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Chair

Mr. Anthony Housefather

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● (1555)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, ladies and gentlemen. I'd like to convene this meeting of the Standing Committee on Justice and Human Rights.

I would like to start by asking our witnesses to pardon us for being late today. Unfortunately, this is a day when all members of Parliament from all parties are very pained, as we've lost our colleague Arnold Chan. We were paying tribute to him in the House.

One thing that Arnold always said was that parliamentary decorum, caring about your colleagues, and being non-partisan was something that was very important, and I think this committee hopefully is a testament to that. We all get along very well, and I know that will continue.

Today I'd like to welcome Mr. Rankin back to the committee to replace Mr. MacGregor.

Mr. Murray Rankin (Victoria, NDP): Thank you very much.

The Chair: I would like to welcome Mr. Liepert to the committee. It's a pleasure to have you with us.

Mr. Ron Liepert (Calgary Signal Hill, CPC): Well, we'll see how it goes.

The Chair: Absolutely.

I'd like to welcome Mr. May, who is replacing Ms. Khalid today, and Mr. Ehsassi, who is replacing Mr. Bittle.

It's also a pleasure to commence our study of Bill C-46,an act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other acts, or as we all think of it, impaired driving.

We have a panel of very distinguished witnesses before us today. We have with us Mr. Robert Solomon, distinguished university professor, faculty of law, Western University.

Welcome, Mr. Solomon.

Professor Robert Solomon (Distinguished University Professor, Faculty of Law, Western University, As an Individual): Thank you.

The Chair: From the Canadian Bar Association, we have Kathy Pentz, who is the treasurer of the criminal justice section.

Welcome, Ms. Pentz.

We also have with us Gaylene Schellenberg, who is a lawyer and on the legislation and law reform committee.

Welcome, Ms. Schellenberg.

Finally, from the Canadian Civil Liberties Association, we have Roberto De Luca, who is the director of the public safety program.

Welcome, Mr. De Luca.

Mr. Roberto De Luca (Director, Public Safety Program, Canadian Civil Liberties Association): Thank you.

The Chair: In order to make sure that we don't run way over, I will turn right away to Mr. Solomon to begin. We will have opening statements of no more than 10 minutes from each group.

Mr. Solomon.

Prof. Robert Solomon: Thank you for the opportunity to comment on Bill C-46. I believe this is the sixth or seventh time I have appeared before the justice committee in regard to impaired driving issues.

As indicated, I'm a professor of law at Western University and I've been researching and writing in the field for about 35 years. I've worked with MADD Canada, its predecessor organizations, and other groups. However, I'm here today on behalf of myself, Dean Erika Chamberlain of the faculty of law at Western University, and Dr. Roy Purssell, professor of emergency medicine, University of British Columbia and medical lead of the British Columbia Drug and Poison Information Centre.

Among other things, Bill C-46 will simplify and clarify the federal impaired driving law, create new drug-impaired driving offences, authorize roadside oral fluid testing, and address many evidentiary procedural and technical concerns with the current law. We support these measures because they will improve the federal impaired driving legislation. However, in terms of traffic safety, by far the most important measure is the mandatory alcohol screening provision. Consequently, I will limit my comments to this issue.

This measure would authorize the police to demand a roadside breath test from any driver they have lawfully stopped. The test is conducted while the driver remains seated in the car, and the average stop takes approximately two minutes. The results of the screening test are not admissible in court, but rather are used exclusively as a screening mechanism to determine if there are grounds for further testing. The Criminal Lawyers' Association and others have claimed that mandatory alcohol screening is not necessary, and that Canada's impaired driving laws are working well. It's difficult to see how anyone can credibly make that claim given that impairment-related crashes kill about 1,000 Canadians a year, injure almost another 60,000 more, a disproportionate percentage of whom are teenagers and young adults. Those between the ages of 16 and 25 represent 13% of the population but 31% of alcohol-related crash deaths.

Our current law has left Canada with one of the worst impaired driving records among comparable countries. Consistent with earlier studies, the United States Centers for Disease Control reported that Canada had the highest percentage of alcohol-related crash deaths among 20 high-income countries in 2013. Although Canadians drink considerably less than their counterparts, they're much more likely to die in an alcohol-related crash. For example, Canada's per capita rate of alcohol-related crash deaths is almost five times that of Germany, even though Canadians consume 33% less alcohol. They drink more, we die more.

The laws in these other countries do a far better job than the laws in Canada of separating drinking from driving. Not coincidentally, 17 of those 19 countries have comprehensive mandatory alcohol screening programs. In fact, according to a World Health Organization traffic study, 121 out of 180 countries have some form of mandatary alcohol screening. Canada's laws are not only out of step with comparable democracies in developed countries, they're out of step with the rest of the world.

Research over the last 45 years in Sweden, Finland, Denmark, Australia, the EU, Czech Republic, Switzerland, and numerous other countries, have shown that mandatory alcohol screening generates substantial and lasting reductions in impaired driving crashes, deaths, and injuries. For example, a 2004 study concluded that New Zealand's fully implemented mandatory alcohol screening program resulted in a 54% decrease in serious and fatal night-time crashes and saved society more than $1 billion in 1997. Ireland achieved similar reductions in crash deaths and injuries within a decade of enacting its mandatory alcohol screening program in 2006. Rather than overburdening the courts, as has been suggested by some people, the introduction of mandatory alcohol screening in Ireland was the major factor in impaired driving charges dropping from 18,500 in 2006 to 6,000 in 2015.

● (1600)

While the dramatic traffic safety benefits of MAS, mandatory alcohol screening, were first established by studies in the 1970s, 1980s, and 1990s, this body of research is wholly consistent with recent research from New Zealand in 2004, the Netherlands in 2005, Switzerland in 2006, even the United States in 2006, Denmark in 2007, Estonia in 2007, Czech Republic in 2010, the European Union in 2010 and 2003, Hong Kong in 2013, Ireland in 2015, and Australia in each of the last four years. These studies are directly relevant and can hardly be considered dated. Moreover, many of the studies I've referred to took into account potentially confounding factors.

The assertion that there is no direct evidence that mandatory alcohol screening is better than selective breath testing, the system we currently have, is simply false. The sharp decreases in fatal crashes that occurred in Queensland, Western Australia, New Zealand, and Ireland occurred after those jurisdictions moved from selective breath testing to mandatory alcohol screening, exactly what would occur in Canada if the mandatory alcohol screening provisions in Bill C-46 were enacted.

Critics have claimed that mandatory alcohol screening would lead to targeting of certain groups. In fact, the opposite is true. Canadian police currently have the power to stop vehicles—both under common law and under provincial statute in most provinces—to question the drivers about their driving, their sobriety, their licence, and their insurance. Somewhere between four million and six million Canadians are stopped each and every year at sobriety checkpoints and during routine police patrol activities. Currently, the processing of these drivers is based on the officer's subjective assessment, using his or her own unaided senses. Mandatory alcohol screening would change only one aspect of the existing law, namely, the basis for demanding a roadside breath test. In contrast to the current system, under mandatory alcohol screening, all drivers passing the checkpoint are stopped, and all drivers are tested using an objective screening test rather than the officer's subjective judgment. Mandatory alcohol screening limits subjectivity in assessing drivers.

MAS, mandatory alcohol screening, will be challenged under the Canadian Charter of Rights and Freedoms, but we have to put mandatory alcohol screening in the context of other accepted screening procedures that occur on a daily basis. Millions of Canadians are routinely subject to mandatory screening at Canadian airports—131 million, apparently, the last data indicates—at our borders, in courts, and in many other government buildings. The Canadian courts have never held that these mandatory screening procedures violate the charter. To put it bluntly, far more Canadians are killed on our roads in alcohol-related crashes than in attacks at our airports, borders, and courts. Mandatory alcohol screening is less intrusive, inconvenient, and stigmatizing than are many of these other screening procedures. It operates in exactly the same way and serves the same protective purpose. Given that the courts have upheld the constitutionality of airport, border, and courthouse screening, there is no principled basis for reaching the opposite conclusion in terms of RBT. I am pleased to leave further discussion of the charter to my colleague Dr. Peter Hogg, Canada's pre-eminent constitutional law scholar, who will be appearing in the next session.

Decades of experience in dozens of countries indicates that implementing a comprehensive mandatory alcohol screening program would save hundreds of lives, prevent tens of thousands of injuries, and reduce the social costs of impaired driving by billions of dollars a year. Rather than overburdening the courts, mandatory alcohol screening has been shown to reduce impaired driving charges and prosecutions. Frankly, it's about time that Canada's impaired driving law focused on protecting the public rather than immunizing impaired drivers from criminal responsibilities for the needless deaths and injuries that they cause on our roads.

● (1605)

The major problem has never been a lack of research, but rather a lack of political will. Parliament should follow the evidence, enact the MAS provisions in Bill C-46, and finally bring Canada's federal impaired driving law into line with the laws in the rest of the world.

I would be happy to provide the committee and my colleagues with a copy of our published and unpublished studies that document the position that we've taken here today.

Thank you.

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

We will now move on to the Canadian Bar Association. Ladies, the floor is yours.

Ms. Gaylene Schellenberg (Lawyer, Legislation and Law Reform, Canadian Bar Association): Thank you for inviting the Canadian Bar Association to discuss Bill C-46 with you today. The CBA is a national association of over 36,000 lawyers, law students, notaries, and academics. An important aspect of our mandate is seeking improvements in the law and the administration of justice, and that aspect brings us to appear before you today.

The CBA's criminal justice section consists of experienced lawyers who practise in Canada's criminal courts on a daily basis from both the prosecution and defence side. With me is Kathryn Pentz, the current chief crown attorney of Cape Breton and secretary of our national section. She will address some main points from our submission in response to your questions.

Thank you.

● (1610)

Ms. Kathryn Pentz (Treasurer, Criminal Justice Section, Canadian Bar Association): Thank you.

The criminal justice section of the Canadian Bar Association is pleased to comment on Bill C-46, which proposes to amend Canada's impaired driving legislation. The section recognizes the importance of road safety and the need to ensure that Canadian law offers effective enforcement mechanisms to address impaired driving. As front-line practitioners, crowns and defence lawyers, the CBA feels that we are very familiar with the operation of the law in this area and the demands impaired driving cases place on the system.

The reality is that litigation of impaired driving consumes significant court resources, and any change should be approached cautiously and only when shown to be necessary. Part 1 of the bill deals with impairment by drugs. Drug-impaired driving is a major concern and with the expected legalization of marijuana, the number of drivers on the road under the influence of marijuana is likely to increase. We appreciate the need to address this reality.

Part 1 of Bill C-46 would amend section 253 of the Criminal Code to provide acceptable levels for drugs, as we now have for alcohol. However, the reality is that it is much more difficult to determine an impairment level for drugs than for alcohol. Most experts will agree that everyone is impaired to some degree by alcohol at .08, but the analysis is not so simple in relation to drugs. In the fall of 2016, I had the opportunity to attend a government-sponsored conference in Quebec City on marijuana-impaired driving. The experts there from both the U.S. and Canada were unanimous that it was impossible to set a limit at which all drivers would be impaired by marijuana. Habitual users will have a higher tolerance and will not be impaired as easily as an occasional user. If the limit was set at five nanograms, a habitual user could fail the test but not necessarily be impaired. In contrast, an occasional user might pass the test but still be quite impaired.

The CBA is an association of lawyers, and unfortunately we cannot offer scientifically valid solutions. What we want to do today, however, is identify this as a problem and say that in order to comply with Canada's Constitution, any proposed limits must link the concentration level to impairment based on proven scientific evidence.

Part 2 of Bill C-46 would replace the existing criminal legislation on impaired driving with an entirely new regime. From the perspective of front-line practitioners, both the crown and defence, this is extremely problematic. In fact, our first recommendation is that part 1 of the bill proceed and part 2 be deleted.

Impaired driving is one of the most extensively litigated areas of criminal law, and every aspect of the existing law has been subject to intensive constitutional scrutiny. The law is now settled. When cases are litigated, the arguments are mainly about the facts of a particular case and how they relate to the established law. We are not arguing on how the law of those sections should be interpreted. If part 2 of Bill C-46 were proclaimed, we would basically be back at square one, arguing interpretation and constitutionality of the new provisions.

The criminal justice system is still struggling to deal with the time limits recently imposed by the Jordan decision of the Supreme Court of Canada. The government has recognized that court efficiencies are at a critical point. The Senate has recently released its report with recommendations to achieve greater efficiencies. We all acknowledge that court delays are a major concern. The CBA's criminal justice section believes that this is not the time to impose legislation that will add significant demands on the system. A complete revision of impaired driving laws, in our opinion, is unnecessary. Apart from the need to address drug impairment with the new technological advances on the market, the existing laws are not deficient. Any deficiencies that we see arising would result more often from a lack of training and resources than from problems with the existing legislation.

I will offer a few examples of our specific concerns in relation to part 2 of Bill C-46.

● (1615)

Proposed subsection 320.14(5) provides a defence to “over 80” if the driver consumed alcohol after driving, had no expectation that they would be required to provide a sample, and the levels were consistent with a level under 80 milligrams at the time of driving.

The aspect of having no expectation that they would be required to provide a sample is something new in legislation. The language “no reasonable expectation”, who will have to prove or disprove that expectation? What is a “reasonable expectation”? Presently, if an individual attempts to skew Breathalyzer results by consuming large amounts of alcohol after driving, we have the option of charging that individual with obstruction of justice. The only addition of this “no reasonable grounds to believe that one would be asked to provide a sample” is to introduce new terminology that would spawn further litigation.

We also feel very strongly about the mandatory roadside testing under proposed subsection 320.27(2). That testing is provided when the officer has a screening device. First and foremost, we have to recognize that it would involve a tremendous input of resources to get these screening devices out there, but the essence of the CBA's objection is that it is random testing. We view this as a violation of section 8 of the charter and believe it would not withstand constitutional challenge.

Advocates of random testing frequently look to Australia and its experience, where there was a significant reduction of fatal and serious crashes following the introduction of random testing, but we have to recognize that Australia does not have a charter of rights. More importantly, when they went to random testing, they went from no testing to random testing. In Canada, when we went from no testing to suspicion-based testing, we also had a reduction. We can't look at the Australian model and assume that we are going to have the same reductions.

The other reality, Ireland, has had some success, but again, Ireland deals with drinking and driving largely under an administrative scheme as opposed to a criminal justice scheme.

When we are looking at mandatory roadside testing, it's important that we recognize those factors and not simply jump aboard other studies and assume that we are going to have the same results with our existing legislation and without going to the administrative regime that has been seen in other countries.

The CBA is also concerned about proposed paragraph 320.28(2)(b), which seems to allow any police officer to completely bypass the drug enforcement officer and make a demand for a bodily substance. Under the existing legislation, if an officer believes a person is impaired, they may demand that the person comply with testing by a properly qualified police officer, a DRE officer.

Under the new legislation, the police officer can do that, or they can bypass the DRE officer directly and make their own demand for a bodily substance. This is, in essence, totally bypassing the need for the trained officer. We have a situation where the DRE officer, who is trained, has to go through tests before he can make a request for bodily samples, yet the untrained officer can just make a request for bodily substances without doing any testing. We view that, again, as a violation, and we believe very strongly that untrained officers should not be permitted to make a demand for a bodily substance. That is far more intrusive than making a demand for breath.

Proposed section 320.29 amends the section dealing with warrants after an accident resulting in death or bodily injury. However, unlike in the existing warrant section, the officer does not need to have any grounds to believe an offence was committed, only that there was an accident, coupled with a suspicion that the person has drugs in their system—not “had” drugs in their system at the time of the accident, but “has” drugs in their system at the time of the request of the warrant. There is no linkage at all to the drugs or the alcohol or the accident. This could basically allow the police to make a request for a warrant in any case where there's a death or bodily harm even where there's no allegation of an offence by the person targeted. Again, there are significant charter implications for such a broad authorization.

● (1620)

Bill C-46 still contains mandatory minimum sentences. We were pleased that the extent that was in Bill C-226 was removed, but mandatory minimum still exists in Bill C-46. The CBA has long opposed mandatory minimum sentences and we continue to do so. The minister has also recognized these as problematic and we support the judicial discretion to determine the appropriate penalty in this case, in individual cases.

Proposed section 320.23 provides that an offender is not subject to mandatory minimums if he or she completes a treatment program, but under Bill C-46, that can only happen with the crown's consent. We believe that it should be the court and not the crown who determines if a treatment program is required. We are also concerned that the lack of available treatment facilities in some jurisdictions could result in inconsistencies in the application of this section.

Thank you for your attention and I welcome any questions.

The Chair: Thank you very much for your presentation.

We will now move to the Canadian Civil Liberties Association.

Mr. De Luca, the floor is yours.

Mr. Roberto De Luca: Thank you very much for the opportunity to appear before you today. I'm Rob De Luca. I am a lawyer and a program director with the Canadian Civil Liberties Association.

I would like to begin by emphasizing that we support the goal of this bill. The government clearly has a strong role to play in combatting the persistent social problem of impaired driving. However, we submit that this bill, in its current form, is not the answer. In our written brief, which unfortunately wasn't here in time for the official translation, we specifically address four areas of concern: mandatory alcohol screening, the increase in mandatory minimum fines, the increase in maximum allowable penalties, and the new statutory presumptions in the drug-impaired context.

This afternoon I will focus my submissions on the provision authorizing mandatory alcohol screening, otherwise known as random breath testing. As we detail in our written materials, we have significant concerns about the likely impact and the constitutionality of this expansion of police stop-and-search powers. Currently, police officers in Canada are authorized to stop a vehicle to check vehicle fitness, licence, registration, and sobriety. A sobriety check must be limited to observing an individual's behaviour, speech, and breath. What is impermissible, and we believe unconstitutional, is a random roving stop for the purpose of a roadside breath demand.

The Supreme Court of Canada has held that a breath demand engages individual charter rights. Among other things, a breath demand constitutes a search and seizure that engages an individual's reasonable expectation of privacy. For this reason, police may currently demand a roadside breath sample only if they have reasonable grounds to suspect that a driver has alcohol in his or her body. This framework is frequently referred to as selective breath testing.

Random breath testing would mark a fundamental change in our law. Current expectations dictate that an individual is susceptible to a search and seizure only when officers reasonably suspect that the person has done something wrong. The random breath testing framework, by contrast, requires that one must now prove that they have done nothing wrong. This transforms the police-citizen interaction; the presumption of innocence is replaced with a presumption of guilt.

We recognize that there are written opinions suggesting that the implementation of random breath testing would be constitutional. I would like to raise two major reasons why we believe random breath testing is not a justifiable limit of charter rights. First, I will discuss the lack of evidence justifying this increased intrusion on charter rights. Second, I will discuss the impact that an additional arbitrary search power will have on individuals, and in particular those who come from minority communities.

It is true that the introduction of random breath testing has been revolutionary in many countries. Random breath testing does work to deter impaired driving, but the correct question is not whether random breath testing works. In Canada, what we need to ask is whether random breath testing will be more effective in deterring impaired drivers than is our current regime of selective breath testing, a practice that we have had in place for decades, which does less to limit the charter rights of individuals. This is a question that is extremely difficult to answer. Indeed, we think that a review of the research on this topic suggests that it is a question that it is not possible to answer on the basis of the current research and the existing international comparators, particularly New Zealand, Australia, and Ireland.

There are two main difficulties with any attempt to conclude that the success of random breath testing in other jurisdictions would carry over to the Canadian context. First, the vast majority of jurisdictions that have implemented random breath testing did not have any roadside testing program before they introduced the program. The successes of these programs do not speak to the comparison between random breath testing and selective breath testing. If random breath testing is adopted in Canada, it will be implemented in a country that has had decades of RIDE programs, in which drivers have become habituated to being stopped on the side of the road for the purposes of a sobriety check.

In Canada, selective breath testing, combined with other initiatives, has led to our own revolution in impaired driving. We've seen the percentage of driver fatalities involving alcohol drop from 62% to roughly half that mark today.

● (1625)

While there are some jurisdictions that implemented random breath testing after first implementing selective breath testing and experienced an additional decline with the introduction of random breath testing—again, the comparatives here are New Zealand, Ireland, and certain jurisdictions in Australia—the success of random breath testing in these countries cannot be divorced from the host of other measures to combat impaired driving that were introduced at the same time, such as drastically increased enforcement and publicity efforts. As such, it is simply not possible, on the basis of the existing research, to tease apart the impact of implementing random breath testing and all of the other considerable efforts that went on at the same time. For this reason, we view the projected impact of random breath testing implementation in Canada as more speculative than certain.

This brings me to our second broad area of concern. A speculative effect is simply not sufficient to justify authorizing police powers that we know will limit charter rights. We are especially concerned about the impact that an additional arbitrary police search power will have on individuals who come from minority communities. The current proposal would not limit the new search power to stationary checkpoints, where discretion is curtailed and therefore the risk of racial profiling or other improper exercises of police powers is reduced. Those who are already disproportionately stopped while driving will now not only be pulled over and questioned, but required to provide a breath sample as well. For those individuals who tend to be singled out disproportionately, a breath demand during a so-called routine stop will frequently be experienced as humiliating and degrading. It is a mistake to think that a breath demand will, in fact, always be a quick and routine affair. Many individuals will be required to exit the vehicle and stand on the side of the roadway, or sit in the police cruiser, while they provide a breath sample.

This factual background informs our constitutional analysis that random breath testing is unconstitutional as currently presented. As indicated earlier, we have spoken to additional concerns with Bill C-46 in our brief. I would urge the committee to examine our written submissions along with the detailed recommendations in our brief that are aimed at addressing our most serious concerns.

Thank you.

The Chair: Thank you very much to all of the witnesses.

We'll now move to questioning by members of the panel. We'll start with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Mr. Chair, I'll be splitting my time with my colleague, Mr. Cooper.

Mr. Solomon, thank you very much for this address and all the contributions, quite frankly, you've made over the years. Among other things, you said that you had a number of papers, published and unpublished, and I would appreciate it very much if you would forward those to us for our study on this, and I thank you for that.

Professor, you said that one of the advantages of the mandatory testing is how quickly the initial interaction would be. You said two minutes. I presume this does not include any sort of an assessment of the possibility of drugs in an individual. Is that correct?

● (1630)

Prof. Robert Solomon: There are studies on how long it takes, from the time they're stopped to the time a person is released from what is called an RBT, random breath testing, checkpoint. The average is two minutes. In fact, I drove through one of them with an academic colleague. The testing took 30 seconds and it took about a minute and a half.

Hon. Rob Nicholson: It's certainly going to become more complicated, in terms of what this bill does with respect to marijuana and the use of that.

Just to clarify what you said, was it New Zealand that went from 18,500 charges before the courts and reduced it to 6,000, or was that Ireland?

Prof. Robert Solomon: That is correct; 18,500 to 6,500, I think. They introduced RBT with what they would call mandatory alcohol testing in 2006. In 2011, there were additional changes to their law, going from .08 to .05. However, when you had only the RBT change, charges dropped from 16,000 to 9,000. I actually have the numbers, so I want to make sure I get—

Hon. Rob Nicholson: You don't have to get that—we'll get that—but I think the message you gave is very clear.

Prof. Robert Solomon: RBT was the major factor in the decrease.

Hon. Rob Nicholson: Thank you very much.

Ms. Pentz, you heard what Professor Solomon had to say. One of the concerns you have is the system getting clogged up with even more cases involving impairment. You heard from Professor Solomon that in the case of New Zealand, there in fact has been a reduction in the courts that would be pretty significant. Are you buying into that at all?

Ms. Kathryn Pentz: Not particularly, because again, we have the Charter of Rights and Freedoms. That certainly—

Hon. Rob Nicholson: Yes, but quite apart from that, do you think it would unclog the system if in fact this were upheld, as Professor Solomon says it would be upheld, by the charter?

Ms. Kathryn Pentz: Professor Solomon speaks of people stopping and complying with the demand instantly. Knowing the clientele that I deal with, I seriously doubt that this will be the case. I can envision that the testing will take a longer period of time. We will then have more refusals, because people will not be willing to submit to that. Then we will have those refusals going through the system.

We'll also have issues with respect to the demands, that if following these demands there is a Breathalyzer demand, then those cases will again come through the system. We are very concerned that the entire bill, and that section in particular, will lead to increased litigation.

Hon. Rob Nicholson: Fair enough.

I don't want to use up all the time. I'll give it to my colleague.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you.

Thank you to the witnesses.

Certainly on the question of mandatory breath testing, I approach this with an open mind but a considerable degree of scepticism. We are talking about a very significant change in the law. We're talking about something that will have a significant impact in terms of a serious infringement on individual liberty. When we talk about reasonable suspicion, we're talking about what is, at the end of the day, a very low standard.

Mr. De Luca, you made the comment that the question that should be asked is whether mandatory breath-testing would be an improvement from the current selective breath-testing system. I agree that it's an important question to ask and that it needs to be answered. But I would submit that there's a further question that needs to be asked, even if that first question were answered in the affirmative that indeed mandatory breath-testing would have some positive effect. That's to be balanced against how many individuals who are innocent will have their rights interfered with in order to be able to identify what, at the end of the day, is a relatively small number of individuals who get behind the wheel impaired and cause deaths and injuries. I mean, that group, that demographic, tends to be made up of repeat offenders and hard-core drunk drivers. It seems to me that mandatory breath testing may not be the right approach in order to be able to get at those people.

I'd be interested in your comments.

● (1635)

Mr. Roberto De Luca: I would first like to emphasize that I agree; I don't think the question of whether or not mandatory alcohol screening or random breath testing is effective settles the question. I mean, it's our opinion that this would ultimately go to a section 1 analysis once the inevitable charter challenge arises if this provision is enforced, and what we know of the effectiveness will go to that inquiry.

But that does not settle the matter. We have a number of concerns that even if it's proven to be effective, it still would fail on the minimal impairments and the proportionality grounds of the section 1 test. For instance, one of the problems we have with the provision, as was mentioned earlier, is that it will very likely sweep up a number of innocent individuals who will be faced with a mandatory breath demand and will not realize that if the demand is instant, they don't have a right to counsel. A number of innocent individuals will very likely assert their rights and be caught up with a mandatory minimum fine of $2,000.

I mentioned in my earlier comments the concern around the increased intrusiveness of a breath demand. One, it's an increasingly intrusive behaviour. It is a bodily sample, and courts have found this to engage section 8. As well, this will have a disproportionate effect on certain individuals and communities.

So I don't think the effectiveness piece settles it, but I do think the lack of evidence is nevertheless problematic.

The Chair: Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you to our witnesses for being here and providing your presentations.

Mr. Solomon, if I could start with you, I would like to hear your thoughts on the difference between a checkpoint stop and any routine traffic stop in the use of mandatory alcohol screening. As I understand it, in Ireland the system uses the mandatory alcohol screening for just the checkpoint stops, and I see quite a difference between the two.

I would like to hear your thoughts on how you can then just extrapolate the Ireland experience if we're going to any routine traffic stop.

Prof. Robert Solomon: It's my understanding that they use mobile alcohol screening as well, so it's not just at stationary positions that they can demand a breath sample.

All of the leading researchers have concluded that the ability to conduct alcohol screening when drivers are stopped outside of sobriety checkpoints is critically important for several reasons, the first of which is that it reinforces the message that if you drink, don't drive. If you do not have the mobile ability to screen drivers who are stopped, the difficulty is that people will try to evade the system.

The other problem, which many people don't realize, is that the rural population represents 30% of the population but 69% of the incidents of impaired driving causing death. If we don't enact mobile screening, it will increase the overrepresentation of rural road users in impaired driving crashes, deaths, and injuries.

The way mobile screening works in generally almost all countries is that every time a driver is stopped, for whatever reason, they're asked for a breath sample. All stopped drivers are asked for a breath sample. There is no individualizing. If you're stopped, it isn't discretionary to provide a breath sample. The studies clearly indicate that adding mobile significantly increases the deterrent impact of the impaired driving law.

The other point I want to make is we have selective breath testing now, and we have 1,000 dead people and 60,000 injuries. If we continue doing exactly what we're doing, we're going to continue to have one of the world's worst records in terms of impaired driving death or injury. We have to do something. Virtually every reputable traffic safety organization recognizes that mandatory alcohol screening is the single most effective way of reducing impaired driving deaths or injuries.

The other point I want to make is that there are four jurisdictions that did exactly what we would do. Those are Western Australia, Queensland, Ireland, and New Zealand. Going from fairly moderate selective breath-testing stops to mandatory alcohol-screening stops, in each and every case there were significant decreases.

One of the two leading traffic safety experts in this area concluded that in every case, mandatory alcohol screening proved to be superior in its effectiveness to achieving accident reductions by approximately 50% over what was achieved through selective breath testing. The leading scholar in the field, Ross Homel, says, “Nothing in the Australian experience encourages the belief that, without [full use of mandatory testing], roadblocks or sobriety checkpoints are capable of delivering” substantial or sustained reductions “in alcohol-related crash deaths.”

If we do not enact mandatory alcohol screening, next year we'll have another 1,000 impaired driving deaths and another 60,000 injuries.

● (1640)

Mr. Colin Fraser: Thank you, Mr. Solomon. I appreciate your comments.

What I'm trying to understand, though, in addition to that, is that you say this will take away the subjectivity of the police officer by making it a mandatory alcohol screening system, but it will be used for any routine traffic stop the police officer will make. I want to understand this. If there could be a sense that some people are stopped for reasons that are not legitimate, will they not then be more likely to be subject to the mandatory alcohol screening?

I would like to hear your thoughts on that.

Prof. Robert Solomon: The legislation says you can't ask for a breath sample unless you are lawfully stopped, so if the stop is not lawful, then the demand will also be not lawful.

Again, this is best practice in terms of mandatory alcohol screening. Best practice in numerous dozens of countries around the world works most effectively if every driver passing the checkpoint is waved in and every driver stopped at a checkpoint is tested. Similarly, in terms of mobile mandatory alcohol screening, every time a driver is stopped, they are asked for a breath sample. If the stop is illegal, there is no right to make the demand, under the proposed legislation.

Mr. Colin Fraser: Do I have more time?

The Chair: You have 40 seconds.

Mr. Colin Fraser: To the Canadian Bar Association representatives, I want to turn to something that I hadn't heard mentioned yet, or at least I don't think it was, regarding the changes to the use of the interlock device and the fact that it's an option now that the court can allow the interlock device immediately upon sentencing.

Do you see any merit in that reducing the resolutions that may occur regarding a person entering a guilty plea because they are able to get on right away with being able to drive for work and that sort of purpose? I know the counter-argument can be made, of course, that obviously we want to make sure there aren't false guilty pleas, but I would like to hear your thoughts on whether you think that might remedy some of the court backlog that you're....

Ms. Kathryn Pentz: We haven't specifically addressed that in our submission, so the CBA does not have a position on it, but I can speak to that from my own personal perspective.

The difficulty with the interlock program is that while it is certainly a great program, it is also an expensive program, so a lot of people can't avail themselves of that. As well, as you mentioned, we would not want to in any way encourage people to enter a plea if they are not in fact guilty, if they do have a viable defence that should be brought before the court. We don't think that that really addresses the concerns we have.

The Chair: Thank you very much.

Mr. Rankin.

Mr. Murray Rankin: I want to thank everyone for coming.

In particular, I want to acknowledge Professor Solomon. Your decades of research in this area and the contribution you've made is enormous. Thank you.

In your material, at page 3 of your brief, you talk about the concerns the Civil Liberties Association and the Criminal Lawyers' Association have about police discrimination and the targeting of visible minorities. You say their concerns are exactly the opposite to what is true. Yet you speak, I think, about sobriety checkpoints and you say the enactment of MAS would reduce the ability of the police to target minorities or otherwise misuse their authority, and you went on to say, because best practices require that all passing vehicles are stopped, and so on.

I don't understand that. I understand, as my friend Mr. Fraser said, that there's a difference between sobriety checkpoints on the one hand, where everybody is stopped, and the ability that this now gives the police to target minorities if they wish on a random basis. It's random Breathalyzer testing, random alcohol testing. I'm having a great difficulty understanding how you can discard the concerns that the Civil Liberties Association and the defence lawyers have provided.

● (1645)

Prof. Robert Solomon: I would find it quite surprising if the police implemented mandatory alcohol screening in a manner inconsistent with what every other country does, or what the vast majority of other countries do. That is, every driver passing along, unless there is a lineup, is waved in, and that's not dissimilar to what happens now. Now in a sobriety checkpoint, when you're pulled in currently, it's up to the officers to use their own subjective judgment in terms of whether to assess your potential sobriety and to decide whether or not there are reasonable grounds to suspect you have alcohol or drugs in your body. That's the individual, subjective judgment of the officer. Under mandatory alcohol screening, the officer has no individual discretion. Best practice is you're pulled in, and if you're stopped, you're asked for a breath sample.

Mr. Murray Rankin: That's best practices. It may not be the whim that the minority in Ladouceur talked about. The minority in the Supreme Court of Canada were concerned about the possibility of random discretion exercised by police officers according to their whim. Why isn't that equally applicable here?

Prof. Robert Solomon: I guess we can always say, just as when I pass through security at the Ottawa airport or when I pass through security here, that an officer could somehow choose to be more aggressive or misuse their power. But that's not the way the system works. Mandatory alcohol screening limits the officers' subjective use of their judgment.

Mr. Murray Rankin: In the interests of time—I know I have a limited amount, and thank you for that answer—I want to turn to Ms. Pentz from the Canadian Bar Association, and at the same time to Mr. De Luca and ask a very simple question.

You both have made the statement that this legislation is suspect according to sections 8 and 9, and it won't be saved by section 1 of the charter, to which I say, all right, let the courts decide. Sure there's going to be uncertainty, as you point out, with interpretation and the constitutionality. What if the Minister of Justice did a reference case to the Supreme Court of Canada? Put it all out there and let them decide. Wouldn't that be the way to avoid the kinds of concerns that you've expressed? Let the courts say right away what the answer is.

Ms. Kathryn Pentz: Again, from the CBA perspective, we haven't really taken a position on that aspect of it. Again, going back to my comment, it's not only the constitutionality of it. We have to also look at the implementation and what we're going to get out of it.

I have a short paper here from 2014 from the Canadian Centre on Substance Abuse. If we want the same results as Australia, it says we'll have to do the same types of stops as Australia. It says, “In Australia, at least one-third of all licensed drivers are breath tested in a year.... In Ontario alone, testing one-third of licensed drivers would involve conducting in excess of three million breath tests a year, the equivalent of over 8,200 tests per day.”How are we going to implement that?

Mr. Murray Rankin: Your testimony was that all of part 2 should be deleted, all the impaired driving changes, because there would be lots of litigation.

Ms. Kathryn Pentz: Yes.

Mr. Murray Rankin: It's the most litigated provision. Of course, you're right. I still don't understand why the CBA wouldn't say to send it to the courts on a reference and we'll get to the bottom of it right now.

Ms. Kathryn Pentz: This isn't the only part that we feel is objectionable. There are other sections that we feel—

Mr. Murray Rankin: Mr. De Luca.

Mr. Roberto De Luca: We don't have an organizational position on whether a constitutional reference would be appropriate in this instance. I think letting the courts decide, in the sense of implementing the legislation and seeing after-the-fact challenges arise, is obviously problematic, because we think these provisions will sweep up a number of innocent individuals.

I want to clarify that the problem with discretion is the random roving stops and the initial decision to stop a vehicle. It is that act of discretion that we already know disproportionately affects people from certain communities, including racial communities. Even if you then say that the breath demand is mandatory for anyone who's stopped, we know that it's going to disproportionately affect certain communities.

● (1650)

Mr. Murray Rankin: The Minister of Justice is quoted as saying, “It would not give police any more powers than they already have under common or provincial law to stop drivers at random to determine their sobriety.” Her argument is that nothing changes. Your argument is that this is only going to give individual police officers enormous discretion to target racialized minorities, young people and the like on a whim. Your argument would be that we ought to make sure that this doesn't happen, obviously. Why don't we simply not wait until abuses occur but demand that the Minister of Justice send this to the courts for them to decide whether you're right or the government is right?

Mr. Roberto De Luca: Just to clarify one final point, I think the concern that there might be incentives to stop additional people is a secondary concern. The primary concern is that people from certain communities are already being stopped at a higher rate. What we are doing is increasing the invasiveness of the search. The effect of the new power, because it's going to have greater invasiveness, will fall disproportionately on certain communities. That's in addition to that. In terms of an organizational position, again, we don't have a position on that.

Mr. Murray Rankin: Thank you.

The Chair: Thank you very much.

Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Professor Solomon, I'd like to understand a little bit better this MAS you're talking about. As I understand what you're saying, every car that comes along is stopped. In every car that comes along, the driver is tested.

Prof. Robert Solomon: At a mandatory alcohol screening checkpoint, like at current selective breath-testing checkpoints, the practice is that as cars come along, they're waved in. That doesn't change at all. The difference is that instead of the officer coming up to the car and asking you for your vehicle ownership, your licence, and your insurance to try to detect the telltale odour of alcohol, they simply present you with the machine and say, “Blow.” So in many ways, it may well be faster than our current selective breath-testing procedure.

Mr. Ron McKinnon: But every car that comes by is stopped.

Prof. Robert Solomon: If there is no lineup, that is correct.

Mr. Ron McKinnon: If there's a lineup, then some people go by.

Prof. Robert Solomon: They're not waved in.

Mr. Ron McKinnon: I see.

Prof. Robert Solomon: It is just like what currently happens at a sobriety checkpoint. Exactly the same process of stopping occurs.

Mr. Ron McKinnon: You believe that this will reduce the opportunity for racial profiling and so forth, because everybody who is stopped is tested.

Prof. Robert Solomon: That's correct. Right now it's up to the subjective judgment of the officer.

Mr. Ron McKinnon: Would you then exclude selective breath testing?

Prof. Robert Solomon: If you had mandatory alcohol screening, you wouldn't need selective breath testing.

Mr. Ron McKinnon: If a police officer stops a car because it's speeding or whatever and he speaks to the driver and says, “You know, I think this guy is loaded. I think he needs a breath test” would you exclude that?

Prof. Robert Solomon: I wouldn't exclude it, but the studies in western Europe, the EU, and I think also Switzerland indicate that when you test every driver stopped, it significantly reduces impaired driving, deaths, and injuries further because of its deterring impact.

Mr. Ron McKinnon: In the context of expanding the tools for drug impairment, would you see doing the same thing for drug impairment as well?

Prof. Robert Solomon: Currently the proposal is to have oral fluid testing based on the officer having reasonable grounds to suspect the presence of drugs.

Mr. Ron McKinnon: Wouldn't the same argument hold for this mandatory alcohol as would for drugs?

Prof. Robert Solomon: I think the difference is that the oral fluid testing there is in an earlier stage of development. It is felt, I understand, that we're not yet ready to make that mandatory. Some jurisdictions in Australia already have mandatory oral fluid testing.

● (1655)

Mr. Ron McKinnon: I'd like to switch to Ms. Pentz and Mr. De Luca.

Do you think that mandatory alcohol testing as described, such that everybody who is stopped gets tested, would ease your concerns about random testing?

That's for Mr. De Luca, perhaps.

Mr. Roberto De Luca: We definitely think that if the provision were restricted to fixed checkpoints and there were procedures in place that ensured randomization so that, for instance, either everybody is stopped, or, if there's a capacity issue, every fifth or sixth driver is stopped, that would significantly curtail the problem of discretion and profiling. If the provision were changed to ensure that would be the practice—I mean it's been called the best practice—and it was codified, we would have significantly less concern with the provisions. We still think there would be issues—in part having to ensure that there's randomization and oversight and accountability—but I think it would certainly be a preferable provision.

Mr. Ron McKinnon: Would you see charter issues with that?

Mr. Roberto De Luca: I still think there would be charter issues. It would still be assessed through a section 1 analysis. I think the argument defending it might be a little bit stronger because the discretionary component is so curtailed.

Mr. Ron McKinnon: Thank you.

Ms. Pentz.

Ms. Kathryn Pentz: I think in practice that will not be the case. In practice when there is a line of vehicles stopped, the police will, because of the time involved, certainly wave certain people through, and certain profiling will take place. You and I would probably be waved through, and other individuals would probably be stopped based on other characteristics.

Mr. Ron McKinnon: So you don't believe that in practice it's truly going to be mandatory but rather that it will in practice be selective?

Ms. Kathryn Pentz: With the resources needed for it to be mandatory, I don't see that it will be possible.

Mr. Ron McKinnon: If they said that if they had more than five people in the lineup, everybody else would go, and then as soon as one car went, the next car to come along would be stopped and there would always be five cars in line, it seems to me they'd be able to manage their workload in that way and still maintain the mandatory nature of the testing. Would you see that as plausible?

Ms. Kathryn Pentz: Yes, but again, it's the enforcement. How are you going to enforce that that's how it's employed?

The Chair: You can have only one more short question, Mr. McKinnon.

Mr. Ron McKinnon: You expressed some concerns about per se testing for drug impairment. Would you like to speak to that? Do you think it's more appropriate to kind of back away and go to a drug recognition expert kind of evaluation, a subjective evaluation by someone who is highly trained rather than to do per se testing for drugs?

Ms. Kathryn Pentz: The difficulty with per se testing is that drugs affect everybody differently, so it's not going to be possible, at least from my understanding having talked to the experts, to say that everyone will be impaired at a particular level. The only answer to that, unless there is some science that evolves to deal with that, is to perhaps have a sample or substance and some sort of other testing in conjunction with that. The only other option is to remain with the drug recognition experts.

Mr. Ron McKinnon: Thank you.

The Chair: I'd like to thank the members of the panel for sharing their very useful expertise with us. We really appreciate it. Given that we're running quite late, I'd ask the next panel to come on up. Again, our greatest appreciation to you guys for coming in.

We're going to recess for a second until the next panel can come up.

● (1655)

(Pause)

● (1700)

The Chair: Ladies and gentlemen, we're going to reconvene with the next panel. Again, apologies to the witnesses for keeping you waiting.

This panel is incredibly distinguished. We have appearing as an individual, Professor Peter Hogg, who is a scholar in residence from Blake, Cassels & Graydon LLP, and certainly if not pre-eminent, one of our most eminent constitutional scholars. We have Ms. Markita Kaulius, the president of Families For Justice, who has appeared before us before. We are joined by Mr. Jeff Walker, the key strategy officer for the Canadian Automobile Association. Welcome to all of you. Thank you so much for coming.

We're going to start with Professor Hogg.

Mr. Peter Hogg (Scholar in Residence, Blake, Cassels & Graydon LLP, As an Individual): Thank you, Mr. Chair.

I have given the committee a four-page document, so I will briefly summarize that. The document is available to the committee with a somewhat fuller analysis than I can make in my 10 minutes.

I have read Mr. Solomon's written submission and, of course, I listened to him because I've been in the committee room from the beginning. I accept completely what he says about the benign impact of random breath testing. I'm not going to talk about that at all. I'm simply going to talk about the constitutional questions which have been raised by some of the witnesses.

First of all, section 8 is the provision that prohibits unreasonable search and seizure. The CCLA and the CBA thought that random breath testing would violate section 8. I don't think that's correct. All that section 8 says is that everyone has the right to be secure against unreasonable search and seizure. It seems to me that concerns about road safety are such that steps like random breath testing will be accepted as reasonable because they're directed, of course, at adding some more regulation, admittedly, but to what is already a highly regulated activity, and it's a highly regulated activity because it's a very dangerous activity.

I agree with Professor Solomon that random breath testing is going to typically—some of the questioners pointed out that this won't always be the case—take place at a stationary roadblock in which the police officers will have no discretion, and they will simply test everybody. Therefore, I think the section 8 concerns are not a problem.

There's also the section 9 concerns. Section 9 is the provision that prohibits an arbitrary detention. The Supreme Court has already addressed random stopping of vehicles, not for random breath testing of course, but to check licensing, ownership, insurance, as well as sobriety. The court has said that those are arbitrary stops because they are random, but they are justified under section 1. Random breath testing, RBT, is going to fall out in exactly the same way; it will be accepted as justified under section 1 because of its contributions to road safety.

The right to counsel was mentioned by the CBA representatives. What section 10(b) of the charter says is that everyone has a right on arrest or detention to retain and instruct counsel without delay. Obviously, it's completely impossible to allow people to retain and instruct counsel in random breath testing, so that will not be able to be complied with. It shouldn't be complied with, because for people who want to instruct counsel it will probably take several hours to contact their counsel, by which time the random breath testing will be useless.

● (1705)

There is a case called Orbanski which I talk about in the little submission I have made to the committee. It was decided by the Supreme Court in 2005. There were two drivers. One had been stopped at a random stop, and the other had been stopped because he was driving erratically, but they both challenged the stoppage because they had not been advised of their right to counsel when they were stopped. Justice Louise Charron of the Supreme Court of Canada said, for the majority, that since the major purpose of a police power to stop drivers was to check sobriety, and since time was of the essence in checking sobriety, the provincial law, which said nothing about right to counsel—in this case, it was a provincial law—should be interpreted as not permitting drivers to retain counsel before giving a breath test. She said that's how the legislation should be interpreted.

I think Orbanski would save RBT from the ruinous effect of the right to counsel. I say “ruinous effect”, and it would be a ruinous effect. It is going to be an infringement of the right to counsel, but it's one that will be easily justified under section 1.

My paper goes on to talk a bit about section 1, but I don't think there's any need for me to detain the committee on that, because it's there in my paper. Those are the main provisions that are being invoked in favour of a constitutional challenge to the proposal.

● (1710)

The Chair: Thank you very much, Mr. Hogg. We very much appreciate it, especially the succinct time you put in. It was only seven minutes.

Ms. Kaulius, you're up.

Ms. Markita Kaulius (President, Families For Justice): Thank you.

Dear MP Housefather and honourable members of the Standing Committee on Justice and Human Rights, thank you for allowing me to be here today to speak with all of you.

My name is Markita Kaulius. I am the founder and president of Families For Justice. I am here today representing thousands of Canadian families that have had our children and loved ones killed by impaired drivers in Canada.

On May 3, 2011, my 22-year-old daughter Kassandra went to the university to write a final exam towards her teaching degree. Later that day, she went out to coach a girls' softball team, and pitched a softball game herself that night. Kassandra left the park and was driving home when she was stopped at a red light. The red light turned green, and she proceeded into the intersection to make a left-hand turn. An impaired driver came speeding down the curb lane and accelerated through the intersection on a red light that had been red for 12 seconds. The driver got airborne over railroad tracks and slammed into my daughter's driver-side door, striking her at 103 kilometres an hour. Kassandra's car was sent up and over a median about 1,200 feet down the road, and debris was sent across four lanes of traffic. The driver got out of her car and went up to look at my daughter dying, then fled the scene of the collision. Kassandra never came home. She was killed in a catastrophic accident. I'm sorry, it was not an accident; it was a collision. She died from multiple injuries she received from being crushed to death at 103 kilometres an hour.

During that same year, 1,074 other innocent Canadians were killed, and over 62,000 people were injured in Canada by impaired drivers. Even with all the education and awareness campaigns we have had over the past 35 years, impaired driving is still the number one criminal cause of death in Canada.

Each year statistics show impaired driving causes the deaths of thousands of innocent people across this country. Statistics show on average between 1,200 to 1,500 people per year are killed by an impaired driver—that equates to about four to six people a day—and 190 a day are injured by impaired drivers in Canada.

Numerous lives are tragically cut short by impaired drivers who make the decision to be reckless in their actions. They make the wilful choice to put others at risk on our roadways and highways by driving while being impaired by either drugs or alcohol. Somewhere today in other communities, there is the next victim of impaired driving.

A speeding vehicle in the hands of an impaired driver becomes a 2,000 pound weapon. It is as much a lethal weapon in causing death as a loaded gun or a knife. The only difference is that the weapon of choice is different and the victims are at random on our roadways and highways, and it causes more severe injuries. It happens in every city and town across Canada. The deaths are all vehicular homicides, and the devastation to families is life changing.

Families For Justice has been lobbying the federal government in the form of several bills over the past six years. We supported Bill C-247 and Bill C-226, which were both voted down by the federal government, and over the past six years while we've been waiting for the past and present governments to make changes to laws in Canada, over 6,000 more innocent lives have been lost to impaired drivers in Canada.

In 2011, fatalities involving a drinking driver accounted for 33.6% of total deaths on Canada's roadways. The statistics reflect the growing rate of drug presence in drivers involved in fatal crashes as well. In fact, drugs are now more present than alcohol in drivers involved in fatal crashes.

An estimated 30% of impaired driving offences are by repeat offenders. These offenders are more likely to drink and drive frequently, often at higher breath alcohol concentration levels, and they have a history of prior convictions. Some have alcohol dependency issues.

● (1715)

Those with chronic dependency issues are often employed and driving through our neighbourhoods, through school and bus zones, in the morning rush hours with high blood alcohol levels from the previous night's drinking or drugging. They are also relatively resistant to changing their behaviour, as evidenced by their continued offending behaviour, even after they have faced penalties. Even though these offenders represent a relatively small proportion of the driving population, they account for nearly two-thirds, or 65%, of all alcohol-related driving fatalities and they were responsible for making 84% of all drinking and driving trips. In other words, they drink and drive more frequently than any other type of impaired driver.

We owe it to the lives lost and to the families to rededicate ourselves to the task of finding the most effective measures to finally put an end to impaired driving on our roads. Canadians are counting on the Government of Canada to not give in to the temptation to simply talk tough in the wake of these tragedies. We are counting on you to stop the next crash, the next injury, and the next death, and focus on effective deterrents. It is time now that we measured the progress of making real changes to Canada's impaired driving laws, not in the years that you have just had a discussion about it. This legislation will save lives and hold people accountable for their actions in committing crimes.

The impaired driving act was designed to address inconsistencies in the Criminal Code, harmonize and increase penalties for repeat offenders, simplify the burden of proof for establishing blood alcohol concentration, and speed up impaired driving related court cases. The legislation should contain important measures that are essential to combatting impaired driving, but there are still items that need to be addressed in this bill.

While we support many of the proposed changes in Bill C-46, we strongly feel there are two urgent changes that need to be considered and have not been addressed. Drivers of all ages still risk the chance and drive after consuming alcohol or taking drugs, and only very strict deterrents would impact the crucial thoughts of a driver before they drink or do drugs. Tougher laws must be implemented to enforce deterrence.

Families for Justice submitted over 117,000 names of Canadians on petitions asking the federal government to change the Criminal Code of Canada and the offence of impaired driving causing death. We ask that this offence be redefined as vehicular homicide as a result of impairment. We also do not see any mandatory minimum sentencing for anyone convicted of impaired driving causing a death, which was also requested on our petition from the Canadian public. We feel both these changes in the laws are very strong deterrents to add to Bill C-46. The driver has broken two driving laws: one, by driving impaired, and two, by causing the fatality of an innocent person.

We have the support of the B.C. chiefs of police, the Edmonton police, the RCMP, the Alberta Federation of Police, the Canadian Association of Chiefs of Police and there isn't a first responder, a paramedic, a police officer, a fireman, or a citizen who doesn't hope that one day the number of tragic impaired driving collisions will stop.

Changing the Criminal Code of Canada would finally call this crime what it rightfully is, vehicular homicide as a result of impairment. Minimum mandatory sentencing would finally hold people accountable for their actions in committing crimes against society, and in causing the deaths of innocent people. With additional changes we propose in Bill C-46, it would become one of the most important pieces of legislation for public safety that would become law and affect Canadians now and for future generations.

For 16 years, the law has set 10 years' imprisonment for causing bodily harm and life imprisonment as the maximum punishment for impaired driving causing death. In Bill C-46, the maximum penalty for dangerous driving causing bodily harm would increase from 10 years to 14 years. For impaired driving causing death, the sentence has not changed. It says in the Criminal Code of Canada that a person is liable on conviction of the indictment to imprisonment for life for causing a death, but sadly, no judges ever give this sentence for causing death in impaired driving cases.

● (1720)

The average sentence for impaired driving causing death is two to four years. The actual amount of time served in a two-year to four-year sentence is six months to 12 months. That's it. You can raise the sentence on a piece of paper in the Criminal Code but the reality is the lengths of sentences are never given out by judges in Canada in impaired driving cases where death or multiple deaths have occurred. No one in Canada has ever received a life sentence in prison for causing the death of multiple family members.

The courts need to acknowledge that the deaths that arise from impaired driving are homicides. They are vehicular homicides. People are being killed by the reckless action of others who make the choice to put others at risk by driving while being impaired. There is no excuse in this day and age for anyone to drive impaired as every one of those deaths was 100% preventable.

Over the years, judges continue to give out low sentences and fines in impaired driving cases. Therefore, those cases become precedents for future sentences. A prosecutor recently told a friend of mine who is a police officer that only about 3% of cases actually ever make it to trial. After plea deals are done and charges are dropped, he said only about 3% actually make it to trial.

We have seen such sentences as a $100 fine, a $1,500 fine, seven weekends in jail, and these sentences were given out to a driver for his third offence for impaired driving. This time he killed two women. Basically he got a $750 fine per death and served three weeks in jail for killing. One of these women left six children orphaned. The pain and the suffering of that family will last a lifetime.

Another couple, Brad and Krista Howe, were killed in Red Deer, Alberta. They left five children orphaned as well. The impaired driver who killed them was given a two-year sentence and was released after serving only seven months in jail. He served three and a half months per death. We've seen sentences of $2,000 fines, 90 days to be served on weekends only, four months in jail. That driver is appealing his four-month conviction.

Entire families have been killed by impaired drivers: Catherine McKay killed Jordan Van de Vorst, his wife, his son Miguire, age two, and daughter Kamryn, age five, in Saskatoon, Saskatchewan. The driver was convicted in 2016. It was her third impaired driving charge. She was sentenced to 10 years, and spent one month in jail. She was then sent to a healing lodge. Even the elders at the healing lodge shared with the deceased family that they didn't feel that was appropriate, that this woman should have spent some time in jail. She will come up for parole in February 2018 after serving 18 months out of a 10-year sentence. She will have served four and a half months per death.

Mr. Marco Muzzo killed three children in Vaughan, Ontario, Daniel, age nine, Harrison, age five, and Milly, age two, as well as their grandfather, and seriously injured the grandmother and aunt. In one fell swoop, he decimated an entire generation of the Neville-Lake family, its legacy and its future. Mr. Muzzo will come up for a parole hearing 18 months into his nine-year sentence. He will have served four and a half months per death. Jennifer and Edward Lake received a lifetime sentence of being without all three of their children.

Over the past several years an average sentence handed down for impaired driving has been two to four years. The average sentence actually served in jail is about six to 10 months.

We continually hear from the public that our justice system is broken and failing. Presently, victims feel that a human life is of no value in our criminal justice system and the victims are hardly considered. After attending many court cases over the last six and a half years, it appears in a court of law that often the investigations themselves are on trial and not the accused. The public feel there is a revolving door at the courthouses across Canada and that the courts are not holding people accountable for breaking the law and are depriving Canadians of their fundamental right to safety.

● (1725)

Parents have told us the message coming from our courts to Canadians is loud and clear and it is unmistakable: criminals have more rights than their victims. Even when writing a victim impact statement, victims have strict guidelines on what they are allowed to say and are limited on the number of pages they can write, while the accused is allowed all of the character references they can submit to court. The accused is allowed to see the victim impact statement before the victim even is allowed to read their victim impact statement. People keep asking us why the sentencing laws are so lax in Canada. We wish we could answer that question. Maybe someone here today could answer that for us. Why are the sentences so low in Canada?

We need stronger deterrents and tougher sentencing laws in Canada. We believe that mandatory minimum sentencing is not for every crime. However, Canadians do believe that when an unnatural death has been caused to an innocent person, the accused should be held accountable for causing a death and receive an appropriate sentence based on the severity of the crime. The sentences that are being handed down by our criminal justice system are inappropriate and need to be changed, and just changing them on paper and not having them ever enforced will not make a difference.

Most people who currently break the laws do so because they know there are very little consequences that will happen to them in our criminal justice system. If a mandatory sentence of five years was handed down, the accused would only serve about 10 to 12 months, which is still a low sentence for killing someone but is better than the six months or the $1,500 or $100 fine that is being given out now. The victim's family receives a lifetime sentence of being without their child or loved one and the victims receive a death sentence. Those who are not killed but who are injured may live a lifetime with extensive injuries or disabilities to deal with.

The convicted person is serving the least amount of sentence after committing the crime of killing or injuring a person. In Canada, impaired drivers will continue, and magnify, with the upcoming changes to marijuana laws. This crime will only grow if there are no mandatory minimum sentences handed down for impaired driving causing death. Considering the upcoming lessened restrictions on marijuana, not to mention the current crisis of opiate overdoses, which also happen in vehicles, the public is fearful of more impaired driving fatalities. Changing the Criminal Code of Canada would cover future deaths caused by both alcohol and drug impairment.

The Chair: Ms. Kaulius, at this point you're almost at double your time. Could I ask you to wrap it up, please.

Ms. Markita Kaulius: I will. Sorry. I just want to get this one part in here.

With the legalization of marijuana, research has shown that impaired driving stats rose. In Washington state they rose from 8% in 2013 to 17% in 2014. In Colorado they tripled. From 2005 to 2014 they went from 3.4% to 12.1%.

I'll be very brief here, sorry. While we support the random breath testing and the lowering of breath alcohol concentration to .05, we hope that the federal government will make additional amendments to Bill C-46. We know that some people may not agree with changes to the laws, but these changes are being proposed in the interest of public safety to save all Canadians. The public have accepted changes in laws regarding no smoking in restaurants and public places, the mandatory wearing of seatbelts, and we go through tighter security at airports and border crossings because we know it will keep the public safe. We get it and we just do it.

Bill C-46 is an extremely important bill. As the justice and human rights committee, you have an opportunity to make one of the most important decisions in the future laws in Canada. Public safety should be a prime consideration as every citizen deserves the right to their life and safety in their community.

Thank you.

● (1730)

The Chair: Thank you very much.

Ms. Markita Kaulius: I'm sorry I went over. I apologize. I have a lot to say.

The Chair: You deserve the latitude. You've suffered enough. On behalf of all members of the committee, again, we extend our deepest condolences on the loss of your beautiful daughter.

Ms. Markita Kaulius: Thank you.

The Chair: Anyway, thank you for coming.

We'll move over to Mr. Walker.

Mr. Walker.

Mr. Jeff Walker (Chief Strategy Officer, National Office, Canadian Automobile Association): Thank you very much. Good afternoon. My name is Jeff Walker. I'm the chief strategy officer at CAA.

Let me begin by thanking the members of the standing committee for inviting the CAA to join you today to provide our views on Bill C-46. Our focus of discussion is going to be on the drug-impaired driving aspects of Bill C-46.

The CAA was founded in 1913 as a consumer advocacy organization. We have 6.2 million members in Canada today, and since our inception, we've been advocating for critical pieces of the traffic and road safety network that are currently in place today—everything from stop signs, which were put in place in the early 1900s, to seatbelts and airbags. You name it, and we've been involved all the way along, and we continue to be committed to this aspect of safety in Canada. We represent, roughly, one in four adult drivers in Canada, and we're recognized as one of the most trusted brands in the country.

Although drugs and driving has long been a public policy issue in road safety, only recently has this issue become a major concern to Canadians in light of the government's plan to legalize cannabis. In some of our polling across the country, seven in 10 Canadians have told us that they are concerned about their safety on the roads with the coming legalization of marijuana. Public education about the danger of driving under the influence of cannabis is, and will continue to be, a significant area of focus for us and many other stakeholders in the years to come.

The Canadian Centre on Substance Use and Addiction has reported that, in stark contrast to alcohol-impaired driving, the number of drug-impaired incidents has been rising since 2009. As alluded to by Markita, if you look at Washington and Colorado, it's the same pattern. There is no reason to assume this trend will reverse. What we need to do is minimize it.

CAA is pleased to see that with Bill C-46 the government is committed to creating new and stronger laws to deter Canadians from driving while under the influence of drugs.

The introduction of roadside oral fluid screeners and ensuring that drug evaluating officers providing testimony do not need to be qualified through an expert witness hearing are positive steps forward. These new tools will help police to better detect drug-impaired drivers and ensure that they will face the justice system.

The legislation also creates three new offences for having specified levels of drug in the blood and sets these levels for cannabis. Based on the available scientific evidence, we think that these levels are reasonable for now, but we believe that one of the major things that needs to be done is more investment in scientific research around this question. There are major gaps in the science right now.

As with drinking and driving, driving under the influence of cannabis affects not just those individuals who partake but potentially all road users. Alarmingly, while few Canadians would argue that they are better drivers after drinking alcohol, a significant number of Canadian young people actually believe that driving after smoking marijuana makes them safer and more focused drivers. This is real. I've been there. I've watched the focus groups. It's a problem. For this reason, CAA was pleased to see the McLellan task force report confirm that work must be done urgently to address these misconceptions. Several issues have to be tackled immediately: public education, better funding for law enforcement, more research on science and technology to detect impairment, and the impairing effects of cannabis.

Bill C-46 deals with the law on cannabis quite thoroughly, but it leaves unanswered some key questions such as funding for law enforcement, research, and public awareness. The legislation is a positive step, but it's only the first step. Last week, the federal government announced new funding amounting to $161 million to support Bill C-46. That funding is to be used for law enforcement, bolstering research, and raising public awareness. We're very happy that this announcement was made, but I want to flag something. Half of that money is going to be spread over five years, and if you break it out across the 13 jurisdictions in the country, you're talking about $11.5 million for each of them. That's not a ton of money. Maybe that helps with the science, but if we're talking about public education, there's still a way to go.

● (1735)

We know from our experience with alcohol and other driving campaigns that public education plays a significant role in reducing the amount of impaired driving. A major public education effort is going to be required to make Canadians, particularly young Canadians, understand that driving under the influence of cannabis is likely to impair their ability to control their vehicle.

As I alluded to earlier, our recent polling says that 20% of Canadians age 18 to 34 believe they are the same or better behind the wheel after consuming cannabis. This is not the only misconception about the impairing effects of cannabis. We and other non-profit groups in this country have been left to carry the burden of creating and executing public education campaigns on our own. We're going to continue to do our part, but we want help.

Additionally, the government will need to continue to support the law enforcement community to ensure it has the resources necessary to develop the tools, detection devices, and access to training that it will require into the future.

In conclusion, the CAA, without reservation, supports measures that make Canada's roads safer, and we believe that Bill C-46 is a good step in the right direction. However, to combat drug-impaired driving, three key elements—meaningful legislation, public awareness, and effective enforcement and measurement—all need to be taken care of. If we get all three right, we're going to be in a good place. We need to do it, and we need to do it right.

Provinces, law enforcement, and stakeholders will do their part and the tax revenues that people talk about as coming from this may eventually provide the kind of funding that we need, so it becomes a self-funding thing to be able to take care of these things, but in the near term we need a real down payment to be able to get this right from the beginning.

We cannot wait for legislation to begin this important work that we all have in front of us. It's important and needs to come soon. Again, to your point from earlier, we have a lot of people already consuming cannabis and driving today and there's nothing, so getting this done soon is really important.

Thank you very much.

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

Now we will move to questions, starting with Mr. Cooper.

Mr. Michael Cooper: I want to thank the witnesses.

Ms. Kaulius, certainly you have my condolences on your tragic loss. All members of the committee certainly feel for you and your pain. Unfortunately, there are far too many mothers and fathers, brothers and sisters, friends and neighbours who have loved ones who have needlessly died or been seriously injured at the hands of an impaired driver. It is why to some degree in this big bill, a complex bill, there are some good aspects, although there are some areas that I have some concern with. I will make one observation, which is that I do believe that when you compare Bill C-73 and Bill C-226 and this legislation, there really is a considerable watering down, in terms of penalties particularly, with respect to mandatory minimums.

While we talk about sentencing and sentencing principles, two very important sentencing principles involve denunciation and protection. Certainly, that is relevant when we're talking, as you say, about a very small number of individuals who are hard-core impaired drivers.

I was wondering if you might want to speak to that. Then I will have a question for Professor Hogg.

Ms. Markita Kaulius: Definitely, the penalties in this new bill are quite a bit lower. There are no mandatory minimums. I've been at this now for six and a half years, almost seven years, and I'm still trying to get something that everybody says should be a no-brainer. This is public safety that people are talking about and Canadians are asking for, and they're wondering why our government does not take this as seriously as it should. They keep asking why our penalties are so low in Canada.

Maybe somebody can address that for me, because impaired driving deaths are the number one criminal cause of death in Canada. It is tying up our courts, but the penalties are so low.

Most people realize.... I mean, it's common knowledge. I work in an RCMP detachment. I hear police officers saying that the criminals come in and they go. It's common knowledge. You can do the crime, because you're not going to serve any time. People are dying here, and these drivers are getting a $100 fine, seven weekends in jail. What does that tell the rest of the public? That tells them they can drink and they can drive, or they can do drugs and they can drive, and the penalties are next to nothing. That has to change, ladies and gentlemen. That has to change.

● (1740)

Mr. Michael Cooper: I have one question for Professor Hogg, and then I will give the balance of my time for Mr. Nicholson.

Professor Hogg, on the recommendation of Families for Justice with respect to implementing a mandatory minimum sentence of five years for anyone convicted of impaired driving causing death, I was wondering if you might be able to comment, offer your opinion on the likelihood that such a mandatory minimum would be upheld in light of recent Supreme Court pronouncements.

Mr. Peter Hogg: Yes, that is a difficult question, as it turns out, because a lot of mandatory minimum sentences have been struck down on the theory that if they have disproportion.... I do not agree with this reasoning, but what the court has said is that if they were disproportionate for some offenders, then they're cruel and unusual punishment, forgetting the notion that there are a lot of problems with judicial discretion as well. In my mind, there's a lot to be said for mandatory minimum sentences for offences which Parliament has described as extremely important.

Mr. Michael Cooper: Not to put words in your mouth, but if I were to summarize what you're saying, would it be fair to say that it would be arguable, at least?

Mr. Peter Hogg: Oh absolutely, yes.

Hon. Rob Nicholson: Thank you very much.

Also, thank you very much, Mr. Walker and Ms. Kaulius. You made a very good point about what's going to happen with respect to impaired driving in this country. With the legalization of marijuana and the combination of that in and of itself with alcohol, we're going to see more impaired driving in Canada. I don't think there can be any argument at all on that. Thank you very much for making that point.

Professor Hogg, you heard from Ms. Kaulius about the lack of serious sentences in many cases and the disparity in this area. Do you have any insight into that and what's happening with our court system?

Mr. Peter Hogg: No, I don't. I was a little surprised at some of the things Ms. Kaulius said about the very light sentences that are being imposed.

I do think, though, as I've said to Mr. Cooper, that there is a great deal to be said for some mandatory minimum sentences where Parliament is satisfied that the offence is a very, very serious one and should not be left purely to the discretion of judges. I'm quite sympathetic with that notion.

Hon. Rob Nicholson: I appreciate that. Thank you for your insight on this.

I think we're probably out of time, Ms. Kaulius, but thank you very much for all your efforts, and thank you, Mr. Walker, for your insight here.

Ms. Kaulius, I know that you have worked on this for years. You have done everything possible to bring this to our attention and to have us do something about this. I don't know if we'll get the chance to see it, but I know you brought a canvas here today....

Ms. Markita Kaulius: I did. I would like to show it, if I may.

Hon. Rob Nicholson: We would be glad to see it.

Ms. Markita Kaulius: I would like you to take a look at this canvas, please. These are pictures of the families that Families for Justice has been working with. I started with 12 pictures in the first year and added 15 in the second. I added 20 last year, and I added 20 this year. In the six years that we've been waiting, we could have made 60 of these banners. There are 100 faces here.

Please don't let any more people die because of impaired driving. Sheri and I have both lost our children. We're not here because we have anything to gain from this. We're just trying to protect all of you from losing your children and loved ones.

Thank you.

● (1745)

Hon. Rob Nicholson: Thank you.

The Chair: Thank you very much.

Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): I want to thank all of the presenters today, all the witnesses in this section and before this one, for bringing their testimony to us.

I'm a past volunteer firefighter in the small town of Morinville, which is north of St. Albert, which is to the north of Edmonton. I have responded to motor vehicle accidents. I know what it's like to see people who've been thrown from their vehicles. I can only imagine the pain and suffering that you, the people on the canvas, and the thousands of others who have lost people to impaired driving go through. I lost my sister to a reason that medical science still has no ideas on. She was 20. So to have this done by somebody who ought to have known better, I can only imagine.... I can imagine the suffering. Thank you for sticking up for Canadians and for keeping the rest of us safe.

Mr. Walker, I'm one of those one in four Canadians who is a CAA member. Thank you for keeping us safe on the roads and for boosting my car when the battery doesn't work.

Mr. Jeff Walker: We're here for you.

Mr. Randy Boissonnault: Professor Hogg, I'm a person who didn't get to enjoy the trials and the vicissitudes of law school. I'm a member of Parliament who is not from the legal profession. I think it's important for Canadians to understand from a layman's perspective why section 1 matters. Why do we accept in the Constitution limits on our freedoms when there is a particularly strong reason for that to be the case?

As it pertains to the mandatory breath testing, my question for you, which you ably answered in the document that we didn't see beforehand, is why you think that in this case section 1 would pass constitutionality. Could you share with us, so that it's on the record, why you think the random breath test or the mandatory breath test would pass section 1?

Mr. Peter Hogg: I'm very pleased to do that. I thought at the beginning that I had made an error of judgment in not talking about that, because it is in the paper and it is very important.

Section 1 is the provision that says that the charter guarantees the rights and freedoms set out subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. That is designed to cover the situation where a right may have unexpected consequences and where Parliament may quite legitimately decide to limit the right. The cases under section 1 require four steps to be taken.

First of all, a law under section 1 must have a sufficiently important objective to justify limiting a right. Second, it must have a rational connection to the objective. The third point is that there must be a proportionality between the deleterious and salutary effects of the law so that the price of the infringement of the right is not too high a price to pay.

A lot of laws have been accepted under those provisions, so that when one worries about something being an unlawful detention or the right to counsel being a serious problem, section 1 provides some comfort for a sort of common-sense solution to those kinds of concerns.

Mr. Randy Boissonnault: And it's in your estimation that, as written in Bill C-46, the mandatory testing would pass constitutionally under section 1 because we're trying to stop the 1,000 deaths a year that Ms. Kaulius was talking about, and we're trying to prevent the 60,000 injuries a year, and that's better done front-loaded than through the court system later, when the injuries and the deaths have already happened.

Mr. Peter Hogg: That's exactly right, yes.

Mr. Randy Boissonnault: Thank you.

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

We're going to Mr. Rankin.

Mr. Murray Rankin: I too would like to start by saying to Ms. Kaulius how much I appreciate her bringing Kassandra's situation to us, as well as that of all of the other people that we saw on the canvas, one of whom was RCMP Constable Sarah Beckett from my community, who died tragically in exactly this kind of situation. I thank you for putting the 1,000 deaths with their real human faces for the benefit of our committee.

I'd like to start by asking a question of Professor Hogg that I asked of the Canadian Bar Association. They suggested when they came that the entire part 2 should be deleted. They said they thought the impaired driving provisions would not pass constitutional muster. You, of course, have given us testimony to the opposite, but you would acknowledge that there is considerable debate about this, particularly in regard to section 9, section 8, and the like.

The question I'd like to ask you at the outset is the question I asked of the CBA and the Canadian Civil Liberties Association. Would it not make sense in your experience for us to ask the Minister of Justice to send this to the Supreme Court by way of a reference so that we have the benefit of the Supreme Court's decision right now before we start spending a lot of money and time in addressing constitutionality?

● (1750)

Mr. Peter Hogg: Mr. Rankin, I don't regard that as an easy question to answer. I can see the point. One of the problems with directing a reference before there has been any real experience with the law is that it comes to the court as a rather abstract question. It might be better—and I'm not dismissing the idea of a reference at all—to wait and see, gain some experience with the law, some experience that might lead to changes in the law. The concern is that you go to a court, which is not going to be very well informed about the problem to start with, and you don't have very much experience to bring to it.

Mr. Murray Rankin: That's very helpful. I appreciate your thoughts.

In your brief, you talk about random breath testing as being "usually administered by police at a stationary roadside checkpoint". I understand that's what the premise of your remarks or your opinion is.

Would you not concede that there is a possibility, which others have brought forward, that certain visible minorities could be disproportionately targeted? In your city of Toronto, for example, police street checks, known as carding, have resulted in a disproportionate impact on the black community. They are 8.3% of Toronto's population but account for 25% of the cards police wrote from 2008 to mid-2011.

To your point about not doing a reference now but waiting, if the evidence were that there was a disproportionate impact on racialized groups and minorities, would that not give you pause in defending this under section 1 of the charter? That is, if the evidence were to that effect, and it wasn't simply being used at stationary roadside checkpoints but rather, as the Ladouceur minority said, "on a whim" by police officials, would that not give you pause? Could that affect your judgment as to whether this would pass constitutional scrutiny?

Mr. Peter Hogg: It would give me pause if that were the case, Mr. Rankin, but I think the pause that I would make would be to look at the administration of the law, so that it does get cleansed of any kind of racial bias or anything like that. That was really the position of Professor Solomon when attempting to answer the same difficult question. It seems to me that this is going to be a very important contribution to road safety, and we have to get it right. I think a stoppage of all traffic does get it right.

Obviously, there is a risk that in some cases a police officer may pick a certain person for reasons that are inappropriate, and impose a random breath test. We can't eliminate that possibility.

● (1755)

Mr. Murray Rankin: I believe you gave a thorough legal opinion about seven years ago on this very issue. It was an excellent piece of work. At the time, it seemed to me—to build on the point I've been trying to make—that you were referring in that opinion only to random stops such as at a checkpoint. Of course, Bill C-46 is wider than that. It isn't narrowed to what I understand is the Irish experience but is more like the Australian experience, as I've heard it described. As you say, it may be that if everyone is stopped, there's no way that anyone could be accused of profiling in that context, because everyone gets stopped. There are many people who've expressed serious concern that this will be used in a random way to target certain minorities.

Considering your opinion written seven years ago, have you done a specific legal opinion assessing this bill, given that it's much broader than when you simply looked at checkpoints?

Mr. Peter Hogg: The written submission to the committee is addressed to this. Yes, I have looked at that again.

It seems to me that the thrust of your question is whether it should it be required to do it at some kind of roadblock, which would eliminate the discretion and which I think everyone agrees is going to be the common way to do it. I don't think I would readily agree with that, because it does seem to me that late at night in rural areas it may not be feasible to have a roadblock, so inevitably some discretion has to be given to police officers. I can't eliminate the possibility of bias on the part of police officers. I would hesitate to reduce the random breath testing to the road stoppage, which is obviously the ideal thing, because that would work beautifully in the city, but it won't work very well in the country or at night. I don't think there is an easy answer to your very legitimate concern.

The Chair: Thank you very much. That was very interesting.

Mr. Ehsassi.

Mr. Ali Ehsassi (Willowdale, Lib.): I would like to thank all three of the witnesses for appearing before us, in particular, the very compelling testimony that we heard from Ms. Kaulius and of course Professor Hogg, who is the pre-eminent scholar in constitutional law.

If I could first start off with Professor Hogg, you were kind and good enough to actually refer to some case law, providing us with evidence perhaps that this legislation would be perfectly fine under section 20, that it would be safe, and you referred to case law. You did not do the same for section 9. Is there any particular case law that we should have the opportunity to review?

Mr. Peter Hogg: Yes, there is case law under section 9 as well. It is referred to in my paper at footnote 3. There are two cases. One is a case called Hufsky. It was a random stop at a checkpoint and the court held that, yes, that's an arbitrary detention, but because the idea of the checkpoint was to check licensing, insurance, and sobriety, it was justified under section 1. The other case is Ladouceur, which was a random stop not at a checkpoint but on a routine patrol by a police officer. That was a more individualized choice, which I know is a matter of concern to Mr. Rankin. That one was upheld as well on the grounds that, yes, it was an arbitrary detention, but because the purpose was road safety, it was justified under section 1.

Mr. Ali Ehsassi: Then you explained to us how, even despite your concerns with sections 9 and 10, it would be saved under section 1, in particular under the Oakes test. In your opinion, given the reality that Canada has one of the worst impaired driving records in comparison to other countries and the fact that there is a fundamental right to safety, are you certain that section 1 would save any challenges that are brought against this law?

● (1800)

Mr. Peter Hogg: I am satisfied that it's likely to be the result. Of course, you can't predict the Supreme Court of Canada. They do sometimes disagree with me and then I have to admit that they are right and I am wrong.

Hon. Rob Nicholson: No, no, no.

Mr. Peter Hogg: One thing that I will say in favour of the Supreme Court of Canada—I have often criticized them—is they are concerned about road safety. In the cases that have come up on a variety of issues affecting road safety, you do see a concern in the court about road safety. The nine judges are human beings, and like the human beings in this room, they are concerned about road safety. I think they would be anxious to uphold any bona fide measure that was designed to enhance road safety. So I think we get some bias, if you like, from the court in the right direction.

Mr. Ali Ehsassi: Thank you for that.

Mr. Walker, I have a question for you. I noted that in the written testimony you have provided, in two paragraphs you were referring to a study that I understand was undertaken by the CAA independently, which suggested that young people are under the impression that perhaps driving under the influence will enhance their safety. This is quite disconcerting, so apart from the survey the CAA itself has done, are there any other sources that you can direct us to?

Mr. Jeff Walker: It is disconcerting.

To tell you the truth, we haven't seen a lot of other public opinion polling on this, not enough, frankly. We commissioned it ourselves because we see it as a public interest mandate. There would be a lot of value, for example, if maybe the Department of Justice or some others did some more polling to validate and verify that. But I can tell you very clearly that 20% of young people believe they are either as good or better under impairment. It's not all young people, and if I insinuated that, let's make it clear. What it also suggests, and we have a bunch.... If you're interested in looking at the poll, we could share it with you. It shows that a lot of young people strongly believe that alcohol impairment is far more significant as a potential risk than marijuana impairment. It's not even just that there are some who think marijuana is not that big a deal. There is a whole set of considerations about just a basic sense that it's not really that big a deal to smoke a little bit, have an edible, or whatever that might be.

I have not seen other polling, but I'm happy to share with you all the work we've done, and we haven't just done it one time. We've been tracking this issue for four years now because we have known that this is coming.

Ms. Markita Kaulius: Can I make one comment?

Mr. Ali Ehsassi: Of course. Absolutely.

Ms. Markita Kaulius: I've been going out to schools and talking to high school students about impaired driving. One of the questions I ask them during my presentation is how many students have either drunk alcohol or smoked marijuana and gotten into a vehicle or driven themselves. I ask them to give me a show of hands. About 97% of the class put up their hands. Then I usually say to them, "Is there anyone here who does not know you should not drink and drive?" They all know it, but they do it. They still assume, as well, that because it's marijuana, they are not really impaired as with alcohol. Sadly, they are.

The Chair: Thank you very much.

Mr. Cooper asked if he could ask a short, pointed question about Ladouceur.

Mr. Cooper, go ahead.

Mr. Michael Cooper: It's a question for Professor Hogg in regard to Ladouceur.

Of course, in terms of the context of Ladouceur, it was a case of a roving stop in which a police officer asked if the driver's papers were in order, asked for a driver's licence, insurance, etc., and didn't have any suspicion that the driver was in any way acting unlawfully. In that decision, the majority did find a section 9 violation, but it was saved on the basis of section 1. In so finding, Justice Cory and the court stated, in a majority, "Any further, more intrusive procedures could only be undertaken based upon reasonable and probable grounds."

In the case of mandatory breath testing, it would certainly be much more intrusive to obtain a bodily sample than to simply ask whether the officer can check their driver's licence.

How do you square that statement of the court with the opinion you have reached, which is that this would be upheld under section 1?

● (1805)

Mr. Peter Hogg: I think Mr. Justice Cory was talking about the present state of the law, not about potential changes to the law, of which this would be a potential change.

I do think—and here I'm following Professor Homel—that it is not particularly intrusive to have a breath test on top of whatever other concerns the police officer might have. It's a rather brief thing. Apparently, the person does not have to get out of the car, and it takes only a couple of minutes, so it's pressing it to say that this is a very extreme measure. It's not an extreme measure at all.

I gather this is done in New Zealand. I'm going back to New Zealand for Christmas, so I hope I get stopped in one of these stops and see exactly how they do it.

On top of that is the overwhelming concern about road safety. We highly regulate drivers. We do it because it's a very unsafe activity, as we all know. It seems to me that this is not a very intrusive measure, and it's one that the evidence suggests may well have good results.

The Chair: Thank you very much.

I would like to thank all the distinguished members of this panel for having contributed to our debate. We really appreciate it.

I will ask the next panel to come up.

We are recessed until the next panel comes up.

● (1805)

(Pause)

● (1815)

The Chair: We're going to reconvene the meeting and join our third panel of witnesses.

Again, we apologize to the witnesses. We ran late because the House of Commons ran over after question period today to pay tribute to a late colleague.

We are joined right now by Mr. Greg DelBigio, a director of the Canadian Council of Criminal Defence Lawyers, and from British Columbia by video conference, we have Mr. Tom Stamatakis, president of the Canadian Police Association.

Welcome to you both.

We are waiting for our third witness, Mr. Halsor, but in the meantime, we're going to get started.

Mr. Stamatakis, just given the difficulty sometimes of video technology, while we know we have you and you're coming in clear, let's start with you. You have 10 minutes.

Mr. Tom Stamatakis (President, Canadian Police Association): Honourable members, I appreciate the opportunity to appear before you this evening as you continue your study of Bill C-46.

I note that there are some familiar faces around the table, but for those of you who may not be aware, I'm appearing before you tonight as the president of the Canadian Police Association, an organization that represents more than 60,000 front-line civilian and sworn police professionals serving across Canada.

As I have testified before, I also note that I'm a police officer in the city of Vancouver. I am, however, seconded from the Vancouver Police Department to the Vancouver Police Union as its president. I'm also the president of the British Columbia Police Association, an association of all the municipal police unions in the province of British Columbia.

My opening remarks will be brief. I want to begin to saying that the Canadian Police Association supports Bill C-46, which represents one of the most significant modernizations of our country's impaired driving laws that I can remember.

I know that all members around the table share our goal of getting impaired drivers, whether they are impaired by alcohol or drugs, off our streets. While we may at times differ when it comes to specific tactics, I believe the provisions of this legislation, if enacted, will have a significant and positive impact on our efforts.

I'm sure most of you are aware that impaired driving imposes one of the most significant demands on the resources of almost every Canadian police service. While there's no question we've had success through education in reducing the number of impaired driving incidents, there aren't many officers you could talk to in this country who don't have at least one heartbreaking story about responding to a motor vehicle accident where alcohol or drugs were a factor.

I'm confident in saying that the changes proposed by Bill C-46, specifically those that allow for mandatory roadside testing, will help our officers more effectively reduce the number of those stories, although I do understand that some concerns have been raised regarding civil liberties, our fundamental rights, and the potential for infringement under this regime. I want to say that, in this regard, police officers across the country are already asked and trained to exercise a tremendous amount of discretion every day in the execution of their duties, and that will continue.

While opponents of this mandatory screening have painted a picture where officers will regularly be randomly stopping motorists and demanding breath samples, I can say from a practical standpoint that this is simply impossible to imagine. The familiar holiday checkpoints will remain, but what these new provisions will allow us to do is eliminate many of the inefficiencies that plague impaired driving prosecutions.

As I'm sure this committee is aware, studies, particularly those done by researchers at Simon Fraser University, have shown that under the current regime, a single impaired driving case can take a police officer off the road for up to eight hours. The legislation you're considering today will have a meaningful and positive impact in that regard, particularly by eliminating many of the common defences now used to beat the charges. Most notable are arguments regarding reasonable suspicion and whether or not an officer had grounds to pursue breath testing in the first place.

I should also note very briefly that steps taken in this legislation to eliminate the bolus drinking and intervening drinking defences are very much appreciated by our members. Additional clarity within legislation is always preferable, and while some people will never fully be deterred from drinking and driving, I'm hopeful that explicitly restricting these two common defences that officers hear every day will help in the long run.

As I mentioned, I want to keep my opening remarks brief, as I believe I can help you best by answering any questions you might have about the current state of impaired driving enforcement or how these new changes might impact front-line police personnel in this country.

Again, thank you for the opportunity to appear before you this evening. I look forward to continuing this discussion.

● (1820)

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

We're going to Mr. DelBigio.

Mr. Greg DelBigio (Director, Canadian Council of Criminal Defence Lawyers): It's a pleasure to be here. Thank you for the invitation.

Very briefly, I practise criminal constitutional law and have done so for the past 25 years. I'll try to bring that perspective to bear.

Certainties will arise from the proposed amendments, and that is that roadside criminal investigations take time for police officers to conduct. If a case proceeds with criminal charges, the preparation of disclosure packages occupies a police officer's time. Although the use of administrative sanctions instead of criminal law is the subject of discussion and debate, administrative procedures, such as the administrative drug prohibitions that are used in B.C., allow an officer to be out on the road more quickly compared to criminal law requirements.

Impaired driving charges, with these amendments or without them, will continue to be defended against. Criminal trials take an officer off the road for even more time. The more criminal trials there are and the more complicated they are, the more court time is needed. That, of course, engages the concerns that have been addressed by the Supreme Court of Canada in Jordan.

A further certainty is that changes in law, whether they are good changes or not, will create uncertainty with respect to the state of the law, and there will be litigation. Roadside stops, investigations, and prosecutions do engage constitutional rights, and the proposed amendments obviously can't change that. The constitutional rights that are engaged arise in three areas.

I'm moving a little off my prepared remarks because I was listening carefully to the eloquent speakers who were here before me.

The first situation is roadside. The context, of course, is that driving is a regulated activity. Safety is important. Roadside detentions tend to be brief, but privacy interests exist, and there are going to be concerns about the lawfulness of the initial detention. There is a risk of bias about an improperly exercised discretion. I wish to be clear in saying that. I do not say that there is a widespread tendency toward improper detentions, but whenever there is an opportunity for detention, there is a risk of bias. Also, at roadside there are going to be the issues with respect to reasonable grounds to suspect versus reasonable grounds to believe, which are section 8 charter concerns.

The fair trial process and the right to make full answer in defence is guaranteed by section 7 of the charter. I'll address some of the issues that the amendments propose.

Then there's the sentencing. There have been discussions before with respect to mandatory minimum sentences, whether they'd be effective in offering deterrence and whether they'd be constitutional.

I predict, unsurprisingly, that the amendments, if made, will bring constitutional challenges that will require court resources. There will be uncertainty as the cases go through the appellate systems in different provinces. That might or might not be a bad thing, but it almost certainly will exist.

The questions that I pose are: Is there a sound evidentiary basis upon which to conclude that the proposed amendments will more effectively deter criminal conduct or will measurably improve road safety? Even if road safety might be improved, do the amendments contain provisions that are constitutionally defective?

I now make the following specific observations with respect to the proposed amendments. The language of “impaired” versus the phrase of “impaired to any degree” I predict will give rise to problems. When I say “problems” all I mean is litigation and the uncertainty that arises from it. “Impaired to any degree”, I suggest, imports an uncertainty or vagueness, and it may amount to no threshold at all.

● (1825)

Evidentiary matters with respect to the courtroom process, the proposal that an evaluating officer's opinion would be admissible without the officer's being qualified as an expert, is first, potentially going to be subject to some form of challenge. Second, it is not necessarily going to eliminate court time or make the process any quicker. Even though an officer's opinion may be admissible, although he or she may not be qualified as an expert, there will be inevitable challenges to the weight of the officer's opinion. If the officer's opinion may be challenged on the basis of weight, it is going to be attacked, much as it would be if it were an expert opinion.

Under the heading of proposed section 320.12, “Recognition and declaration”, are the phrases “an approved instrument produces reliable and accurate readings” and “(d) an evaluation conducted by an evaluating officer is a reliable method of determining whether a person...is impaired”. These, I will simply say, in my mind, are curious provisions. It's hard to know what to make of something that is a statutory recognition and declaration. In any event, evidence that may be used to prove guilt and that has a statutory presumption of reliability will give rise to inevitable questions.

Finally, with respect to this, the proposed provision that the amount of alcohol or drug consumed does not constitute evidence that the analysis of blood was not conducted properly some might regard as interesting. Some might regard it as remarkable that evidence of alcohol or drug consumption might somehow be irrelevant to charges that relate to drug or alcohol impairment. I say that those provisions might well be challenged on section 7 grounds.

A challenge to the manner of proof available to the prosecution, or the defences available to a defence, are going to be subject to very different considerations as to, for example, whether a roadside detention is itself unconstitutional or whether it can be saved by section 1.

My comment with respect to delay in sentencing is that this is a very good provision. I would encourage those who have the power to ensure that treatment, which is referred to, is available in rural and smaller jurisdictions. It tends to be something that is available in the city. It is unfortunate if such provision is not available uniformly across Canada.

In the interest of time, those are my opening remarks.

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

I've been advised that Mr. Halsor is not able to join us at this time. We're going to proceed with questioning, and we're going to move to Mr. Nicholson.

Hon. Rob Nicholson: Mr. DelBigio, you said that the levels of alcohol or drugs are not relevant. You suggested that someone was saying that.

Weren't those who were testifying saying to us that they're not the only measure of a person's impairment? Don't you believe that someone who perhaps has never tasted alcohol before who has a couple of drinks may in fact be impaired, quite apart from whatever level is in his or her blood system? Someone who is used to drinking a lot of alcohol may have several drinks and in fact may not be impaired. It's just one of the tests.

Isn't that a fairer description of what they're talking about?

Mr. Greg DelBigio: I must say that I regard this as complex proposed legislation. I hope I've interpreted it properly.

There's no doubt that a person can be impaired by drugs or alcohol. There's no doubt, as I understand it, that different amounts will have different effects on people.

My remarks were really directed to the defences that are available to a person in a courtroom. If a person is charged with an offence that relates to drug or alcohol consumption, the person should have the opportunity to deny drug or alcohol consumption and to have that counted as relevant in the court proceedings. If there are provisions that provide a certain weight or reliability to the drug or alcohol testing mechanisms and the way they can prove consumption in court, there needs to be a way to effectively rebut that.

● (1830)

Hon. Rob Nicholson: You're not surprised. You pointed out very clearly where these sections would be challenged, but isn't that what's going to happen anytime we change the laws in this area? Somebody will challenge it. In fact, I think that's your business, isn't it?

Mr. Greg DelBigio: There certainly are some lawyers who do these cases in the hundreds and indeed the thousands. There's no doubt that this area of law is very extensively litigated. Sure, it's going to be challenged, and it's your job to do your best to ensure that this is constitutional, and my job to suggest ways in which it might not be, if it is.

Hon. Rob Nicholson: Fair enough.

Mr. Greg DelBigio: The concern with challenges is indeed really the time that it takes in court and uncertainties that arise as these cases work their way through the system.

Hon. Rob Nicholson: Thank you very much.

You pointed out, Mr. Stamatakis, that it actually clarifies some of the different provisions with respect to impaired driving which may create more certainty as to what can and cannot be done.

Thank you very much for both your testimonies.

Let me ask you this. Sir, you indicated that there are different clarifications and certain aspects of the law that you like, but isn't the bottom line, though, that you're going to be busier than ever? Isn't there going to be more impaired driving, in your opinion? You've had a long history in this area, but if you start adding legal marijuana to the availability of alcohol, are we going to see more impaired driving charges next year?

Mr. Tom Stamatakis: I think there's a significant amount of impaired driving now.

Hon. Rob Nicholson: I agree.

Mr. Tom Stamatakis: Whether or not, I think people are anticipating there will be more impaired driving with the introduction of legislation—

Hon. Rob Nicholson: Are you anticipating more?

Mr. Tom Stamatakis: I guess my answer is there's already an overwhelming amount of impaired driving, so I'm not sure that there will be more or if we're going to capture it better because we're going to be tracking both impaired driving by alcohol and also by drug, whereas historically we focused mostly on alcohol.

Hon. Rob Nicholson: Fair enough. Thank you very much.

The Chair: Thank you very much.

We will now move to Mr. Fraser.

Mr. Colin Fraser: Thank you both very much for being here and providing excellent presentations. Mr. Stamatakis, I will start with you.

I will pick up on the last point with regard to being able to better capture and understand what's actually happening with, perhaps, drug-impaired driving. The announcement was made recently by the government regarding money. I think it was $274 million in total, part of it for training, building law enforcement capacity, providing access to devices, public awareness and research. Do you think all of that is going to be helpful in not only getting the message out there that these are not acceptable activities to participate in, but actually give the tools to the police officers themselves to be able to detect impaired drivers?

Mr. Tom Stamatakis: Absolutely. I think the announcement was a welcome announcement. I think there are lots of follow-on discussions about to happen around how those funds are going to be allocated and how we make sure that the appropriate funds get to local police forces so they can build the capacity to better respond to impaired driving, whether it is by alcohol or drugs. It was a welcome announcement and I think it will help build capacity, but I think that discussion needs to be ongoing because this is new, uncharted territory.

We've looked at other jurisdictions where it seems that there is more impaired driving. Whether there's more impaired driving by drug or whether they're just detecting it more because the legal framework has changed, I think it's early to tell, but this discussion has to be ongoing because police agencies, police services across the country are going to be challenged much like they are now. We're all struggling with resources, and this is another piece to the puzzle that needs to be responded to, so I think it's important for the government to be an active partner in the response.

Mr. Colin Fraser: One aspect of this bill deals, of course, with drug impairment and adding.... First of all, currently, if somebody is driving and is impaired because of smoking cannabis, for example, can you talk a bit about how a police officer might acquire reasonable suspicion to carry on the investigation with regard to somebody being impaired by marijuana now?

● (1835)

Mr. Tom Stamatakis: Typically, you're going to look for smell, symptoms the person who's impaired might be exhibiting, whether it's red eyes, how they're talking, or slurred speech. You build your grounds that way and conduct the investigation. At a certain point, when you've formed the suspicion that the person's impaired now with a drug, you would bring in somebody who's had the drug recognition training or you'd conduct your own field sobriety test. Our challenge is we don't have any mechanism to quickly test for the substance as we do with alcohol, with the approved screening devices that we have.

If I wanted to make a comparison, the best-case scenario is that we come up with a device, or there's a device that becomes available that allows a police officer on the street to very quickly test for whatever drug and at least determine that there's impairment by drug, and then follow along from there.

Mr. Colin Fraser: In addition to the standard field sobriety tests that go on now, will the oral fluid screening device assist police officers in being able to ascertain reasonable and probable grounds to suspect the person is impaired by drugs?

Mr. Tom Stamatakis: That's the hope, absolutely.

Mr. Colin Fraser: Thank you.

Mr. DelBigio, one of the things you mentioned in your presentation was regarding court delay, backlogs, and obviously, the problem that our criminal justice system faces, especially in light of Jordan. A part of this bill deals with the interlock device and getting rid of the waiting period. Is there any merit that, if somebody were to get a conviction for impaired driving, they no longer—with regard to alcohol, anyway—have to wait the three months for them to be able to use the interlock device? Do you see that encouraging people to plead guilty at an earlier stage perhaps because they don't have that fear of having to wait the three months? Do you see any merit in that alleviating some of the cases that otherwise would take a while to get through the system, and perhaps lead to a guilty plea at some other time, when the person had arranged their affairs? Do you see any merit in the fact that that could help get rid of some of these cases earlier on or be dealt with more expeditiously?

Mr. Greg DelBigio: People plead not guilty for a variety of reasons: one, because they are entitled to do so as a matter of law; two, because they are not guilty; three, because they can beat the charge; and four, because even if they're not sure they can beat the charge, the consequences are so significant that it's worth the try. The consequences are the record of criminal conviction and the stigma that attaches to that and the way in which that can affect employment and travel. The second part is the prohibition. The third, perhaps to a lesser extent, is the fine. If the prohibition issue can be addressed, might it encourage guilty pleas in appropriate instances? It might. It's not going to hurt, as it's a good provision. Would it have a significant or dramatic effect upon the rate at which these cases are contested? My guess is no.

Mr. Colin Fraser: Do I have more time?

The Chair: No, you're out of time. Thank you very much, Mr. Fraser.

Mr. Rankin.

Mr. Murray Rankin: I just want to say how proud I am to see two eminent British Columbians giving testimony here today. This is great.

I'm going to start with Mr. DelBigio. I want to ask you two specific questions.

You raised a very interesting point about the expression in the bill, “impaired to any degree”, and I think you suggested it was maybe vague. Were you suggesting that, as a consequence, it might not pass muster under section 7? If so, how would you suggest we recommend it be fixed?

Mr. Greg DelBigio: If there is a legal standard, which this seems to impose, then it needs to be sufficiently precise that it is understood. “Impaired to any degree” suggests that there is a legal standard that can be satisfied, although it is barely detectable, so it is impairment to a barely perceptible degree. That will give rise to questions, both with respect to proof, so an evidentiary question.... If a person says that he or she was satisfied there was impairment to a degree that was barely perceptible, what is the evidence that is needed to satisfy that? I understand that the language might have been designed as its purpose to capture more, but in capturing more, it creates an uncertainty. I'm not sure why the drafters would not just use the term “impaired”.

● (1840)

Mr. Murray Rankin: Thank you.

The second point of many that you made was that police officers can give an opinion now, but they're not, I presume when you're referring to experts, like drug recognition experts under the scheme, and they can now give opinion evidence, and you say that we can challenge its weight, just as one challenges expert opinion evidence generally. My question is, what turns on that? So what that we're going to challenge, just like any other expert, the weight that should be attributed to it? What turns on that?

Mr. Greg DelBigio: It's unclear exactly how that would operate. As a technical matter, I think that the importance of a person being qualified as an expert is that the person is permitted to offer opinion evidence, as a matter of law of evidence. If a person is being advanced as a proposed expert, the person can be challenged, both with respect to whether he or she is an expert, and then if so, the weight that should be given to the expert's opinion. How would this change things? It's a little unclear, but I would hope that the way in which this would not change things is that there would be some sort of a presumptive weight that would go to a person's opinion, as a result of the operation of this provision.

Mr. Murray Rankin: Mr. Stamatakis, thank you very much for being here.

The drug recognition experts of course undergo extensive training to see if they can determine impairment. There are only about 600 such officers, I'm told, across the country. Some have suggested that we need 2,000 to meet the demand requirement of this legislation. Are you satisfied that training will be available to you? Are you concerned that your members of the CPA will now be asked to provide opinion testimony in this regard? Do you think the training will be adequate? Have you received any indication yet of whether there will be a budget for it and the like?

Mr. Tom Stamatakis: Well, training is a concern, anticipating that the demand for drug recognition experts will increase. Having said that, police officers give evidence in court every day. I can recall that when I was an operational police officer, some of the most challenging evidence to give was around impaired driving cases in terms of describing the observations I made as a police officer of the symptoms of impairment, etc. I'm not really concerned about that piece of it, because when it comes to impaired driving, police officers have always had to give that kind of evidence in court. It's always been challenged. Ultimately it's up to the trier of fact, the judge, to determine what weight to place on what evidence and arrive at a conclusion. I don't see anything changing in that regard.

I think the funding announcement by the government goes a long way to alleviating some of the concerns around the training capacity. There's no question that there is a desire in the police community to train more police officers as drug recognition experts so that they are available, when front-line police officers believe they have someone who is impaired by drugs, to properly assess. The case becomes stronger and more likely to succeed from a prosecution perspective. Police officers are always giving that kind of evidence in court, so I don't see that changing.

Mr. Murray Rankin: I'm told that the RCMP, along with five other police forces, were selected to test these new roadside oral fluid screening devices for drug-impaired driving, under some sort of pilot project. Do you have any evidence on that, or is there anything you've heard from your members about that experience?

Mr. Tom Stamatakis: No, I have not yet heard much feedback from that experience, so I can't really comment.

There are concerns around weather, reliability, and those kinds of things. Of course, whatever equipment we end up using will inevitably have to be proven in court as being reliable as we move forward.

● (1845)

The Chair: That's time.

Monsieur Boissonnault.

[*Translation*]

Mr. Randy Boissonnault: Thank you, Mr. Chair.

[*English*]

Mr. Stamatakis, thank you very much for your testimony. I noticed that you mentioned in your comments that it will be important, because you'll have new mechanisms. Police officers will have new mechanisms at their disposal.

I also think it's important to just iterate this at the committee. Of the $274 million our government is allocating to support this legislation, some $81 million will go toward training, capacity-building, and providing the cost over five years of the oral fluid screening devices.

In your testimony, you said that this legislation will help you to have more mechanisms to catch existing offenders, and that it will also allow police officers to...that there will be efficiencies created by this legislation. I'm wondering if you could share more information on what you meant by that part of your testimony.

Mr. Tom Stamatakis: We can take roadside stops as an example. If as a police officer, as part of my lawful stop, I can make a demand without having to build my reasonable suspicion that a person is impaired, then that should, theoretically, speed up the process, because I won't have to develop those grounds. Hopefully, when I get to court and I'm testifying, I don't have to spend a ton of time trying to explain what my grounds were and why I made the demand of the person that I thought was driving impaired. That's just one example.

Mr. Randy Boissonnault: Sure.

As we shift from a discretionary roadside testing framework to one where everybody gets the test, what type of offenders will police officers be able to catch when we move from one framework to this proposed framework?

Mr. Tom Stamatakis: Just as an example, the typical framework would be the holiday road checks that police organizations conduct across the country. As it stands now, I approach the car, if I'm working one of those, and I have to ask the driver questions. I'm relying on those answers to be able to make a demand on that driver.

The way it stands now, based on the legislation the way it's proposed, I don't need to do that. I can just simply ask the driver to provide a sample using an approved screening device. I don't need an acknowledgement, for example, that the driver was drinking or consumed drugs in order to be able to do that. Even from an efficiency perspective, the opportunities we have to detect impaired drivers will be more efficient when we're doing that.

Mr. Randy Boissonnault: I appreciate that.

We've seen from other jurisdictions that the implementation of a mandatory roadside screening process drops the fatalities dramatically. Before we get from testing to preventing fatalities, there's the whole court system and charging people.

What have you been hearing from your members about having a mandatory system and the anticipated, not necessarily percentage... but do your members think this kind of system will pull more people who have offended off the the road? Will it prevent them from harming other people and ultimately even change behaviour?

Mr. Tom Stamatakis: Yes, I believe it will, and that's certainly the feedback.

If I compare to what some of the provinces have done, and I'll use my home province of British Columbia, based on experience of the regulations that the provincial government introduced around the administrative prohibitions and impaired driving regulations, we're told they've made a significant impact on getting impaired drivers off the road. You're immediately prohibiting them from driving. In some cases, we're impounding their vehicles so they can't drive. It sets off a whole series of events that prevents those people from driving while they're impaired, thus making the roads safer.

I think this kind of a legislative framework will have a positive impact on the number of people who are driving impaired.

I'm just giving you my personal opinion. I'm sure there's research around it, but around my social circle in Vancouver and British Columbia, the people I talk to and the public I interact with, people are more aware now of impaired driving. They're less willing to take the risk because there's an immediate consequence to driving while impaired. You're going to be prohibited immediately. If you're over the limit, you're going to have your vehicle impounded for 30 days and will have to go through this process.

It has had a positive impact on reducing impaired driving in our province, and also, of course, then reducing the number of injuries or deaths that occur as a result.

● (1850)

Mr. Randy Boissonnault: Thank you very much.

The Chair: Thank you very much to both our witnesses, Mr. Stamatakis and Mr. DelBigio.

Mr. Greg DelBigio: Thank you very much.

The Chair: You were both very helpful and we really appreciate it. I want to again apologize for being late.

I'll ask our next panel of witnesses to come forward.

We will recess while we get our next panel up.

● (1850)

(Pause)

● (1855)

The Chair: We'll reconvene with our next panel.

I'd like to thank both Dr. Brubacher and Mr. Mann, for being here. We apologize for our tardiness. We ran over time in the House this afternoon, but we're delighted to have you here to help us better understand and get your viewpoint on this legislation.

I'd like to welcome Dr. Jeff Brubacher from the department of emergency medicine. He teaches in the faculty of medicine at the University of British Columbia. Robert Mann, senior scientist, is from the Centre for Addiction and Mental Health. Welcome, Mr. Mann.

Given the risk of losing a witness on video technology, we'll start with Dr. Brubacher, if that's okay with you.

Dr. Brubacher, the floor is yours, sir.

Dr. Jeff Brubacher (Medical Doctor, Department of Emergency Medicine, Faculty of Medicine, University of British Columbia, As an Individual): Thank you for the opportunity to speak.

I'm an associate professor at the University of British Columbia, with a research focus on impaired driving. I'm also an emergency physician at Vancouver General Hospital, which is one of Canada's largest trauma centres. I've worked at Vancouver General for over 20 years, so I've had a lot of experience seeing people with road trauma, and too much experience seeing people involved in crashes, injured in crashes involving impaired driving.

I'm happy to say that the rate of impaired driving, alcohol-impaired driving at least, has decreased over the years, certainly since I started practising, but it's still much higher than it should be. We're doing some research here in British Columbia studying drivers who visit the hospital after a crash and measuring drug and alcohol levels. We're finding, and this is recent data covering 2015, 2016, 2017, that about 18% of these injured drivers who come to the hospital after a crash, test positive for alcohol, and 15% are above the legal limit of .08%, so it's much higher than what it should be.

We're also looking at THC, the active ingredient in cannabis. We're finding that a number of drivers are using THC. About 7% of the drivers that we're seeing test positive for THC. About 4% of the drivers we're seeing have THC above two nanograms per millilitre. Just for perspective, other drugs are often seen. About 10% test positive for recreational drugs such as cocaine or amphetamines, and around 20% have used an impairing medication. So impaired driving is still a problem in 2017. With that background, I think Bill C-46 has a lot of good material in it that I think will help decrease the rate of impaired driving.

First, I want to say that I agree with random breath testing. I think it's a powerful measure. I think it will decrease impaired driving, prevent crashes and injuries. There are two observations from my research that support this. The first observation is that police do not always recognize drivers who are impaired by alcohol.

When we compared the results of our toxicology testing with police reports to see whether police suspected that the driver had used alcohol, we found that for drivers with a blood alcohol concentration between .08%, the legal limit, and .16%, twice the legal limit, in those drivers police suspected alcohol 58% of the time. Put the other way, they missed it 42% of the time. For drivers with higher alcohol levels, above .16%, so more than twice the legal limit —and these are drivers who's risk of crashing is 30 times higher than when sober; so a high risk of crashing in drivers who are going to be impaired—police suspected alcohol 80% of the time. The police were doing better, but they still missed 20% of the time. Random breath testing would get around that. Police won't have to suspect alcohol to test them, and I think they'll detect some of those drivers that they're currently missing.

The second observation, and this is from older research that we did some time ago, we found that many impaired drivers, even when they come to the police's attention, go unpunished. This is from the same basic method. We're looking at drivers who come to hospital after a crash and have alcohol levels tested, and we're looking at their alcohol results and seeing what their subsequent driver record shows. Were they convicted of impaired driving? What we found there is that for drivers with a blood alcohol level between .08 and .16, only 4.7%—so less than one in 20—were convicted of impaired driving. For drivers with a blood alcohol over .16, twice the legal limit, only 13.6%—so about one in seven—were convicted of impaired driving.

We don't know why these drivers are not being convicted, but I suspect that part of that problem is police having difficulty gathering the evidence they need. Again, I think that random breath testing would help them gather that evidence.

● (1900)

This is bad. It's bad because laws against impaired driving work by creating the perception in the public that if you drink and drive, if you're impaired and drive, you're going to be caught and you're going to be punished. That's what deterrence is about. When drunk drivers or impaired drivers come in contact with police and are not recognized as being drunk, are not charged with drunk driving, or get off on a technicality, that undermines the deterrent effect of those laws. I think random breath testing is a good way to get around that.

That's my first point: I agree with random breath testing.

My second point is that I agree with using roadside screening devices to measure drugs in saliva to help police identify drivers who use drugs.

In this same research, we looked at police reports and compared them with toxicology testing for THC, the active ingredient in cannabis. We found that for drivers with THC in the range of two nanograms to five nanograms per millilitre—that's not just positive but substantial levels—police suspected drugs in only 8.5%, or about one in 12 drivers.

It didn't get any better when the THC levels went up. We had 16 drivers where the THC was above five nanograms per millilitre. Police suspected drugs in only one of those drivers—6%—and I don't mean to say anything bad about police. It's difficult to detect moderate cannabis impairment. Police have a very difficult time detecting drivers who are impaired by cannabis. I think they need help to do that, and I think roadside oral fluid screening devices would be a valuable tool for police to help them detect these drivers.

The third point I wanted to make is that I believe in per se levels. I think per se levels for THC are the way to go. I think the levels chosen—two nanograms per millilitre and five nanograms per millilitre—are reasonable options. The best evidence shows that drivers who use cannabis have an increased crash risk. The exact THC levels where that risk starts to go up hasn't been as well defined as it has for alcohol, but two nanograms per millilitre and five nanograms per millilitre are certainly in line with the evidence we have.

The reason we need per se limits is that it's very difficult for police to prove that a driver is impaired. As for the current system of drug recognition experts, I'm not an expert on this, but I know enough about it to say that it has its role. It gives a systematic way for police to gather evidence, but it's difficult. It's a resource-intensive and time-consuming system, and it's not widely available. If you have a crash in a rural area, a drug recognition expert might not be able to get there. Also, it's most likely open to legal challenges.

Per se limits would be a far more streamlined and more efficient way of gathering evidence. Going back to the 1960s when per se limits were introduced for alcohol, there were dramatic decreases in alcohol-impaired driving. My hope would be that setting per se limits for THC would have the same effect for driving impaired by cannabis.

Those are the points I wanted to make. I'm happy to answer questions later. Thank you for listening.

● (1905)

The Chair: Now we'll move to Mr. Mann.

Professor Robert Mann (Senior Scientist, Institute for Mental Health Policy Research, Centre for Addiction and Mental Health): Thank you very much.

My name is Robert Mann. I'm the senior scientist from the Centre for Addiction and Mental Health in Toronto, or CAMH, as we call it. I'm a member of the epidemiology faculty at the University of Toronto.

In Bill C-46 the Government of Canada is proposing to revise Canada's impaired driving laws. The provisions being considered in Bill C-46 are supported by research and how impaired driving can be prevented. The bill addresses impaired driving in two general areas: driving under the influence of cannabis and other drugs, and driving under the influence of alcohol.

With regard to driving under the influence of cannabis and other drugs, we note that the Government of Canada has stated its intention to legalize cannabis use. This change in the legal status of the drug is consistent with the recommendation of the Centre for Addiction and Mental Health to legalize cannabis use to achieve the public health goals of controlling cannabis use and preventing cannabis-related harms. The success of the public health approach can be seen in the reduction in rates of tobacco use and in driving after drinking that have been observed in recent decades in contrast to evidence that cannabis use has changed little or may be increasing among some groups in the population.

However, regardless of the legal status of the drug, it is recognized that one of the major health problems associated with cannabis use is an increase in the risk of collisions and resulting casualties among those who drive under the influence of cannabis, or DUIC as I'll phrase it, and among their passengers and other road users as well.

Much research has been devoted to the impact of cannabis and traffic safety in recent decades. Laboratory studies indicate that cannabis affects basic physiological and psychological processes involved in the driving task and epidemiologic studies now show that DUIC increases the risk of collision involvement significantly. Currently, rates of DUIC in the general population are relatively low, but are much higher among some subgroups. For example, rates of DUIC among adolescent and young drivers now equal or exceed the rates of driving after drinking in these groups. Recent studies have estimated that between 75 and 95 deaths on Canadian roads in 2012 were caused by DUIC, that DUIC caused about 4,500 collision-related injuries, and that between 7,800 and 25,000 Canadians were involved in collisions caused by DUIC that year. Adolescents and young adults are most affected by these deaths, injuries, and collisions since they are most likely to drive after using cannabis.

Preventing collisions and casualties that result from DUIC is a very important goal and should receive more attention regardless of the legal status of cannabis. Combinations of legal measures with educational and remedial measures have been implemented in various jurisdictions across the world, but currently, because these measures are relatively recent, we know little about their impact in preventing DUIC. However, we can look to the impact of measures to prevent driving after drinking to inform our efforts to prevent DUIC-related collisions. Similar combinations of legal, educational, and remedial measures have been introduced around the world and the success of these measures in reducing alcohol-related collisions is considered one of the leading public health successes of the past century. The key to this success has been the introduction of per se laws, which make it an offence to drive if the level of alcohol in the blood exceeds the level specified in law. These legal limits have been shown to reduce rates of driving after drinking and resulting casualties in the population.

CAMH scientists estimated that Canada's per se law, introduced in 1969 and setting the legal limit for alcohol in Canada at .08% at that time, prevented over 3,000 deaths in Ontario alone between 1970 and 2006. This experience suggests that introduction of a per se or legal limit law, along with enabling the use of roadside oral fluid screeners to facilitate identification of drivers under the influence, should be central to our efforts to prevent DUIC-related collisions. Other jurisdictions have successfully implemented a similar approach and their experience can guide us here.

● (1910)

Although there is now much interest in the topic of driving under the influence of cannabis, it must be remembered that alcohol still accounts for a larger number of deaths and injuries than cannabis; thus, efforts to prevent these deaths and injuries are still essential.

One measure that would significantly reduce alcohol-related casualties on our highways is mandatory alcohol screening or MAS. MAS originated in Australia and Europe in the 1970s. All states in Australia have implemented MAS, as have many states in Europe and many other parts of the world. The key to MAS is allowing the police to request a breath sample without probable cause. This permits the processing of large numbers of drivers at the roadside as a way to increase general deterrence. This causes an increase in the average driver's perception of being caught if he or she drives while impaired, which is believed to be the mechanism for the beneficial effects of MAS on collision rates.

Evaluations of MAS have supported its effectiveness in reducing alcohol-related collisions and fatalities. Reviews have found reductions in alcohol-related fatalities across studies ranging from about 8% to about 71%, and an average reduction of 30.6% in accidents with injuries associated with introducing MAS has been reported. Because of these positive results, MAS has been supported by many health organizations. In a WHO-sponsored study of measures to prevent alcohol-related harms, MAS was one of the measures given its strongest support.

A second measure that would significantly reduce alcohol-related deaths and injuries on our roads would be the introduction of a legal limit of .05% in the Criminal Code of Canada. There is clear and strong scientific support for a legal limit of .05%. Above this level, it is clear that safe driving skills are impaired and collision risks are substantially increased. Reduction of the legal limit to .05% in other jurisdictions has provided substantial evidence of beneficial effects.

The potential impact on fatalities on our roads would be substantial. In 1998 CAMH scientists estimated, based on effects seen in Australia and Europe, that introducing a .05% legal limit in Canada could prevent between 185 and 555 deaths on our roads per year. Rigorous scientific research that has appeared since that time has supported and strengthened that conclusion.

In conclusion, driving under the influence of cannabis, alcohol, and other drugs is a significant public health problem. There is strong evidence that the deaths and injuries that result from this behaviour can be substantially reduced by effective public policies. The Centre for Addiction and Mental Health strongly supports the Government of Canada in its efforts to implement these policies and notes that the initiatives considered in Bill C-46 are consistent with the best scientific evidence for preventing the casualties that result from impaired driving. As the Government of Canada reforms the country's impaired driving laws, CAMH would be pleased to help in any way we can.

Thank you for having me with you. It's been an honour.

● (1915)

The Chair: Thank you very much to both of our witnesses.

We're going to move to questions, and we're going to start with Mr. Cooper.

Mr. Michael Cooper: Dr. Brubacher, you cited a few numbers during your presentation on the rates of conviction regarding impaired drivers. Could you repeat those, as well as your sources? They seemed to be a lot lower than I was led to believe, at least based upon other statistics that I've seen presented. Maybe I misunderstood you.

Dr. Jeff Brubacher: These were injured drivers seen in hospital after a crash, so there may be a different population. These are from about a decade ago. We compared toxicology testing done in hospital—alcohol levels—with their subsequent driver records. We found that of drivers with a BAC between .08% and .16%, 4.7 % were ultimately convicted of impaired driving. For drivers with a higher BAC, over .16%—more than twice the legal limit—it was 13.6%.

I would add that a similar study was done in Alberta—similar population and similar methods—and their conviction rate was slightly higher, but not much. I think it was in the range of 15%.

Of these particular populations of drivers, very few of them are convicted. We can speculate on the reasons for that, but the numbers are low.

Mr. Michael Cooper: Thank you for that clarification.

Dr. Mann, I want to follow up on your testimony respecting mandatory breath testing.

I certainly agree that there are far too many people who are dying or being seriously injured on our roads. I'm all for stringent sentences and holding people who make that choice of getting behind the wheel impaired accountable for the seriousness of the crime they are committing when they do that.

In terms of mandatory breath testing, you made reference to Australia. When you look at New South Wales, for example, it was brought in at a time when it was really one of the first measures to crack down on impaired driving. In Canada around that time in the early 1980s or the late 1970s, we started to see check stops and RIDE programs. We didn't go down the route of mandatory breath testing, but we went down the route of selective breath testing. We saw a very significant reduction in the number of deaths and the number of injuries on our roads following those measures.

You then look at a state like Victoria where you have mandatory breath testing, yes, but things like booze buses are out on the roads, where you have two or three million people—I saw numbers indicating that—who are stopped each year by these booze buses. In other words, almost everyone is being stopped. When we look at the numbers and we see, say, there's a decrease of the context, the other measures beyond mandatory breath testing would seem to partially explain why we're seeing those decreases. In other words, they may not necessarily be attributable to mandatory breath testing.

● (1920)

Prof. Robert Mann: That's an excellent point.

Are you referring to the changes that have been seen in Australia?

Mr. Michael Cooper: Yes.

Prof. Robert Mann: Are you suggesting they may not be due to mandatory breath testing?

Mr. Michael Cooper: Not entirely. Again, there is mandatory breath testing, and then you have these booze buses, public advertising campaigns, and a whole series of measures that were introduced at one time.

Prof. Robert Mann: Yes.

It's very true that, when we look at the effects of a particular measure like mandatory breath testing, changes to legal limits, or RIDE programs, there are other things that need to happen.

I've said that legal limits and per se laws are important to introduce, but we also need education. If you passed a law and nobody knew about it, that really wouldn't have the effect you want it to have. I think you're correct that other things need to happen for mandatory breath testing to work as well as it can.

We have a colleague who's a criminologist in Australia, Ross Homel, who wrote a chapter for a book comparing the different experiences in the different states. He pointed out that some states really introduced it in a half-hearted fashion and there wasn't much testing that happened. Other states were what he called “boots and all”; I guess that's an Australian term. That's where you saw the biggest effect; it was where they had large numbers of people being tested and lots of education. From a general deterrence perspective you saw that the average person—you and I—would think, “Gosh, my chances of being detected are really high.” He clearly makes the point, and I would agree with you that you need all of these other pieces to achieve the kind of success that you can achieve with a measure like mandatory breath testing.

Mr. Michael Cooper: Thank you.

The Chair: Thank you very much.

Go ahead, Mr. Ehsassi.

Mr. Ali Ehsassi: I have no questions.

The Chair: Would you rather Mr. McKinnon went now and then you come later? You were down on the list this time.

Mr. McKinnon, are you okay to go ahead?

Mr. Ron McKinnon: Yes, absolutely.

Dr. Brubacher, you were talking about the difficulty in recognizing drug-impaired drivers. You're very comfortable with per se levels in the legislation.

Does this mean that, for the drug recognition experts, it's not an effective tool? The officers who are having trouble recognizing drug-impaired drivers, is that just the run-of-the-mill officers, or do you include drug recognition experts in that category as well?

Dr. Jeff Brubacher: I think drug recognition experts are a useful tool, but that has to do more with the per se limits.

Let me answer the other part of your question first. In terms of recognition, these would be the front-line officers. The only way that a driver would come in contact with a drug recognition expert is if the front-line officers had reason to suspect that they were impaired by drugs, otherwise they wouldn't come in contact with the drug recognition expert.

Who we found are failing to identify drug-impaired drivers are the front-line officers. I think there are levels of impairment, just like there are levels of drunkenness. Someone can be a little impaired, enough that they're distracted more easily. Maybe their coordination is a little bit off and they're at a higher risk of crashing, but they're not so impaired that it's easy to pick up. It's similar to the notion that you don't have to be a staggering drunk to have an increased risk of crashing. It's the front-line officers who weren't detecting these people, and the front-line officers I think would be the ones who would be using the screening devices as well.

In terms of drug recognition experts, they definitely have their place, and I think it's possible for people who have used multiple drugs to be impaired while under a per se limit. You want to be able to detect that impairment, but it's just such a lengthy and difficult process that I think it acts as a barrier to convicting someone of impairment. I think they have their place, but it's not the perfect answer.

● (1925)

Mr. Ron McKinnon: I've heard that long-time users of THC and frequent users of THC don't show signs of impairment as readily as, say, a new user. Do you think that per se limits put them at a disadvantage?

Dr. Jeff Brubacher: I think the per se limits have to be chosen carefully. I know, for example, that a heavy user could have a low level of THC, a nanogram per millilitre, that's detectable for a long time after they last use. You certainly don't want a per se level that's going to be catching everybody up in the net.

It's a difficult problem because on the one hand, you don't want the levels so low that you're detecting chronic users who might not be impaired. On the other hand, unlike alcohol, the THC levels can drop off quite quickly with time. It's hard to go from a level that may be four hours after a crash and to estimate what it would have been at the time of the crash. You can't back extrapolate the way we've learned to do with alcohol. If you have a level that's too high, you might have someone who was quite impaired at the time of a crash, and two hours later, by the time you get a chance to get blood and measure the level, their level has dropped below that. It's sort of a balance.

Other countries have used a slightly higher limit. Norway uses three nanograms per millilitre. I still think that, on balance, two is a reasonable level. I should put in a disclaimer that I don't have a lot of experience with seeing people who have used cannabis, measuring their levels, and studying their impairment. That's not my line of research. It's more at a population level, looking at the risk of crashing for most drivers.

I have one additional comment. To use the analogy with alcohol, there are people who are less impaired at a high alcohol level than others, yet we've accepted that, on balance, most people above .08 are not fit to drive, and it makes sense to have a per se level for alcohol as well.

Mr. Ron McKinnon: Thank you.

The Chair: You may ask a really short question.

Mr. Ron McKinnon: Dr. Mann, you're in favour of mandatory alcohol screening, and we've heard it expressed as having a roadside stop where everybody gets tested. Would you envision and like to see the same thing for drug testing?

Prof. Robert Mann: It's certainly something you could propose. I think it works for alcohol, and it works to the extent that it's enforced in a public fashion. Among other things it works because a large portion of the driving population may have been drinking, or might drink in the future if they have not had the experience of realizing, "Gosh, the police are out there. I'm going to get stopped, and I'm going to get screened." If that situation applies to drug use, then I think it's perhaps something we might consider down the road. I don't think there are any evaluations of that kind of approach in the literature as of yet, so we don't know what kind of an outcome there would be, in contrast to what we understand about the effects of mandatory alcohol screening.

● (1930)

The Chair: Thank you very much.

Mr. Rankin.

Mr. Murray Rankin: I'd like to build on what Mr. McKinnon was asking both witnesses, and invite comments from both.

The first point is the per se limits. Both of you support and believe in per se limits. However, the November 2016 report of the task force on cannabis legalization and regulation said the following:

> ...investment in research to link THC levels to impairment and crash risk is required to support the establishment of a scientifically supported per se limit. In addition, investments to support the development of accurate and reliable roadside testing tools are required.

I think the legislation is wise to not set in the law itself the standard as we do for alcohol, but rather to leave it to regulation, as we will understand over time, whether two nanograms or five or three or whatever is the right number. Are you satisfied that the per se limits will really tell us reliably whether a person's ability to drive is impaired?

I'd invite both of you to comment on that. They're both arbitrary numbers.

You pointed out, Dr. Brubacher, that in fact Norway uses a very different number. How can we be sure that we're getting this right?

Perhaps I could invite you, Dr. Brubacher, to start.

Dr. Jeff Brubacher: Sure. I wouldn't say that Norway is using a very different number. They're using three, which is between two and five—

Mr. Murray Rankin: Not four?

Dr. Jeff Brubacher: Well, yes, it's in that range. You're right, and we have to acknowledge that the research on when the crash risk starts to increase, exactly at what level, is not as well established as it is for alcohol. I think that most of the research would suggest that when you're above five, the crash risk does increase. We can also look at some of the experimental evidence that looks at impairment versus THC level—Sorry, Bob—but I think Dr. Mann does more of that research than I do. I don't do that research, but I think that can give you some additional insight into what the levels should be.

There isn't going to be a perfect answer, but I do think there's enough evidence that we should pick and choose a per se limit.

Mr. Murray Rankin: Dr. Mann, do you have anything to add to that?

Prof. Robert Mann: I would agree with Dr. Brubacher that there is enough evidence for us to, at least initially, pick per se levels based on the international literature, based on laboratory research. I think we know from laboratory studies the effects of cannabis on basic physiological and psychological functions and that we do detect impairment in the laboratory.

Mr. Murray Rankin: We're talking about cannabis primarily, but of course the impairment could be from other new psychoactive substances. Is it possible that the drug-screening devices we're talking about could address other kinds of impairment? I'm thinking about opioids, methamphetamines, cocaine, and the like. How are we going to grapple with that? If you believe in per se limits, do we have scientific evidence for what those numbers should be?

Prof. Robert Mann: Well, we do. Evidence from several sources goes into setting per se levels. That's evidence from basic laboratory studies of the impact of these drugs on skills, evidence from effects on driving performance or simulated driving performance, and then epidemiologic studies on the impact of having a drug on board on collision risk.

It's important to recognize that the key piece is the epidemiologic studies showing what the drug does to collision risk. We all know that having a good reaction time is required for safe driving. You see that if the driver in front of you slows down or stops, you need to react fast to slow down too. If amphetamines actually improve your reaction time in a laboratory situation, does that mean we should not have a per se level for amphetamines and maybe encourage people to use amphetamines and drive? No, because when we look at the epidemiologic studies, we see that drivers with amphetamines on board are more likely to be involved in collisions.

We need that range of evidence, and that substantial evidence is out there.

● (1935)

Mr. Murray Rankin: We've had the alcohol test committee in Canada which for 50 years has been looking at breath-testing equipment. We have a pretty good sense that they are reliable and trusted by the legal and scientific communities.

However, here we are at the threshold of new technology with these new devices, and we're going to make significant decisions based on what they tell us. Turning from the levels to the reliability of the equipment, one hears that there are big problems when it gets cold in a country like Canada, that it produces a lot more false positives than otherwise would be the case.

I guess I'm wondering whether you think we're at the right place and time to rely on this equipment instead of the old field sobriety tests or some variation on them to address drug impairment.

Prof. Robert Mann: My perspective is that we should give the police as many good tools as we can to use these laws, and I would include oral fluid tests in that. It's true that they are a newer technology than breath tests that we've had for alcohol for many years, but they have been used in other countries for perhaps a decade now. They have been field tested in Canada, and my understanding is that as a result of the field test, it was suggested that some were suitable for Canadian use.

Mr. Murray Rankin: Could I ask one final question, or am I out of time?

The Chair: You are out of time, but you can have one very quick question.

Mr. Murray Rankin: We have so many different kinds of tests. The law that we're talking about refers to a sample of oral fluid or urine. Saliva, urine, blood, even sweat, are things that could indicate drug use. Is one more reliable than the other? Is a blood test more reliable than a urine test, for example?

Prof. Robert Mann: Well, a blood test is considered the gold standard. For a criminal charge or conviction, I think that's what's being considered. However, I think the oral fluid tests will facilitate detection of impaired drivers and make the lives of police officers a lot easier.

The Chair: Thank you very much.

Mr. Ehsassi.

Mr. Ali Ehsassi: My first question would be for Mr. Mann.

I am wondering if you could explain to us whether there is a lag time between the use of cannabis and the impairment of one's senses.

Prof. Robert Mann: There are suggestions that this is the case.

In our lab, we've looked at smoked cannabis, and we find that it goes into the blood very quickly. In five minutes after people smoke a cannabis cigarette, they achieve their peak blood THC levels. It declines relatively rapidly after that.

When we ask them if they feel the effects of the drug, we find there is a slight lag. It increases for a little bit beyond that five-minute window, and then it too begins to decline within a half an hour or so. There is this perhaps slight lag in terms of the impact on the self-reported sense of the effects of the drug, and it may be that there is, as well, for behavioural effects of the drug.

Mr. Ali Ehsassi: How does that compare to alcohol use? What are the lag times there?

Prof. Robert Mann: For alcohol, what we typically see is the effects of the drug are most pronounced on the rising limb of the BAC curve, and then once the BAC peaks, the effects on the falling limb of the curve at the same BAC are somewhat less pronounced than we typically see in the rising limb of the curve.

● (1940)

Mr. Ali Ehsassi: Thank you.

Perhaps I could ask a question of Dr. Brubacher.

We heard incredibly disturbing testimony an hour ago about how a company had actually done an internal survey and they had questioned youth aged 18 to 35 on what their impressions were of drug use on driving. Evidently, 20% of the respondents had said that they thought cannabis use would either not affect their driving abilities or perhaps would even enhance their driving abilities.

Could you speak to that issue for the record?

Dr. Jeff Brubacher: I think that is a perception out there—

Mr. Ali Ehsassi: A perception.

Dr. Jeff Brubacher: Yes, that cannabis is not a big problem when it comes to driving. It's not true. All the evidence suggests that it does increase crash risk, approximately doubles crash risk in cannabis users. It's far worse if you use it together with alcohol. I guess some of that perception may be in comparison with alcohol, where we know that the crash risk goes up exponentially at higher alcohol levels. Cannabis is not as bad as alcohol in terms of causing an increased crash risk, but it certainly does cause an increased crash risk.

Mr. Ali Ehsassi: Thank you.

Dr. Jeff Brubacher: It's just perception, yes.

Mr. Ali Ehsassi: Another question that also has to do with perceptions is that some people are of the view that if they don't feel impaired, then they're perfectly fine to drive. What would you say to that?

Dr. Jeff Brubacher: Well, I think impairment sometimes impairs your ability to judge yourself, and it's often the case that people think that they're fine when they're not. So, no, that's not good advice.

Mr. Ali Ehsassi: Okay.

Last, how long does the effect of THC last, actually?

Dr. Jeff Brubacher: Bob may be able to speak to this better than I can, but usually after you smoke it...approximately four hours longer after you take it orally, so up to eight hours, I think, after oral use.

I'll turn it over to Bob, if he wants to....

Mr. Ali Ehsassi: Sure, absolutely.

The Chair: Mr. Mann, do you have an answer?

Prof. Robert Mann: Just a quick comment that in our laboratory we see that the self-reported effects are as Jeff describes. Typically about four hours or so after people smoke, the perception of high has declined and data are returning back to normal; heart rates are back to normal, and so on.

Mr. Ali Ehsassi: Thank you for that.

The Chair: Thank you very much to both of our witnesses. Again, your testimony was enormously appreciated. Thank you so much for helping us with our study of the law.

I have one question for members of the committee. We have a motion as to whom we can distribute documents. Given that Mr. Rankin is replacing Mr. MacGregor for an extended period of time, would it be okay with everyone that we distribute documents directly to Mr. Rankin from the clerk?

Hon. Rob Nicholson: And Mr. Liepert.

The Chair: Well, Mr. Liepert is going to be on the committee.

Hon. Rob Nicholson: Okay, good. Is he officially on there now?

The Chair: I believe as of today he is.

Hon. Rob Nicholson: That's beautiful. Okay, thank you.

The Chair: Is that okay with everyone? Great.

Just for notice, tomorrow at the end of the meeting, we're going to elect our new vice-chair, so perhaps the official opposition could just decide who they want it to be.

Have a wonderful day, everyone.

The meeting is adjourned.