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Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I would like to call the Standing Committee on Justice and Human Rights to order. Pursuant to Standing Order 108(2), we are studying matters related to impaired driving.

We have a number of witnesses, and again I'd like to express my appreciation for their attendance. I'll just go down the list briefly. The order of the witnesses on the agenda is the order in which they will be speaking.

First, as an individual, we have Mr. Thomas Brown, a researcher with the addiction research program of the Douglas Institute at McGill University. Welcome, sir.

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

From the Canadian Council of Motor Transport Administrators, we have Mr. Kwei Quaye, chair of the strategy to reduce impaired driving, and Mr. Paul Boase, co-chair, strategy to reduce impaired driving. Welcome.

From the Canadian Society for Forensic Science, we have Mr. Robert Langille, chair of the alcohol test committee. Welcome, sir.

As an individual, we have Mr. Frank Hoskins. You're with the prosecutors?

Mr. Frank Hoskins (Q.C., As an Individual): Yes. I'm with the Public Prosecution Service of Nova Scotia.

The Chair: It's the Public Prosecution Service. Thank you.

From the Department of Justice, we have Mr. Greg Yost, counsel from the criminal law policy section, along with Mr. Hal Pruden, counsel from the criminal law policy section.

Welcome, all.

I will turn the floor over to Mr. Thomas Brown. Could you try to keep your comments to approximately ten minutes or less, if possible? That will give ample time for the members to ask questions of the witnesses.

Mr. Brown.

Mr. Thomas Brown (Researcher, Addiction Research Program, Douglas Institute, McGill University, As an Individual): I'd like to thank the House of Commons Standing Committee on Justice and Human Rights for this invitation to contribute my perspective to your comprehensive review of matters related to impaired driving.

I'm a clinical psychologist and behavioural scientist affiliated withe the Douglas Hospital Research Centre in Montreal at McGill University. My research program into impaired driving, DUI, is focused on the why and the wherefore of recidivism—that is, what are the characteristics that contribute to DUI recidivism and what does that knowledge tell us about how to prevent it?

The focus of my brief is on repeat offenders who are associated with the greatest risk and burden to health and society, some of the most significant findings we have collected in our work, and what they may mean and how we address a problem in the future. Frequently when people discuss DUI recidivism and what to do about it, it often is from very specific perspectives with implicit or explicit assumptions about who recidivists are and what they're like.

First off, measures such as lowering the legal limit for blood alcohol and increasing fines and other deterrents as well as providing remediation to treat problem drinking seem reasonable to reduce the incidents of DUI in general. However, such measures have proven of more limited value in addressing the problem of recidivists, who, by definition, are impervious to these measures. Our work has attempted to find out why the usual deterrents and remedial measures do not work. What we have found is that recidivism is associated with several individual characteristics that go beyond the severity of alcohol abuse or dependence or even other individual characteristics often linked to recidivism, such as criminality, anti-social tendencies, and so on.

We have evidence that risk of DUI recidivism is linked to important neuro-cognitive problems, particularly in domains influencing memory, learning, and planning. We know that problems in these areas reduce the effectiveness of many kinds of psycho-social interventions for all sorts of behavioural problems. For example, if some offenders have difficulty remembering plans they made to avoid a drinking-driving occasion, not to mention remembering them when intoxicated, it is obvious that even the best laid plans to change drink-driving will not be very successful.

This is a fairly novel finding, although it makes intuitive sense if we remember that alcohol can be quite toxic for the brain, especially if one drinks early on in life, when the brain is still developing, for example binge drinking in adolescence, or if one has a genetic susceptibility to drink a lot, and again, early on. In fact, recidivists do tend to report earlier problem drinking than non-recidivists. That is not to say that all recidivists have brain damage, but many more of them do compared to what we might expect in the general population.

Another finding is that recidivists, more than those who are not likely to be so, have specific hormonal responses to stress that suggest they may not respond to fear-provoking situations and risk or danger in the same way as others. A situation that would provoke an unpleasant emotional reaction such as fear and foreboding in us, such as the threat of being arrested a second time for a DUI offence, does not have the same emotional impact on these individuals. This may explain why for some offenders our strategies of deterrence, that is, the fear of arrest, conviction, fines, and even prison, just do not have the desired dissuasive impact, no matter how tough they are.

We also know that many individuals after a DUI conviction do not participate in the remedial measures required for re-licensing in a timely manner. And the numbers are staggering. About 50% in Quebec delay for significant periods of time their re-licensing procedures and up to 80% in other North American jurisdictions. Our research indicates that these individuals share some common reasons for not doing so. One main reason is that reacquiring their licence is simply too costly. By the way, these individuals are also economically more disadvantaged, so their perceptions of costliness seem to make sense. Another is that they have made other transportation arrangements, making paying all the costs and changing their behaviour, especially drinking, unnecessary. One problem we have found is that some who do not reacquire their licence continue to drive unlicensed. That means that they are driving and have not participated in the remedial intervention programs that we have developed to help them deal with alcohol problems.

● (1535)

It is not surprising, then, that our data indicate that while these individuals drive less than those who reacquire their licence, when they do drive, the risk that they are impaired while they're driving is much higher. So here's the paradox: the individuals who most need to have help in resolving a drink-driving problem and pose the greatest DUI risk are the very ones who are least capable of accessing the remedial help they need.

What do these findings suggest to us concerning what can be done to help reduce the risk of DUI recidivism? First, measures that are effective in reducing recidivism in some may not be effective in others. More specifically, if an offender has difficulty remembering his plans to avoid a drink-driving occasion, if he has difficulty even making feasible plans, clearly this will alter how we might envision helping such an individual to reduce the risks they pose. Furthermore, if an offender has a reduced reaction to fear and stress-provoking experiences, the threat of future arrests, punishments, and so on are not winning strategies and other approaches need to be considered.

Finally, if participation in remedial programs to reacquire a licence remain costly, we will tend to dissuade those individuals who really need these services from participating and getting back their licence. One might argue that keeping some of these individuals off the road by making it difficult for them to reacquire a licence is a good thing. Maybe so, but clearly in a rural area, where alternative transportation arrangements are virtually non-existent and the risk of arrest is low, it seems almost inevitable that in order to work, play, or socialize, driving unlicensed will be considered a viable solution for some offenders, rather than dealing with the alternatives—no work, no play, no socializing.

Being able to figure out who's who, and then what precisely they need in the way of remediation, becomes essential. Currently, our DUI assessments are quite limited in scope, focusing mainly on alcohol and drug use. Moreover, the importance of a lot of the information collected, even biological markers of alcohol use, to predict recidivism is quite limited. It's about 50-50. In fact, the accuracy of the vast majority of evaluation protocols currently being employed have not been objectively evaluated.

Concerning intervention, the impact of participation in remedial counselling programs is modest, estimated at about a 7% to 9% improvement in reducing DUI recidivism. Interlock seems to work better, for as long as they are installed and for those who actually sign on to use them, which I understand is about 10%.

Given that these statistics are based only upon those who are involved in remedial programs to begin with, and it looks like the majority of recidivists do not engage in these protocols, we are not doing as great as we might like to think. But as modest as the benefits of these programs are, they are the best we have.

What are some of the solutions suggested by our work? First, we need to remove all obstacles to participation in our remedial strategies. Intervention programs, interlock devices—whatever—should be made as available as possible if we believe them to be effective and we want as many people as possible to benefit from their use. We may even consider decoupling any notion of punishment or deterrence from measures that could help people deal with their problems. Even providing incentives for them to participate in remedial measures should be part of the debate.

Second—and this comes from a researcher—we need to invest in research in order to address the following three priorities: first, objectively evaluate the effectiveness of current assessment protocols; second, develop new approaches to assessment that are more effective in appraising risky characteristics associated with recidivism; and third, develop new and more varied approaches to intervention that take into account the fact that recidivists, the toughest ones, are not all the same and may not respond to interventions that are effective with people more like those in this room.

Driving research, and DUI research specifically, is not well funded by public funding agencies relative to other health concerns. It should be, because the burden on health and society is staggering. Car accidents, about 40% of which involve alcohol, are the source of the greatest morbidity in children and young adults.

● (1540)

Finally, and at the risk of complicating life, we need to acknowledge that recidivists are very different one from the other, and that any one approach to reducing recidivism is not likely to be adequate. But as we see in the alcoholism and other problem behaviour areas, a shotgun approach—throw everything at them—is not very effective and not particularly cost-efficient either. It seems likely that in looking to the future, we will have to be prepared to better tailor our strategies to the individual characteristics of offenders.

Thank you.

The Chair: Thank you very much, Dr. Brown.

Now we go to the Canadian Centre on Substance Abuse. Mr. Beirness.

Dr. Douglas Beirness (Manager, Research and Policy, Canadian Centre on Substance Abuse): Thank you, Mr. Chairman and committee members. The Canadian Centre on Substance Abuse appreciates the opportunity to address you today to share our views on the issue of impaired driving.

As you may know, CCSA is Canada's national non-governmental organization, formed in 1988 by an act of Parliament, to provide national leadership and evidence-based analysis and advice on substance use and abuse in Canada. Accordingly, the issue of alcohol and drug-impaired driving is of great interest to our organization, and we believe we're well positioned to contribute meaningfully to the discussion. It is also an issue that has been the primary focus of my own research over the past 25 years.

Today I want to talk about three issues: first, lowering the blood alcohol limit in the Criminal Code; second, random breath testing, or RBT; and third, repeat offenders.

Last year CCSA, in collaboration with Health Canada and the Alberta Alcohol and Drug Abuse Commission, released recommendations for a national alcohol strategy. The 41 recommendations included in this document were developed through extensive consultations with a wide variety of stakeholders and represent a comprehensive approach to establishing a culture of moderation around alcohol use in Canada. Recommendation 38 calls for the adoption of the Canadian Council of Motor Transport Administrators' model to address drinking drivers with lower blood alcohol concentrations. CCSA supports this recommendation.

The CCMTA model outlines a series of steps to improve our current provincial system of short-term licence suspensions for drivers with blood alcohol concentrations below the criterion for criminal charges. In many cases, the threshold for these suspensions is 50 milligrams per decalitre.

Currently, all provinces and territories, with the exception of Quebec, give police the power to issue these drivers an immediate 12- or 24-hour suspension. The CCMTA model calls for longer periods of suspension—seven to 14 days—increased suspensions for repeat violations, rehabilitation and interlock programs for repeat offenders, and a system of escalating reinstatement fees.

The short-term suspension approach is administrative and avoids the complications associated with the processing and prosecution of criminal charges. Short-term suspensions are not necessarily a severe sanction, but they are applied swiftly and with certainty at the time of the offence—two factors deemed essential to effective deterrence. Short-term suspensions are applied quickly and easily at the side of the road. Because of these laws, the police are able to remove from the road at least twice as many drinking drivers as they might otherwise if criminal charges were the only option available to them.

Short-term suspensions have been used in this country for over 30 years. Surprisingly, few evaluations have been conducted. A few years ago, I was involved in a major study of the introduction of short-term suspensions for drivers with blood alcohol levels between 40 and 80 milligrams per decalitre in Saskatchewan. This study revealed a decrease in driver fatalities with BACs below 80 milligrams per decalitre associated with the new law. Also, drivers issued a short-term suspension were less likely to have a subsequent Criminal Code conviction than drivers whose first alcohol-related offence was a Criminal Code conviction.

As part of the same study, we found differences in the characteristics of drivers who were issued a short-term suspension and those who were convicted of a Criminal Code offence. Whereas drivers issued a short-term suspension were characterized by their involvement in risky driving practices, drivers charged under the Criminal Code were distinguished by the extent of their heavy drinking. These data revealed differences between the two groups that go well beyond the magnitude of their blood alcohol level when they were stopped by the police and suggest that more pervasive differences in psychosocial and behavioural characteristics may underlie their drinking-and-driving behaviour. The two groups of drivers are clearly different, and these differences should be reflected in measures to deal effectively with them.

Over the years, many arguments have been advanced in support of a lower BAC limit, specifically a limit of 50 milligrams per decalitre. Most of this evidence is open to interpretation. Nevertheless, two indisputable facts remain. First, most alcohol-related fatalities are accounted for by drivers with blood alcohol levels in excess of 150 milligrams per decalitre. Second, in most provinces, a lower alcohol limit is already being enforced.

● (1545)

We at CCSA believe that the CCMTA model for improvements to short-term suspensions remains the preferred system for dealing with lower-BAC drivers.

Random breath testing, or RBT, refers to a policy that requires a driver to provide a breath sample at any time in the absence of reasonable suspicion or cause.

First of all, let me say that there is nothing truly random about random breath testing. The term random is used in place of more accurate and contentious descriptors, such as arbitrary or capricious.

Nevertheless, whatever label you choose, the strategy works, at least when used as part of a year-round intensive enforcement campaign. When used in this fashion, RBT increases the perceived and the actual probability of being detected by the police, both of which are key factors in general deterrence.

The Australians have pioneered RBT as part of an intensive enforcement campaign and have demonstrated some pretty remarkable success with it.

Thirty years ago, Parliament gave police the power to stop vehicles without cause to check drivers for alcohol use. However, police were not given the power to demand a breath test without a reasonable suspicion that the driver had consumed alcohol.

Although the threshold for suspicion is not high—generally the smell of alcohol is sufficient—it has been demonstrated that police officers vary considerably in their ability to detect the signs and symptoms of alcohol use. In a study where researchers collected voluntary breath samples from drivers immediately downstream from a police checkpoint, it was determined that the police failed to detect more than 50% of drivers with a blood alcohol level in excess of 80 milligrams per decalitre.

Now, I don't say this to discredit our police. I raise it to illustrate the fact that the detection of alcohol can be a very difficult task, especially in a brief interaction at the side of the road. Nevertheless, if an impaired driver escapes detection at a checkpoint, it serves to reinforce the behaviour and increases the likelihood of its recurrence. Clearly, a better model of detection is needed.

In the past, any suggestion of random testing has been quickly dismissed as a violation of our constitutional rights. Perhaps it's time to reconsider that position. Sometimes we have to make small sacrifices to achieve a greater goal. Consider for a minute the procedures we're now subjected to in this country in order to board an airplane. By comparison, providing a quick and easy breath test while sitting in the relative comfort and privacy of your own vehicle seems almost trivial. The need is great, the benefits are substantial, the sacrifice is minimal.

I would suggest that it's at least worth having the discussion. This discussion of random breath testing should include alternatives as well. One such alternative is the use of passive alcohol sensors. These portable, hand-held devices detect the presence of alcohol in the air surrounding the driver. The presence of alcohol would provide the officer with the reasonable suspicion of alcohol use necessary to make a demand for an actual breath test on an approved screening device.

Passive sensors are in use by numerous police departments in the United States, where they have been considered an extension of the officer's nose.The procedure is virtually transparent to the driver, and because drivers are not generally considered to have ownership of the ambient air or their expired breath, use of a passive sensor does not constitute an unreasonable search or seizure.

The passive sensor would provide reasonable suspicion of alcohol use; evidence of a violation is provided by approved breath testing instruments. Passive alcohol sensors may actually provide a compromise between the need to increase the perceived and actual probability of detecting impaired drivers and the protection of individual rights and freedoms.

The final issue I want to address is repeat offenders. Recommendation 40 of the national alcohol strategy focuses on those strategies to deal effectively with repeat offenders. Extensive research over the past 20 years has demonstrated that convicted impaired drivers continue to drive after drinking, often with high BACs, even while prohibited or suspended. They present an unacceptable risk on the road.

● (1550)

As we heard a minute ago, many of these drivers have chronic alcohol problems as well as other problems and require treatment and rehabilitation. There's an urgent need for more and better assessment and treatment services and a means to ensure that they're accessible to all impaired driving offenders.

Dealing with alcohol problems is not a simple process. It begins with assessment and can be a prolonged and intensive process. Relapses are common. In the interim, between an impaired driving offence and an acceptable resolution to the drinking problem, there's a need to incapacitate the offender to prevent a repeat occurrence of the behaviour.

A simple driving prohibition or licence suspension just simply is not sufficient. It's too easily circumvented. Something more is needed and that something is an alcohol ignition interlock. This device prevents a vehicle from being started if the driver has been drinking. Nine provinces as well as the Yukon have such programs. They've been proven extremely effective in reducing the rate of repeat offences among convicted impaired drivers. The primary drawback of interlock programs is that they are grossly underutilized. In light of the danger imposed by repeat impaired driving and the proven success of ignition interlocks, there's an urgent need to ensure that more offenders, including first-time offenders, participate in interlock programs as soon as possible following the offence to prevent further impaired driving behaviour. In this context perhaps it's time to reconsider the traditional mandatory driving prohibition and replace it with a mandatory period of interlock program participation.

In summary, we recommend the following: allow provinces to deal with lower BAC drivers with an improved system of short-term licence suspension according to the model proposed by CCMTA; give due consideration to the implementation of random breath testing and/or the use of passive alcohol sensors; and finally, encourage the widespread use of alcohol ignition interlock programs for all offenders by eliminating the mandatory period of prohibition and replacing it with a requirement for ignition interlock program participation.

I appreciate the opportunity to present our views to you today and I look forward to any questions that you may have.

The Chair: Thank you, Mr. Beirness.

Next is the Canadian Council of Motor Transport Administrators. Mr. Quaye, will you be presenting?

Mr. Kwei Quaye (Chair, Strategy to Reduce Impaired Driving, Canadian Council of Motor Transport Administrators): Yes, I will. Thank you.

The Canadian Council of Motor Transport Administrators, or CCMTA, wishes to thank you for the opportunity to speak to the Standing Committee on Justice and Human Rights on the issue of alcohol-impaired driving.

CCMTA is a non-profit organization comprised of transportation representatives from the federal, provincial, and territorial governments and includes associate members from the private sector, non-governmental organizations, and other government departments. CCMTA reports through a board of directors to the Council of Ministers Responsible for Transportation and Highway Safety.

CCMTA oversees Canada's road safety vision 2010, otherwise known as RSV 2010, which targets a 30% reduction in deaths and serious injuries on Canadian roads by 2010. RSV 2010 has a number of soft targets related to the issues of road safety, including an impaired driving target of a 40% decrease in the percentage of road users fatally or seriously injured in crashes involving a drinking driver.

Data from 1987 to 2005 indicate that there have been improvements in the number of fatally injured drivers who had been drinking, but much of the improvement occurred in the 1980s and 1990s. Over the past seven years the rate of improvement has plateaued.

● (1555)

The Chair: Excuse me, Mr. Quaye.

I've just been informed that you're speaking a little too fast for the interpreters. Would you just slow down a tad, please. I know your presentation is fairly long. We'd like you to keep it to about ten minutes, if you could. Perhaps as you read you could think about where you might want to shorten it up a little.

Thank you, sir.

Mr. Kwei Quaye: CCMTA is of the view that for impaired driving programs to be effective, they should combine the elements of certainty and swiftness of apprehension, severity of penalties, and appropriate remedial action. In light of the foregoing, CCMTA would like to take this opportunity to specifically address the four areas under review by the committee.

The first one is lowering the Criminal Code blood alcohol concentration threshold from 0.08 to 0.05. CCMTA believes there is sufficient evidence to suggest that drivers pose a safety risk below the current legal threshold of 0.08. At issue is how a lower threshold can best be incorporated into the existing process while minimizing any adverse systemic impacts of such a change. Currently, all jurisdictions except Quebec have existing administrative programs to address the issue of lower BAC drivers. These programs generally entail the issuing of short-term administrative suspensions to quickly remove low-BAC drinking drivers from the road. These programs can be used by police officers for drivers below the legal threshold but above 0.04 or 0.05, depending on jurisdiction. While knowledge of the current legal limit among drivers is high, evidence suggests that the administrative limits and the associated penalties are not.

To strengthen and increase the effectiveness of existing short-term administrative sanctions, CCMTA developed a model as a standard for jurisdictions to consider, so as to update the existing roadside suspension programs for drivers with lower BACs. Indeed, a number of jurisdictions have already strengthened existing programs since the model was approved. This model takes a swift and measured approach to lower-BAC drivers without unduly increasing the workload on police, court services, or transportation agencies.

Number two is random breath testing. A number of surveys have indicated that the public does not have a high expectation that impaired drivers will be caught by police. That is to say, the certainty or perception of certainty of apprehension is low. The goal of random breath testing, or RBT, programs is to increase the probability of an impaired driver coming into contact with the police, increasing the perception of apprehension and increasing the general deterrent effect of police enforcement. Currently, a police officer may stop a vehicle but may not make a demand for a breath sample unless there is suspicion that the driver has consumed alcohol. As a result, many drivers who are stopped in spot checks are allowed to proceed without providing a breath sample. The use of RBT in which all drivers stopped in the check stop will be required to provide a breath sample or be charged with failure to provide a breath sample will significantly increase the number of drivers tested who have been drinking. While such a system would be challenged under sections of the Canadian Charter of Rights and Freedoms, the Supreme Court has indicated a number of criteria for such a violation to be justified, which we believe the use of RBT for managing impaired driving will meet.

Number three is advances in technology to enforce laws. Ignition interlock programs have been shown to be effective when installed on the vehicle of a convicted driver who uses that vehicle. However, a number of challenges exist with interlock programs. Currently, the alcohol test committee of the Canadian Society of Forensic Science is responsible for approving screening devices and instruments, but not for ignition interlocks, as programs are fully within provincial and territorial jurisdiction. In order to improve national consistency and elevate the technical standard for ignition interlocks, it would be beneficial if the alcohol test committee could be given the responsibility for approving specific ignition interlock devices as meeting an approved technical standard.

A second issue with ignition interlock programs is the low number of eligible drivers who actually use the devices. This is a significant concern, as there is evidence that these drivers may not be honouring their suspensions but choosing to drive without valid licenses. In further developing ignition interlock programs for convicted impaired drivers, one challenge is to increase the number of eligible drivers who install the device and the provision of swift and sure sanctions for those who drive a vehicle without the equipment installed. An RBT program is a necessary element to increase the perception of being caught driving without a licence or an ignition interlock device, and to support existing provincial and territorial programs.

● (1600)

CCMTA also believes that research into other technologies that can be used to immobilize the vehicle or monitor the alcohol use of an offender should be pursued further with the goal of making these technologies available for jurisdictions to consider integrating into their programs.

Number four is federal, provincial, and territorial programs. The partnerships among provincial and territorial programs and the federal Criminal Code of Canada have been effective in reducing the incidence of impaired driving. Provincial and territorial jurisdictions have invested a great deal of time and resources in impaired driving programs that have been developed over the years. As new programs are developed, it will be important to consider the impact on existing programs and the resources before a specific initiative is implemented. For example, the implementation of measures in Bill C-2 is likely to be significant with respect to human and fiscal resources, training for police and prosecutors, purchases of new equipment, and changes to the handling of evidence and cases. These must all be managed along with other priorities. It is necessary to consider the capacity of police, courts, and transportation agencies to implement and support new programs or program changes in an efficient and timely manner. In addition, each proposal must be fully costed, and a funding source identified before implementation can be considered.

Many of these problems can be overcome by streamlining the necessary forms and processes for federal, provincial, and territorial legislation. This streamlining should be a priority, as it speaks directly to the provincial and territorial capacity to deal with new programs or additional changes generated by random breath testing or changing the blood alcohol concentration threshold.

In conclusion, impaired driving remains a significant challenge, which Canadians believe can and should be addressed by governments. To do so effectively requires coordination and cooperation. Federal legislation must dovetail with provincial and territorial programs and have the support of police agencies and the general public as well as the necessary funding to be successful. We must be cognizant of the comprehensive impaired driving programs that are already in place in the various jurisdictions, and be careful to ensure that new broad and far-reaching initiatives do not jeopardize our goal of having swift, certain, and significant initiatives to help reduce the incidence of impaired driving and its consequences in Canada.

CCMTA recommends that the Criminal Code threshold not be lowered from the existing level, with the exception of one of the jurisdictions that is not in full agreement in with this.

CCMTA also recommends that Parliament make mandatory a demand for a breath sample by a police officer at a random breath test stop.

CCMTA recommends that Parliament authorize the alcohol test committee to approve alcohol ignition interlock system standards to ensure that all the technology functions at a minimum acceptable level.

Finally, CCMTA recommends that a comprehensive research and evaluation framework be developed and funded with a goal of recommending evidence-based solutions to the challenge of impaired driving and reducing unnecessary technicalities that place an undue burden on police, the courts, and transportation agencies.

Together, we have made significant improvements in rates of impaired driving over the past 30 years, and together we can move forward and achieve our collective goal of 40% reduction in deaths and serious injuries by alcohol-involved drivers by 2010, thereby reducing the $21 billion in societal costs related to impaired driving each year.

Thank you for the opportunity to express our considerations and concerns. We will be happy to take any questions.

● (1605)

The Chair: Thank you very much, Mr. Kwei, and also for keeping your presentation to the limit. We appreciate that.

Now we go to the Canadian Society of Forensic Science, and Mr. Robert Langille.

Dr. Robert Langille (Chair, Alcohol Test Committee, Canadian Society of Forensic Science): Thank you, Mr. Chair and members, for allowing me to act on behalf of the alcohol test committee as a witness before you today.

After giving you an overview of the Canadian Society of Forensic Science and the alcohol test committee, we'll just be presenting a summary of the highlights from the brief that I and my colleagues prepared in response to the issues raised in the extract.

The Canadian Society of Forensic Science was founded in October 1953 by scientists with an interest in forensic science and the growth and development of forensic science in Canada, including the RCMP lab, other federal labs, and the Centre of Forensic Sciences in Toronto, the laboratory where I work. The alcohol test committee was formed as a committee of the Canadian Society of Forensic Science in 1967, at the same time as Parliament was considering Canada's first driving laws, per se. The focus of the alcohol test committee is to develop recommended procedures for breath testing, minimum standards for police training in the use of breath-testing equipment, and the evaluation of equipment for breath and blood alcohol testing, primarily breath alcohol testing.

Currently the alcohol test committee is an adviser to the Minister of Justice in the area of impaired driving, especially with respect to the evaluation of breath testing equipment for use in Canada. We're comprised of forensic sciences from the RCMP, the Centre for Forensic Sciences, and the Laboratoire de sciences judiciaires et de médecine légale in Montreal, and we represent all regions of Canada.

In the brief that I prepared we addressed the issues outlined in the extract primarily from a toxicological point of view. I will begin with an innovative approach, which is random breath testing.

It's well known from pharmacological and toxicological studies that intoxication is an advanced state of impairment. Consider the findings of publications from me and colleagues at the Centre of Forensic Sciences and others that the average blood alcohol concentration of drinking drivers in Ontario—our work was done with Toronto data—is an average of 160 milligrams of alcohol in 100 millilitres of blood, or 160 milligrams percent.

The Chair: Can I just briefly interrupt you for a moment? If you could slow down for the interpreters, we would appreciate it. Thank you.

Dr. Robert Langille: This must include a significant number of frequent drinkers and individuals who have significant tolerance to the effects of alcohol, such that they would show few or no signs of intoxication. In low-traffic or low-demand situations, their poor driving may not be as identifiable to traffic and other police officers, but they are still impaired in their ability to operate a motor vehicle. This is the rationale for the RIDE program and approved screening devices used at the roadside.

On the list of references accompanying my brief, reference number five is the abstract of a study performed by two RCMP officers in 1977, which looked at the advantages of the RIDE program. I'll just pick out three of the cases from that study, in which police officers could not detect the intoxication of individuals who had substantial blood alcohol concentrations. These are the comments from police officers: One individual with a blood alcohol concentration of 200 was not obviously impaired. Another at 290 had no strong visible signs of impairment according to the officer who was investigating that individual. A third, who had a blood alcohol concentration of 160, smelled of liquor but did not look or act impaired. Those are the views of the officers at the roadside at the time.

The police need a better tool to identify these drivers before they enter high-traffic or high-demand situations, such as an emergency situation. Randomized breath testing would complement RIDE programs, and increase the possibility of catching these problem drinking drivers, and put added pressure on the majority of the driving public to act responsibly.

Next I'd like to address the per se limits, and the topic of reducing the per se limit to 50. There is no doubt that there is good toxicological evidence for impairment in individuals' abilities to operate a motor vehicle at blood alcohol concentrations between 50 and 80 milligrams of alcohol in 100 millilitres of blood. What occurs is that as one drinks, one's blood alcohol concentration increases and the degree of impairment increases in a graded fashion.

What we would like to do, though, is to address the fact that although the limit is currently set at 80, the reality is that individuals are not charged until their blood alcohol concentrations exceed 100 milligrams of alcohol in 100 millilitres of blood. Furthermore, due to the safeguards and the instruments that are used to determine blood alcohol concentrations, and the calibration of those instruments to ensure that no one is falsely charged due to falsely high results, this actually translates into no charges being laid until their blood alcohol concentration reaches a minimum of 110. Therefore, we think that through some changes in legislation, that level could be brought down to an actual level where criminal charges would apply at the realistic level of 80 milligrams of alcohol in 100 millilitres of blood.

Three suggestions that would assist that would be, first, to include 80 in the legislation. Currently paragraph 253(b) states that someone is in violation when their blood alcohol concentration exceeds 80 milligrams, so 80 is not included. Due to certain good practices, that means that anyone whose blood alcohol concentration is between 80 and 89 would not be considered to exceed 80. Including 80 would eliminate that, and that would be an initial reduction in the limit at which individuals would be charged.

● (1610)

Something that has been used in the U.S. and elsewhere is to include a third category or a third offence, which is that individuals be charged when their breath alcohol concentration exceeds 80 milligrams of alcohol in 210 litres of breath. This is the exact equivalent of 80 milligrams of alcohol in 100 millilitres of blood. This is what breath-testing instruments actually calculate, and then it is transcribed into a blood alcohol concentration. This would eliminate a lot of the defences around variability in the blood-breath ratio, that although the instrument read an individual's blood alcohol concentration as greater than 80, the person might have been below 80 at the time due to physiological properties.

A third one would be to include wording that would direct the courts to consider the actual readings of breath-testing instruments. Breath-testing instruments today are set to read low so that there are no falsely high breath readings. If the wording were changed to include the actual results, rather than any variability around them, the inclusion of these three changes would bring the limit where people are actually charged from 100 down to 80, and the realistic levels would be from 110 down to at least 89 milligrams per hundred. It would not unfairly prejudice those individuals who are around 80, and would still be in the interests of public safety, because someone whose blood alcohol concentration is 78 is still just as much a risk to the public as someone whose blood alcohol concentration is 81. With the safeguards that are enacted in this country with the breath-testing instruments, it is our belief that individuals who have breath readings of 80 milligrams of alcohol in 100 millilitres of blood and above would not be unfairly prejudiced by being included in criminal charges.

We also agree with the CCMTA and the others here that the combination of provincial statutes being applied at blood alcohol concentrations between, essentially, zero, or certainly between 50 and 80 for most adults, and even lower levels for youth, combined with criminal prosecutions above 80 is defensible toxicologically because it increases the penalty with increasing degree of impairment from increasing blood alcohol concentrations.

We would also ask you to consider more strongly imposing even greater sanctions when blood alcohol concentrations go beyond 160 milligrams of alcohol in 100 millilitres of blood. There is absolutely good scientific evidence to show that individuals at 200 and 300 are a much greater risk, and they deserve much greater penalties than those who are at 80. Currently there is only a statement that the courts consider blood alcohol readings in excess of 160 as an aggravating factor. From personal observations in court, that doesn't lead to a whole lot of difference in the types of fines for individuals convicted at blood alcohol concentrations of 200 and those convicted with blood alcohol concentrations of 110, unless they are repeat offenders.

Finally, the alcohol test committee would invite the committee to consider adding, either as a separate category or an additional category, the point that the readings not only be considered at the time of driving but also be considered at the time of testing, so that readings at the time of testing be admissible in court. Currently individuals are able to use a defence of bolus drinking, or drinking large amounts of alcohol shortly before driving, as a valid defence against being prosecuted under paragraph 253(b), where their blood alcohol concentration was greater than 80 milligrams in 100 millilitres of blood at the time of driving.

● (1615)

The rationale for this apparent defence is that they were under 80 at the time, they had consumed a large amount of alcohol shortly before driving, and by the time they were tested they were over 80. But frankly, the consumption of large amounts of alcohol and a rapidly rising blood alcohol concentration is even more impairing than regular social drinking.

The use of this dangerous practice as a loophole to evade prosecution of over 80 seems irrational and contrary to public safety. Allowing a court to view the results at the time of testing would eliminate that. It's a procedure that has been called the “perilous rush home”—the consumption of large amounts of alcohol, and then the rush to get home before one's blood alcohol concentration exceeds 80. All those individuals are still impaired in their ability to operate motor vehicles, and this issue should be addressed.

I would like to end by stating that with consideration of any new technologies, the overriding concern of the alcohol test committee is that new equipment be properly tested and approved, and that it be used by properly trained officers in a program that is subject to strict quality assurance and quality control procedures to ensure that the evidence meets the acceptable standards of reliance for court purposes.

Thank you for your attention.

The Chair: Thank you, Mr. Langille.

We will now move to Mr. Frank Hoskins from the Nova Scotia crown prosecutors office.

● (1620)

Mr. Frank Hoskins: Mr. Chair and committee members, I'm appearing here today as a crown attorney; however, my views expressed here today are not intended to represent the Province of Nova Scotia or the public prosecution service.

My position with the public prosecution service is that of chief crown attorney of the Halifax region and special prosecutions. As chief crown attorney, my responsibilities include the supervision of 40 crown attorneys, whose responsibilities include the prosecution of offences under the Criminal Code and numerous provincial statutes.

I am pleased to have been invited here today, as I believe that the need to prevent, investigate, and deter impaired driving is unchallenged as a laudable and necessary objective. Indeed, there is no question that reducing the carnage caused by impaired driving continues to be a compelling, important, and worthwhile government objective.

The effective regulation and control of this activity gives rise to a unique challenge when it comes to protecting users of the highway from the menace posed by impaired driving. This challenge arises from the fact that drinking and driving is not itself illegal; it is only driving with an impermissible amount of alcohol in one's body or driving while one's faculties are impaired that is criminalized.

Consequently, there is not always a clear, bright line to easily discern the permissible and the impermissible amounts of alcohol in one's body. The necessary screening can only be achieved through field enforcement officers, who must be equipped to conduct the screening with minimal intrusion on the individual motorist's charter of rights.

The challenge in this area of law enforcement is increased by the fact that the activity in question is ongoing and the impaired driver who has exceeded the permissible limits represents a continuing danger on the highway. Effective screening at the outset is necessary to ensure the safety of the drivers themselves, their passengers, and other users of the highway. Effective screening should also be achieved with minimal inconvenience to legitimate users of the highway.

It is important to recognize that the need for regulation and control is achieved through an interlocking scheme of federal and provincial legislation. The regulation of impaired driving is not confined exclusively to the criminal law, but rather includes effective enforcement by roadside screening techniques contemplated by provincial legislation, which provide a mechanism for combating the continuing danger presented by impaired driving.

In Nova Scotia, our provincial legislation imposes strict restrictions and rigid or exacting impositions on impaired drivers, which are intended to serve as an effective deterrent and protection for the public.

The Chair: Excuse me, Mr. Hoskins. I know that as all of you get into your presentations you move along quite rapidly, but the interpreters are having a problem again.

Thank you, sir.

Mr. Frank Hoskins: Furthermore, it is expected that the alcohol ignition interlock program will come into effect later this year, sometime in June. Against this backdrop, and from a prosecutorial perspective, I wish to briefly comment on the new legislative initiatives in the area of impaired driving as contained in Bill C-2, and then briefly comment on both the legal and practical issues that frequently arise in the prosecution of impaired driving cases.

Before I briefly comment on the initiatives of Bill C-2, I want to recognize and commend this committee and Parliament for the important work that has been done in attempting to protect Canadian citizens from drivers impaired by alcohol, drugs, or both in the manner consistent with the values enshrined in the charter.

Given the time allotted, I will touch upon only two initiatives contained in Bill C-2: the drug-impaired driving provision, and the provision that restricts evidence to the contrary.

It is an understatement to suggest that the drug-impairment driving enforcement provisions are long overdue. The lack of clear, effective responses to drug-impaired driving has been a longstanding concern. The new legislative provision will undoubtedly enhance the prosecution of drug-impaired drivers.

Although Bill C-2 permits video recording of test, in my view such video recording, where practical, should be conducted both at the roadside and later in the evaluation process during the drug-recognition test, as this is one way to import more objectivity into what will be argued as a subjective interpretation of the officer.

Furthermore, the audio and video recording of test for drug and alcohol impairment could be the most compelling evidence in the prosecution of an impaired driver, as it could clearly demonstrate the demeanour, behaviour, and condition of an accused person.

With respect to the provision that restricts evidence to the contrary, this amendment will undoubtedly limit or restrict the often-asserted defence of “I had only a couple of drinks”, or the Carter defence, but it does not eliminate the defence of bolus drinking that could occur before or after operating a motor vehicle. While the defence of bolus drinking is still possible, with the amendments the defence will be very difficult to establish.

There is a multitude of legal and practical issues that frequently arise in the prosecution of impaired driving cases; however, I'm going to focus on the following five: first, the effects of contextual definitions; second, police and crown training; third, blood alcohol concentration limit; fourth, random breath testing; and fifth, the necessity of a preamble.

With respect to the legal issues, there are phrases or words contained in the Criminal Code that are frequently litigated because they have been given contextual definitions by the courts. Examples include “care or control”, “forthwith”, and “as soon as practicable”. While these phrases or terms can cause uncertainty and unpredictability, they do provide a major flexibility that is consistent with the charter values. Thus, practically speaking, because of the contextual nature of these legal terms frequent litigation of the application of these terms to any given case should be expected.

With respect to police and crown training, I would like to make a few comments. The proclamation of the new Criminal Code provisions or amendments to the code related to impaired driving offences should be accompanied by funding sufficient to include adequate resources for enhanced police and crown training. Often an accused will challenge the police investigation, or lack thereof, which will include arguments involving insufficient grounds to make the demand, charter violations, and/or procedural mistakes made during the course of police investigation. Therefore continuous training in this area is necessary to ensure that investigations and prosecutions are conducted efficiently and effectively.

● (1625)

With respect to the issue of lowering the blood alcohol concentration limit from 0.8 milligrams of alcohol per 100 millilitres of blood to 0.05 milligrams, I'm not qualified to provide any meaningful commentary on this issue. It would appear to be a scientific inquiry examining the effects of impairment at 0.05 milligrams. However, I would add as a practical caveat to this issue that the common practice of the police in Nova Scotia is to lay charges only where blood alcohol exceeds or equals 0.10 milligrams. This is because of the presumed margin of error involved in the breathalyzer equipment.

In effect, then, the BAC level is elevated in practice, although it should be noted that in Nova Scotia, under provincial legislation, a BAC level of 0.05 milligrams empowers the police to temporarily suspend a driver's licence. Furthermore, a zero BAC level is statutorily mandated for newly licensed drivers.

I will now touch upon the issue of random breath testing. I do so not as a constitutional expert but as a practitioner in criminal law.

While random testing may be used in other countries, it would undoubtedly be challenged in Canada as a violation of the charter unless the courts found it to be a reasonable limit on the freedom of our citizens. In Canada, Parliament has set a statutory scheme whereby a screening test can be administered by the police merely upon entertaining a reasonable suspicion that alcohol is in a person's body—for example, the mere smell of alcohol on the driver's breath.

While the Supreme Court of Canada has upheld the constitutionality of this statutory scheme as a reasonable limit, it is arguable that the court may not uphold the statutory scheme that authorizes random breath testing where the police have no reason to suspect that the person is impaired. However, limiting the application of random breath testing to specific situations, such as motor vehicle accidents that cause death or bodily harm, may alleviate the charter concerns. Again, that is a matter best left with constitutional experts.

In any event, every aspect of any legislative scheme that authorizes random breath testing will invariably be subjected to detailed constitutional scrutiny.

Lastly, is it necessary to have a legislative preamble? While preambles can serve a useful purpose with new legislative schemes, if it is Parliament's intention that the amendments be judicially interpreted according to certain enumerated principles, it would be preferable to have these principles clearly and succinctly contained in amendments themselves.

That concludes my remarks, Mr. Chair. I'd be pleased to answer any questions.

● (1630)

The Chair: Thank you, Mr. Hoskins. It's always good to have a crown opinion statement. That doesn't happen too often in our committee, so we appreciate your presence.

Now to Mr. Yost or Mr. Pruden.

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): I'll be presenting. Thank you, Mr. Chairman.

The Chair: Okay, Mr. Yost, you have the floor.

Mr. Greg Yost: Mr. Chairman, members of the standing committee, I trust you've received the paper that Mr. Pruden and I prepared, “Impaired Driving Issues”. It was submitted through the clerk about two weeks ago, I do believe.

Between us, Mr. Pruden and I have more than 40 years of dealing with impaired driving issues.....

Vous ne l'avez pas reçu?

Mr. Rick Dykstra (St. Catharines, CPC): I think the only question is whether it was distributed to members of the committee.

The Chair: Electronically it was distributed, yes.

Mr. Rick Dykstra: It was?

Mr. Greg Yost: Well, that's unfortunate, because my remarks are focused on the paper that we prepared.

Mr. Pruden and I are well aware that progress on impaired driving requires a coordinated approach, including enforcement, education, treatment of those who are alcohol- and drug-dependent, and federal and provincial legislation.

The Chair: Mr. Comartin has a point of order.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Chair, I just checked with the members, and none of us—that's me and the three sitting beside me—got the brief.

The Chair: It was sent two weeks ago, I'm advised, through electronic mail.

We'll follow up on that point, but we do have Mr. Yost presenting now.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Perhaps it was during the election scare period?

The Chair: Irrelevant.

Go ahead, Mr. Yost.

Mr. Greg Yost: In any event, Mr. Pruden and I are not experts on toxicology or on social science research. We rely on the advice of experts in those fields. The paper is therefore restricted to the possible amendments to the Criminal Code. It makes no recommendations and is intended to assist the standing committee in its deliberations by discussing the issues as they're seen from a legal perspective.

[*Translation*]

As for dropping the blood alcohol content (BAC), experts agree that a driver with a BAC of 50 milligrams is less able to drive than a sober person who takes the wheel. In addition, a BAC of 50 increases the risk of accident, death, and injury. However, experts do not agree on the most effective way of mitigating this higher risk, whether it be by way of provincial legislation, or making it an offence under the Criminal Code to drive with a BAC of 50 to 80 milligrams.

Making it an offence to drive with a BAC in excess of 50 would not prevent provinces from taking action. Now, if a person's blood alcohol concentration is higher than 80, a province can immediately suspend a driver's licence, regardless of the outcome of the criminal charges. Most provinces are now proceeding to suspend licences of those found driving with a BAC between 50 and 80.

If legislators make it an offence to operate a motor vehicle with a blood alcohol concentration higher than 50, provinces can still maintain the right to suspend drivers' licences. There are two ways of creating an offence to drive with a BAC of 50 milligrams or higher, but bringing the illegal limit down from 80 to 50 milligrams would allow police officers and prosecutors to leave their current methods unchanged.

And yet, a minimum fine of $1,000 and a prohibition from driving for one year could be perceived as unduly strict for drivers whose BAC is between 50 and 80. A separate offence could set out less stringent fines and prohibitions. It would allow police officers to take action as they see fit, lay charges, or write up a ticket. If a ticket is issued under the Contraventions Act, the offender will not have a criminal record that would be detrimental to his career, or prevent him from travelling.

● (1635)

[*English*]

With respect to random breath testing, there is research indicating that many impaired drivers are able to avoid a demand for a breath test when stopped by the police, because the officer does not detect the smell of alcohol or symptoms of impairment. These drivers would be more likely to be detected under RBT, which is expected to have a deterrent effect. Nevertheless, it is probable that RBT would ultimately have to be justified under section 1 of the charter, as RBT requires detention of the driver.

The Oakes test requires that there be proportionality between the objective and the limitation. The salutary effects must outweigh the deleterious effects. In that regard, the results of the introduction of RBT in Australia, New Zealand, and the Republic of Ireland, combined with the fact that RBT or an approved screening device is immediately available—it only takes a minute or two—are encouraging.

We caution the standing committee that RBT is not a silver bullet. It is most effective when it is part of a high-profile campaign, with visible enforcement, that increases the perception among drinking drivers that they will be stopped and required to blow.

With respect to innovative approaches in use in other countries, we are most familiar with American practice. The Americans have been having some success with DWI courts, modelled on drug courts, and with using electronic monitoring to ensure that those who are prohibited from driving will be detected. However, these programs are expensive and require an elaborate infrastructure.

In the United States, persons who fail the screening test are required to provide a breath sample on an approved instrument for use in court. The American courts have held that assistance of counsel is not needed because the police are gathering evidence. Indeed, a BAC under 80 will exonerate a person, while a BAC over 80 does not, in and of itself, result in a conviction, as the prosecution must still show that the person was driving and that the equipment was working properly and had been operated properly.

As you know, the Supreme Court has held that it is constitutional to require a driver to provide a roadside screening test without the person being given the right to counsel. Officials have only begun to consider whether requiring an AI test without the person being given the right to counsel could survive a charter challenge. The major benefit would be to accelerate the determination of whether to lay a charge, and to free the police to go back on the road. However, administrative convenience is not an acceptable justification for an infringement of a charter right. Moreover, one of the main reasons the Supreme Court upheld roadside screening was that the ASD results could not be used in court.

I will not say much about sanctions because Bill C-2 includes increases in penalties. We are aware of the concern that the ignition interlock provisions in the code are unduly restrictive and should be made more affordable and available earlier to encourage greater use. The interlock example illustrates the need to ensure that the Criminal Code sanctions work effectively with provincial programs by encouraging drivers to get their licences back rather than discouraging them so that they drive while prohibited.

The standing committee should be aware that in the United States it is normal to have penalties tied to BAC and to have higher penalties for a person who refuses to provide a breath sample than for a person who is convicted on the basis of the breath sample. It provides an incentive for the driver to comply with the demand.

Finally, I would point out that much of the work we do as officials has consisted of responding to decisions made by the courts and advances in technology. The breath-testing provisions of the Criminal Code are almost 40 years old, with major changes made in 1979, with the introduction of screening devices; in 1985, after a comprehensive review by the Department of Justice; and in 1999, after a review by this committee. With the changes regarding DRE and evidence to the contrary just passed in Bill C-2, we have another set of major changes coming.

As a result of this series of amendments, the current edition of breathalyzer law in Canada is three volumes—about 12 inches thick—and contains 26 chapters and more than 300 topics. We are aware that other countries do not find it necessary to include such detail about how the breath test will be conducted or to prescribe timelines that must be respected. The paper suggests that it may be time for a reconsideration of the legislation as a whole, with a view to making it simpler and, in particular, for Parliament to assist the courts in understanding Parliament's intent in making any changes that may flow from this review.

● (1640)

Parliament has provided principles to guide the courts in the sentencing provisions of the Criminal Code, in the Youth Criminal Justice Act, and in the DNA Identification Act. Such principles could be included in any legislation that may flow from this review.

Thank you.

Mr. Pruden and I will be pleased to answer any questions.

The Chair: Thank you, Mr. Yost, from the criminal law policy section of the Department of Justice.

Now I'll open the floor to questions.

Mr. Murphy.

Mr. Brian Murphy: Thank you, Mr. Chairman.

Mr. Langille, I noticed that you stumbled and said “abstract”. A forensic person saying “abstract” must be like a Liberal saying good things about a Conservative budget.

I want to ask you a couple of questions about your very informative suggestions. We're here from the federal side, and I think everybody should know that we're here as guardians of the Criminal Code, the old beast that it is. Your suggestion about including 80 is something we can do; I think it's clearly something we can do. The issue of using a definition of breath alcohol instead of blood alcohol is also something we can do.

When we get into the provincial regimes and the issue of 0.05 per hundred leading to suspensions and detection, and all those things, it's not as easy for us. Obviously, we can make recommendations—but I do want to stick to what we can do.

In light of what Mr. Quaye said about interlocking devices, do I understand correctly that your committee would have anything to do with approving interlocking devices?

Dr. Robert Langille: This is actually rather new to me. Currently we evaluate and recommend equipment to the minister to be included in the approved lists in the Criminal Code.

Mr. Brian Murphy: So you do have that authority?

Dr. Robert Langille: Yes—or we have the expertise.

Mr. Brian Murphy: The scope.

Dr. Robert Langille: How it would actually work seems to be something that still needs to be worked out, but we could review the standards that have been set. If appropriate, we could then look at individual interlocking devices and see whether they meet the standards and essentially publish a list of those that meet the criteria to a high standard of scientific accuracy.

Mr. Brian Murphy: Are you mandated to review them? Who sends them to you to look at? Do you do this on your own?

Dr. Robert Langille: No, and as I understand it, that's not really the thrust of this proposal.

Mr. Brian Murphy: Not at all, but I do want to emphasize interlocking devices, because it might be something we can do. In the presentations, which were all very clear, there is language that.... I'll go right to Mr. Beirness, who said the devices were grossly underutilized. Mr. Quaye was talking about some of them not being approved or that there should be some help in that regard.

If they're being grossly underutilized, is it an issue of budgeting—which I think the groups spoke of—or is it an issue of it not being part of a sentence, or is it an issue of money?

Who's best fit to answer that question?

We've parsed from your series of briefs the different levels of drinkers with impairment problems; I understand that. We're talking about people with repeat impairment problems, people who would probably benefit or, at least, be less harmful to society if those devices were used. But there seem to be a number of road blocks here.

Mr. Pruden.

Mr. Hal Pruden (Counsel, Criminal Law Policy Section, Department of Justice): In 1999, at the recommendation of this committee, Parliament looked at amending the Criminal Code to take into account the fact that some provinces at the time were already using ignition interlock devices. Parliament began by saying that first offenders could have a reduction in their federal Criminal Code driving prohibition if they used the provincial interlock device under the provincial program.

Subsequent to that, many provinces now have a provincial program for interlock device use, allowing drivers an early return to driving even during their driving licence suspension or during their federal Criminal Code driving prohibition. But it is a provincial program that is being utilized.

● (1645)

Mr. Brian Murphy: Why is it being grossly underutilized? That's really what I'm asking.

Mr. Hal Pruden: It may be underutilized because of the fact that some people feel they don't want to spend the money or can't afford it. Other people may simply not want to have an interlock.

Maybe Dr. Beirness could talk about the underutilization.

Mr. Brian Murphy: Thank you.

I'm going to save the last for you guys, the people who have been in the trenches.

Mr. Hoskins, let's get your statement on the record clear. I take it that you'd be in favour of random breath tests or roadside testing. You can answer that. And would you think it would be effective to have a higher penalty for refusal as opposed to compliance? Would you support including 80? And would you support breath alcohol as a definition, instead of or alongside blood alcohol?

Those are four questions.

Mr. Frank Hoskins: How many questions were there? I want to write them down.

Mr. Brian Murphy: There were four. This is how we work: there are four questions and about a half a minute to answer.

Mr. Frank Hoskins: Would you repeat the first question for me, please?

Mr. Brian Murphy: There was a suggestion that if people refused to give a sample, they should be given a higher penalty than those who complied in giving a sample and then were found guilty.

Mr. Frank Hoskins: As I understand, in Bill C-2 they have amended the refusal section now to increase it.... It's a new offence, I believe. Perhaps you could help me with that.

Mr. Greg Yost: The only thing done in Bill C-2 is to have a 0.8 causing death or causing bodily harm. This remains the same penalty whether you're convicted of refusal or over 0.8 in a simplicitor case.

Mr. Frank Hoskins: There's also a new provision for refusal causing bodily harm, and death, as well. So the incentive to refuse.... There are more consequences, I suppose.

Mr. Greg Yost: That was intended to address the incentive if there was an accident. This suggestion, which is done in the United States, is to encourage the person to actually provide a breath alcohol sample, because when they consult their lawyer, presumably, and they say, “What happens if I refuse?”, he says “You're going to get twice as big a fine as if you comply.”

That's the American model that I mentioned.

Mr. Frank Hoskins: Mr. Murphy, I'm not quite sure how to answer that question. I don't know why it causes people to refuse, whether it's because they're concerned about going over, or they're concerned about being in an accident, but anything that can assist in taking away that incentive may be helpful. But you always have to be concerned with going too far, and then infringing into self-incrimination, as well.

But for the most part, if there's a greater punishment for refusal, I don't know what, if any, effect that's going to have, because I don't know why people are refusing, to be perfectly candid.

The Chair: Do you have a comment?

Mr. Brian Murphy: Well, the other three little points were including 80, 0.8, rather than “in excess of”. I take it you obviously support that.

Mr. Frank Hoskins: Yes, and right now, as I said earlier, it's been my experience that the police do not charge in that range. They're charging to 0.10 as a result of the presumed error in the accuracy of the machine. If it were going to change, I don't know what, if any, effect that would to have. It says “include 0.8”. Are the police still going to continue to lay 0.10 at that level? I don't know.

The Chair: Thank you, Mr. Murphy.

Mr. Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Thank you, Mr. Chairman. Something very interesting occurred this afternoon, and it has gone almost unnoticed. The two groups with the most extensive expertise on the causes of intoxication have not recommended changing the criminal system, bringing down the BAC from 0.08% to 0.05%. I find it rather significant that the Canadian Council of Motor Transport Administrators and the Canadian Centre on Substance Abuse do not want to see...

You would like to implement random tests; I understand this. You want us to take more preventative action on the roads and have devices such as anti-locks. I also agree with Mr. Murphy. But I am not convinced, I have not heard enough arguments that would lead me to...

I will have a question for Mr. Brown later on. One of your colleagues, Ms. Nadeau, also studied psychology.

It is clearly obvious that targeting repeat offenders and changing behaviours has nothing to do with criminal law. With all due respect to my colleagues across the way, very often this government tries to change behaviours by way of criminal law, and we know very well that it is not the appropriate tool to use in this type of situation. I'm not saying that we should be soft, or hesitant when it comes to repeat offenders who are compromising road security. Obviously, we would never hold such an opinion.

My first question is for the Canadian Centre of Substance Abuse, and the Canadian Council on Motor Transport Administrators. I would like you to explain to me very clearly why you do not want to see the limit go from 0.08% to 0.05%. Unless I have misinterpreted your comments, that is my understanding.

● (1650)

[*English*]

Dr. Douglas Beirness: This has been an issue that has been on the table since I first started working in the impaired-driving field 25 years ago. Even back then, when we looked at the evidence there was a lot of interpretation to what was out there. It was not very clear-cut. Not everyone is impaired at a level of 50. You will find impairment on some tasks in laboratory situations; there's no doubt about that. Not everyone is impaired on all tasks at that level. Imposing criminal sanctions on those people just doesn't seemed justified. When you get to a level of 80, yes, virtually everyone shows impairment. That's the level that seems appropriate for imposing criminal sanctions.

Are there reasons to do things with people who are between 50 and 80? Yes. There are enough of them that have sufficient level of risk on the road and sufficient degree of impairment that you should get them off the road to send them a message. It's an early-warning system. Should you do things with people who repeatedly do that? Yes. You should increase the sanctions and you should get them into an assessment, and possibly a treatment or a rehabilitation program. The graded response to impaired driving based on blood alcohol concentration just makes so much sense to us that simply having a level at which it is criminal and a level at which it is not criminal just doesn't make sense to us.

[*Translation*]

Mr. Réal Ménard: I also have a question for Mr. Brown, but I would like to hear the answer of your colleague from the Canadian Centre on Substance Abuse.

[*English*]

Mr. Paul Boase (Co-Chair, Strategy to Reduce Impaired Driving, Canadian Council of Motor Transport Administrators): As Mr. Beirness has said, there are two issues. One, you don't want to unduly burden the police, the prosecution, or the transportation agencies at a level that may be less significant than hitting the criminal level.

Second is to take a tiered approach. If you can get to them early, catch them doing this, and do an assessment, you may prevent them from going to that higher level. But you have to be able to keep the records. That's why the CCMTA model keeps that on the driver record. So if there is an assessment they will know how many times you've done that, and that will be considered.

Mostly it's about taking a tiered approach to this problem.

[*Translation*]

Mr. Réal Ménard: Thank you.

Mr. Brown, we heard Ms. Nadeau provide a testimony similar to yours, and I was very much impressed by its relevance. You have repeated a few of the points she raised, including comments on psychology and neurocognitive factors. We cannot use criminal law to change behavioural patterns.

I would like you to elaborate further on your point of view so that it is accurately reflected in our report, without your needing to claim copyright, obviously.

Mr. Thomas Brown: Ms. Louise Nadeau works with me; we are a team. Indeed, according to our research, there are two arguments that we make in the scientific debate on why people are resistant to current treatments and forms of intervention. It is not a matter of explaining all of the phenomena, nor suggesting that everyone is the same. Rather, we must entertain the possibility that, most likely because of the over-consumption of psychotropic drugs, there are people who suffer significant deficiencies and are less able to change their behaviour.

As such, and I'm not talking about the majority of people, there are those who almost unconsciously find a way of putting themselves in the situation to repeat a certain behaviour. Despite the sentences and fines, they will do this. Some display mental deficiencies that reduce their ability to remember treatment guidelines or apply techniques to control their alcohol consumption.

There is another more innovative piece of information. Bearing in mind our research—research always involves probabilities—some people have a way of responding to stress, which is that some experiences can cause severe anguish for some, making them feel extreme humiliation, extreme anxiety, and that is enough to convince them that they will never do the same thing in the future. This does not have the same effect on some other people. We ask ourselves the question as to why some individuals are unable to understand a clear social or legal message being sent to them by their loved ones, to the effect that they must not repeat a certain behaviour once they have been convicted. These people lack sufficient emotional memory to understand that they must change their behaviour to prevent reliving this anguish.

● (1655)

[*English*]

The Chair: Mr. Ménard, your time is up.

[*Translation*]

Mr. Réal Ménard: Do I have time to ask another question? I have absolutely no short-term memory.

[*English*]

The Chair: If there's another round we'll give you an opportunity, sir.

Mr. Comartin.

Mr. Joe Comartin: Thank you all for being here.

I'm having a battle with the Bloc over the 0.08 and 0.05.

Mr. Beirness, Mr. Boase, and Mr. Quaye, you've heard evidence—and we heard it at a previous panel—that enforcement in Canada of 80 is really 100. I would like to know if you agree that the real level in Canada is 100. If we lower it to 50, do we not go to the same situation—out of a sense of caution by police officers—and really have a 70 level because that's what's going to be enforced? Do you agree with me that as far as we know, everybody at 70 is impaired?

So I have two questions really. Are we impaired at 70, and do you agree that we only enforce at the present time at 100?

Dr. Douglas Beirness: Do we enforce at 100? That's an item for data analysis.

Mr. Joe Comartin: Have you done that analysis?

Dr. Douglas Beirness: I have looked at data from a long time ago, and yes, you'll see charges between 80 and 100 in the data that comes forth. Most of them are between 160 and 170. That's the average.

So are we enforcing 110? Not very well. We're getting the worst ones off the road. That's all we're able to do, get those people who are grossly intoxicated, grossly impaired with BACs of 160 and 170. That's the best we're doing.

Mr. Joe Comartin: In my years of practice, I never had one under 100.

Dr. Douglas Beirness: They are around. You will see them.

Mr. Joe Comartin: We're talking very small percentages. We're talking 1%, 2%, 5% at a maximum.

Dr. Douglas Beirness: Sure. But we have a law to deal with those people too, people who are even at 80 or below 80. It's called "impaired driving".

Mr. Joe Comartin: That's my next question. Let's stay with this one.

The second part of the question is, at 70, is there anybody who's not impaired?

Dr. Douglas Beirness: I think you'll find lots of people who aren't. I believe we heard it earlier. There are people at 270 who will not show gross signs of intoxication at all.

Mr. Joe Comartin: No, I'm asking at the bottom end. At 70, is there anybody who's not impaired?

Dr. Douglas Beirness: Certainly, absolutely, no question.

Mr. Joe Comartin: What's the percentage, Dr. Langille?

Dr. Robert Langille: I'd have to disagree with that. It's not that they're not impaired, it's that their degree of impairment is less. But is their ability to operate a motor vehicle impaired at 70? Yes. Their degree of impairment will depend on their driving experience and their drinking experience, but they will be more greatly impaired at high blood alcohol concentrations. There's no doubt in my mind that there's still a risk of accidents at that level. Scientifically, we don't talk about "Is everybody in the world impaired", but rather, if you take any individual at that blood alcohol concentration, they will have a degree of impairment, even at 70. It will be less than that same individual's impairment at 80, at 100, at 160.

To answer your earlier question, my experience from working day to day with crown attorneys and police is that, at least in Ontario, there is only one jurisdiction that was regularly charging above 90. That was in the region where I live, in Durham, and they have suspended that for a time because of the large backlog of cases. They are now offering those individuals "careless driving". So, practically, police officers charge at breath readings of 100 or greater, and they're prosecuted at those readings. Sometimes individuals show signs of impairment at the roadside, and when they're brought back, they may have blood alcohol readings that are below 100. They're charged with a paragraph 253(a) impaired. They may bring us in to support their impairment at those lower levels, but the main focus of that prosecution would likely be the impairment, due to the observations of the officers or other witnesses.

● (1700)

Mr. Joe Comartin: Mr. Boase or Mr. Quaye.

Mr. Kwei Quaye: Could you repeat the first question, Mr. Comartin?

Mr. Joe Comartin: It's a two-part question.

One, do you agree with the analysis that the vast majority of charges in Canada are laid at 100 or above?

Two—I'm arguing if we drop it to 50, we'll probably just charge people at 70 or above—do you agree that anybody who's at 70 or above is impaired?

Mr. Kwei Quaye: I'll agree with the first point, but I'd like to make a comment that the people taken off the road in Canada are not only restricted to the ones who are criminally charged. A vast majority of people who are currently taken off the road in the different jurisdictions—

Mr. Joe Comartin: Temporarily, for as little as 24 hours.

Mr. Kwei Quaye: Yes, I'm developing this, if you could bear with me for a minute.

There's a vast number of people who are taken off the road at the lower level as well.

I think when you look at the groups that are looking at a Criminal Code approach or an administrative approach, we do not disagree with the need to take these people off the road. I think where we differ is on what would be the most effective way of doing it.

We believe, in view of the comment that Mr. Langille just made, from a practical perspective, taking the administrative route and putting more teeth into the administrative approach so that these people are not taken off the road for just 24 hours but for a longer period of time and with greater consequences will lead to a much more overall efficient and effective way of swiftly taking these people off the road and applying the section to these people.

Mr. Joe Comartin: Mr. Quaye, we heard evidence on this that the provincial programs—and the Province of Quebec is the worst culprit in this regard—to try to make the administrative side work just haven't been very successful, and our impaired rates are going up.

Mr. Kwei Quaye: I will comment on that, but if you go back, we have in the CCMTA something called a strategy to reduce impaired driving. If we had a slide show here and showed you a picture of the types of laws and legislation that were in the different provinces in 1990 when we started this process and the types of laws and policies in the jurisdictions today, were you to look at the two pictures, you would see a vastly different landscape in terms of laws and policies. We know that this issue of short-term suspension is now on the agenda, as it were. As to whether we are optimistic that change will take place and change will take place quickly, we would say yes. We would say yes based on experience. We would say yes based on many years of experience in trying to handle these issues of impaired driving.

For example, the Province of Ontario quite recently made huge changes to the way it deals with short-term suspensions. The Province of Saskatchewan made huge changes recently with respect to how to deal with it. Will the other provinces change? I am very optimistic. We believe that through CCMTA we can make this happen, and happen very quickly.

● (1705)

The Chair: Thank you, Mr. Comartin.

Mr. Hoskins—

Mr. Joe Comartin: Mr. Yost wanted to respond.

The Chair: Mr. Yost.

Mr. Greg Yost: I'll just say with respect to the 0.05 issue, in the study "Relative Risk of Fatal Crash Involvement by BAC, Age and Gender", done by the United States Department of Transportation, they actually divided males and females by three age groups. If you are a male at 0.050 to 0.079 the relative risk, if you are 16 to 20, of being involved in a fatal crash they calculated to be 17.32 times what it would be if you were a sober 16- to 20-year-old. By the time you are 35, it is down to 5.71. For females 16 to 20, it is 7.04. By the time they're 35, it is 5.79, in that range. They calculated that on the basis of masses of detail.

We aren't social scientists, but we can look at these things. There is, I believe, some fairly strong evidence of seriously higher risk of accident at 0.05 to 0.08.

The Chair: Thank you, Mr. Yost. Is it possible to get those statistics?

Mr. Greg Yost: I can download this from the Internet again. It's right on NHTSA's site, so I'll provide it.

The Chair: That's fair enough. Thank you, sir.

Mr. Hoskins, are the Nova Scotia courts pretty much prosecuting at 100 or over?

Mr. Frank Hoskins: It has been my experience that it's pretty much 100 or over. That's not to say there may not be a few cases under that, but generally speaking it is over 100.

The Chair: Will the courts accept something that comes in at 0.08?

Mr. Frank Hoskins: The code says "exceeds eighty milligrams", so if it were 100, I can't say what they would say, but there is a presumption of accuracy that would be challenged, I would presume, as you get lower. Often with defence counsel, the lower the BAC, the more you'll have to argue the presumption, which is that the machine was working correctly at that time.

The Chair: That's Mr. Langille's point.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): I will not take long, because there will be a vote at 5:15 and we will have to go to the House to vote on a motion put forward by the Bloc Québécois. So yes, our time is limited.

I have a question just for Mr. Brown, if I may. You raised the issue from a particular point of view. We certainly understand from your testimony—at least this is what Mr. Ménard was implying—that the criminal justice system is not necessarily the right approach in some cases. Up to that point, I can follow the direction in which we are headed.

As you know, there was a major anti-smoking campaign. From the point of view of the criminal justice system at the moment, it looks like we are attacking smokers. And yet, the anti-smoking campaign attacked the product, and not the smoker, by increasing the price of cigarettes. At the moment, the price of a carton of 20 packages of cigarettes is $72, while a case of 24 beers costs about $32.

Do you think our first approach should be to attack people who produce beer? Because this is the first component of the problem—the beer producer.

Second, have you looked at the possibility of having beer, which has a 4.1% alcohol content for 341 millilitres, being sold still as beer but with a lower percentage of alcohol—such as 2% or 3%? As you know, a person's ability to imbibe beer is limited: when someone has drunk a case of 24 beers with an alcohol content of 2%, he cannot drink any more.

Could you not suggest some approaches along these lines? Have you looked at this option? At the moment, we want to put everyone in prison, we all want to find a solution to the problem, we're all good people, but we are not targeting the product, even though it is the product that is causing the problem. In the case of cigarettes, the campaign worked because of the advertising and the fact that the price of cigarettes was increased so much that smoking almost became a luxury. Could we not consider doing something like this?

[*English*]

Mr. Thomas Brown: I personally haven't done any research in that area and I'm not really an expert in those kinds of measures to reduce alcohol use and the burden caused by alcohol use in that fashion. I think that accessibility to products, whatever they are, is a necessary aspect to explain abuse of those substances. If they're not readily available or are less available, you see reductions in consumption in most cases.

Perhaps there's something to consider there. There's also something to consider concerning the availability of overpowered vehicles and how we represent automobiles in our society. That kind of goes along the same lines of what you're talking about. We have social values here that are really shooting us in the foot with respect to prevention of death, especially of youth. Messages that are quite pervasive in our society about the desirability of using alcohol and other drugs and substances and driving hugely overpowered vehicles quickly are not helping us.

● (1710)

[*Translation*]

Mr. Daniel Petit: I will be sharing my time with one of my colleagues.

[*English*]

The Chair: Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Mr. Chair.

One of the things you presented on to the group was the interlock device and its ability to curtail repeat offenders, for the most part. One of the points a number of folks have made throughout this discussion is on the potential to have the device installed when the vehicle is being built on the line, so all vehicles come with the device in them.

I wouldn't mind hearing from those who wish to comment on whether they would recommend that as a position the industry should move forward on, and whether or not it's something we should legislate.

Mr. Paul Boase: There is an international committee being run out of the United States, of which Transport Canada is a member, looking at original equipment manufacture of these devices. A couple of manufacturers are also working on these technologies, but they're still a number of years away.

The other thing to consider is that once you have the device, it would take roughly 11 years to roll over 80% of the fleet. The people who would make use of these the most are probably the ones least likely to get new cars, so it would be a long time before those people would be exposed to that device. That may be a long-term solution, but not necessarily a short-term one.

Dr. Douglas Beirness: I am also a member of the committee Mr. Boase speaks about. It is a long-term process. It's something we should be looking at, but don't hold your breath. It's a long way away.

Mr. Rick Dykstra: That's an interesting choice of metaphor.

My other question relates to two things. From an overall perspective, Mr. Hoskins, one of the questions I asked in one of the other committees was around the issue of random testing and how it relates to the ability to stand up under a charter challenge. Of course, whenever we raise these types of issues about random anything and the potential to invade someone's privacy or space in this country, there are questions about whether or not we can do that.

In your province or any other province, is there the potential for something like this to be challenged in the near future so we can determine whether it would stand the test of a charter challenge?

Mr. Frank Hoskins: I'm not a constitutional expert, but I think it will be constitutionally challenged if it is passed.

Mr. Rick Dykstra: Do you have a recommendation on the likelihood of success of that challenge?

Mr. Frank Hoskins: I don't because I haven't done an analysis of it myself, but I think the proportionality area would be most litigated.

The Chair: Thank you, Mr. Dykstra.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you.

I have two questions. The first one—

Mr. Rick Dykstra: I apologize—Mr. Lee, sorry—but on a point of order, Mr. Chair, I think Mr. Yost had wanted to make a comment.

The Chair: You have a comment, Mr. Yost, on Mr. Dykstra's question?

Mr. Greg Yost: Yes, thank you.

If you find the paper that we submitted, annex 1 looks at international experience with RBT. I won't run through it other than to give you some examples.

It was introduced in Ireland in July 2006. It was credited with reducing the number of people killed on Irish roads by almost a quarter, 23%. It was introduced in New Zealand in 1993, admittedly with such other things as 0.05, and there was a 22% increase...or decrease, I should say; geez, an increase would be a disaster.

So there's a good deal of evidence on the side of the public safety benefit for which we have to balance the public inconvenience of having to provide a breath sample. But there is evidence of that.

● (1715)

The Chair: Thank you, Mr. Yost.

Mr. Lee.

Mr. Derek Lee: Okay, we're back on.

To Mr. Beirness, in a document that we had distributed here recently there was a chart: male, female, one drink, two drinks, 100 pounds, 120 pounds, whatever. It showed pretty clearly that if a 110-pound female, I think, had a second drink of wine, on the chart she would have passed the 0.05 level.

As a legislator, I have difficulty criminalizing a female just because she has that second glass of wine and we might lower that limit from 0.08 to 0.05, even though she may not be materially impaired in any way that would affect her driving. That causes me a lot of caution.

Am I on the right track, do you think, in terms of being cautious about criminalizing, just by definition, that second drink of wine for that 110-pound female?

Dr. Douglas Beirness: I think you're on the right track. What we also have to consider, though, is how impaired that person is.

Mr. Derek Lee: Sure.

Dr. Douglas Beirness: That's why we have the two sections, impaired and over the limit. Either one can apply.

Mr. Derek Lee: Oh, I don't even pause; if she has any real impairment in her driving, this is a serious social misconduct and should be criminalized as impaired. But I think you've answered my question.

My second question is to Mr. Pruden or Mr. Yost. Recently I had a chance to look at a system in the United Kingdom—I don't think we could do this under our charter—where they take problem drug users and problem drinkers and bundle them together. They call them "PPOs", priority and persistent offenders. If you have six notations with police intelligence—just notations, not arrests—and you have a charge that comes down the pipeline, then you have to have a blood test. By use of a carrot-and-stick approach, they divert most of these people, those who are alcohol- or drug-addicted, into programming. They think they're making a big dent with the program. It's expensive as heck.

Since the feds operate our drug courts, and since the Criminal Code has set up the drunk driving thing, do you think it would be at all possible for the federal government to look at, or has the federal government looked at, bundling this type of offender?

The Chair: Mr. Yost.

Mr. Greg Yost: I'll take a shot at that, just quickly. First of all, of course, it's the provinces that operate the drug courts. We have been subsidizing them, helping them to set them up, but it's provincial administration.

Mr. Derek Lee: But we prosecute, don't we? We have federal prosecutors for drug prosecutions.

Mr. Greg Yost: Yes, we do that, but this sounds a bit like the American driving-while-impaired courts, where they put together the people who can be helped with rehabilitation, etc. In Oklahoma, if you're over 0.08 you are required to spend 28 days in treatment. That is a requirement under their law.

Now, that's the kind of thing that probably could be done more by the provinces, because they establish the programs to assess whether a person is capable of getting their licence back.

Bringing it all together would be a possibility. It might work. But I don't think we could mandate to the provinces, "You will have to do this."

The Chair: Does anyone else care to make a quick comment to Mr. Lee's point? No one does?

● (1720)

Mr. Derek Lee: Okay, we'll do it.

The Chair: Thank you, Mr. Lee.

I would like to thank the witnesses again for their appearance here. I think it's been a very fruitful discussion. The information through your presentations and your briefs here is very much welcome. Thank you again.

Is there a motion for adjournment?

An hon. member: Proposed.

The Chair: The meeting is adjourned.

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