a person is impaired.

The DRE approach also establishes the necessary probative cause for the collection of a biological sample for toxicological testing. If and when the DRE-trained officer identifies a family of drugs as causing impairment, the DRE can then demand a bodily fluid sample to test for the presence of the drug.

At this point, collection of the bodily fluid, which is usually urine, is the last step. It's step 12 of 12 steps. The urine sample is collected and then analyzed for the presence of drugs by a forensic laboratory.

The toxicologist's main role in this type of impaired driving investigation, and by that I mean where a DRE evaluation is completed, is to corroborate the finding of the DRE-trained officer. Therefore, if the DRE finding is not supported by the drug analysis, the toxicologist cannot corroborate the DRE finding and the case will not proceed to trial.

This process is outlined in reference 7, which is entitled "The Drug-Impaired Driver: The Drug Recognition Expert Response".

At present there are 46 U.S. states that use this process to detect and prosecute drug-impaired drivers. This program has been scientifically validated both in the laboratory and at the roadside. Since the proposed legislation will detect the abuse of both pharmaceutical and illicit drugs, it's application is not restricted to illicit drugs.

In addition to the impairment caused by alcohol and other recreational drugs, there are many other medical conditions that can cause driving impairment, such as, for example, things like uncontrolled diabetes, epilepsy, and stroke. The DRE procedures are designed to help police officers identify medical disorders that can cause impairment. As a result, the DRE-trained officer would seek medical assistance for this person rather than incarceration.

Thank you for your attention.

● (0925)

The Chair: Thank you, Ms. Treacy.

From the Canadian Centre on Substance Abuse, we have Mr. Douglas Beirness.

Mr. Beirness, you have the floor.

Dr. Douglas Beirness (Manager, Research and Policy, Canadian Centre on Substance Abuse): Mr. Chairman, committee members, I am the manager of research and policy at the Canadian Centre on Substance Abuse, also referred to as CCSA. I'm a behavioural scientist, and over the past 24 years my research has focused almost exclusively on impaired driving issues. With me today is Monsieur Jacques LeCavalier, former CEO of CCSA and a current associate and senior advisor. We appreciate 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-32.

CCSA is Canada's national non-governmental organization established in 1988 by an act of Parliament to provide national leadership and evidence-informed analysis and advice on substance use and abuse issues in Canada. Accordingly, the issue of drugs and driving is of great interest to our organization, and we believe we're well positioned to contribute meaningfully to the discussion.

My colleagues and I at CCSA believe impaired driving is an area of serious concern for Canada. We've addressed the issue in a number of publications, copies of which have been provided to the clerk. We've also agreed to work with the Canadian Council of Motor Transport Administrators and Transport Canada to facilitate the goals and objectives of the strategy to reduce impaired driving. Collectively, our work reflects our level of interest and expertise in the area of drugs and driving.

In general, we at CCSA support the overall purpose and intent of the proposed legislation, particularly the requirement for drivers who are suspected of driving while impaired by drugs and/or alcohol to submit to physical coordination tests, such as the standardized field sobriety test, to submit to an evaluation of drug influence conducted by an officer trained in these techniques, such as the drug evaluation and classification program, also known as the DRE program, and to provide a bodily fluid sample for analysis. These provisions help to create a process comparable to that currently used for alcohol-impaired driving. However, there are a number of important considerations regarding Bill C-32 that we would like to bring to the committee's attention.

Our work on the issue illustrates the extent of the known risks posed by the impairing effects of drugs in traffic. At the same time, our work illustrates that relative to the knowledge about alcohol and driving, the knowledge base about drugs and driving is quite limited. To a large extent, this is because drugs and driving is a far more complex issue than alcohol. These complexities have hindered progress in the field, rendering tenuous any attempt at unequivocal statements about the magnitude of the problem of drugs and driving. As such, there's 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.

A difficulty that has persistently plagued research in this field is the detection and measurement of impairing substances in drivers. Whereas the presence and quantity of alcohol can be easily and reliably determined through breath analysis, no valid and consistently reliable comparable device currently exists to test drivers for other substances. Technological innovations using oral fluid samples hold promise for a device that will reliably detect the presence of certain substances, but practical devices may be many years away. Moreover, unlike alcohol where agreed upon levels of blood alcohol content consistent with impairment exist, such levels have never been established for other substances.

The alcohol crash relative risk curve, presented in a classic study by Professor Borkenstein back in the early 1960s, has yet to be established for other drugs. Hence, it's critical that tests to determine the extent of driver impairment accompany the collection and testing of bodily fluids for the presence of psychoactive substances.

My colleagues and I at CCSA have been working with the RCMP on an evaluation of the implementation of the DRE program here in Canada. Both Monsieur LeCavalier and I have taken the DRE course and we are very familiar with how this program operates.

You have previously heard from other witnesses, including Corporal Graham of the RCMP, that the DRE program is a systematic and standardized protocol to assess suspected impaired drivers for signs and symptoms associated with impairment by psychoactive substances. As part of our project we've had the opportunity to review the scientific evidence on the accuracy of the DRE program and have concluded that the ability of trained officers to identify the drug category responsible for the observed signs and symptoms in suspected impaired drivers is very good indeed, with measures of accuracy typically exceeding 85%. False negatives were not uncommon, but false positives were relatively rare.

● (0930)

A paper reporting the results of our study has been accepted for publication in the peer-reviewed journal, *Traffic Injury Prevention*. A copy has been provided to the clerk.

We've also examined drug evaluations of suspected drug-impaired drivers, conducted by Canadian officers trained in the DRE protocol in Canada. The findings demonstrated that the judgment of the evaluating officer concerning the category of drug responsible for the observed impairment matched the drug category in the toxicology analysis in 98% of cases. Again, a draft copy has been provided to the clerk.

In an ongoing study, we're investigating the reliability of the DRE protocol; that is the degree to which different officers are able to agree on the drug category involved for a given individual. To do this study we provided a randomly selected group of certified DREs with evaluation test results from 23 actual cases. The information provided included only the results of the test performed during the original DRE evaluation. Missing were the report of the arresting officer about driving impairment, the evaluating officer's narrative during the evaluation, and any admissions of drug use by the suspect. Using this limited set of information, our preliminary analysis showed that DREs were able to agree on the drug category involved approximately 75% of the time. Given that our experts were not able to observe the suspect first-hand, and only limited information was provided, we consider the results to be very good. In addition to demonstrating the reliability of the evaluations, the findings attest to the overall validity of the objective data collected as part of a DRE evaluation.

As positive as your research findings are, it is also evident that the DRE protocol is not perfect. The data indicate that the accuracy of the DRE procedure varies according to the class of drug. Some drug types are simply more difficult to detect than others. The use of more than one drug and the use of alcohol in combination with other substances can mask some symptoms and exacerbate others, leading to a mis-specification of drug category. In such cases, there is no question that the suspect is impaired. It's merely a question as to which class of substance is responsible for the observed impairment. Nevertheless, we are convinced that the DRE protocol is the best procedure available to assess drug-induced impairment. Further research and evaluation is clearly necessary to better understand the role of drugs and road safety and how best to identify and deal with those who engage in this behaviour.

The DRE protocol is an evolving process. Further research and development of the DRE protocol will ultimately lead to improvements in the extent to which these procedures can be used to detect some drug classes. Our own research continues, and we're currently using existing evaluations to identify sets of key variables in the evaluation to help officers identify specific drug categories.

We also believe there's a necessity to focus on the issue of impairment, and it's fundamental to the overall intent and purpose of the legislation. The mere presence of a drug or a drug metabolite is not sufficient to demonstrate the driver's ability was impaired. The proposed legislation outlines a process whereby the investigating officer must establish reasonable and probable grounds of impairment of the ability to operate a vehicle safely before making a demand for a bodily fluid sample. This process eliminates fears raised through the media about the possibility of criminal impairment charges being laid as a result of a positive drug test that may not be linked to actual or recent drug use. The police must first establish that the driver's ability was impaired.

It is also our belief that the legislation should maintain a focus on public safety, by controlling drug-impaired driving, and should not be used as a means of drug control. In this context, we believe that the proposed subsection 253.1(1), which makes it an offence to have a controlled substance in the vehicle, is inconsistent with the concept of impaired driving. Simply being in the possession of a drug in a vehicle does not equate with driver impairment. In addition, this particular proposed subsection specifies controlled substance as specified in the Controlled Drugs and Substances Act, CDSA, some of which have never been shown to cause impairment—for example, anabolic steroids. We recommend that offences related to the possession of illegal substances be tackled through the CDSA.

● (0935)

In addition, to further ensure that the focus of the legislation is on impairment, there is a need to define a drug. To this end, we propose the definition of a drug used by the DRE program. They say a drug is any substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely.

Although there's sufficient evidence of the dangers of drug-impaired driving to warrant the measures introduced by this legislation, the evidence is also very clear that the combination of alcohol and drugs, even in small amounts, creates a level of impairment and risk greater than that associated with either substance alone.

In recognition of this, we would like to propose that impairment due to a combination of alcohol and drugs, or a combination of two or more drugs, be treated as exacerbating circumstances in sentencing, similar to subsection 255(1), which currently considers blood alcohol concentrations in excess of 160 milligrams per 100 millilitres of blood to be aggravating circumstances in alcohol-impaired driving offences.

Undoubtedly you have already recognized that Bill C-32 will require officers trained in both field impairment testing and DRE. There are currently 2,427 officers trained in the SFST and 153 certified DRE officers, with 97 officers in the process of certification across Canada. From personal experience, we can attest to the fact that the DRE training is demanding and intensive. It requires commitment, ongoing study, and practice. If this legislation is to have a beneficial impact on drug-impaired driving in Canada, there needs to be an ongoing commitment to the training of police officers in these techniques as well as to the continued development and evaluation of these techniques.

The introduction of this legislation and the training programs necessary to support it are bold steps needed to address a persistent and what we believe is a growing problem. But as you consider this legislation, it's important to recognize that enforcement is only one component of an overall strategy to deal with drug-impaired driving. There's a need to include prevention, adjudication, and rehabilitation as integral components of a broader strategy.

An effective overall strategy will also require coordination and cooperation with the provinces and territories that share responsibility for dealing with impaired driving. Provincial and territorial agencies should be encouraged to examine their own programs for alcohol-impaired drivers, such as administrative licence suspension, short-term suspensions, interlock programs, and rehabilitation programs, and ensure that appropriate options are available for drug-impaired drivers as well. In the absence of these changes, drivers will quickly begin to perceive drug-impaired driving as a less severe offence than alcohol-impaired driving, and this is clearly unacceptable.

As a final note, we'd like to recommend that due consideration be afforded to the need for a comprehensive evaluation of the legislation and the introduction of the DRE program. Evaluation is more than a simple process to determine the success or failure of a program. Evaluation serves to inform policy-makers such as yourselves as to where improvements may be needed to maximize the effectiveness of a program and where efficiencies can be introduced. In the area of drug-impaired driving, a commitment to ongoing monitoring and evaluation is critical.

In closing, we appreciate the opportunity to present our views on drugs and driving in Canada to the committee. Thank you for your interest. We look forward to your questions.

The Vice-Chair (Mr. Derek Lee (Scarborough—Rouge River, Lib.)): Thank you, Mr. Beirness.

Next is the Canadian Bar Association.

I understand, Ms. Thomson, you'll start and you'll share your time with Mr. Mitchell.

Ms. Tamra Thomson (Director, Legislation and Law Reform, Canadian Bar Association): That's correct. Thank you, Mr. Chair.

● (0940)

The Vice-Chair (Mr. Derek Lee): Welcome back. The floor is yours.

Ms. Tamra Thomson: Thank you, Mr. Chair and honourable members.

The Canadian Bar Association appreciates the opportunity to speak to you today on Bill C-32. We're a national association of 37,000 lawyers across Canada. Our mandate includes improvement of the law and improvement in the administration of justice. It's in that optic that we have evaluated Bill C-32.

Our written submission represents that analysis of the bill. It was prepared by our criminal justice section. I think our criminal justice section is unique in Canada, in that its members comprise both defence counsel and crown counsel, so they bring that balance of views to their analysis of the bill.

I'm going to ask Mr. Mitchell, who is a member of the executive of the section, to present some of the highlights of the analysis of the bill.

Mr. Mitchell MacLeod (Executive Member, National Criminal Justice Section, Canadian Bar Association): Thank you, Mr. Chair. Having a first name that's a common last name often results in my being referred to as Mr. Mitchell. For the record, I'll say that actually MacLeod is my last name.

I would echo Ms. Thomson's comments with regard to both appreciating the opportunity to share our perspective here today with this committee on this very important issue, as well as indicating that our written submission, which has been provided to you, does encompass a broad range of perspectives from lawyers who not only occupy different roles in terms of being either crown attorneys or defence counsel but also encompass practitioners from across the country who operate in urban and rural environments and in public and private practices.

I sit as a provincial branch chair on the executive of our criminal justice section, and I can well attest to the lively debate and discussion that goes on amongst our group in coming to conclusions and recommendations that we present in our written submission to you. Indeed, I can say personally that in the ten-plus years I've had a substantial criminal law practice, I have operated and currently operate as both a defence lawyer and as a prosecutor. On some occasions I have stood on both sides of the courtroom on the same day.

I'd like to preface our main commentary by reiterating the common ground that I believe everyone in this room shares, and that is that the best interests of our society and of our citizens are served in reducing the incidence of impaired driving.

No numbers or statistics that we may see bandied about on this important issue will do really any justice to the value of a human life that might be saved if you, as a committee or our government, are successful in employing legislative changes or changes in policy that reduce the incidence, the frequency, of impaired driving on our highways.

We may represent a group of lawyers from across Canada, but we're all citizens, we're all members of the community, and no one would stand in the way of something as obviously beneficial to our society as a reduction in the amount of impaired driving and the tragedies that can often result from it.

However, and as you'll see from our submissions, the measures we seek to employ to accomplish that goal must not just seem to be things that would reduce impaired driving or look like they might do so; they should and must demonstrably do so. These measures should and must be rationally and factually connected to the results we desire. They should and must be measures that respect and balance the fundamental rights of all citizens that are enshrined in our charter. They must not confuse a perhaps understandable desire for retribution or for an increase in conviction rates. It must not confuse those concepts with a reduction in impaired driving rates.

The position specifically is outlined in our fairly substantial written materials, and I don't propose to utilize our remaining time in going through each of those in any particular detail. I would like to highlight, though, a few of our points, and perhaps points that haven't been touched on by other witnesses here this morning.

In relation to an overall perspective, it's our position that each of the proposed amendments or sections in Bill C-32 invite a substantial amount of charter scrutiny, and as a result invite substantial and perhaps in some instances even a paralyzing amount of litigation. To anyone who might suggest that the criminal justice section's concerns about these proposals show perhaps a defence counsel bias, I can certainly say that in its current form these amendments are a defence lawyer's dream, at least from a trial volume perspective.

● (0945)

As a lawyer whose practice encompasses the defence of impaired driving cases, I can certainly say from a purely professional and self-interested perspective that I can see in these proposals many months, if not years, of substantial litigation in the pages of Bill C-32 as it currently exists. However, the public interest prevails in the Canadian Bar Association's perspective on these issues, and the criminal justice section perspective in particular. Thus, in our conclusion, we state that every effort should be made to try to implement measures that might reduce the incidence of impaired driving to avoid encouraging or causing a torrent of litigation and the negative impact that would have on the administration of justice generally through the vastly increased demands that litigation would place on our criminal courts across the country.

The increased demands tie up resources, funds, and time that can be devoted, in our view, to measures that more materially deter impaired drivers. Those are measures that keep them off the roads in the first place. Those are the measures that will ultimately most directly save lives. Those measures are accomplished through enforcement. It is our view that the perceived risk of getting caught trumps any perceived risk or reward in terms of what might happen after someone is caught. It is that perceived risk of detection, of getting caught, that ultimately will best serve the interest of reducing the frequency of impaired driving in this country.

On the issue of drug recognition experts, the use of roadside testing and later testing, and as well on the issue of eliminating or curtailing evidence to the contrary defences, I'll touch on just one part of our submission in that regard. In our view, those items should be non-starters, essentially without mandatory audiovisual recording of the events that are related to those measures. An audiovisual recording should be a condition precedent to any contemplated enshrinement of these provisions in the Criminal Code.

The ability to record these things is already widely distributed. In our view, it's not so much a technological challenge as it is a commitment to devote appropriate resources to setting up frame-works for audiovisual recording of the activities of roadside testing, drug recognition experts involved at later testing, and items related to eliminating or curtailing evidence of the contrary defences. A commitment to complete audiovisual recording of those items should be mandatory, in our view.

By their very nature, the activities of drug recognition experts, regardless of how well trained they are, involve significant subjectivity, and they cry out, in our view, for audiovisual recording. In our view, the availability of an audiovisual record of the activity of drug recognition experts, roadside testing, and later testing would significantly deter many from perhaps rolling the dice and taking their chances at trial. I can say from personal experience with my own clients that there's nothing like seeing themselves on the big screen to bring home the reality of the situation to a client.

In our view, the availability of an audiovisual record might help reduce the anticipated deluge of litigation on these subjective drug recognition experts' testing. Indeed, if the types of testing that these drug recognition experts undertake are as accurate and legitimized through training to the extent that we have heard from certain witnesses, then certainly an audiovisual record of the process would only serve to confirm that fact and offer assurances to the public and to the profession in that regard.

● (0950)

With regard to audiovisual recording and the elimination or curtailing of evidence to the contrary defences—the so-called two-beer or bolus drinking defences—the provisions in Bill C-32 shift the onus to accused persons to produce evidence that tends to show that the instrument or machine, or the operator of that instrument or machine, is in error. The provisions additionally limit greatly what types of evidence an accused person can adduce in support of the position that the machine is wrong or in error or that the operator is incorrect or in error. This, in our view, makes the defence in that situation virtually moot absent the availability of an independent audiovisual record of the process. An accused person is hardly going to be in a position many weeks or months after the fact to call any evidence that tends to call into question either the operation of the machine or the activities of the operator, unless there is an independent record of what the machine did and how the operator operated it. In our respectful view, that requires more than just a checklist that the operator may have filled out or checked off and more than just a slip of paper that the machine may generate in its own self-testing mode that says, “I've tested myself, and I'm working fine, thank you very much”.

There is widespread availability of the technology at police stations and detachments to do this. Where that capability doesn't exist, it's our view that there should be a commitment to make it available. In order for there to be any meaningful defence available to an accused person to call evidence that tends to show these things, we have to allow for an after-the-fact, independent appraisal of what occurred at the station with the operator and with the instrument or machine.

Last, I'd like to touch briefly on the portion of our submission on the proposed new offences that involve offences of, in the vernacular, “over 80”, causing death or bodily harm or refusal when an accused person knows or ought to have known that he or she had caused an accident that resulted in severe bodily harm or death.

We see those provisions as significantly problematic. It's the view of the criminal justice section that to equate the maximum penalties —life in prison for offences that involve actual proof of impaired driving versus, simply, evidence that the person has a reading of over 80 milligrams of alcohol in 100 millilitres of blood or has refused to provide a sample—with moral blameworthiness in those circumstances is problematic and certainly invites significant charter challenge. We would suggest that it is not the reading of one's blood alcohol that "causes" death or bodily harm or causes the accident that causes death or bodily harm; it's the impaired ability to operate the motor vehicle that is the causal factor in those circumstances. And as we've pointed out in our submission, the virtually universal recognition that impairment of one's ability to drive occurs at readings of 100 milligrams of alcohol in 100 millilitres of blood really negates the necessity or efficacy that one might suggest would be achieved by adding an offence of over 80—again I put it in quotation marks—"causing" death or bodily harm.

Even more problematic, in our view, is the addition of an offence of refusal to provide a sample wherein death or bodily harm is involved. As pointed out in our paper, any time you import an objective test in those circumstances, which requires proof that the person knew or ought to have known that death or bodily harm resulted, that is problematic in the extreme. At the time, a person might refuse to provide a sample wherein death or bodily harm has resulted. That's obviously a time when a serious accident has taken place and persons who are asked for a sample may be injured or suffering from shock. That obviously may foreseeably impact on what they know or ought to have known in the circumstances, and it raises significant problems of proof.

● (0955)

Indeed, looking at it a little further, whether a person at the time they're asked to provide a sample, which obviously is in a time period that is close in time to when this accident would have taken place...there's a fair question to be asked whether they're even in a position to assess whether their operation of a motor vehicle "caused" an accident as opposed to simply that they were involved in an accident. Those are two different situations, two different sets of criteria involved.

I thank you again for the opportunity to present a few of the aspects that are raised in our written submission. As you know, our written submission goes into further technical detail regarding case law and other aspects of the legislation that the criminal justice section finds problematic.

It is certainly a worthy societal goal. There's nothing in our submission, nor in my presentation here today, in which we wish to suggest that a reduction of the incidence of impaired driving is not a worthy endeavour. By the same token, we would suggest that these provisions overall do not provide a rationally connected set of circumstances in which the ultimate goal—a reduction in the amount of impaired driving on our highways—can reasonably be expected to be achieved.

I'll end my comments there and look forward to any questions you may have.

The Vice-Chair (Mr. Derek Lee): Thank you, Mr. MacLeod. My apologies for misstating your surname earlier.

I understand Mr. Hodgson has some breathalyzer testing equipment. We may be able to actually do something with that a little later in the meeting. I presume you need some three-minute breaks or 15-minute breaks, so after Mr. Hanger returns, we'll see if we can't get something started about 10:30, if members are willing to participate in something like that. So we'll leave it to the members after Mr. Hanger returns.

I'll go to the official opposition, first round, for seven minutes. Since I'd like to finish up the four first rounds by 10:30 a.m., I'll be fairly strict with the seven minutes today. Thank you.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you, Mr. Chair.

Thank you all for coming. It's very helpful and necessary.

I was quite supportive of this bill before we started the meetings, but after the last meeting, which raised so many problems, I'm not sure how much can be salvaged.

The main thing I want to ask about is the drugs. It's a new concept here. Ms. Treacy, basically with alcohol the present situation is that you at least get a breathalyzer or a roadside test, and if it's adequate you go and have an official breathalyzer and you could be convicted. With drugs, the big question is whether there's a similar scientifically defensible process. What you're saying is, yes, there are some that are applied substantially in the United States, and there are other types of tests taken at the roadside that are substantially scientifically defensible, relatively accurate, and legally defensible, which would require a person to donate a fluid, which then would produce a scientifically defensible result that could convict a person of being impaired. Is that correct?

● (1000)

Ms. Shirley Treacy: That would be correct, yes. For a paragraph 253(a) charge, there first of all has to be evidence of impaired driving. If they don't feel it's alcohol and they think it's drugs, if this legislation were to pass, the person would then be demanded to do roadside screening, like the standard field sobriety tests at the roadside. If they were to fail those, then that would give the police the opportunity to demand that the person complete a DRE evaluation, which is much more intensive and takes longer to do. It looks at clinical indicators as well as some of the standard field sobriety tests. If the DRE then says, yes, this person is impaired in their ability to operate a motor vehicle, and they are able to identify the drug class, then they will demand a sample of a body fluid—it could be urine or saliva or blood—for analysis by the lab to corroborate that finding.

Hon. Larry Bagnell: Once they have the sample done, is there a level in a person's body of particular drugs, like cocaine, that would suggest that every person would be impaired at that level?

Ms. Shirley Treacy: No, particularly not in urine. You cannot correlate pharmacological effects in the body with what you find in the urine. So we're corroborating the finding. Based on the clinical indicators and the problem the person has in completing divided attention tasks, we can say they are under the influence of a drug, or drugs. What the lab does, or what a toxicologist does, is corroborate that finding and says the DRE evaluator says it looks like this person is under the influence of a central nervous system stimulant. I will analyse the urine sample and I'll find cocaine, and cocaine is a central nervous system stimulant; therefore I can corroborate their findings.

Hon. Larry Bagnell: So in alcohol, if it's about 0.08, that in itself would be enough to convict and suggest the person is impaired. But in drugs it doesn't matter what the level, at least in a urine test. It doesn't necessarily suggest the person is impaired.

Ms. Shirley Treacy: That's right. There is no correlation for drugs. There just isn't enough literature out there. But for alcohol it's 80 milligrams per 100 millilitres, and that's based on blood levels, not urine.

Hon. Larry Bagnell: Is there a difference in the blood test and the urine test in the drugs?

Ms. Shirley Treacy: In what regard?

Hon. Larry Bagnell: You were explaining how urine tests couldn't determine impairment. Would a blood test give any different results?

Ms. Shirley Treacy: There is more stuff in the literature about blood levels, but blood would be considered more invasive. So the program, as it stands in the U.S., is based on collecting urine samples —I guess saliva samples are another possibility—because they're less invasive than collecting blood.

Hon. Larry Bagnell: Would the Canadian Bar Association agree, and also the Canadian Centre on Substance Abuse, that the process that was just outlined would basically result in convictions similar to alcohol, without more excessive litigation and problems that would tie up the whole system?

Mr. Mitchell MacLeod: I apologize, Mr. Bagnell. At the time you were asking your question I was contemplating some notes I had written about something Ms. Treacy said. I would just ask you to repeat that for me.

Hon. Larry Bagnell: Okay. Basically the question is this. Under the process that Ms. Treacy just outlined—the parallel process for drugs that is used in the States—if we applied this law as it's presently written, would we then get a number of drug convictions without too much legal hassle, or no more than we get in alcohol? Obviously there are always challenges. Would it result in a number of successful convictions, similar to the percentages in alcohol, without too many legal problems or hassles?

Mr. Mitchell MacLeod: No, that's not the way the criminal justice section sees it. Indeed, in my deep contemplation of moments ago, I was taking a couple of notes. What Ms. Treacy had spoken about was some testing that, let's say, is suggestive of a central nervous system stimulant, and then there's corroborative testing of the urine, and in that testing of the urine it shows there's cocaine in the urine. I think the conclusion the court is going to be asked to draw, or that people are going to be asked to draw, is that the detection of the cocaine in the urine is somehow corroborative that a central nervous system stimulant, and specifically cocaine, was impairing that person's ability to drive a motor vehicle.

We see that type of logic generating an unbelievable amount of litigation. It would be our view that you cannot necessarily draw the conclusion that the presence of cocaine in the urine is corroborative of either the fact that the person was under the influence of cocaine as the central nervous stimulant—it might have been a different central nervous system stimulant—or indeed that a central nervous system stimulant was the precursor to the symptoms that the drug recognition expert found. I think you're going to have court challenges at every step of that process, arguing about what symptoms are indicative of what drugs, about what the differential diagnosis is. If a person is exhibiting symptoms A, B, and C, yes, it could be a central nervous system stimulant. What else could it be?

Those aspects of it, in the view of the criminal justice section, are just part of what we see as a set of circumstances in Bill C-32 that are going to generate an unbelievable amount of litigation, and attendant costs, both in terms of resources and in terms of the time the cases are tied up in the system.

● (1005)

The Vice-Chair (Mr. Derek Lee): Thank you, Mr. MacLeod and Mr. Bagnell.

Monsieur Ménard, vous avez sept minutes.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Thank you. My three questions are for Mr. Hodgson.

First, I want to know whether you officially support the bill. Second, it seems increasingly clear to me that we will not be able to support this bill without specific training on new detection technologies. It's not enough to take 10 minutes at the end of the meeting, particularly since we will have to go and vote at 11 a.m. The division bells will begin to ring at 10:30 a.m. or 10:45 a.m.

I would like for us to be briefed on the available technologies. You talked about a new generation of devices. Would you be in a position and able to provide us with a very in-depth information session, so that we can truly understand what we're talking about? Not only will the offence system change, but this change will have repercussions on the presumption of innocence as well as on the administration of justice in relation to impaired driving. For that reason, I believe it is important for us to truly understand new screening technologies.

If I understand correctly, you are saying that these devices are not effective or operational when it comes to roadside drug screening tests.

In short, here are my three questions. Do you support the bill? Could you provide us with proper training? What can you tell us about this new generation of devices? Finally, when it comes to roadside screening tests, we must distinguish between alcohol and drugs. Have I understood correctly?

[*English*]

Mr. Brian Hodgson: Thank you.

First of all, yes, the alcohol test committee is supportive of Bill C-32. Our only concern is that specific change in regard to the interval between successive breath tests.

I want to make it clear that my colleague Louise and I are only discussing the aspect of alcohol detection, which is a much simpler process than it is for other types of drugs. The technology that exists, has existed, and will exist is well tuned and adapted to measuring alcohol either at the roadside for screening purposes by use of a screening device or to confirm the blood alcohol concentration by means of an approved instrument. It's a very straightforward process. It's one that has to have strict protocols.

On testing drugs, I'm going to have to leave that to my colleague Ms. Treacy in terms of the testing at the roadside, because it's a completely different aspect.

If my colleague Louise has anything to add, perhaps she'd like to comment.

[*Translation*]

Ms. Louise Dehaut (member, Alcohol Test Committee, Canadian Society of Forensic Science): Not really. I think that you have said all that needs to be said.

Mr. Réal Ménard: If, as parliamentarians, we get training, you will be the one to provide it to us. You are the one advising the Department of Justice and you know this new generation of devices, which are the most up-to-date.

Ms. Louise Dehaut: That is true for drinking and driving, but not for drugs.

Mr. Réal Ménard: Your colleague Ms. Treacy has information on drugs.

[*English*]

Ms. Shirley Treacy: Yes. I'm not sure, though, exactly what question you're asking me specifically.

● (1010)

[*Translation*]

Mr. Réal Ménard: What concerns me is that we cannot administer standard roadside tests, which are usually filmed, to test for drugs in the body. The CBA recommends however that they be systematically filmed. We understand that this simplifies things when it comes to the administration of justice.

Based on what I understand, not only are the technologies used to detect drugs in the body not up-to-date but in addition, some signs, even when present, are not sufficient to conclude that drugs are the cause of the impairment. The most helpful technology used by police officers during roadside tests cannot be applied to drugs.

I wonder then whether, as parliamentarians, we should vote on that part of Bill C-32 relating to drugs. Or, should we simply delete this portion?

[*English*]

Ms. Shirley Treacy: There is a difference between alcohol and drugs, yes. In detection it's relatively simple to use a screening device to determine whether the person has alcohol in their body, but for drugs there is no such testing roadside; there is not an instrument like that. It means you have to do the standard field sobriety test at the roadside in order to detect, and you're not actually saying whether there's a drug or alcohol or a combination of both; it's whether the person has difficulty doing divided attention tasks. That suggests to you that they would be having difficulty in safely operating a motor vehicle.

Only a certain small number of those tests, three roadside tests, are done. If a person fails those, they then go back to the police station, where they would undergo a DRE evaluation, which includes divided attention tasks but also a number of other clinical indicators.

It would probably be fine to videotape the standard field sobriety test of having the person go through the walk and turn, the one-leg stand, etc. However, the clinical indicators are things like taking blood pressure, pulse, and body temperature. I'm not exactly sure what you expect to see by videotaping that; it really won't show anything. There would be limited value in doing a videotaping of a DRE evaluation, because other people are only going to be able to see—If you don't know what you're looking for and are not trained —'m not sure of the value of having it videotaped.

The Vice-Chair (Mr. Derek Lee): *Merci, Monsieur Ménard.*

Go ahead, Mr. Comartin, for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair, and thank you all for being here.

Let me just say to the Bar Association that I think there's already a consensus on the part of the opposition parties on getting rid of that extra offence on possession within the vehicle, so we're going to deal with that.

I also want to thank you because you've raised a number of issues that none of the other legal groups or defence groups has brought forward, both around sentences and on the new offences created. I appreciate that, because they were points I hadn't caught, and I don't think they had been drawn to the committee's attention yet. Thank you for that.

I want to follow up on the last point. Mr. MacLeod, let me start with you.

I had a similar reaction when you were raising the point, both in the brief and now verbally, over how extensive the use of audiovisual has to be to be effective. We've heard now from Ms. Treacy that it would be a specific problem with the DRE examination. You're looking there for whether you're seeing the bloodshot eyes; I don't think we have technology specific enough to catch that and some of the other symptoms that would be caught by the observations of the officer.

Similarly, to go to the alcohol side, are you proposing that we would use audiovisual at the station, whether Borkenstein or one of the other machines is being used? To add to that, are you saying that when the police officer is doing the testing and when the testing is actually being done and when the technician is actually testing the equipment, all of that would be subject to an audiovisual assessment?

● (1015)

Mr. Mitchell MacLeod: The short answers are yes, yes, and yes.

To go back to the beginning, on the DRE testing, while I am cognizant of Ms. Treacy's comments questioning the utility of videotaping things like the taking of blood pressure, pulse, and body temperature—some of the components involved in DRE testing—our position would be that there is a great deal of utility in having those items videotaped. I think part of Ms. Treacy's comment was to the effect that unless you knew what you were looking for in the videotape, how much good would it be? But that's the point. If you're an accused person in that circumstance and there is a videotape of the proceeding, then your defence counsel would have the ability to have somebody who knows what they are looking for observe the numerous and detailed steps undertaken by a drug recognition expert and assess whether or not the steps were followed—whether the procedures were done in the appropriate order and whether they were done with the appropriate protocols in place.

Indeed, one of our side concerns with this legislation is that there aren't regulations—at least that I've seen—that actually lay out the exact details of these things. They talk about training and manuals. We think those procedures should be enshrined in regulation, so there is cross-Canada consistency and a very detailed protocol, in or via regulation, that can be buttressed by a videotaped record.

Sure, you might not be able to see with great clarity the bloodshot eyes, but you can certainly see the physical things: how was the blood pressure taken; how was the pulse taken; how was the body temperature taken; and how long did it take to get those, and were there several attempts required to get a blood pressure reading? All those things would show up in videotape.

In relation to impairment, whether it's by alcohol or drugs, I've had occasion in my practice to see videotaped proceedings from police stations, or entrances into police stations or interview rooms, by persons accused of impaired driving. I can tell you these are extremely instructive in the vast majority of cases—in fact, I don't know if I've seen them in any other way. They were instructive in showing an accused person that they perhaps were in fact a little more impaired than they seem to have recalled they were. I think it would be helpful on the prosecution side more often than on the defence side.

Lastly, on the actual maintenance or testing of the videotape machines, I can't say our section was contemplating that specifically when we talked about the audiovisual record; we were talking more about roadside testing and DRE and/or sobriety testing in general at a station. The clearer and more in-depth the record, the better, from our perspective. So I doubt we would be against the process. Whether or not there are already sufficient records maintained, when the machines are actually formally being serviced by qualified people, I would have to leave an opinion on that to further discussion by the section or experts in the area.

Mr. Joe Comartin: Let me pursue that in terms of other assessments. From some of the other criminal defence lawyers who've come before us, we've heard of the need to have a clearer set of regulations that would require the technician to have taken these steps every time the assessments are done, so that when the machine is not being used, it will be tested on an ongoing basis—and of the need for that to be done, if I understood correctly, by independent authorities, rather than the technicians or police officers.

Has the Bar Association done any detailed analysis of what would be required to have that regime in place, or what would be required, in effect, to meet the greater degree of certainty in the validity of the equipment?

Mr. Mitchell MacLeod: The main concern raised within the criminal justice section involving the instruments or the machines was focused on what's happening at the time an accused person is being tested on the machine. This takes on a much greater importance when that person is later restricted from being able to testify about how much they had to drink and to have evidence to the contrary considered by a court in the normal context.

I cannot say that we discussed in any depth the general maintenance of the machinery or the accuracy of the instrument in terms of its ongoing maintenance, whether it be monthly or yearly, or those types of things. It was more in relation to having a videotaped record of how the instrument was being operated at the time, because if the onus is on the accused to produce evidence that the machine is not working properly, or the operator is not operating it properly, what ability are they going to have to do that unless, after the fact, they can show somebody who does know about those things an independent record of what happened?

● (1020)

Mr. Joe Comartin: If the section of the code applicable to the two-beer test had a mandatory audiovisual requirement and a set of regulations, which I suppose will have to be outside the code, as to how the equipment is to be maintained, the records of that, if a regime were in place, would the Canadian Bar Association still be opposed to the section as it is worded now, in effect taking away the defence that's evolved out of that section and through interpretation?

Mr. Mitchell MacLeod: Yes. The section's position wouldn't change in terms of being opposed to removing or curtailing that defence. We would suggest that the availability of that record would enhance and add a layer of objectivity, or an additional layer of objectivity, to the calling of the defence. In addition to an accused person's testimony about how much they had to drink and any buttressing evidence they have that corroborates what they have to say, in addition to the testimony of a toxicologist for the defence, an additional piece of evidence the court would have available to them would be a video record. And in fact the defence toxicologist would also be able to comment on an audiovisual recording of the testing process itself.

So it would enhance the process, but we do not believe it would necessitate or in any way encourage the elimination of that type of defence. Essentially what you're saying in that type of defence is that an accused person, who believes they are innocent or have not had sufficient alcohol to drink to have a particular reading, is not permitted to testify under oath to that effect. We have judges, we have triers of fact in this country, who are able to assess that evidence.

I should add that I don't believe it's accurate to suggest that the two-beer test, this “evidence to the contrary” defence, is simply a matter of an accused person taking the witness stand and swearing they only had two beers and the defence calling it a day on that basis and having judges acquit. The judges assess the credibility of that testimony in relation to a broad range of other evidence that might be available, and that would include an audiovisual record of what happened in the testing procedure.

The Vice-Chair (Mr. Derek Lee): Thank you, Mr. MacLeod.

We'll come back to you for a second round. You've had ample and additional time, Mr. Comartin. Thank you for your round.

Before I go to Monsieur Petit, I'm going to indicate that Mr. Bagnell has agreed to work with Mr. Hodgson on this breathalyzer reading issue. I will point out that for these purposes all our parliamentary privileges are in place with respect to all the laws of Canada, and that applies similarly to all our witnesses, who are protected by parliamentary privilege. So we'll proceed with that at 10:30.

In return for participating in the experiment, I've assured Mr. Bagnell he can have a second round, if that's okay with members.

I'll now go to Monsieur Petit for seven minutes.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you.

My question is for Mrs. Treacy.

I am very interested in the proposed amendments to the Criminal Code. Provisions respecting drug screening, or more specifically impairment-causing narcotics, are set out in greater detail. In your brief, you described a test which is assessed by drug recognition experts. They are trying to determine whether it is possible to administer this as a roadside test, meaning in a police station. I would ask you to give us more details about this. With regard to the drug recognition experts program, known as DRE, we are well aware that the RCMP and some American states have done studies. In fact, 45 of them have used this program.

According to the experts, this program is 98% accurate. You have read what we have proposed putting in the Criminal Code with regard to this program. In your opinion, is this a good enough tool to incarcerate individuals who use narcotics? I must clarify that this is our goal. In Quebec, when I sit in a restaurant with my friends and I smoke a cigarette, I can be charged with an offence and fined $50. And yet we would allow people who use drugs to get behind the wheel and kill one of my children? Not on your life! That is why I'm asking you, Mrs. Treacy, if you are able to tell me whether this test works well.

● (1025)

[*English*]

Ms. Shirley Treacy: Are you asking me to tell you about the 12 steps for the program? This is a two-part thing, but for the first part of the question, are you asking me to describe the 12 steps?

[*Translation*]

Mr. Daniel Petit: In particular, I would like you to give us information on the initial steps. In fact, based on what I understand, with regard to what is currently available to Canadians, they allow experts to confirm the presence of drugs and that those drugs were the cause of what was discovered during the first two or three steps in the process. I'd like to have your comments, if you have any, regarding the safety of these initial steps.

[*English*]

Ms. Shirley Treacy: There are 12 steps in this process. I mentioned earlier that they've already failed the standardized field sobriety test at the roadside. They go back to the police station, and then a person who is trained in drug recognition evaluation does a number of eye tests, looks at a number of clinical indicators, and has the person do divided attention tasks. One of the first things they're doing is looking at the eyes and looking to see whether or not the person has a head injury. So they're looking for medical conditions at the same time.

They go through this 12-step procedure. They then record all of the information on there. They're looking for things like pulse and blood pressure at different times. They do examinations of the eyes. They look at muscle tone. They have them go through the divided attention tasks, although there are five of them, rather than three, as is the case at the roadside. Whether or not they fail the divided attention tasks helps them determine whether the person is impaired. Then, based on the clinical indicators, they can determine whether there is a drug or a drug class—more than one—involved in causing that impairment. Impairment can also be alcohol mixed with drugs.

If they cannot make a call, or the person passes the divided attention tasks at that particular point in time, there would be no bodily fluid sample collected. The DRE has indicated that they have gone through the entire testing. Perhaps the person has a very short-acting drug, or perhaps the person is doing fine on the divided attention tasks at that particular point in time. The DRE would not continue. They would stop, and they would say this person is obviously not under the influence at this particular point in time.

So they have to go through the entire 12 steps. At the end of that they make a call: “Yes, this person's ability to operate a motor vehicle is impaired, and the reason for that impairment is a class of drugs”—and they identify the drug class. They don't identify the drug. They don't identify it as cocaine or methamphetamine; they identify it as a stimulant. A urine sample is collected and sent to the lab. I do not just test for stimulants; I test for all drugs. Therefore, if the person is under the influence of a depressant rather than a stimulant, it means that the call was incorrect and the case would not proceed to trial. I might find cocaine. I might fine methamphetamine. I might fine amphetamine. I might find ephedrine. I might find sudephedrine. These are all stimulants. It therefore corroborates the finding of the DRE.

So, yes, I actually feel there are a lot of checks and balances in this process and that people who are not under the influence of a drug would not get charged. There are lots of processes in place. They have to have the three steps. You have to have evidence of impaired driving in the first place. They have to have failed the standard field sobriety test. You have to have them go through a DRE, which again includes divided attention tasks. Then you have to have the bodily fluid sample, which corroborates the findings of the DRE. So there are lots of checks and balances in place.

The second part of your question had to do with the person's being a cigarette smoker. The DRE does not consider all drugs. There are lots of drugs out there that do not impair your ability to operate a motor vehicle. One of them would be nicotine that you find in cigarettes. Another would be caffeine. We don't worry about things like vitamins or antibiotics, or lots of other drugs. Not all drugs will impair your ability to operate a motor vehicle.

The DRE program is set up so it looks at seven classes of drugs that will affect your ability to operate a motor vehicle. So although I do a screen—and I look for everything; I look for things like acetaminophen, Tylenol, Aspirin—I'm really only interested in reporting the ones that impair your ability to operate a motor vehicle. However, the report will indicate all the other drugs that I found, and I will indicate that some of them do not impair your ability to drive. That's part of my job as a toxicologist.

● (1030)

[*Translation*]

Mr. Daniel Petit: May I continue?

[*English*]

The Chair: I have one very quick question, and then I'll take Mr. Ménard's point of order afterwards.

[*Translation*]

Mr. Daniel Petit: You said that the test was reliable. For me, the word “reliable” in French means the best you could do when you have nothing. Is that what you meant when you used this word?

[*English*]

Ms. Shirley Treacy: Yes.

[*Translation*]

Mr. Daniel Petit: Right, thank you.

[*English*]

The Chair: Monsieur Ménard, on a point of order.

[*Translation*]

Mr. Réal Ménard: Could you see where the committee stands? Since each of the political parties has asked a question and we have here an experienced volunteer, would it not be advisable, between 10:30 a.m. and 11 a.m., to familiarize ourselves with the reliability of the technology being proposed? We could immediately suspend our questions and go to the test. In my opinion, it would be useful for the committee members.

Do you think that there would be a consensus to proceed as I have suggested and adjourn the meeting at 11 a.m. as scheduled? In any case, there is a strong possibility that we will not vote before 11 a.m.

[*English*]

The Chair: I'm not quite sure what you're getting at. I understand we have a test that's going to be performed.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, since Mr. Bagnell is a volunteer, I would like to see how the technology—

An honourable member: Mr. Hanger was not here at the beginning; so he is not aware of what is happening.

Mr. Réal Ménard: Okay.

[*English*]

The Chair: Mr. Lee, would you clarify that please?

Mr. Derek Lee: Thank you, Mr. Chair.

Welcome back to the chair.

In your unavoidable absence the committee decided to go ahead with the experimentation with the breathalyzer equipment, managed by Mr. Hodgson. It can go on while the committee meeting is proceeding.

The Chair: Oh, yes.

Mr. Derek Lee: There's no need to take a break to do it. Mr. Bagnell has already imbibed, and the first test has taken place.

The Chair: The first test has been completed.

To point out to committee members, when the second test is conducted, those who aren't asking questions may go over there to watch, but we'll continue with the questions.

Mr. Rick Dykstra (St. Catharines, CPC): On a point of clarification, I appreciate the fact that Mr. Bagnell has submitted to a test, but what are we doing?

The Chair: Well, I'm not quite sure.

Mr. Derek Lee: If I may, Mr. Bagnell has consumed an alcoholic beverage. He was tested three minutes later and then 15 minutes later. I believe there's a possibility of a third test.

Mr. Hodgson can perhaps tell us that.

Mr. Brian Hodgson: Yes, I ran the instrument through its paces, and then I had Mr. Bagnell blow.

Unfortunately, sir, you didn't blow quite long enough and the instrument wouldn't accept the sample. It has given me an invalid sample test. We might have you start over again. If you want to drink the other half bottle of beer, you're perfectly welcome to do so, and then we can start the testing procedure.

Mr. Chair, I hope to demonstrate how the instrument operates and the external standard feature that checks whether or not the instrument is working properly. Hopefully, we can demonstrate the effects of mouth alcohol on readings.

● (1035)

The Chair: All right.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, it would be good to know what this device is used for, under what circumstances it is used, its reliability rating and how the test is administered. As I said before you got here, we will not support this bill if we do not have a better understanding of new detection technologies.

The more witnesses we hear from, the less convinced we are of this bill's relevancy. With regard to drugs, it seems clear that an entire aspect of the bill we are about to vote on is not relevant. So, since there are professionals here who are actually advising the department, why not take advantage of this opportunity?

[*English*]

The Chair: Why don't those who are interested in watching Mr. Hodgson conduct the first test go over there? He will explain what he's doing while you're observing Mr. Bagnell blow into the machine.

If there are other questions to be put to the remaining witnesses, we will do so while it is happening.

The explanation will take place. Mr. Hodgson, I'm sure you can inform the committee first and then do the test.

Mr. Brian Hodgson: Yes. Maybe I should point out that what I'm testing here is only for alcohol. I'm not doing other drug testing. It's a different matter altogether.

Mr. Rick Dykstra: I thought Mr. Bagnell was doing something else.

[*Translation*]

Mr. Daniel Petit: Mr. Chairman, since Mr. Bagnell is going to blow into the device and the results will determine whether his abilities are impaired, will he be able to vote later?

Some honourable members: Oh, oh!

[*English*]

The Chair: I know there's a time limit here, committee members. We'll listen to Mr. Hodgson's explanation and then Mr. Bagnell will go back. Those who want to watch may do so.

Mr. Hodgson.

Mr. Brian Hodgson: I had Mr. Bagnell blow into an approved instrument—specifically, the Intoxilyzer 5000C. That's the confirmatory test that the police do back in the police station. That's after they've already obtained a screening result on the road that indicates the person is over 80, but you need a confirmatory test.

That's what this instrument that he just blew into is all about. Unfortunately he didn't blow quite long enough to get a proper sample. The instrument simply defaulted to an invalid sample. So we have to start again. But I was getting an indication that the half-bottle of beer was giving him an extremely high BAC—not because he has high blood alcohol but because he has residual alcohol in the mouth. You have to let that alcohol dissipate.

At the committee's leisure, I can run through the procedure at the back of the room. I also have a screening device that's used at the roadside.

I want to stress that what my colleague and I are doing is testing alcohol. We're not dealing with other types of drugs. That's a completely different matter.

The Chair: Go ahead, Mr. Bagnell and Mr. Hodgson, and any committee members who want to see what happens. I myself have seen it a hundred times.

Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, I would just note for the record that this is actually the first time—and we now have absolute proof—that Mr. Bagnell has run out of air. This is the first time we've ever seen it happen.

Some hon. members: Oh, oh!

The Chair: I thought you were going to say that this is the first time alcohol has ever touched his lips.

Mr. Lee, do you have a question?

Mr. Derek Lee: I certainly do, yes.

I would put a question to you, Mr. Beirness. You said earlier, in a general statement, that this legislation contained provisions that essentially put in place a precondition that there be suspected impairment. I can't quote you exactly, sir, but that was the import of what I thought I heard.

As I look at the legislation, there are two sections that don't have any precondition of suspected impairment. The first section is the one involving possession of a drug where there is no precondition that there be suspected impairment. The second section is the trigger section for drug impairment, where the peace officer only has to suspect that the person had a drug in his or her body within the last three hours. There's no reference to impairment.

Could you comment on that?

● (1040)

Dr. Douglas Beirness: Absolutely. I'd be happy to.

What we're saying is that we want the legislation to insist that impairment is the focus of what we're trying to do here. It's to get impaired drivers off the road.

The first section, where there's possession in the vehicle, is something we're opposed to. We don't believe that's part of impaired driving at all, and it is best dealt with under the CDSA.

The other aspect, where the officer has merely a suspicion that the driver has consumed drugs or is under the influence of a drug, leads to a standardized field sobriety test that gives the officer evidence of impairment. It's that evidence of impairment that leads to the next step, which is the DRE.

We believe it's that level of impairment, that the officer sees, that's critical to the legislation. This is not an effort to simply find drivers who have been using drugs but to find people who are impaired by drugs.

Mr. Derek Lee: Okay.

You mention again the aspect of being under the influence of a drug. But in the bill—specifically, subclause 3(3), "Testing for presence of alcohol or a drug"—it says:

> If a peace officer has reasonable grounds to suspect that a person has in the preceding three hours had alcohol or a drug in their body while they were operating a motor vehicle

There's no requirement that the person be under any kind of influence, only that they have a drug, a schedule I to schedule V drug. There is no reference to impairment.

Are you concerned about that? How does that circumstance, which I've just described in my reading of the legislation, square with your views and recommendations here in relation to this?

Dr. Douglas Beirness: It's important, from our perspective, that the police officer on the road is looking for impaired drivers. It begins with a suspicion. Whether it's driving down the road in an improper fashion, whether it's that when you stop the vehicle you smell alcohol or marijuana, or that you look at the individual and begin to see symptoms and signs of other drug use, it leads to a suspicion, which leads to tests for impairment.

Mr. Derek Lee: The absence of any reference here to impairment or being under the influence, therefore, would be of concern to you, in the section I just looked at.

Dr. Douglas Beirness: I'm sorry, I couldn't hear the first part of that question.

Mr. Derek Lee: The absence of any reference in the section I just described to you would be a concern to you.

Dr. Douglas Beirness: It's of some concern, yes. We have to make sure the officer is looking for impairment.

Mr. Derek Lee: The statute doesn't require that. How do we make sure he's looking for it if the statute doesn't require it?

Dr. Douglas Beirness: What the officer is doing, first of all, is looking for suspicion. But what he's actually doing is looking for evidence that could lead to a charge of impaired driving. If he doesn't see it, the person is not going to be charged.

Mr. Derek Lee: Well, this section provides the officer with authority to make an intervention leading to a detention without any suspicion of impairment.

Dr. Douglas Beirness: It's the same as with alcohol. What we have done is create a parallel process. When an officer stops a driver, his first thing to look for may be alcohol. All he needs is a suspicion that the driver has consumed alcohol. That leads to the next step.

In this particular case, if there's a suspicion that drugs have been used, then it leads to the next step. The suspicion leads to the next step, but it's the next step that leads to the charge.

● (1045)

Mr. Derek Lee: All alcohol causes impairment; not all drugs cause impairment.

Dr. Douglas Beirness: That's right. That's why—

Mr. Derek Lee: You're not concerned about that.

Dr. Douglas Beirness: That's why we have asked that the definition of a drug be included in the legislation.

Mr. Derek Lee: The definition is included; "drug" is in schedules I through V of the CDSA.

Dr. Douglas Beirness: No, that's only in the possession part.

Mr. Derek Lee: Is there no other definition in this section?

Dr. Douglas Beirness: No.

Mr. Derek Lee: No. That's the only one it's using. It's the only definition of drug that the Criminal Code is using here: schedules I through V of the CDSA.

Are you recommending that there be another definition of a drug for specific use with this section?

Mr. Jacques Lecavalier (Associate, Research and Policy, Canadian Centre on Substance Abuse): If I may answer that, the definition that appears in CDSA is only applicable for the offence of possession; it is not applicable to the rest of the legislation. As it stands, the word "drug" is not defined either in the Criminal Code or in CDSA. That is why in our brief we propose that to make the definition clearer, the definition of the DRE program be used. We have provided specific text to that effect to the committee.

Mr. Derek Lee: Well, Mr. Chairman—

The Chair: You have one more question, Mr. Lee.

Mr. Derek Lee: It's just a follow-up. You're saying that there is no definition of drug for purposes of these other sections.

Mr. Jacques Lecavalier: No.

Mr. Derek Lee: Okay. Thank you.

The Chair: Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): This question will be for the toxicologist.

Ms. Treacy, probably most people out there in the real world, let's call it, have known for years that alcohol causes impairment, and the more alcohol you have, the more impaired you become, except perhaps in situations where some people are a little more resistant than others.

Tell me if I'm wrong. Canada is not quite the same as other countries. The law says that after a certain amount you're deemed to have too much alcohol in your system to be able to legally drive a motor vehicle, irrespective of your resistance to the effects of alcohol. Would that be correct?

Ms. Shirley Treacy: That's correct regarding alcohol, yes.

Mr. Rick Norlock: Would it also be correct that, in toxicological terms, alcohol is a poison?

Ms. Shirley Treacy: Well, yes. Actually, anything can be a poison if you take enough of it. Yes, your body does think of alcohol as a poison; it tries to get rid of it. Sure.

Mr. Rick Norlock: So we know that all alcohol causes some degree of impairment and that the law says that after so much alcohol you are not legally able to drive.

Ms. Shirley Treacy: That's a specific offence, yes.

Mr. Rick Norlock: Because we've studied alcohol to death in this country.

Ms. Shirley Treacy: Yes.

Mr. Rick Norlock: Okay. So now we move on to some other problems in our society. We used to have an alcohol or.... And we continue to have problems with alcohol and driving. But we live in the real world now, and we know that our children, and many adults, some of whom occupy every profession in this country, consume other drugs—like marijuana, like cocaine—and numerous other prescribed drugs. I want you to tell me if I'm wrong, but from a toxicological point of view with respect to the behaviour of a human being who consumes them—and Mr. Lecavalier may want to step in—those drugs do have an effect on our motor skills and on our ability to do certain things, not the least of which is driving. Would that be correct?

Ms. Shirley Treacy: That's true, yes. The drugs can be prescription or non-prescription drugs—things you buy in a pharmacy without a prescription, like Gravol—as well as illicit drugs. They can all affect your ability to drive.

Mr. Rick Norlock: The current law says you can be impaired by alcohol or by a drug or by a combination thereof.

Ms. Shirley Treacy: Yes, because in our context, alcohol is a drug. So it is alcohol and drugs or one or more drugs.

Mr. Rick Norlock: The problem we're dealing with here as legislators—if I'm wrong, tell me—is that we've already said in law how much of one substance you can have to be automatically creating an offence. But—and am I right here now?—the problem we have with this current legislation, in some people's eyes, is that there is no scientific, toxicological or perhaps—I'm pretty sure I'm wrong as far as behavioural goes, but I stand to be corrected. The problem is we don't have any quantum measurements. In other words, after taking *x* amount of whatever, TLC or TCP, or whatever it is in marijuana or other drugs, at what stage are you impaired?

● (1050)

Ms. Shirley Treacy: You're asking me if there's a certain concentration at which a drug will cause impairment. Is that correct?

Mr. Rick Norlock: That's correct.

Ms. Shirley Treacy: No, there isn't the literature there is for alcohol. We do have to remember that there are two sections in the Criminal Code about impaired driving: one of them is the over 80 charge; the other is impaired from drugs or alcohol, which means that it doesn't matter what the alcohol level is, you could be charged if your blood alcohol concentration is 30 or 40 if you are showing outward signs and your ability to operate a motor vehicle is impaired. So it doesn't matter what the blood alcohol concentration is. Therefore, it also doesn't matter what the drug concentration is. You have to have the evidence of impaired driving and you have to see the outward signs in the individual in order for you to proceed with an impaired driving charge.

Mr. Rick Norlock: The problem here is—tell me if I'm wrong—that there is a lack of scientific measurement or a lack of scientific evidence to say how much marijuana you have to smoke or how much cocaine you have to ingest and so on before you meet certain criteria.

To your knowledge, has there been any scientific testing to that effect that measures it? And if so, could that be produced for the committee?

Ms. Shirley Treacy: Yes, there actually are studies that have looked at that.

The problem is, because there are pharmaceutical medications that people are on, there's the issue of tolerance. So I don't know that we'll ever get to a point where you can say that a specific concentration of drug is going to cause impairment. In fact, other countries in Europe, places like Sweden and Germany, have gone with zero tolerance, meaning that if they find the presence of cocaine or heroin—a drug you're not supposed to be taking—in your body, then you are charged. It doesn't matter how much; it's the fact that it shouldn't be there in the first place.

Mr. Rick Norlock: In this country, we're much smarter in our laws than they are, because we say that if you have it in your blood, since the state can't prove that it's too much or too little or anything, we just ignore it, because it might create some kind of problem for the accused person, irrespective of the problem it causes for society. I'm sorry, that's not a question you probably want to get involved in.

Mr. Lecavalier, in my previous occupation, as I was leaving—I was a breathalyzer operator for about seven or 10 years—we were just being exposed to the—And of course in this country we hate to say anything about the United States, that it might have something perhaps more advanced than we have. But the drug being able—

If I remember correctly, you were discussing some of the physical aspects, but I didn't hear anything about retinas. When I was leaving, there was talk about retinal—Is that a separate issue from the drug recognition program, looking into the eyes? Or is that part of it? Could you explain that part of it a little bit, because we haven't heard about it?

Dr. Douglas Beirness: Several eye examinations are included in the field sobriety test and the drug recognition expert program, because they're very highly correlated with levels of blood alcohol and impairment.

The most commonly used test is the lateral gaze nystagmus, which is the involuntary jerking of your eyes as you move them to the extremities. It's very noticeable for certain types of drugs; you cannot control it. You have absolutely no voluntary control over those movements of your eyes. That's one of the tests that is used.

You can also do it vertically. Certain drugs will also show vertical nystagmus.

Some of the other eye tests include looking at the reaction to light, or simply looking at the pupil size. Some drugs dilate pupils; some drugs constrict them.

Those sorts of things are very important and critical to the DRE process.

The Chair: Mr. Norlock, I'd like to let you continue—that's very interesting—but, Mr. Comartin, you're next on the list here.

● (1055)

Mr. Joe Comartin: Mr. MacLeod, I have concerns of going to the third stage of the drug testing regime because of its invasive nature. Frankly, we end up with evidence that's going to be admissible but doesn't prove anything. It could be very prejudicial in the mind of the judge, in terms of somebody having consumed an illicit drug.

Has the Bar Association looked at a regime that would allow the legislation to proceed on stage one and two—that is, the roadside assessment and then the DRE assessment at the station—but not go into the third stage at this point, or not put it into play until something occurs, according to some scientific standards? Or has the Bar Association looked at just keeping it out of the legislation?

Have you done any analysis of that kind of approach? Also, do you have any sense of how the Bar Association would feel about that kind of approach?

Mr. Mitchell MacLeod: One of the things the criminal justice section has tried to be cautious about is treading too far into the more scientific areas, because we're not scientists; we're lawyers who have to understand certain aspects of science in order to do our jobs. So I cannot say that we've looked at stopping it at the second level, or, from a scientific perspective, whether or not it can go to the third level.

The concern, broadly speaking, is that.... Actually, I'll go back. A lot of the witnesses here today have referenced that with alcohol, we have studied it to death. We know what it does. We have standards. We—

Mr. Joe Comartin: Mr. Norlock was saying that; it wasn't the committee. I think the people on the panel think there is still more study to be done.

Mr. Mitchell MacLeod: True, but I know Mr. Hodgson and Ms. Treacy have both made reference to the idea that when we're dealing with alcohol, it's one thing. When we're dealing with drugs, it's a different animal altogether.

The concern of the criminal justice section is that we seem to be trying to shoehorn the drug-impaired driving problem into the same sort of framework in which we deal with alcohol. To that extent, we see it as problematic.

That's where you get the roadside tests, the DRE, and these very invasive bodily sample tests. Something as simple as a urine test is extremely invasive. On the surface, it may not sound like a big deal, but in order to confirm the source of the test—and I won't go into any further detail than that—it's potentially quite a humiliating experience.

Having blood drawn, for some individuals, is a very traumatic experience.

All of these things result from trying to shoehorn the drug-impaired driving problem into the drug-impaired framework in the Criminal Code, if that's making any sense to you.

We acknowledge that there's a problem, but because we're dealing with a completely different situation with drugs other than alcohol, we're simply not at a stage where we can apply the same legislative framework to deal with that issue.

We already have provisions in the Criminal Code that allow police officers to observe signs of impairment by drugs or alcohol, or both, and it can be dealt with that way. But when we get into the drug recognition expert situation, these additional 12 steps and the things it can or can't show, this is where our section begins to lose its comfort level.

We think that additional study and scientific work is going to have to be done before we can use the same framework for drugs as we do for alcohol.

The Chair: Thank you, Mr. MacLeod.

The time is now about two minutes to 11. I know there was a breathalyzer reading, and I'm assuming you're going to share that with the rest of the committee?

● (1100)

Mr. Brian Hodgson: Oh yes, it's printed out. You can even have it in hard copy if you like.

His blood alcohol concentration on the beer he drank, which I think is the one bottle, was .013. It's way under 80, of course. The only problem with that would be if he happens to be a learner driver here in Ontario, where you're supposed to have a zero blood alcohol concentration. You'd be in trouble there; otherwise, it's a pass.

We tried the screening device and he got .011, which is an excellent correlation with the approved instrument. He then swished a tiny residue of beer in his mouth and I had him blow in the Intoxilyzer again and he got .036, which is more than three times what his true blood alcohol concentration is. So that's the effect of mouth alcohol on readings, and that was just a little bit of residue of beer, I believe.

Three minutes later we may still have some of that residue left, but if we wait 15 minutes after that first test, we're not going to have any of that residue left and he'll be back down to his true blood alcohol concentration, and that's the point we're trying to make.

The Chair: So the three-minute time span could give a false reading?

Mr. Brian Hodgson: Possibly, yes.

The Chair: I would like to thank the witnesses for appearing. I think Mr. Bagnell has a motion he wants to put forward. It has nothing to do with the witnesses.... It has everything to do with the witnesses, okay.

I'll give you the floor then, Mr. Bagnell.

Hon. Larry Bagnell: I'll be really quick. I think, at least on this side, your evidence has been great. A lot of you didn't get a chance to talk, and we might have a lot more questions. I'm wondering if the committee would agree that these witnesses could come back—or let the steering committee look at that?

Mr. Derek Lee: Yes, the steering committee can consider that.

The Chair: Mr. Moore, on a point of order.

Mr. Rob Moore (Fundy Royal, CPC): Some of you weren't even here during the entire committee testimony, so I fail to see why we would—It's unprecedented that we would bring people back. I've appreciated the testimony and I think we got a lot from the testimony. Many of us were able to ask questions, but I don't see the need to bring back an entire panel of witnesses for a second hearing, which is unprecedented, in spite of the fact that we've had some tremendous and valuable testimony today.

The Chair: Yes, I confess that's true.

Mr. Rob Moore: But I don't see spending time doing something else. While the witnesses were here, we were hearing testimony and some of the members opposite weren't here listening to the testimony and now they want to bring them back. I have a problem with that.

The Chair: I know some of them weren't here for a short time, but I know there were ample questions, and they heard all the testimony of these witnesses.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: First, with regard to inviting more witnesses, I do not agree that there is no such precedent. I have been here since 1993 and I can tell you that we have often invited witnesses to reappear. However, I would exclude the people from the Bar Association, since their testimony was extremely clear. With regard to the other witnesses, it is not the fact that their testimony was not clear. The fact of the matter is that you advise the department and you have the expertise to administer this technology. I think it is our responsibility to obtain more information.

We took advantage of the only opportunity we had to see how the tests were administered. To me, the difference between standard sobriety tests and roadside tests, which are available in police stations, is much clearer. I could not have obtained this information if I hadn't had the opportunity to see the demonstration at the back of the room.

In any case, there is no urgent need to put this bill to a vote. There are some problematic issues. The more witnesses we hear from, the more questions we have. So, I wholeheartedly support Mr. Bagnell's motion to call witnesses back, at least the scientists.

[*English*]

The Chair: Mr. Lee.

Mr. Derek Lee: This is probably not the right time to make these decisions, on the run like this. I'm going to recommend that if there is a need or it's desirable to have one or more of the witnesses return, then we take that up at the steering committee and make the decision there and bring it back to the full committee at the earliest possible date.

The Chair: I'm going to excuse the witnesses at this point. Should there be any change, you'll be advised.

I want to thank you for your presentations, especially you, Mr. Hodgson, for bringing the Intoxilyzer. I'd like to thank you for your time and the demonstration.

We'll suspend for one minute.

● _____ (Pause) _____ ●

● (1105)

The Chair: Do we have a motion for adjournment?

An hon. member: So moved.

The Chair: The meeting is adjourned.

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 Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
