HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 066 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Wednesday, September 27, 2017

Chair

Mr. Anthony Housefather

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● (1535)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Ladies and gentlemen, it gives me great pleasure to call to order this meeting of the Standing Committee on Justice and Human Rights, as we continue our study of Bill C-46.

It gives me great pleasure to welcome all of these important groups testifying before us today.

From the Alcohol Countermeasure Systems Corporation, we have Mr. Felix J.E. Comeau, chairman and chief executive officer. Welcome, Mr. Comeau. We also have Mr. Abe Verghis, supervisor, regulatory affairs. Welcome, Mr. Verghis.

[*Translation*]

Joining us from the Railway Association of Canada are Gérald Gauthier, vice-president, and Simon-Pierre Paquette, labour and employment counsel.

Welcome, Mr. Gauthier and Mr. Paquette.

[*English*]

From the Canadian Association of Elizabeth Fry Societies, we have Savannah Gentile, director, advocacy and legal issues. Welcome, Ms. Gentile.

We are going to start right away with testimony. We will move to Monsieur Comeau and Mr. Verghis.

Mr. Felix Comeau (Chairman and Chief Executive Officer, Alcohol Countermeasure Systems Corp.): Thank you.

Good afternoon, everyone. Thank you for the opportunity to present some information to the committee. I applaud the committee and the work of the government in the changes being made with Bill C-46.

This brings up three areas of comment. The first is related to proposed subsection 320.27(1), which in part requires “reasonable grounds” in order to require a drug test. The test for reasonable grounds has had its day in court for many years for alcohol testing, since the mid-seventies. Of course, the courts are filled with cases where this comes forward. I would recommend, in the case of proposed subsection 320.27(1), that instead, proposed subsection 320.27(2) be expanded to include mandatory drug screening through the use of oral fluid screening devices. There is a 10-year history of this type of case law in Australia, with a very effective program countrywide.

The second thing I wish to draw your attention to is proposed paragraph 320.28(2)(b), which requires “samples of blood” for subsequent analysis in the case of drugs of use. Once again, if one draws upon the information historically and throughout the world, samples of saliva are well known. In fact, there is very good data to support the use of saliva samples, oral fluid, instead of blood. It's easy and it's reliable.

We have a chart in the presentation, which will be shown later on, that illustrates the work of Drs. Huestis and Cone from 2004. It has been replicated many times, and shows that oral fluid for THC mimics the concentration of that drug compound in blood from a few minutes after smoking. The oral contamination of the cannabis is removed from the oral cavity quickly, and one sees a track of oral THC with blood. The same occurs very well with many other drugs, but THC was of interest.

The third issue is with regard to proposed paragraph 320.28(4)(a), which enables the collection of a biological sample of “oral fluid or urine”. I would propose that “urine” be struck from this part of the bill, because urine is useful in post-mortem cases. We wish to deal with living drivers. Urine is a collection of what has been—past tense. The drug that you're interested in could have been there from days, weeks, or even months ago. It has not very good evidential value for a criminal or even a provincial case. Again, I would recommend that “urine” be removed there.

As a background to these statements, particularly for THC, we know that the drug recognition experts have been involved in the United States, and more recently in Canada, with the apprehension and prosecution of drug-impaired drivers, whereas in many other places in the world, notably in Europe and Australia, the use of oral fluids has been the predominant choice. If we look at, in the case of THC, the time course of occurrence, we see that within minutes of smoking a joint, or a cigarette containing a modest amount of cannabis, one can peak well into 140 to 150 nanograms per millilitre of THC in the blood. Then you'll see the time course where it drops to less than 20% of its peak within an hour. Within two or three hours, there's relatively little left in the body to be detected. So if one is relying solely on field sobriety tests and the work of DREs, one is limiting the opportunity to collect evidence at the roadside.

Again, in Europe and in Australia, which have been doing this for 10 years or more, oral fluid is used, and the apprehension of drugged drivers is very predominant.

We can look, further, at the work of another researcher. This is in the United States, where one is looking at the frequency of occurrence of THC in blood samples collected after a DRE examination. One can see that fully 70% of the samples have little evidentiary value. They're below five micrograms per litre, post-collection. This is a blood sample collected after a DRE examination. It's very difficult.

If one is reviewing the legislation currently with the inclusion of drugs with alcohol, one would like to use what has been gained over the past 50 years with breath alcohol testing in Canada. Alcohol is very different from THC and vice versa. Alcohol is water soluble. It distributes through the body. Its effects are proportional to the concentration of alcohol.

THC is not that way. THC is fat soluble. It attaches to the lipid molecules in the body and is resident in the brain for a longer period of time than its concentration in the blood. One has to be quick about determining the drug-impaired driving at the roadside, collect a sample for evidentiary value, and then move onwards.

As for the collection of oral fluid, as I mentioned, it's very simple. The devices are well known. It's as simple as a kit such as this. To collect a sample, that's it. A simple swab of the tongue, and it's done. You press the button, and the test starts. The results are known in five minutes. That's an oral fluid test.

For confirmatory testing, there are commercially available kits on the market being used extensively in countries such as Australia, which use oral fluid as the secondary sample for evidentiary value. It's collection is as simple as a sucker. Put it in the person's mouth. Hold it there for a few minutes. The end turns blue. You have your sample. You take it and put it in a vial, wrap it, mark it for evidential value, and there you are. It's a simple procedure to use oral fluid.

My recommendations are that we use mandatory alcohol and drug screening at the roadside; that we concentrate on the use of oral fluids in addition to blood, because blood is already in the Criminal Code for alcohol offences; that we don't limit the police officers at the roadside with the requirement of reasonable suspicion, which we know is going to be problematic in the courts.

Thank you.

● (1540)

The Chair: Thank you very much for your testimony. It's very helpful.

[*Translation*]

We will move to the presentation of the Railway Association of Canada.

Mr. Gauthier, the floor is yours.

Mr. Gérald Gauthier (Vice-President, Railway Association of Canada): Thank you.

Good afternoon, everyone.

[*English*]

I am the vice-president of the Railway Association of Canada, which represents more than 50 freight and passenger rail operators, consisting of six class I rail carriers, 40 local and regional railways, as well as many passenger and commuter rail operators including VIA Rail, GO Transit, and tourist railways. Some of our passenger members are also members of the Canadian Urban Transit Association, which will appear before you later today.

With me is Mr. Simon-Pierre Paquette, labour and employment counsel at CN, Canada's largest railway. We come before you regarding a subject on which all can agree: the importance of working together to maintain safe rail operations.

In its November 30, 2016, final report, the task force on the legalization of cannabis highlighted the importance of addressing the safety implications of workplace impairment arising from the consumption of marijuana in safety sensitive settings such as transportation; hence the bill you are studying today.

Freight railways carry all the goods that sustain Canada's economy and its people, including many dangerous goods, such as gasoline, diesel fuel, liquefied natural gas, butane, anhydrous ammonia, ammonium nitrate, chlorine, and hydrochloric acid. We also transport military equipment and munitions for the Canadian Armed Forces.

Canada's rail network operates every day, year-round, through all our major population and economic centres and goes over some 30,000 federal and provincial road crossings as well as environmentally sensitive areas such as national parks. The movement of goods over rail requires strict adherence to the Railway Safety Act to minimize risk for the public, for the employees, for the environment, and for private and public property.

Our sector employs approximately 30,000 people, many of whom hold safety-critical positions—mainly anyone directly engaged in the operation of trains, in mainline or yard service, or in rail traffic control.

Canada's railways are committed to running the safest rail network possible. A key part of this is ensuring that railway employees are fit to work. We feel it is imperative that some safety concerns be addressed concurrently with plans to legalize marijuana.

I am now turning to Simon-Pierre to address the suggestions we have to mitigate the risks from increased accidents following the legalization of cannabis.

● (1545)

Mr. Simon-Pierre Paquette (Labour and Employment Counsel, Railway Association of Canada): Marijuana diminishes vigilance, concentration, depth perception, and the ability to perform automated tasks. It slows reaction time, and delayed reactions can occur over prolonged periods. These are just a few of its deleterious effects, which pose significant safety risks and increase the risk of injury to users and those around them in a live environment like a rail yard.

Legalizing marijuana will normalize its consumption, increase its availability, and provide greater opportunities for people to consume it. As an industry, we have no interest in regulating what people do on their own time, but as employers we have an obligation to ensure employees are fit to work and not impaired by any substance, legal or not, that may pose a risk to safe operations.

There is no legislation at this time mandating drug or alcohol testing for any position in Canada's transportation industry. This is left to individual railways, whose efforts are frequently subject to legal challenges. This creates an uneven patchwork across the industry, which is detrimental to safety.

Canada's overall approach to the prevention of workplace impairment in safety sensitive environments is reactive instead of proactive. For example, employees showing signs of impairment can be tested for reasonable cause, but this depends on pure observation, and drugs frequently provide few, and sometimes no, visible signs of impairment detectable before an accident happens. Now, employees can be tested in post-accident settings, to be sure, but this means that other screening methods have failed and that safety was seriously compromised.

In rail operations this can entail very serious consequences, which I don't think need to be overstated, for employees themselves, their co-workers, the public, and the environment. Marijuana is the drug most frequently found in employees who fail post-accident tests.

We are pleased that this bill proposes strengthening the Criminal Code by making it an offence to operate rail equipment while exceeding certain blood drug concentrations. However, while this may punish the offender, it remains a reactive measure that will not prevent an accident from occurring. In a context where marijuana is legalized, greater preventive focus is required.

Drug tests, including random tests, are required by law in the United States. The U.S. Department of Transportation considers random testing an effective deterrent, and indeed U.S. law lists deterrence as the purpose of random testing. In our industry's experience, it is very effective.

Both Canadian class I railways and some of the RAC's other members operate on both sides of the Canada-U.S. border. Canadian courts have long accepted that Canadian employees can validly be subject to U.S. random testing rules when they cross into the United States. The Supreme Court of Canada has likewise accepted that random testing can be permissible in circumstances posing enhanced risks to safety.

This bill acknowledges the need for preventive measures, notably by authorizing mandatory screenings at roadside stops. This is the right time to harmonize the Canadian and U.S. approaches to rail safety by adopting shared preventive screening standards. The legal framework is there, and Parliament's leadership is needed to establish a consistent, reliable regulatory framework for Canada's transportation sector, including establishing a per se limit for deemed impairment, approving a reliable instant-reading testing device to screen for drug impairment, and mandating the preventive monitoring of employees' fitness for duty, notably through random testing.

Thank you, and we will be pleased to answer to the best of our knowledge in either official language any questions you may have.

The Chair: Thank you very much for your presentation.

We'll move to the Canadian Association of Elizabeth Fry Societies.

Ms. Gentile.

Ms. Savannah Gentile (Director, Advocacy and Legal Issues, Canadian Association of Elizabeth Fry Societies): My name is Savannah. I'm the director of advocacy and legal issues at the Canadian Association of Elizabeth Fry Societies, CAEFS.

I want to thank you first of all for accommodating our last-minute switch. Our president, Diana Majury, sends her regrets that she could not attend.

Our concerns are mostly general in nature. I want to start with the lack of resources available for those who are struggling with mental health and addiction issues. Our concern is that coming out with a bill that creates harsher punishments and penalties will capture those who are struggling with mental health and addiction, and it is our position that prison is never a useful response to drug-related crimes. It is an intervention that comes too late and fails to treat the source of the problem.

We're further concerned about access to justice. CAEFS is concerned that Bill C-46 will disproportionately impact members of racialized and marginalized groups, who are more likely to be traffic stopped, to be charged, and to receive convictions and harsher penalties. And this is if they don't plead out in the first place.

We are further concerned that a bill of this nature will lead to an increase in the criminalization of our youth. It is our position that more resources need to be diverted to communities to address and better equip them to educate and to heal.

Thank you.

● (1550)

The Chair: Thank you very much for that very succinct presentation.

We will now move to questions and start with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much and thank you to our guests here for your insight.

I'll start with you, Ms. Gentile.

You're worried about youth and impairment charges and everything else. Are you supportive of the government's attempt to legalize marijuana?

Ms. Savannah Gentile: I don't necessarily take a position on supporting or not supporting the legalization. My main concern is with educating youth and educating communities on the potential impacts of impaired driving under the influence of marijuana.

Hon. Rob Nicholson: Do you expect an increase in impaired driving with the legalization of marijuana?

Ms. Savannah Gentile: I can't really speculate on that. I've read statistics cited by the ministers who have stated that it could lead to an increase. I think that education is the best method to combat that impact.

Hon. Rob Nicholson: Thank you very much.

Mr. Comeau, you said it's not only blood that you can test. You gave some examples. How about sweat? Would you have a problem with testing a person's sweat?

Mr. Felix Comeau: Sweat is used usually in an industrial safety workplace situation. It's a collection over time and is really looking for the presence of one or more drugs that may be prohibited in the workplace. It's not typically used for any enforcement in drug driving cases.

Hon. Rob Nicholson: Fair enough.

Mr. Abe Verghis (Supervisor, Regulatory Affairs, Alcohol Countermeasure Systems Corp.): I want to answer that one. Sweat and hair are used for long-term use. If you're looking for the presence of impairment you want to look for something that's immediate, which is saliva or blood, so we're looking only for saliva and blood. Sweat, hair, urine are all long-term uses.

Hon. Rob Nicholson: It's interesting. We've heard slightly different testimony with respect to sweat, but that's very interesting. I appreciate getting that on the record.

Mr. Gauthier and Mr. Paquette, you're concerned about workplace safety, and you did mention one of the cases of the Supreme Court of Canada that said that if you cross into the United States you're going to be tested.

If I remember the Supreme Court of Canada's decision, it was because that was in compliance with American law. If you enter the United States, you have to comply with the law. I don't know if it addressed the whole situation with respect to an individual's rights or freedoms because, if you do this in Canada, I think it's mandatory testing that you could demand of anybody who is an employee.

Do you think there might be some issues related to that person's liberty and ability to act in a free way?

Mr. Simon-Pierre Paquette: I submit to you that the potential impact of that person being present and impaired in a rail yard would itself outweigh any other considerations that would be brought.

Hon. Rob Nicholson: Fair enough. There are some people, though, who are quite concerned about police officers doing mandatory testing. You heard Ms. Gentile saying that it's possible that people from various ethnic or racial groups could be targeted.

Do you have any concerns in that area?

Mr. Simon-Pierre Paquette: The reason why I'm here and the reason why this is a concern to CN, in particular, and to railways in general, is not to do with criminalizing anything. It's making sure that employees, regardless of what they do in their own time, when they present themselves to work they are fit to work and they're fit to do so safely.

Hon. Rob Nicholson: You're not taking any position with respect to the legalization of marijuana.

Mr. Simon-Pierre Paquette: We're not.

Hon. Rob Nicholson: Fair enough.

Thank you very much, Mr. Chair.

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

We will now go to Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you, Chair.

I'll start with Mr. Comeau. Could you show us those kits for testing again?

● (1555)

Mr. Felix Comeau: It's a sealed kit. That's the entire kit. The saliva testing kit for roadside use is just that. You take off the collector. It has collection pads, slides over the tongue, goes back into the kit. You press the button to start the test. Five minutes gives you the lines of drugs that are present.

Mr. Ron McKinnon: We had an officer from the State of Victoria in Australia who gave testimony the other night. He showed us what looks very much like that. Is that what they're using down there?

Mr. Felix Comeau: Yes, they use this kit in Australia country-wide.

Mr. Ron McKinnon: My understanding is that they have zero tolerance, so these kits only need to show the presence or the absence of THC, for example. Are these able to be calibrated to show some given level of THC?

Mr. Felix Comeau: Yes, they're prepared with cut-off limits. The one used in Australia is the same as those used elsewhere. It had a cut-off limit for THC, for example, of 10 nanograms per millilitre.

Last year, in November, this kit was available with five nanograms per millilitre. It had a lower threshold. It's now what is being used in Australia as well. A positive test means more than five nanograms per millilitre of THC in the saliva.

Mr. Ron McKinnon: What's the cost of one of those kits?

Mr. Felix Comeau: These kits would be roughly $50 U.S.

Mr. Ron McKinnon: What about economies of scale if we're going to do a million tests? Do you have any concept of whether those costs can be brought down?

Mr. Felix Comeau: Yes. In Australia at the moment, there are about a million of these tests used per year. Yes, there are some economies of scale, but there's a limitation on the quality of the antibodies used in the kit. Good-quality antibodies provide for a good-quality test. One would judge the use of $50 against the cost of one, two or three hours of police manpower. In fact, these kits are very economical if the policeman can use a kit and get the evidence —yes or no—immediately.

Mr. Ron McKinnon: They use that kit, the blue one, I think, as a starting point, and if it shows positive, they use another kit, which is a red one. It's that one...?

Mr. Felix Comeau: Yes.

It's like that sucker to collect the samples.

Mr. Ron McKinnon: Is that because this is not sufficiently accurate for evidentiary value or...?

Mr. Felix Comeau: Our kit is designed to be a screening tool.

Mr. Ron McKinnon: Okay.

Mr. Felix Comeau: It's go or no-go, above or below the limit. It's quick. Any policeman could do it at the roadside. For that matter, any skilled person could. This kit is designed to collect a sample, which goes into the vial. It's sent off to a forensic laboratory. They do the analysis there, and then you get a quantitative measure of drugs in the body.

Mr. Ron McKinnon: Would that give you an accurate indication of the THC level in the blood as well? Is there a good correlation, a tight correlation?

Mr. Felix Comeau: Yes, on the presentation, the correlation for oral fluid—saliva—and blood is very tight. The concentration in oral fluid will mimic that of the blood.

Mr. Ron McKinnon: Is there any lead time or lag time between what this shows up and what would be in the blood?

Mr. Felix Comeau: Again, one of the screens shows that, with THC, a few minutes after smoking they're running in parallel, meaning the concentration in saliva versus the concentration in the blood. At the time of collection, you have the concentration in the body.

Mr. Ron McKinnon: This is a much less intrusive test than taking blood. In your opinion, is the second test as good for an evidentiary sample as actually taking blood?

Mr. Felix Comeau: Yes. It's well supported by science.

Mr. Ron McKinnon: I'd like to move on to you, Mr. Paquette. You're concerned about mandatory testing or the ability to test for cannabis use in the workplace. If it's legal, you say, there's going to be a problem, but you already have alcohol, for example. Do you have a process for testing for alcohol?

To me, the situation is very similar. In both cases, you have a legal substance for use. They're just not legally usable while you're operating train equipment, right? In the case of alcohol, what would you do to detect impaired operators?

● (1600)

Mr. Simon-Pierre Paquette: The short answer is the same. I agree with you that the contexts are very similar, but as Mr. Comeau pointed out earlier in his presentation, the way the body deals with these substances is different. This is in large part why Parliament's leadership would be needed to establish per se limits and to approve for use devices to screen for drugs in the workplace.

Right now, to my knowledge, there is no such thing as a Breathalyzer for drugs to be put—

Mr. Ron McKinnon: It's different per se limits for driving a vehicle on the road versus driving a train in a train yard. Is that what you're saying?

Mr. Simon-Pierre Paquette: We use different cut-off levels for alcohol, yes, which are lower and more stringent than the Criminal Code levels.

The Chair: Thank you.

Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): I'd like to thank all the witnesses. I am particularly grateful to Mr. Comeau and Alcohol Countermeasure Systems for giving us very specific recommendations for amendment, because of course, that's what we're trying to do here. I appreciate that.

The instrument that you showed us earlier I think is called DrugWipe, a saliva drug tester that your company produces. Is that correct?

Mr. Felix Comeau: It's produced in Germany. We're the—

Mr. Murray Rankin: You're the distributor in Canada for it.

Mr. Felix Comeau: Yes.

Mr. Murray Rankin: On your first recommendation, you talk about the Australian experience. I think the thrust of the study that you showed from Drs. Huestis and Cone was that we really don't need blood testing, if I can summarize. You're saying, showing the chart, that samples of saliva are just fine in terms of demonstrating the presence of THC.

To put words in your mouth—I want you to react to this—there really would be no need to have blood tests, which are more intrusive, of course, if we have the benefit of saliva tests, which are just as reliable. Is that what I'm supposed to take from this?

Mr. Felix Comeau: Yes, that's what's been done in Australia for the past 10 years.

Mr. Murray Rankin: We've heard lots of evidence about how intrusive blood tests are. Their constitutionality is up in the air because of the intrusive nature of blood tests. If the science is as you suggest, as Drs. Huestis and Cone suggest, then one wouldn't need to be as concerned if that's the implication of the science you're presenting here.

Mr. Felix Comeau: That's correct.

Mr. Murray Rankin: Right.

On the use of urine as a bodily substance, you've suggested that, because of the metabolites, it's historical evidence rather than current presence of THC in the system. I'm struck by the fact that at the work site people still use urine tests, if I'm not mistaken, in railways as well as in Fort McMurray and everywhere heavy equipment is used. They're the gold standard in employee testing to this point. Has there been a change? Are people using, for example DrugWipe, in the workplace?

Mr. Felix Comeau: It's becoming prevalent in Europe, and to some extent in North America. Urine testing in the workplace isn't really the gold standard; it's the economical standard.

Mr. Murray Rankin: I see.

Mr. Felix Comeau: It's cheap, to be crass. It's a simple test to be conducted, but then one has to be concerned about gender specificity and who collects the sample. Then you get into the problem of adulterants.

Mr. Murray Rankin: You make the point that this is entirely gender-neutral and that there are no issues of that sort using saliva tests.

You mentioned that the only time urine could be useful would be post-mortem, where a person has died on a highway. Wouldn't a saliva test still be valuable? If a person dies, is the saliva test no longer relevant?

Mr. Felix Comeau: No, it can be, but I was making the point that urine is typically used in post-mortem cases.

Mr. Murray Rankin: But it's not necessary to do that. A corpse can still provide saliva through the same kind of device that you've just been describing.

Mr. Felix Comeau: Yes.

Mr. Murray Rankin: In your materials you talk about evidentiary value. You showed us Dr. Logan's test. I was really struck by the fact of how little evidentiary value there was in the chart you've provided for THC in the blood. What about if alcohol and cannabis are mixed together, as often occurs? What's the implication of alcohol when one is using these oral fluid devices that you've just been talking to us about?

Mr. Felix Comeau: There's a lot of work being done on the concurrent use of alcohol and drugs, particularly THC, because it's often prevalent. The question is the impairing effect. Is it 1 plus 1? Is it 1 minus 0.5? Is it 1 plus 2? The effects of alcohol are quite different from the effects of THC on the body. Alcohol typically affects the back region of the brain; marijuana typically affects the top section, the cognitive functions. There are some antagonistic effects, and there are some complementary effects. This is not well known, and there's a lot of research yet—

● (1605)

Mr. Murray Rankin: Just to be clear, if you were to apply your DrugWipe saliva drug tester to a person who has both had alcohol and THC/cannabis in their system, the fact that there's also alcohol in the system wouldn't destroy the benefit or the evidentiary value of the saliva tester.

Mr. Felix Comeau: No, these are specific for the drug.

Mr. Murray Rankin: I understand.

I just want to ask, in the time that I have available, about Washington. You didn't have a chance in your oral remarks, but in your written material you talk about the Washington Traffic Safety Commission work.

We have a range of what are called per se limits from one nanogram per millilitre to five, and some states don't have any. What is your position? What would your recommendation be to this committee? Should we have per se limits or not?

Mr. Felix Comeau: Per se limits are difficult if you're going to say a given limit is equal to a given amount of impairment. With alcohol, we could do that, based on the studies from the beginning of time—I think it was in 1969—when we brought forward the legislation in Canada.

In the case of marijuana, it's not clear. Typically, one would look at a limit that is low, and in the case of these testers it's now down to five, which is the lowest detectable limit in oral fluid. If, as in some states, it's zero tolerance, what is zero? Mathematically, you can't measure zero. It has to be something positive. What do you take as the first positive measurement? Perhaps two nanograms per millilitre is indicative of marijuana present in the body at a level that should have some impairing affects. Dr. Huestis et al. show that this is the case.

Mr. Murray Rankin: Do I have time for just one quick question?

The Chair: You're over six minutes, but very quickly, yes.

Mr. Murray Rankin: Ms. Gentile, I wanted to make sure you didn't escape. You talked about the disproportionate effect on racialized groups, and their fear about that in this bill. That is presumably to do with randomized tests at the whim of a police officer going after somebody. Would you react the same way if there were roadblocks, and only at roadblocks would people be able to administer tests? Would this fear of discrimination be as strong?

Ms. Savannah Gentile: Not necessarily, but even at roadblocks the way a racialized minority is treated may differ from the way a majority member is treated. Actually, what it might do is serve to just diminish the appearance of discrimination, but not actually the discrimination, so that's a concern. We know in our jails and in our prisons that indigenous peoples are over-represented, so the result is clear, that they are criminalized disproportionately. Therefore, creating practices that seem neutral on their face will not necessarily alleviate discrimination.

The Chair: Thank you very much.

Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): Thanks, Mr. Chair.

I will start with Ms. Gentile. Thank you for coming, and for such a brief and succinct presentation.

Just quickly to check in, were you aware that our government committed $1.9 billion over the next 10 years to increase funding to the health system of Ontario for mental health interventions?

Ms. Savannah Gentile: I'm very happy to hear that, yes, and I hope those resources are being diverted away from the prisons.

Mr. Randy Boissonnault: Okay, I understand that comment.

The other point I would like to raise with you is that we've committed $274 million to pay for the devices that Mr. Comeau was showing for roadside testing. That's helping the police to pay for the devices and to train police officers—new DRE officers—as well as funding a public awareness campaign targeting exactly the kind of people you want us to make sure we get the message to.

Do you think there is wisdom in making sure we have additional sensitivity training when we're going out and doing drug-related testing, so we don't have this over-sampling among racialized or minority populations?

Ms. Savannah Gentile: I want to say yes. It's always important to have sensitivity training. The actual impact, in reality, of that sensitivity training though.... We've yet to really see results from that, so there's the policy and the law, and then the practice. In certain situations where you have huge power differentials, that training doesn't necessarily come out.

● (1610)

Mr. Randy Boissonnault: Could we ask the Elizabeth Fry Society for an official memo to this committee as it pertains to making sure we can protect these vulnerable communities as we're heading down the path of looking at the actual legislation for Bill C-46?

Ms. Savannah Gentile: I will look into that, yes.

Mr. Randy Boissonnault: Thank you very much.

Mr. Comeau, you made a comment that the science supports the devices, and the secondary device. What has the experience been in the criminal justice system in Australia, starting at the ability of the police to charge more people because of the evidence presented by these devices? How has it worked its way through the court system? Is the secondary test considered at an evidentiary standard that's actually making a difference in the court system?

Mr. Felix Comeau: Yes, it is. There are several scientific reports that review the success of the Australian story, and it's one, if not the only one, that is using mandatory testing and a two-step oral screening process for both the screening and the collection of an evidentiary sample. So, yes, the prosecution is working well in Australia.

Mr. Randy Boissonnault: Okay, thank you very much.

[*Translation*]

Mr. Gauthier and Mr. Paquette, the federal government regulates the rail system in Canada.

This may be beyond your scope, but I think it is important to highlight what the Toronto Transit Commission (TTC) does.

[*English*]

Since 2010, the TTC has been doing random drug and alcohol testing. Now, they did it; the federal government didn't put in any laws saying they should do it. Why do we need to...? I mean I understand the prima facie reason to do it as a federal government, but what is stopping rail companies from implementing something similar to what the TTC has done?

Mr. Simon-Pierre Paquette: Regarding the TTC, it did roll out its policy in 2010, and it was immediately challenged by the union. It actually only formally rolled it out in the field this year. The very first two tests that it did were actually positive, one for alcohol and one for drugs.

In terms of what's keeping other federally regulated companies from rolling out similar policies, well, the TTC example is a good one. Suncor is another equally good example. It tried to roll out a similar policy at a similar time and it has been similarly stuck in a judicial quagmire since then. The courts are still making up their minds about whether or not they will permit that kind of policy to go forward.

That is really the concern, that without some common national framework, these policies will keep getting rolled out and challenged on a piecemeal basis. You will get different standards applicable to different industries at different times, depending on different decisions.

Mr. Randy Boissonnault: Just to be clear, in the absence of federal legislation particular to your industry—if I heard your testimony correctly, lower per se levels than the average population would have—it becomes a battle between management and unions, and the courts are left to decide what management can and cannot do.

Mr. Simon-Pierre Paquette: That is where the dispute would be settled. I would submit that there is a broader benefit to be drawn from having a common set of standards enforced and applied by the federal government. Yes.

[*Translation*]

Mr. Randy Boissonnault: Okay. My thanks to both of you.

[*English*]

Mr. Comeau, with the time that's remaining to me, can you just walk me through what it would look like with what you're suggesting we do differently from what's written in Bill C-46?

There's a roadblock, an officer comes up to the car, asks for the Breathalyzer, and it shows positive. What happens now?

Mr. Felix Comeau: Police officers in a roadblock would walk up to the car and administer a roadside screening test, blown into the device. If it's truly mandatory, then they would proceed to request the subjects to stick out their tongue and draw a sample. They'd put it in, take it to the car, press the button, and wait five minutes. They'd get the results. In the case of the breath test, the results are known within seconds. It's quite simply there.

In Australia, in that situation, if they have a positive at the roadside, they then request the person to accompany them to another location. They have what they call “booze buses”. Inside the booze bus then they administer the second test, write it up, and take charge of the matter.

In Canada, we have had check stops operating across the country in different fashions. Simply, a road is blocked. It might be an access road to a highway or a major thoroughfare in downtown Calgary. I've had the fortune of being stopped in both. It's a funnel, and everyone goes through the funnel. There is no determination as to who goes one way or another. In the case of the RIDE program in Toronto, they typically ask questions of the person—for example, “Have you been drinking today?” That's to gather that reasonable suspicion. If there is no suspicion, then you go on your way.

● (1615)

Mr. Randy Boissonnault: What is your position on the way legislation is proposed right now, providing police officers with that discretionary ability to compel a test for a situation that is not in a roadblock situation?

Mr. Felix Comeau: In the current bill, it's a mandatory alcohol test, but it's a reasonable suspicion for a drug test. As it's working currently with alcohol, we will lose most of the cases. Either we don't detect them to begin with, or we have difficulty in the courts.

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

Colleagues, with your indulgence, because we have votes today and because we have so many panels, my suggestion is that we move to the next panel a little early, so we can finish the second panel before we have to leave to vote.

Some hon. members: Agreed.

The Chair: I would like to thank all of the witnesses. You were very, very helpful. It's extremely appreciated. I'd like to ask the next panel to move forward.

We'll recess until the next panel has come up.

● (1615)

(Pause)

● (1620)

The Chair: Ladies and gentlemen, we are going to reconvene with our second panel of the day.

It's a pleasure to welcome, from the Department of Public Safety and Emergency Preparedness, Ms. Kathy Thompson, who is the assistant deputy minister, community safety and countering crime branch. Welcome, Ms. Thompson.

We also have Ms. Rachel Huggins, who is the manager, policy and development, serious and organized crime strategies division, community safety and countering crime branch. Welcome, Ms. Huggins.

From the Royal Canadian Mounted Police, we have Mr. Kevin Brosseau, who is the deputy commissioner, contract and aboriginal policing. Welcome, Mr. Brosseau.

From the Department of Justice, we are again joined by Mr. Greg Yost, who is counsel in the criminal law policy section. Welcome, Mr. Yost.

Colleagues, we're going to have opening statements from the Department of Public Safety and Emergency Preparedness and the Royal Canadian Mounted Police, but not the Department of Justice.

Just so you know, there are two members of our third panel, who are flying in and flying out from Toronto. They have flights at nine o'clock. In the event, somehow, that they are here and can make their opening statements now, my suggestion is that we allow them to make their opening statements now, so we can include them as part of this panel as well and finish before question period.

Ms. Thompson, the floor is yours.

Ms. Kathy Thompson (Assistant Deputy Minister, Community Safety and Countering Crime Branch, Department of Public Safety and Emergency Preparedness): Mr. Chairman and committee members, thank you very much for the opportunity to speak to you today from a law enforcement and public safety perspective regarding Bill C-46.

As you know, my name is Kathy Thompson. I'm the assistant deputy minister at Public Safety Canada and I'm responsible for the drug file, principally. I'm joined today by my colleagues. We're here and we're pleased to answer any questions you may have with respect to Bill C-46 from our organization's perspective.

I recognize that you've already benefited from hearing from Minister Wilson-Raybould and Justice officials with respect to the bill. You've also heard from many other witnesses and stakeholders and we've been tracking that with interest.

Bill C-46 proposes specific enhanced measures to deal with impaired driving and driving under the influence of both drugs and alcohol. Part 1 of Bill C-46 proposes to enact new Criminal Code offences prohibiting prescribed levels of drugs in the blood within two hours of driving and authorizes police to use oral fluid screening devices at the road side. Part 2 of Bill C-46 will modernize and simplify the transportation provisions of the Criminal Code by repealing all transportation offence provisions and replacing them with a new part. My submission today will focus on matters related to Part 1 of Bill C-46. As Minister Goodale noted recently before the Standing Committee on Health with respect to the review of Bill C-45, the cannabis act, this proposed legislation, Bill C-46, is meant to address a problem that exists currently concerning impaired driving, but also to ensure public safety in view of the creation of a new cannabis regime.

● (1625)

[*Translation*]

The government is committed to supporting the implementation of Bill C-46, through screening, prosecution, public education, in order to send a clear message to Canadians that driving under the influence of any drug whatsoever is dangerous and criminal.

[*English*]

To begin, in terms of the broader public safety in law enforcement context, impaired driving continues to kill or injure more Canadians than any other crime. While alcohol-impaired incidents are declining, recent statistics show that the number of police reported drug-impaired incidents increased 11% from 2015 to 2016 for a total of about 3,100 incidents, which accounts for approximately 4% of all impaired driving offences. The number of police reported drug-impaired driving incidents is believed to be under-reported because detection requires specialized training, as we'll discuss shortly. If alcohol and drugs are present, it's easier for law enforcement to pursue only the alcohol impairment driving offence. Drug-impaired driving is a challenging offence to prosecute, as it requires proof of driving impairment, as well as impairment caused by a drug. Unlike alcohol, there is no separate offence for driving over a legal drug limit. Additionally, there are limited tools and training at present for front-line officers to detect drug-impaired driving.

On September 8, 2017, the government announced funding in support of Bill C-46 and in support of Bill C-45 as well. For Bill C-46, for drug-impaired driving, it committed up to $161 million for training of front-line officers on how to recognize the symptoms of drug-impaired driving, building law enforcement capacity across the country in support of this, providing access to drug screening devices, developing policy, bolstering research, and raising public awareness around drug-impaired driving, which I know has been a point that's been driven home in your discussions.

[*Translation*]

An amount of $80 million over the next five years will be available in order to provide access to drug screening devices in the provinces and territories, and to improve training for all police officers so that they are able to enforce new strengthened legislation.

[*English*]

Public Safety Canada has already engaged with provinces and territories to identify the current level capacity used to control and determine impaired driving. This initial work will help to establish how these funds are distributed across the country, and we will continue to engage all partners to further flesh out the allocation of these funds to ensure the most effective strategic use.

Building law enforcement capacity across the country to address impaired driving will be met by an increasing number of officers trained in standardized field sobriety tests, or SFSTs, and also drug recognition experts, or DREs, as we call them. There are approximately 3,400 SFST-trained officers in Canada, which is about 15% of front-line officers. These officers perform a set of divided-attention tests at roadside, which provide evidence that a driver is impaired. At the moment they are trained to recognize alcohol impairment only.

If the driver fails the test, the officer has reasonable grounds to believe there is impairment and can have further investigative tests conducted by a drug recognition expert, who is a police officer trained to detect impairment by drugs. There are approximately 600 DREs in Canada currently. In the proposed approach Public Safety is pursuing with provinces and territories, the intention is to have approximately 7,000 officers, representing about 33% of the front line, who are SFST-trained over the next two to three years, with a 50% coverage within five years. This number will then continue to increase as training institutes implement new training into their core curriculum. The objective is to put in place a “train the trainer” program across the country as the most efficient approach to meet these levels. The number of DRE-trained officers will increase by about 250, to about 800 officers.

In addition to training, further capacity for law enforcement to pursue impaired driving is being built through the testing and deployment of oral fluid screening devices. Public Safety is working with the RCMP and the Department of Justice to establish standards for these devices and have manufacturers submit their devices to be tested against these standards, with the aim of recommending the devices to the Minister of Justice, and allowing their initial deployment by spring 2018.

● (1630)

[*Translation*]

Last winter, the Department of Public Safety and Emergency Preparedness and the RCMP worked with seven police agencies across the country to conduct a pilot test on two oral fluid screening devices. The police indicated that the devices were generally easy to use in various weather conditions and temperatures, as well as various lighting conditions.

[*English*]

Another critical element of the work under way to address drug-impaired driving relates to public awareness. As I alluded to earlier, we know that this raises an important issue. Earlier this year Public Safety and partners, including the RCMP, used social media channels to encourage Canadians to drive sober as well as to dispel some of the myths that police cannot tell if you're driving high. This included a Twitter campaign. It was launched around March of last year, and it reached more than 13 million social media users. Presently, Public Safety Canada is broadening its reach and developing a national, multi-year public awareness campaign around drug-impaired driving specifically targeting youth, which will roll out very shortly this fall with radio, television, print, in movie theatres, and of course, through social media.

In addition, these efforts will be reinforced through work with provinces and territories and law enforcement agencies, indigenous policing services, and relevant stakeholder organizations, such as MADD and the Canadian Automobile Association, to inform the public and prevent drug-impaired driving.

[*Translation*]

There will also be federal efforts to improve research and data collection, thereby creating a better understanding of drug-impaired driving issues and making it possible to assess our efforts and investments in those areas, and also to improve accountability.

[*English*]

In summary, Mr. Chair, through this important legislation and related efforts, the government has indicated that it is committed to a zero-tolerance approach when it comes to drug-impaired driving and is proposing to take strong action to create new laws and initiatives to combat this crime. For its part, Public Safety and the RCMP are working together to develop supporting materials, training, and tools to help all law enforcement agencies across the country as well as border services to effectively and efficiently enforce the drug-impaired driving legislation.

Thank you.

The Chair: Thank you very much, Ms. Thompson.

Now we'll hear from the RCMP, Mr. Brosseau.

D/Commr Kevin Brosseau (Deputy Commissioner, Contract and Aboriginal Policing, Royal Canadian Mounted Police): Good afternoon.

[*Translation*]

Thank you for the opportunity to speak to you on the issue of impaired driving, particularly in the context of the legalization and regulation of cannabis in Canada.

[*English*]

We all know the carnage that impaired driving causes on our streets and highways. In 2015, of all impaired driving incidents the police handled approximately 4% involved drug-impaired driving, as Ms. Thompson mentioned. However, road surveys indicate that drug-impaired driving is as prevalent as alcohol-impaired driving. Consequently, Canadian police officers need to have the necessary tools and the training to keep our roadways safe for everyone.

Driving while impaired by cannabis or any other drug, whether prescription or non-prescription, or by alcohol, is currently a criminal offence. To this end, the RCMP has a contingent of over 900 SFST-trained officers and is increasing this training to our officers. In addition, the curriculum for that training is being updated to include enhanced training on drugs that impair. This will better prepare and enable front-line officers to detect individuals who drive while under the influence of drugs, alcohol, or a combination of both.

Canadian police officers can also receive drug recognition expert training, which is accredited, as you likely know, by the International Association of Chiefs of Police and overseen by the RCMP for all police officers in Canada. A drug recognition expert puts a suspected drug-impaired individual through a standardized series of psycho-physical tests and can use clinical indicators to determine if an individual is impaired by drugs. If an individual is impaired by drugs, that DRE can also determine the category of drugs that is causing the impairment. Notably, in February of this year the Supreme Court ruled that the opinion of a DRE is considered expert testimony in court.

There area approximately 650 of these active trained experts across Canada, of which 200 or so are members of the RCMP, and then 450 are from municipal and provincial agencies. It is important to note these numbers change daily based on recertification dates.

SFST and DRE will continue to be the primary enforcement tools used in the investigation of drug-impaired driving.

In the meantime, support for the enforcement of drug-impaired driving laws and the prosecution of offenders is currently provided by the RCMP national forensic laboratory services. Forensic toxicologists analyze bodily fluid samples for the presence and concentration of drugs. They provide written laboratory reports or certificates for use in court, interpret the effects of drugs on the actions of individuals, and provide expert testimony in court.

Given that enforcement is not enough and with a focus on prevention, the RCMP continues to conduct outreach and awareness activities with Canadians, and with youth in particular, to educate and raise awareness of the harms of drug use, the consequences of impaired driving, and the potential negative outcomes on all of our communities. These efforts will need to be clear and consistent for the duration of the cannabis legalization process and beyond.

Everyone has the right to come home safe, and the RCMP is steadfast in our commitment to do all we can to enhance awareness, prevent impaired driving, and equip police officers with the tools and the necessary training. We'll also continue to work with our partners and stakeholders to educate the public about the consequences and dangers of impaired driving whether by alcohol or drugs.

Thank you. I look forward to taking your questions.

● (1635)

The Chair: Thank you very much, Deputy Commissioner.

Now we were very lucky that we were able to accommodate the timing for our witnesses in our third panel who have to get back to Toronto.

[*Translation*]

I am very pleased to have with us Patrick Leclerc, president and chief executive officer of the Canadian Urban Transit Association.

Welcome, Mr. Leclerc.

Mr. Patrick Leclerc (President and Chief Executive Officer, Canadian Urban Transit Association): Thank you.

[*English*]

The Chair And we're also joined by, from the TTC, Mr. Brian Leck, who is the head of legal and general counsel. Hi, Mr. Leck.

And with him is Ms. Megan MacRae, who is the executive director of human resources. Welcome, Ms. MacRae.

My understanding is the three of you are joining together in a presentation that's going to be started by Mr. Leclerc.

[*Translation*]

Mr. Patrick Leclerc: Thank you, Mr. Chair.

Members of the Standing Committee on Justice, let me begin by thanking you for your invitation to appear before you today as part of your study on Bill C-46.

My name is Patrick Leclerc and I am the president and chief executive officer of the Canadian Urban Transit Association (CUTA).

CUTA is the influential voice of the public transit sector across Canada. Our membership includes all transit systems in Canada, private sector companies, government agencies and urban mobility partners.

[*English*]

The safety of our communities is closely linked to the safety of our transit systems. Each year in Canada our members provide over two billion trips, drive over one billion kilometres, and are on the road for more than 53 million hours, all that in mixed traffic.

A few years ago, and you may remember this, CUTA worked hand-in-hand with transit leaders, transit unions, MPs, and senators to successfully and unanimously amend the Criminal Code to make assaulting a transit operator an aggravating factor in the determination of the sentence.

The reason was simple. There are about 2,000 assaults against bus operators across the country each year. The situation is dangerous and unacceptable. While some pointed to the fact that 2,000 assaults over two billion trips represented about 0.000001% assault per transit trip, everyone agreed, including the members of this committee, that assaulting a bus driver represented a serious public safety issue that needed to be addressed. It was a matter of public safety back then, and we're now back in front of you today with exactly the same consideration in mind, public safety.

Transit riders should feel confident that getting on a transit vehicle is safe. In fact, it is much safer than getting in a car. Our transit operators care deeply about their passengers. They have their safety in mind at every turn. They are well-trained, very professional, and they provide excellent service to our communities. There's no doubt, Mr. Chair, that the vast majority of our transit operators would never drive a vehicle while impaired by drugs or alcohol.

[*Translation*]

Unfortunately, there are cases where drivers or other employees perform their duties while impaired by alcohol or drugs. This information comes from the experience of the U.S. transport networks, where random tests are mandatory, as well as the recent program implemented by the Toronto Transit Commission.

While this is the exception and not the rule, the few cases of alcohol- or drug-impaired driving are a few too many. As I mentioned, it is not just about drivers of vehicles. When passengers take public transit, their safety also depends on the work of mechanics, supervisors, inspectors, engineers and managers, all of whom have a role to play in ensuring the safety of all public transportation operations.

● (1640)

[*English*]

In addition to public safety this issue is also a matter of workplace safety. It's management's responsibility to ensure transit employees are safe at all times. Transit systems involve heavy-duty machinery, safety sensitive duties, and no shortage of ways in which an impaired person could put their fellow workers at risk. While transit operations for the most part sit outside the federal government's purview, the government does have a role to play in providing clear leadership and an unambiguous direction on safety-related issues surrounding the legalization of cannabis, such as recommended by the task force on cannabis legalization and regulation.

In addition to establishing clear mechanisms to allow for random alcohol and drug testing for safety sensitive positions under federal jurisdiction, the government needs to show leadership and work with provinces and territories to ensure the approach to public safety and safety sensitive positions as it relates to the use of cannabis and impairment in the workplace is consistent from coast to coast to coast.

I will now turn to my colleague from the TTC, Megan MacRae.

Ms. Megan MacRae (Executive Director, Human Resources, Toronto Transit Commission): Good afternoon, and thank you for the invitation to speak to the honourable committee today on the very important issue of road safety, or in our case, workplace safety.

I'm here today because I have managed our fitness for duty program since 2011 and have spearheaded the implementation of our random testing program, which was introduced earlier this year. As well, I have been intricately involved with our ongoing labour arbitration and the various ongoing legal proceedings.

TTC has been working with various employers and employer associations, including CUTA, over the past year to draw attention to workplace safety concerns associated with the legalization of marijuana.

We believe the risk to employees and the public in our industry is currently understated and will only increase. We believe that the federal government has an important leadership role to play in ensuring appropriate mechanisms are in place to protect workplace and public safety in advance of July 2018. We call upon the federal government to lead the provinces by example through the introduction of mandatory workplace random drug and alcohol testing in safety sensitive industries.

Our workplaces, in many cases, are public roadways, and the actions of our employees, both front line and behind the scenes, impact public safety.

TTC has been engaged in lengthy and costly legal disputes for which there is no end in sight. We have not been alone. In our view, the time for legislation is long overdue. TTC introduced random testing on May 8 of this year, and in less than five months has had 16 positive drug tests—over 50% of these were for marijuana—five positive alcohol tests, and two refusals. This is in addition to safety sensitive flags and alcohol violation. These results have surprised us by being higher than even we anticipated.

The Ontario Superior Court of Justice, in denying the Amalgamated Transit Union Local 113's injunction to our random testing program, determined that our program will increase public safety. Justice Marrocco was satisfied, based on our evidence, that the safety of both our employees and the public outweighed any privacy concerns. Much of TTC's evidence went unchallenged by the union. The judge explicitly concluded, based on our expert evidence, that oral fluid testing for cannabis at the TTC cut-off level will detect persons whose cognitive and motor abilities are likely impaired at the time of testing.

Our experts and witnesses offered evidence showing that in other jurisdictions, such as the U.S., the U.K., and Australia, where random testing has been introduced in similar workplaces, the rate of positive tests have significantly decreased. We looked at the Colorado experience and showed the impact to usage and public safety.

TTC uses oral fluid technology for the most part. While the TTC is of the view that this technology is not sufficiently invasive so as to present privacy concerns, we respect this protected right and would submit that even if it were truly invasive, the right to safety for the public is greater than the slight inconvenience random testing could create for those subjected to it.

As I mentioned, TTC uses oral fluid technology, and based on our experts, there is sufficient evidence to support the notion that one can choose drug cut-off levels consistent with time frames related to recent use and likely impairment.

I have a variety of other figures to speak to, but in the interest of time, I will highlight simply that 163 people have declared a substance use disorder since our fitness for duty program was introduced in 2010. All of our post-incident tests have been for drugs, which is noteworthy because we believe it's indicative that the visual means by which one generally has to detect impairment are insufficient. We've had 216 positive results in certification and pre-employment testing. These are people who are looking for work and know they will be drug tested.

With that, I will pass the time on to my colleague, Brian Leck.

● (1645)

Mr. Brian Leck (Head of Legal and General Counsel, Legal Department, Toronto Transit Commission): Good evening, Mr. Chair and honourable members.

On May 8 of this year, the TTC took the bold step of initiating random alcohol and drug tests for all safety sensitive positions, designated management positions, and executive positions. As a result, as Megan has alluded to, some 21 union members were found to have positive test results or refusals, people who would otherwise be out driving buses, subways, streetcars, in the busy streets of Toronto. Those people were undetected, unverified, unknown. What you don't know, you don't know. Random is the right way to deal with safety sensitive positions, particularly in the public transportation industry.

What TTC did was because it was the right thing to do, but I submit that it was the wrong way to do it. We have been involved in litigation for some six years with no end in sight. We're not through an arbitration process that began in 2011 and will be ongoing with, no doubt, judicial review, appeal to the Court of Appeal, and the Supreme Court of Canada. Maybe 10 years from now we'll get some decision. The problem with that is it's not at all proactive.

In every other western civilization, what it has taken is a horrific tragedy. In England, in London, there was a horrible subway crash that killed five people and injured 540 people as a result of someone being highly impaired by marijuana usage. Shortly following that, the government introduced legislative controls for random testing. Likewise in New York, a horrific accident. Likewise in Australia and in New Zealand. All these western democracies were reacting to situations that cried out for finally implementing random testing.

We're looking to leadership from the federal government to take the step, to set the bars, to set the requirements, to create consistency across the industry for all safety sensitive positions. Otherwise it will be a hodgepodge of different tests, different criteria, different arbitrators, different judges, all at different times coming to different conclusions at absolutely enormous expense to all of these companies, whether they're public sector or private sector. Inevitably, if it goes that way many families, many individuals, will suffer tragic consequences.

Thank you.

The Chair: Thank you very much for your testimony, it's very much appreciated.

We'll now move to questions. Mr. Cooper.

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

My first set of questions will be to Ms. Thompson. I want to dig a little bit into the issue of drug recognition experts. You indicated there are currently 600 and that the target is to have 7,000 DREs. By when?

Ms. Kathy Thompson: With respect to drug recognition experts, there are currently 600. The objective is to augment that by approximately 250, approximately 750 to 800. The reason for that is because there's actually a very high turnover in those positions. In order to constantly be filling those positions and making sure people are accredited, that's the number we feel we could have, trained.

Mr. Michael Cooper: I am sorry, I misheard you about the 7,000. Is that right? You never said 7,000, or did you?

Ms. Kathy Thompson: Not for drug recognition experts.

Mr. Michael Cooper: Not for drug recognition experts. The target is 750 to 800, by when?

Ms. Kathy Thompson: By year five. The five-year funding was announced on September 8, so within five years we will augment that number to approximately 750 to 800.

I think the number you may have been thinking about is the number for what we call SFSTs, standard field sobriety tests. We're so used to acronyms in the federal government. We currently have approximately 3,400 SFSTs, and you heard the number who are in the RCMP, which represents about 15% of front-line officers, and we will grow that number to about 50% by year five.

● (1650)

Mr. Michael Cooper: Thank you for that clarification.

How many drug recognition experts will there be as of July 1, 2018? What is the expectation, 600?

Ms. Kathy Thompson: I'm just going to turn to Ms. Huggins to see if we can get clarification.

Ms. Rachel Huggins (Manager, Policy and Development, Serious and Organized Crime Strategies Division, Community Safety and Countering Crime Branch, Department of Public Safety and Emergency Preparedness): We're already growing the number of DREs in the country. More are being trained every month, and the expectation is that within the current fiscal year, so by July, we will probably have an additional 100 officers trained.

Mr. Michael Cooper: So we'll be closer to 700, potentially.

You spoke about the level of attrition. It's my understanding that since 2013 the level of attrition has been somewhere in the neighbourhood of 50%. Is that correct?

D/Commr Kevin Brosseau: I don't know what the cumulative attrition is, Mr. Cooper, but I'd say that it's about 20% per year, for a few reasons. One is the training requirements and transfers within the RCMP. I'm not speaking about the entire program, but I can tell you that my officers have a high attrition rate, which means that the level of training needs to be accelerated, and this is happening.

Mr. Michael Cooper: That 800 figure seems to be considerably less than the figure given by some others who have appeared before the committee, some of whom have suggested that we need somewhere in the neighbourhood of 2,400 drug recognition experts.

Mr. Brosseau, I don't know if you might be able to comment on whether you're satisfied that the RCMP, and law enforcement generally, have the tools and resources they need to acquire a sufficient number of drug recognition experts by July 1, 2018.

D/Commr Kevin Brosseau: I would say that additional time would permit us to train more officers, and this will always be our goal. I will also say, though, that with respect to the placement of DREs, particularly from my organization, given our geographic scope, we're trying to ensure that there's as much coverage as possible across the country and that these DREs are strategically placed in particular areas. Given the mobility my organization, it's a challenge to make sure that we have them placed where we need them so that the coverage is there.

The other piece, in anticipation of the new legislation, is that front-line police officers will not have to rely solely on DREs. There is a second option, which is to be able to go directly to a blood sample. We're hoping that this will alleviate some of the pressure, which is now quite acute, and which is something other police services have cited in regard to the overall numbers of DREs being trained.

Mr. Michael Cooper: Just to get a handle on the training aspect of drug recognition experts, Ms. Thompson, did you indicate that this was being done under the supervision of the RCMP?

Ms. Kathy Thompson: Yes, it's accredited by the International Association of Chiefs of Police, and the RCMP oversees the program.

Mr. Michael Cooper: How long does it take for an officer to go through the program?

Ms. Kathy Thompson: It takes approximately three weeks, with one week of accreditation.

Mr. Michael Cooper: So it's not that long. What is the cost, approximately, per officer?

D/Commr Kevin Brosseau: It can vary. There's a 10-day classroom component, and then there's a period where the trainees are tested. It can vary in timing, but the cost is around $8,000 to $10,000 per candidate. Each session that goes through typically has 20 candidates.

Mr. Michael Cooper: Thank you.

Ms. Thompson, on the issue of efforts to create awareness and education around drug-impaired driving and alcohol-impaired driving, you alluded to the fact that the government has committed some money for such a campaign. I've been asking this for a long time, but where is the campaign? You said it's going to be rolled out in the near future. We're six or seven months from July 1, 2018, and the marijuana task force, in their report, stated that it was very important to mount an early campaign to create awareness. The campaign has not yet been rolled out. You said it would be later this fall. When exactly do you anticipate that it will rolled out? Will it be in two weeks, a month, two months?

● (1655)

Ms. Kathy Thompson: The campaign was launched in March through a social media Twitter campaign, which in our experience is the best way to target youth. That is our principal audience, although there are other audiences as well, particularly when we look at the polling. Particularly young males 18 to 28 to 34 are a very important demographic.

The Twitter campaign was very successful. It reached 13 million social media users. Videos on impaired driving have been produced on the Internet as well.

That was all done in the spring, and now we're in the process of doing research, public opinion polling, focus groups to make sure we target the message effectively. That should roll out in the next few weeks, and as I mentioned, it will be in print, on television, in broadcasts, and in movie theatres as well.

Mr. Michael Cooper: I understood about the Twitter campaign, but I meant the larger, broader campaign.

Ms. Kathy Thompson: It has been building up.

Mr. Michael Cooper: Okay.

The Chair: Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Chair.

Thank you all so much for being here and for your presentations.

With this many witnesses, it's going to be pretty difficult to ask all of you all the questions I want to, but certainly any information you have given us is helpful.

I would like to start with a couple of technical questions for Mr. Yost with regard to the bill itself. One of the things I heard in testimony from the Canada Border Services Agency was the definition of a vessel and the fact that has changed in section 320.11 .

Can you help me understand the rationale for the change because, as I understand it, the state of the law right now with regard to the definition of impaired operation of a vessel would include things that are muscle propelled. The definition specifically in this legislation is excluding that. Why?

Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice): The reasoning was that the criminal law was aimed at those who were endangering the public. We have impaired operation of a motor vehicle. We don't have impaired operation of bicycles, scooters, etc.

The current definition of vessel isn't a definition. It just says that it includes a hovercraft. It's for the courts to interpret what a vessel is. The information we had from prosecutors was that impaired operation of canoes and kayaks was not charged. The information we received from the CBSA that you received, which I was listening to, appears to be contrary to that.

We thought that when someone was injured or killed, criminal negligence charges could be laid. Nevertheless, returning to the status quo by eliminating the “doesn't include” would leave it to police to decide if they want to charge and prosecutors if they want to proceed with the charge.

Mr. Colin Fraser: Are you aware of someone being convicted of an offence of being impaired by operating a canoe, for example?

Mr. Greg Yost: I am not aware. I asked an articling student in some haste to try to find some cases, and she did not find any for me.

Mr. Colin Fraser: If I can move now to the term “impaired to any degree”. The words “to any degree” are added. The criminal defence lawyers indicated that could cause some uncertainty in the state of the law.

I'm wondering why “to any degree” was added, and what that means because impaired means impaired so what does “to any degree” add to it?

Mr. Greg Yost: The witnesses referred to the Stellato case, and the Stellato case is referred to in the material that the government has put out on its backgrounder, etc. In that case, the Ontario Court of Appeal was deciding between two streams of authorities, one of which said that you needed a marked departure from normal behaviour before you could find impairment. The other one basically said, no, it doesn't have to be that marked. There just has to be evidence of some impairment.

The Ontario Court of Appeal decided that the appropriate balance was not to include a test that was not written into the legislation, and if I remember the words properly, that any impairment from slight to great was quite sufficient.

We felt that putting this in was a reminder to the courts of what the legislation is. If you read as many cases as I do, you will occasionally be astonished at what judges seem to require as proof of impairment. They seem to want intoxication.

So that was the reason.

● (1700)

Mr. Colin Fraser: Thank you.

A question for both you, Mr. Yost—I would like your quick comment on it—as well as Ms. Thompson, if you can.

We heard earlier today, and we have heard it from others, that making mandatory samples for drugs would be the better way to go rather than keeping the reasonable suspicion element as the standard, so alcohol and drugs should be the same is the suggestion where you're doing it on a random basis.

What is your comment on that?

Mr. Greg Yost: We certainly considered random drug screening. First of all, when you're looking at the Australian experience, it is the presence of it, so finding it in your oral fluid is actually an offence. It's in your body if it's in your oral fluid. When we looked at the state of the technology and compared it with approved screening devices, we found approved screening devices give you a virtual certainty of what the person's blood alcohol concentration is. As you know, concentration in the oral fluid does not equate necessarily to the concentration in the blood, so it's not as useful a test. But even more important is that you have to keep the person there. It said five minutes. The information I've seen, when they did the pilot testing of some these, said it was an average of about eight minutes. Frankly, that causes serious charter concerns about the arbitrary detention of a person. Maybe the legislation will get changed later, when the Drugs and Driving Committee tells us things have improved on the technology, etc., but for now we do not believe it's justifiable under the charter to hold someone for that long for this test.

Mr. Colin Fraser: That's fair enough.

Ms. Thompson, do you have anything to add to that?

Ms. Kathy Thompson: No.

Mr. Colin Fraser: If I have a moment, I'll just turn quickly to the TTC.

You mentioned drug cut-off levels for the random tests that you're doing now. What are those levels, and how did you determine them?

Ms. Megan MacRae: For marijuana specifically, our cut-off level is 10 nanograms. If you're interested in the others, I can go through them, but I anticipate that's the focus.

Mr. Colin Fraser: No, I'm interested in that one in particular. How was that arrived at? Where did you get the idea that was the right number?

Ms. Megan MacRae: We received advice from a forensic toxicologist with respect to that cut-off level. Various workplaces in Canada will utilize different ranges: some use five nanograms, and I know some are looking toward one nanogram. From our perspective, given the absence of legislation and given the inconsistent arbitral jurisprudence and what would apply in our case, we felt that was the most appropriate number that could assure us, based on the advice we were receiving, that an oral fluid swab would determine impairment at the workplace.

The Chair: Thank you very much.

Go ahead, Mr. Rankin.

Mr. Murray Rankin: Thank you very much. I'd like to pursue what Mr. Fraser was talking about.

For Mr. Yost and Ms. Thompson, I heard Ms. Thompson say that the government has a zero-tolerance approach, yet I understand we're going to have per se levels set by regulations under Bill C-46 of two nanograms, and five nanograms as well. If the Australians have a presence-absence system, isn't that essentially what a zero-tolerance level would mean? I'm told on the other hand that we're going to have regulations that won't set that, so I'm confused.

Mr. Greg Yost: The Australians do have zero tolerance. It is an illegal drug in Australia. They don't want you mixing it with your driving, so it is definitely zero tolerance. We find it in your oral fluid. Now you must recall that oral fluid is going to reflect recent use, because taking a brownie takes a lot longer to be digested and work it's way in. If you find it in oral fluid, you almost undoubtedly have a person who has recently smoked marijuana. And you smoke marijuana, as I understand it, in order to get high, which may not be a good idea if you're planning to drive. The Department of Justice calls it a “precautionary approach”, based on public safety considerations. We prefer to avoid zero tolerance.

● (1705)

Mr. Murray Rankin: But why would we contemplate regulations that set a limit of two nanograms per millilitre, then, if it's zero tolerance?

Mr. Greg Yost: The regulation process is one that's used in other countries, including the United Kingdom. The science is rapidly evolving with respect to this. There is a great deal of research going on. We rely on the Drugs and Driving Committee for its advice. It examined five nanograms and two nanograms, the pros and cons of both of those. It picked five nanograms because that's what's in Colorado and picked two nanograms because that's what's in the United Kingdom. There are pros and cons to both of them. The government, based upon that scientific advice and its own views, decided to propose two levels. It made that clear. It'll have to be put in regulations eventually. The five-nanogram level is, according to the DDC, much more likely to be certain of impairment. The two-nanogram level is a public safety consideration.

The reason for regulations is that, frankly, as the science evolves and as the DDC has to opportunity to consider more and more drugs —which we hope it will do in the future—it will be difficult to come back to Parliament every time to amend the Criminal Code.

Mr. Murray Rankin: I understand.

In the interests of time, I'd like to ask a question of Mr. Leclerc and to my colleagues from the TTC. Mr. Leclerc, you said that transit is safer than driving a car and I couldn't agree with you more, especially if I'm driving the car. I haven't had a car for years because in my community of Victoria we have an amazing bus service. But that's absolutely true. What I'm not clear on is what you are seeking from our committee. We appreciate your testimony, the 10-nanogram standard and so forth, but we have a committee that is studying Bill C-46, which is to deal with impaired driving and the like. I think I heard you ask for a standardization across all safety sensitive positions. Is it your testimony that you want us to amend Bill C-46 to deal with safety sensitive positions? Are you seeking amendments to this bill or do you believe what we have before us meets your needs? I'm not clear.

Mr. Patrick Leclerc: I was not talking about you, about the driving, I promise.

What we're looking for is twofold, whether it's in Bill C-46 that you're looking at, or through any other means. The first thing is that when it's under federal jurisdiction you have clear standards where you have safety sensitive positions. And we don't define them; we understand the legislators will. That's what I think Ms. MacRae and Mr. Leck, as well, mentioned. In the absence of clear standards or regulations, they had to go with their own and lead a costly and lengthy court battle. So, in terms of that, it's defining it.

The second thing that we're looking for is that we don't see right now the dialogue happening between the federal government and provinces and territories on a common approach to safety sensitive positions. In our case, what we're really concerned with is the public safety elements.

Mr. Brian Leck: Essentially what TTC is requesting is that the federal government review the whole notion of creating standards particularly for the transportation industry, similar to what they have in the United Kingdom and the United States, so there is a consistent set of per se limits, cut-off levels. Right now they are literally all over the map.

Mr. Murray Rankin: Oh, yes.

Mr. Brian Leck: The difference between a roadside test—and the government may have a certain functional approach to that—and the workplace is that it's well established that you need to deal with impairment in the workplace. That's the issue. If you start getting into your analysis and into too low a cut-off, then you're dealing with someone's personal recreational habits, whatever those might be, whether you agree with them or not. That's not our business at TTC. It is our business, though, when you show up at work impaired.

● (1710)

Mr. Murray Rankin: Right.

Mr. Brian Leck: Oral fluid is the test that shows that. Urinalysis doesn't and some other tests don't. But oral fluid shows a very high likelihood with marijuana, for example. The cut-off shows that you've smoked within four hours and there's a high concentration. So, we're looking for a set of regulations and legislation at the federal government level for the federal sector employees in safety sensitive positions that will establish those kinds of things as opposed to different industries trying to set their own standards and fight before different arbitrators and different judges—

Mr. Murray Rankin: The only difficulty, aside from the lack of my time, is that your standard of 10, which I think is very fair, by the way, to employees based on the evidence we've heard, is a long way from what the government is contemplating in this bill, so it's the utility of that. This is not the law that would create a federal-wide, safety sensitive standard.

But I want to go back to testimony we had from the last witness, which was a company called ACS, Alcohol Countermeasure Systems. They provided allegedly scientific evidence, from Drs. Huestis and Cone, where they argued that saliva is as reliable as blood testing and it is of course much easier and less intrusive than blood testing. Therefore, the burden of what they were suggesting to this committee was we don't need blood testing at all, which would probably change a lot of things in the bill.

I'd like the reaction of Public Safety and the Department of Justice to that assertion.

Mr. Greg Yost: Kathy is looking at me to start, unfortunately.

Ms. Kathy Thompson: I was going to start. Go ahead.

Mr. Greg Yost: Unfortunately, I missed that part of his testimony. It was pouring rain out there and I decided to wait for it to break.

What they said is not what I've been hearing from the Drugs and Driving Committee over the last several years, or what you've heard. The equipment is becoming more and more reliable at detecting it at lower and lower thresholds in saliva. I don't think there's any question about that, but the question of how that is connected with the level in your blood and impairment isn't as clear.

There is a particular legal problem, perhaps, that we haven't explored. One of the reasons approved screening devices are acceptable is that evidence isn't used against you in court. If you have presence in your oral fluid, it's sufficient to create the offence. You're requiring the person right there at the side of the road to provide you with proof that they have it in their system. That is self-incriminating. Obviously in Australia they then take another one and send it to a laboratory to be analyzed.

Our understanding of the state of the science is that it is not that good at this stage. We rely on the Drugs and Driving Committee for its advice.

The Chair: Ms. Thompson.

Ms. Kathy Thompson: Yes, just to add very quickly to that, we too rely on the DDC, but have also undertaken our own research, which shows the exact same thing about saliva. While it's very useful for law enforcement to have the oral fluid screening device for detection, and it helps them to build reasonable grounds to believe an offence is being committed, it's not sufficient yet for an actual per se limit. We're in contact with manufacturers, we see great progress, and we're convinced that the technology will continue to improve, but it's not there yet.

The other thing I might add is that there's not as much research as there is on the alcohol side. Of course, alcohol has been legal for so many years, and cannabis has been an illicit substance. There isn't as much research, but we are investing heavily in it. We're planning to do some research with Dr. Bruna Brands from the CIHR with respect to impairment and different use, whether it's smoking or eating brownies.

Other countries are doing the same thing. The U.S., for example, has a green lab. We're monitoring all of that very closely.

The Chair: Thank you very much.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, Chair. Thank you, ladies and gentlemen, for your testimony today.

I'd like to start with Ms. Thompson. In December of 2016, there was a pilot project that tested devices with six police forces. Ultimately, Public Safety published its final report on how that whole pilot project went.

Can you comment on how it went? Then can you also comment on the 13% malfunction rate that was also found in your report?

● (1715)

Ms. Kathy Thompson: I'm happy to talk about the pilot project that Public Safety and the RCMP ran with seven different police forces across the country. I'll ask Ms. Huggins to speak specifically about the false positive rates.

As you indicated, the pilot was run across the country in December, in seven jurisdictions, for about 12 weeks. We tested the device to see whether it operated well under different weather and lighting conditions, and so on. We found that officers were very comfortable with the device. The devices perform very well under different weather conditions. This was deliberately run between December and February or March, because of our great Canadian winters. They performed very well.

There were some experiences that will inform the development of standard operating procedures, like some of the saliva samples freezing after eight minutes, but overall the pilot worked very well.

The devices will have to still be accredited according to standards that are being developed right now by the DDC. These were two amongst many that are on the market. It was very encouraging and prompted us to move to include it in the proposed bill.

I'll just ask Ms. Huggins to speak to the false positive rate.

Ms. Rachel Huggins: I'll speak to both the false positives and the malfunctions. The malfunctions were articulated in the report that we wrote. However, a lot of them dealt with things like the printer not connecting to the Bluetooth, so they weren't really malfunctions with the devices themselves. Overall, they worked very well for the officers.

With regard to the false positive rate, because this was a volunteer pilot project, we assumed—because the officers screened the individuals before they actually volunteered for the pilot—that there were a few false positives. The device recorded the same drug detection in more than one instance in a row. Overall, the individuals who were part of the pilot were screened by the officers and didn't stay after the fact for us to do any further investigation about their consumption of a drug.

Ms. Iqra Khalid: Thank you for that clarification.

Mr. Brosseau, as a chief who is really taking leadership of our forces on the ground in dealing with impaired driving, you outlined some statistics in your opening statement. There were very big numbers in terms of impaired driving incidents.

As this legislation is rolled out, do you think police services are ready to deal with perhaps an increased rate of charges for impaired driving with regard to the number of trained officers we have on the roads, etc.? Do you think we are ready? If not, what steps do we need to take to be ready for this?

D/Commr Kevin Brosseau: Thank you for your question. I'll limit my comments to my organization.

I know that other police chiefs are being quite vocal about that. I will definitely say that additional time would be helpful, as I've mentioned. That would permit us to be able to train more officers, given the amount of pressures that currently exist on police forces to train in a wide spectrum of competencies.

That said, I'll say again that, first, this is already an offence that we are enforcing today. We've stepped up training. We haven't been sitting idly by at all. We have stepped up training on both the SFST side and the DRE side, strategically locating them, and I'm quite certain that other police services are doing that. Also, then, we have a plan to train more before next year and then continuing on. I suppose part of it is that it's unclear as to what will happen when the bill or the law comes into force. We can expect, I suppose, based on other jurisdictions, that there will be increased usage.

The other part that I really want to highlight is the proactivity and positive engagement with communities. I am convinced that we can't enforce our way out of the problem that is impaired driving, whether by alcohol or drugs. The previous commissioner talked about how it would be our goal to make it socially unacceptable, just like lighting up a cigarette in a restaurant. I think that's how our campaign has to work. It has to work in that prevention mode, in that proactive engagement with community groups—as Ms. Thompson mentioned —such as MADD, CAA, licensed establishments, and schools, so that we're actually getting left of bang and reducing the number of people, rather than trying to simply enforce and to catch those who made that bad decision of consuming some substance and then driving.

● (1720)

Ms. Iqra Khalid: Thank you.

The Chair: The vote is coming up, but while we have Mr. Yost I'd like to ask if anybody has technical questions for Mr. Yost. We're getting to clause-by-clause, and I know that I have a couple of questions, colleagues, if you would indulge me while you think about it.

Mr. Yost, very quick answers, please.

Proposed subsection 320.36(2) on disclosure states:

> No person shall use, disclose or allow the disclosure of the results obtained under this Part of any evaluation, physical coordination test or analysis of a bodily substance, except for the purpose of the administration or enforcement of a federal or provincial Act.

The Privacy Commissioner came before us and suggested that it was too expansive to have “a federal or provincial Act”. He suggested that they should be acts related to drugs or alcohol. What are the department's comments on that?

Mr. Greg Yost: This is actually just modern drafting technique.

If you look at the existing provision dealing with this, you see that it refers to six sections of the Criminal Code, the Aeronautics Act, and the Railway Safety Act federally. There is not a mention of any shipping act or anything like that. The modern practice is to ask what this is to be used for and not to try to tie it around. All of this information is connected with drugs or alcohol, so I would imagine that adding the drugs or alcohol back in isn't a problem whatsoever. Trying to list the legislation would be an impossible task.

The Chair: If we generalize on drugs or alcohol, that would be within the intent? Okay.

On proposed section 320.31(4), the presumption on the blood alcohol concentration, we had some suggestions that it could lead to an absurdity where, if your blood alcohol concentration was zero and you would just add five milligrams per hour.... Do you or the department have any objection to saying that this would solely apply if the person's BAC is above zero within the context of the clause?

Mr. Greg Yost: We've referred this to the alcohol test committee. You heard from the chair of the alcohol test committee that this would not happen in the real world—

The Chair: Have you a reason why we couldn't say—

Mr. Greg Yost: —but it could.... We are awaiting the response from the alcohol test committee, which I believe will be writing you, but my expectation is that they will say that wouldn't hurt anything because they would have to start from some number.

The Chair: Perfect.

Proposed subsection 320.12(c):

> It is recognized and declared that
>
> (c) the analysis of a sample of a person’s breath by means of an approved instrument produces reliable and accurate readings of blood alcohol concentration;

The Canadian Bar Association indicated this would be best left to a trial judge, and there were concerns raised.

Can you explain the intent of why that's there and what presumption are we trying to create in terms of this clause?

Mr. Greg Yost: It's based actually on a model in the DNA Identification Act where Parliament set out why it does this thing and its confidence in various things.

The point is there have been disclosure wars going on ever since we tried to eliminate the “two-beer” defence, and the requests for information are getting more and more bizarre, if I can put it that way. Thus far, the ATC does thorough evaluations and it's a ministerial order that lists these instruments. We thought it might be appropriate for Parliament to state its confidence as well in approved instruments rather than indirectly through a ministerial order. That's why it's there.

The Chair: Thank you.

Does anyone else have any technical questions for Mr. Yost? Not hearing any, are there any other quick questions for the panel?

Ladies and gentlemen, thank you so much for coming before us. We greatly appreciate it. You are excused.

Are we recessing to try to get another panel up to start or....?

Hon. Rob Nicholson: Why don't we get another panel?

The Chair: Let me ask the next panel. They're on videoconference. Can we see if we can get them up before the bells start?

Thank you.

● (1720)

(Pause)

● (1725)

The Chair: You're very kind and have agreed to join us by video conference and I want to thank you both so much.

As you may have been told, I believe there is the possibility that we are going to be called away to vote at some point and we would like to at least get your opening statements in before. Then if you're able to come back for questions, it would be greatly appreciated, but let's at least get your opening statements in.

We are now joined as an individual by Professor Jan Ramaekers, who is joining us from Maastricht in the Netherlands. Welcome, Professor.

And we have Randy Goossen, who is a psychiatrist and is joining us from Winnipeg. Welcome, Dr. Goossen.

Thank you, both, so much for joining us.

I'll ask Professor Ramaekers to start.

Dr. Jan Ramaekers (Professor, Maastricht University): Thank you very much for handing the floor over to me, but are there specific questions you would like me to address?

The Chair: Professor, normally, in Canada, what we do is we have an opening statement from each witness that summarizes their testimony and it goes to a maximum of 8 to 10 minutes. Do you have any opening statement you wanted to make to us about Bill C-46?

Dr. Jan Ramaekers: Okay, I can give you some thoughts that I had while reading parts of the bill earlier this week. Is that okay?

The Chair: Yes. Again, the more summarized the better.

Dr. Jan Ramaekers: Okay.

I would like to perhaps focus on two parts of the bill. One aspect is the fact that DUIC, driving under the influence of cannabis, will become punishable. Canada is intending to install some per se limits to distinguish the level of penalties. I've seen the limits of two nanograms and five nanograms as the markers, basically, of where penalties should start.

This is an interesting area. Probably the first point I would like to make is that much of the science underlying the choices for thresholds in Europe, the U.S. and, I suspect, also in Canada is really based on what I would call experimental research. The only type of research that has been able to establish something like a dose- or concentration-effect relationship between THC impairment and the skills related to actual driving performance comes really from what people would call laboratory studies. Participants would be invited to undergo a driving test or perhaps a simulated driving performance, or take part in a number of neurocognitive tests where reaction times would be tested and attention performances and cognitive functions in general measured, all while they were under the influence of a single or an acute dose of cannabis. They either smoked it in the laboratory or used a vaporizer or other means of administration. These performances would then be compared with the performances of the same individuals but under placebo conditions—when they really did not smoke any cannabis at all.

This is a wonderful set-up. It allows you to also take blood samples at the time of actual impairment. Typically THC, as I'm sure you've all seen, has a very profound pharmacokinetic profile, which indicates that if people smoke, they reach peak levels of THC in the blood very rapidly, perhaps within five minutes. Depending on how much people actually smoke, it could go up to, say, 100 nanograms per millilitre. After five minutes, the curve would go down, also very rapidly—

● (1730)

The Chair: I'm so sorry, Professor, but can I interrupt you for a second? Our bells are going.

Do we have unanimous consent to continue and to try to get these statements finished before we go?

Some hon. members: Agreed.

The Chair: Please continue, sir.

Dr. Jan Ramaekers: The curve would also go down very rapidly, and within 60 minutes. Within one hour, the levels of THC could be below 10 nanograms, or even five nanograms.

This is all perfectly monitorable in a laboratory setting. It means that we have been able to link certain levels of impairment to certain levels of THC in blood, as well as in oral fluid. This works fine. All of the results that come from these studies will indicate two nanograms, for example, which is really the lower limit above which impairment levels become apparent.

If we want to transfer this knowledge to real life and practice, the levels that people like me are measuring in the laboratory are not necessarily identical to the levels that a policeman, for example, would observe, or a forensic laboratory when analyzing the blood samples. The main reason is that the blood samples after an actual crash are usually taken two hours, three hours, or even four hours after the accident occurred.

This is the big dilemma that we are facing right now. The levels that we measure are representative of the THC concentration at the time that the blood sample was taken, but not necessarily at the time of the actual crash. This is a bridge that we need to cross somehow. It is important to keep in mind that with the majority of people who will be involved in a crash for which a blood sample will be taken two hours, three hours, or even later, after the crash, the majority of these samples will show very low THC limits. They may be well below one nanogram, or below two nanograms. That does not necessarily mean that all of these drivers were negative or under the THC threshold at the time of the crash.

The Chair: Thank you.

Dr. Jan Ramaekers: This is one important point that I would like to make.

The Chair: Thank you very much, Professor.

Due to the vote, I'm going to have you hold there for the moment.

We're going to go to our other witness, Dr. Goossen.

Dr. Goossen, if you could hold to eight minutes, that would be great, because then we have to leave for the vote.

Dr. Randy Goossen (Psychiatrist, As an Individual): Right. I think I have already handed in a sheet of information so I'll jump right ahead.

I thank you, honourable Chair, for the privilege of speaking to you today.

I would like to point out a few things. As a psychiatrist, I've seen the devastating effects of substances on people's lives. As stated in my paper here, alcohol robs, and it's clear it really does impact people's lives in a way that wants to steal away all that is valuable to us. As well, sometimes there is a difficult component in walking that fine line between recognizing the illness and then having to manage the fallout that occurs when people's behaviours are not safe and they are drinking and driving. It does play a confrontational role sometimes, so much so that I've actually been taken to the college about reporting people. At one point I even had a death threat in regard to cannabis use.

My last point is that it's my hope that the committee remembers the ravages of addictive disorders as well and that intervention is imperative. I would ask that the honourable chair of the committee be reminded of the illness of addiction and recognize the importance for not only prevention and managing road safety, but also the promotion of recovery as it pertains to mental health, substance abuse, and treatment of both.

I have about four sections of the bill that I want to quickly go over. I'll spell them out clearly as I go through them.

Bill C-46 allows the testing for alcohol during any legal roadside stop. I believe special consideration needs to be made in reviewing whether police are given too much freedom to randomly stop any vehicle at will. Although I agree that there are liberties in this regard that should be explored and expanded upon, the parameters of stopping a vehicle randomly for roadside checks is no small matter and needs to be well defined, with the ramifications carefully reviewed.

I have some thoughts and recommendations in regard to Bill C-46 if it's passed.

First, I think the federal government should work with provincial governments to include a signature, where drivers who have passed their driver's test sign that they are aware they will be subject to random testing. It's not giving consent; it's simply stating you're fully aware that random testing comes with the privilege of being able to drive a vehicle. This will enhance their own and the public's safety. This would create a change of attitude to a more receptive attitude to the proposed change of roadside testing.

Second, although obvious, it needs to be stated that the privacy of individuals will be significantly impacted by random testing. I believe our police require further training to detect whether a driver is under the influence. To make the point, albeit quite extreme, I'm using the idea here that an animal control officer shouldn't need to stop every dog owner to see if they're walking a pit bull.

Third, given recent evidence of profiling of individuals within our country, careful consideration in giving police sweeping powers to stop and test individuals needs to be weighed against the potential that the bill may give licence to the intentional or the unintentional targeting of certain populations within our society.

The document “Legislative Background: reforms to the Transportation Provisions of the Criminal Code (Bill C-46)” points out some interesting facts. I think I've given you those on my printout. Although there has been a 65% reduction over 30 years of driving incidents, at the same time Canada is lagging in terms of safety. Bearing this in mind, if we are looking to make the most significant impact possible when it comes to road safety, is there a reason that the blood alcohol level is not lowered from 80 to 50? This would be in keeping with the gains that other countries have benefited from after making similar changes to their laws in lowering their blood alcohol thresholds.

If the bill should be passed, I would recommend that the testing proposed for drugs and alcohol should be equally allowed at the same time of random testing.

I would use the proposed subsection 253(3). As stated, there are three new offences for operation of conveyance while impaired by cannabis and other drugs. The bill criminalizes operation of a vehicle, depending on the driver's concentration of THC in the blood.

● (1735)

If two nanograms of THC is a punishable offence in proposed paragraph 253(3)(b) when using cannabis alone, would it not be most appropriate to keep the drug level the same for proposed paragraph 253(3)(c), which spells out the offence in which cannabis is combined with alcohol? Instead of 2.5 nanograms, keep it at two nanograms, especially when, in combination with alcohol, the impairment may be greater.

Although the testing for the presence—

The Chair: Dr. Goossen, you only have two minutes left before we have to go for the vote. Could you try to summarize three and four in two minutes? We have it in front of us.

Dr. Randy Goossen: Sure. All I'm saying is that testing using swabs in the mouth could be invasive and possibly traumatizing to people who have PTSD.

With the resources that are present and possibly gained from this intervention of random testing, it would be most helpful if those monies were spent towards treatment options and assisting those who require recovery from use of substances.

Thank you.

● (1740)

The Chair: Thank you, both, so much. Again, we are really so apologetic about these votes, especially to you, Professor, who are six hours later than us. If you are available for questions when we get back, we would very much appreciate it. If not, I totally understand. I will leave you to deal with the clerk on that. We should be back in about 45 minutes.

Thank you very much, gentlemen.

The meeting is recessed.

● (1740)

(Pause)

● (1905)

The Chair: We are back.

Before we begin our next panel, I will tell you that Professor Ramaekers was kind enough to stay behind.

Thank you so much, sir. We again really apologize for the delays.

You had asked if we could ask a couple of questions of him before we move to the next panel. So we're just going to ask a couple of short questions of Professor Ramaekers, and then we're going to move to our next panel, if that's okay with everyone.

Mr. Liepert has the first question.

Mr. Ron Liepert (Calgary Signal Hill, CPC): First of all, thank you for hanging around. I'm not sure what time it is in the Netherlands, but it's got to be three or four in the morning by now, I would think. I appreciate that.

Dr. Jan Ramaekers: It's one o'clock in the morning.

Mr. Ron Liepert: Okay, for me that would still be way beyond my bedtime.

If you had any specific cautions or words of advice based on some of the things you've seen and had the opportunity to be enlightened on, what would be the one or two things that you would have as advice for our government relative to...? Maybe even a little broader. Obviously this impaired driving law is tied into the legalization of marijuana.

So if you take that whole package, what are a couple of things you would want to pass on to our government?

Dr. Jan Ramaekers: Perhaps one issue that I would like to bring forward is that if you look at DUI statistics, the number of drivers who test positive for cannabis alone is really not very impressive. In Europe, it's really somewhere down to 3% or 4% at maximum. In the U.S. it's maybe twice as high. In Canada I'm not quite sure, but probably it's comparable to the U.S. But if you look at the percentage of drivers who are positive for THC as well as any other drug or alcohol, then we're actually looking at a more significant number of drivers that I think may even be a more important target for any DUI legislation than just the driver who is under the influence of marijuana per se.

Of course that's not unimportant, but from statistics you can actually say that the combination of cannabis and alcohol is actually much more common. What you've seen, at least in the scientific literature, is that any combination of cannabis and alcohol already increases drug impairment and increases crash risk.

My advice would actually be to copy some of the laws that have been installed in Europe that basically take a zero-tolerance position for any combination of cannabis and alcohol, independent of the actual concentration. Even with BACs below .05 and THC levels beyond five nanograms, the combination will always lead to a very significant increased crash risk. I see that, in your bill, there is an effort to also make a law for combined use of cannabis and alcohol, but it actually has lower limits. Anything above blood alcohol concentration of .05 is considered relevant.

I would argue that any combination, independent of the actual level of concentration, should be an offence. It would actually make more impact, because this is really the most frequent occurrence on the road.

The Chair: Our next question will be from Mr. McKinnon.

Mr. Ron McKinnon: Thank you, Professor, again for hanging in here with us.

I'm not exactly sure what your field is, but I'm wondering if you can give us any insight into the relationship between THC in oral fluids and blood alcohol content, whether they align closely, and whether you can comment on oral fluid testing apparatus in measuring those.

Dr. Jan Ramaekers: To say something about my background, I'm trained as a psychologist, and I work in the field of psychopharmacology at my university.

In terms of oral fluids, I don't think that there is a single relationship between THC concentration and oral fluid relative to blood. It depends really on the device that people are using. There are many differences between the devices themselves that can lead to a different level of THC that has been traced in all fluid. Also the oral fluid devices are usually not able to detect THC levels for a very long time, so there's really a narrow time window of about three to four hours that would enable you to pick up recent THC use. Even more important, I think, is the real cut-off value that these oral fluid devices are operating by. They can vary quite a lot between devices.

If the sensitivity of such a cut-off level is really high, meaning that if the cut-off level is really low, then the rate of false negatives would be very low as well. If the cut-off level were higher, for example 30 nanograms or so, then I predict that the false negatives raised with oral fluid devices would easily be up to 50%, even if people smoked a cannabis cigarette 30 minutes before.

● (1910)

Mr. Ron McKinnon: Thank you, Professor. I didn't quite get your answer. We had some testimony earlier today that the THC measures in oral fluids corresponded pretty closely to THC in the blood, but I'm not getting that from you.

Dr. Jan Ramaekers: No.

Mr. Ron McKinnon: Thank you.

The Chair: We want to thank you, Professor Ramaekers, for having stayed with us. If we have any further questions we'll send them to you by email, but I really appreciate how late it is, and I want you to be able to sign off. We want to thank you very much for having stayed with us, and if we have any further questions—the same with Dr. Goossen—we'll send them by email.

We'll start our next panel now. We are very pleased to be joined, for our last panel of the day, by Ms. Diane Kelsall, the editor-in-chief of the *Canadian Medical Association Journal*.

We also have Richard Compton, who is the director of the office of behavioural safety research of the U.S. Department of Transportation.

We are also joined by Mr. Chris Halsor, who is the founder and principal of Understanding Legal Marijuana and is joining us from Nevada.

Welcome to you all.

We're going to take your opening statements and then go to questions. Opening statements can be no longer than eight to 10 minutes. We will start with Ms. Kelsall.

Dr. Diane Kelsall (Editor-in-Chief, Canadian Medical Association Journal): Mr. Chair and distinguished members of the committee, thank you for the invitation to present to you this evening on Bill C-46. I'm a family physician and interim editor-in-chief of the *Canadian Medical Association Journal*, of *CMAJ Open* and the *CMAJ* Group.

Just to be clear at the outset, I do not represent the views of the Canadian Medical Association or Joule, the subsidiary that owns *CMAJ*. *CMAJ* and the other journals within the *CMAJ* Group are editorially independent from their ownership.

I'd also like to be clear that I am not an expert in cannabis or on its effects on driving. I know that tonight you've had access to expertise and some of my fellow witnesses obviously have that kind of expertise. But I will bring you the perspective of a journal editor and a physician, as someone who assesses evidence for a living.

The mission of *CMAJ*, Canada's leading medical journal, is to champion knowledge that matters for the health of Canadians and for the rest of the world. Our vision is best evidence, best practice, best health.

That is why I am concerned about the two pieces of legislation, Bill C-45 and Bill C-46, related to the legalization of cannabis, and why I wrote the *CMAJ* editorial, “Cannabis legislation fails to protect Canada’s youth,” that was published in May of this year. I've supplied you with copies. Ironically, I was in Amsterdam at the time it was published.

That so many Canadian young people and adults believe that cannabis is a benign substance is a failure. It is our failure, our failure of public education in this country. You see, we know that it's not a benign substance.

That many Canadian young people and adults believe that it is safe to drive under the influence of cannabis, some even believing that it improves their driving, is a failure. It's our failure, our failure of public education in this country. You see, we know that driving under the influence of cannabis is impaired driving.

That so many Canadian young people and adults use cannabis regularly is a failure, our failure, our failure of public education in this country. Yet we are about to embark on what I consider to be a national experiment, an experiment on our youth to see what happens when we legalize the use of marijuana.

That's why a bill, a bill like C-46, the focus of this committee, is needed as a corollary to the cannabis act to counteract the possible increased rates of driving under the influence of cannabis as seen in other jurisdictions at least initially after legalization.

You see, as a journal editor, I worry about the research papers that will likely be submitted to *CMAJ* over the next years, papers that include graphs showing a dotted line vertically indicating when the cannabis act came into effect and showing an increase in cannabis use, an increase in citations for impaired driving, increased mental health issues among our youth, and perhaps even an increase in deaths related to motor vehicle accidents. That keeps me up at night. That's why I am here.

You see, any increase in the use of cannabis and any increase in impaired driving, even the most modest, after its legalization means that the legislation will have failed. This will indicate that the use of cannabis and its inherent risks are not really a concern, and that users believe that they have nothing to worry about. It will make clear our already evident inability to have communicated the dangers of cannabis effectively to the people, to the youth of Canada.

We are simply not ready.

By legalizing cannabis we are sending a message to the youth of Canada that its use is fine, that it is safe, but that's not the message the Canadian public needs to hear. While the cannabis act includes some provision for public education, Bill C-46 has no such specific provision.

On September 20, Health Canada issued a tender for a public health campaign specifically targeting Canadian young people. According to the tender this campaign will be designed to ensure that Canadians, especially youth, are well informed about the health and safety risks of cannabis use and about current laws. That campaign is not scheduled to be launched until December. Yet the Government of Canada intends to legalize access to cannabis no later than July 2018. This doesn't compute.

So it's half a year to completely change the thinking on cannabis for many Canadians nationwide, to change the thinking of the tow-truck driver I saw smoking cannabis in his truck on Merivale a few weeks ago, to change the thinking of the kids I saw standing on Bank Street in front of the cannabis clinic as I walked here this evening.

● (1915)

How long did it take before rates of smoking tobacco in Canada decreased? Decades. What did it take? It took a multi-year, multi-faceted, targeted approach involving all levels of government, simply to begin to make inroads.

For these bills to be successful, rates of cannabis use and rates of impaired driving should decrease after legalization. But that's not likely to happen. More likely, it will be the opposite. We are simply not ready.

Therefore, I urge you to work with your colleagues across the parties to slow all this down. There is no meaningful reason to legalize the use of cannabis this quickly.

Before this government considers moving forward with the legalization of cannabis, we need a robust, evidence-based public education campaign focusing on the health risks of cannabis, and a requirement in Bill C-46 for a campaign focused on educating the public, specifically on its effects on driving. We need to see these campaigns work before cannabis is legalized.

Rates of cannabis use and rates of impaired driving should demonstrably be seen to be decreasing in Canada before legalization. How would we know they have decreased? These campaigns must be accompanied by robust research programs that will assess the results before the cannabis act goes through.

Let me reiterate. Before this government considers moving forward with legalizing cannabis, we need to see a meaningful decrease that is both statistically significant and clinically significant in rates of use of cannabis and impaired driving as a result of these campaigns, not click-through rates, not page views, not likes or other measures of engagement with the campaigns. Those are intermediate outcomes only, and may not translate into behavioural change.

Rather, we need to see meaningful decreases in the actual rates of use of cannabis and impaired driving before legalization. Then and only then will we have a modest hope that what I consider to be a national experiment in legalizing cannabis will not irredeemably harm the people of Canada, particularly our youth.

Thank you. I look forward to your questions.

● (1920)

The Chair: Thank you, Dr. Kelsall.

We will now move to Mr. Compton.

Mr. Richard Compton (Director, Office of Behavioral Safety Research, U.S. Department of Transportation, International Council on Alcohol, Drugs and Traffic Safety): Thank you.

We have in the United States, as I'm sure you're aware, for many years now been altering, on a state level, our legal prohibitions about marijuana. We have quite a few states that have passed measures authorizing what's called medical marijuana use. Some of them contain very few restrictions. We've had some jurisdictions decriminalize the use of marijuana, and as you know, now we have eight jurisdictions that have legalized recreational use of marijuana. We are confronting a sea change, and I think the expectations are this will continue over the next few election cycles.

I work in our Department of Transportation, in our road safety organization. I have focused on impaired driving for over 35 years now, on alcohol and drugs, a specialty of mine. We like to be evidence-based.

What can I say about marijuana and driving? I think there is ample evidence from laboratory research, driving simulators, in-vehicle research on closed courses, and even in traffic that marijuana has the potential to impair driving-related skills. It is a psychotropic drug, that's why many people use it recreationally, so I think there's no question it impairs driving. Certainly it does not make one a safer driver, so it's not a good thing from a road safety point of view.

Our ability to actually talk a bit about the crash risk of driving under the influence of marijuana is quite limited at this point in time because of the complexities in conducting that type of research. I know there's a tremendous desire for someone to come up with an impairment level for marijuana, and that really is just not feasible at this time. It's not clear if it will ever be feasible that you will have an analog to blood alcohol concentration or breath alcohol concentration.

People are all very familiar with the alcohol model. It really does not apply much to many other drugs, whether they're prescription or illegal drugs, and it does not apply to THC, where you do not get a correlation with the psychoactive ingredient, delta-9-tetrahydrocannabinol. You can measure blood levels, you can measure oral fluid levels, but you do not see this nice correlation between blood or oral fluid levels and impairment that you see with alcohol.

It is certainly reasonable and feasible for police officers to detect marijuana-impaired drivers, and arrest them, and prosecute them. As I always try to point out to people in our country, research we've done shows that many people in the U.S. refuse to take a BAC test. In many states they have that right, and it may result in the suspension or revocation of the driver's licence. It's almost approaching 25% of the people arrested for alcohol-impaired driving who don't take a BAC test, and the vast majority of those are prosecuted, and successfully. We've compared cases where there is a BAC available to the prosecution, with cases where there isn't, and it results almost in identical conviction rates between them.

The fact that you don't have an equivalent to BAC is not a bar to the successful prosecution. It's important that police receive training in detecting. They need to know how to recognize signs of marijuana impairment. They have to be trained in careful observations and note-taking.

● (1925)

I will agree with the witness who preceded me, Ms. Kelsall. I do think that when you legalize a substance like marijuana, people get a very positive impression, and they think it's safe. They do not realize —just like with alcohol, which is a legal substance—that it's not safe to drive impaired by alcohol, marijuana, or many other psychoactive drugs. It's critically important as part of legalization that the public be informed that impaired driving is impaired driving, whether it's by a legal or illegal substance. There is a lot of education that needs to be done.

I know there is a lot of interest in these oral fluid drug-screening devices. I do think those would probably be useful for law enforcement. I know that in most of the United States there are tremendous backlogs in conducting drug tests. This is a real disincentive for law enforcement to get a blood sample, send it off to a lab, and wait for months—sometime three, four, five, six months—to get a test result. The available evidence right now seems to show that screening devices are fairly accurate. They're not of the same quality as what we would call evidential tests—qualitative tests done at a laboratory—but they seem to be fairly accurate. I would expect to see their use increase over time. I am hopeful that there will be proper testing of these devices before their use becomes too widespread. There have been some studies done to date, but most of those have been funded by the manufacturers, which, of course, are very interested in marketing their devices.

At that point, I'll just stop and welcome any questions you might have.

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

Before we get to questions for you, we're going to go to Mr. Halsor.

Mr. Chris Halsor (Founder and Principal, Understanding Legal Marijuana): Mr. Chairman, and distinguished members of the committee, my name is Chris Halsor. I am a Colorado lawyer and a former 14-year prosecutor. Just so you guys have background on me, I was a line deputy district attorney who tried cases. I've tried everything from off-leash dogs to first-degree murder. I did that job for eight years and then I became Colorado's first traffic safety resource prosecutor. In essence, I was charged with the responsibility of training law enforcement personnel and prosecutors about all things to do with impaired driving.

I began that job in 2008. In about 2009 medical marijuana really took off in Colorado, which has developed a reputation as the epicentre of legal marijuana. I was a first-hand observer of all of that. I participated in and oversaw legislation that went through our state legislature. I was a sitting member on one of the regulatory committees that dealt with edibles, packaging, and serving. And I was a substitute member dealing with growing caps. Over the five or six years that I was the traffic safety resource prosecutor in Colorado, I developed an expertise in legal marijuana overall and, more specifically, in marijuana-impaired driving.

In 2014, I jumped ship and formed my own company called Understanding Legal Marijuana. Now, what I mainly do is travel the United States. I have in fact been to Canada a couple of times to offer training, speak at conferences, and basically share my knowledge with other people. In addition, in September 2015, I created a class on marijuana DUI investigations in which I host something I call a “green lab”. We get volunteers to come in—not my law enforcement students, mind you—to dose on marijuana so that my police officers have an opportunity to see people actually under the influence of marijuana and perform roadside tests such as a standardized field sobriety test.

That has led to many things. I am speaking to you right now from Nevada because voters in Nevada passed a recreational marijuana ballot. Beginning in January of this year, the Nevada attorney general's office hired me as a contract lawyer to serve their state in a capacity similar to the position I previously held as a rural traffic safety resource prosecutor. I feel that I can offer the committee a substantial amount of expertise in this area. I don't want to take an advocacy position, but I am happy to answer any questions.

There are obviously some differences between Canada and the United States. One of the severe limitations in the United States, which has already been alluded to, is that in the U.S. marijuana is illegal federally, yet the states have largely been permitted to run their own marijuana systems without interference from the federal government. This has set up some difficult questions concerning public safety. It is difficult, for example, to answer questions concerning impairment and toxicology because our federal system requires an application process involving several federal agencies just to conduct a human study on marijuana. Where such an application is granted, researchers would be provided access to marijuana from the only legal source permitted for federal studies in the United States, namely, the University of Mississippi. However, the marijuana produced at the University of Mississippi grossly understates the typical THC levels of medical and recreational marijuana available in states where the drug is legal.

● (1930)

In addition to that, we cannot conduct studies concerning...just for smoked THC, but there is almost no research when it comes to edibles. Nor is there any research to the best of my knowledge concerning concentrated marijuana. I apologize; I have not kept up with all the legislation that is taking place in front of Parliament, so I can't speak to any details.

That being said, when it comes to determinations of whether there is a nanogram level, as some of the previous witnesses have testified, the scientific literature suggests that this is a question we cannot resolve right now.

Understanding that a per se level legislation makes things easier, I would suggest to you that there a number of things to contemplate and consider with legalization moving forward, at least in the context of impaired driving.

One is going to be training for law enforcement. Certainly, that is going to have to be a significant investment. I would assert to you that the methods that have been developed over decades for detecting alcohol have served as the template for detecting drugs. While some of those things are certainly relevant and applicable to the detection of marijuana-impaired driving, it's not as sensitive in some areas. Additional research would be helpful. Additional tools and training for law enforcement officers, basically to be trained in more advanced techniques, would be necessary.

Further, there was a discussion of oral fluid devices. Obviously, I was not tuned in to listen to the previous panel and what you heard. My understanding and knowledge of this is that the best oral fluid testing devices will test delta-9-THC, the active impairing ingredient. However, that is only in saliva, and there is no correlation to blood. The value of these is that they will indicate that the person recently had THC in them.

It's a huge challenge, because I think that going forward, what people aspire to do is to have a system like we have for alcohol. That includes having these devices we can use, and having a number we can definitively point to and say, “Yes, they are impaired.”

However, I think that going forward, the marijuana question is much more challenging. What I have been doing in the last two years in particular is trying to teach law enforcement prosecutors that you have to prove impairment, and impairment with marijuana is different than with alcohol.

Public perception is going to drive a lot of this. Regardless of what the scientists and experts say, your general public may just latch onto the conventional things they find and discover, such as, “Well, it's not as bad as alcohol,” and for part of your population, “I drive better high.”

I think there are going to have to be resources that come to bear if Canada goes forward with legalization, and tracking the data becomes a critical component. That's something that law enforcement agencies and other people who are recording this may not be equipped for. Is there money for that?

Furthermore, in terms of fatalities, when people do die on Canadian roads, are there rules and requirements for what is required in an autopsy? What are they testing for? Can we make corollaries as to whether they only had the presence of marijuana in their systems, or did they have the presence of something like delta-9-THC?

I could go on and on. I understand that my time is limited, so I will stop right there and certainly entertain any questions.

● (1935)

The Chair: Thank you very much to all three of you.

We'll start the questions with Mr. Nicholson.

Hon. Rob Nicholson: Thank you very much.

It's much appreciated by the members of this committee that all of you would take this time and make this effort to assist us.

Let me start with you, Dr. Kelsall. Thank you very much for your testimony as well.

You seem to understand the bill very well, so you probably are aware of the fact that, despite your recommendations with respect to educating and making sure there is a rollout of the public dialogue on this, the government is quite determined to have this in place just in time for Canada's next birthday. However, you have some concerns that the rollout for this public thing is just not going to work. Is that the case?

Dr. Diane Kelsall: I would like to reply to the member that this is the case. I would have to say that to have the public health education campaign that is required to reverse the rising increase in use in half a year would be a miracle. I know that. I've looked at the tender from Health Canada, and it's good. It's innovative. It looks like there are some really interesting ways to reach youth. However, we're talking about a fundamental shift in thinking for so many people. As I said, I think six months would be a miracle.

Hon. Rob Nicholson: One of the things the government has consistently said every time they talk about this is they want to reach out, they want to protect young people. That's part of their focus. Do you think that's consistent with the legislation that will allow every house to have a small grow op consisting of four plants, three feet high? Do you think this is consistent with the government's concerns to keep this out of the hands of young people?

Dr. Diane Kelsall: No, I don't think it's consistent. When I wrote my editorial, that was one of the things that I highlighted in it. I am concerned that by allowing people to grow at home, we have no control over the quality, the concentration, or its diversion. I don't think it's consistent with a public health approach to the legalization of marijuana.

● (1940)

Hon. Rob Nicholson: Thank you very much.

Mr. Compton, you've predicted that we'll see an increase in impaired driving. You pointed out that youth, when everybody is celebrating Canada's birthday next year, along with that they will get a very initial, positive impression of marijuana. Can anything be done? I take it you probably agree with Dr. Kelsall, that there has to be a considerable amount of education. How effective do you think that will be in the next six months?

Mr. Richard Compton: I would agree with Dr. Kelsall. Again, six months is a very short time for a public health campaign to change attitudes and behaviours. Most previous ones on smoking, exercise, and other things, have taken a number of years to penetrate to thinking and behaviour. I don't think you'll get all that far in six months.

We've seen in the United States that recreational marijuana, even medical marijuana, has contributed to an increased use in marijuana. We have not yet seen a big effect on crashes, but I suspect there is one. It's almost inevitable. I think for road safety, this is not positive.

Hon. Rob Nicholson: Thank you very much.

Mr. Halsor, I'm following up on some of the comments you made. Did they see an increase in drug-impaired driving in the state of Colorado after its legalization?

Mr. Chris Halsor: Data collection is such an imperative piece. First of all, it establishes baselines. That's a critical component to determining whether legalization has had an impact. I will tell you that Colorado government agencies struggle to answer this question because we didn't have good baselines.

While alcohol-impaired driving still constitutes the vast majority of cases, alcohol-impaired driving numbers have gone down. Drug-impaired driving numbers are on the rise, and that is multiple categories of drugs. It would appear there was some uptick in marijuana-impaired driving cases, including some evidence of a rise in fatalities, but as I alluded to, we had certain limitations within the data that was collected from crashes, where we didn't know if marijuana was truly the proximate cause. This was in part because when we had fatalities, when people were tested, they were only given a urine test, and urine tests really only tell you whether somebody had marijuana in their system within the last 30 days.

It did appear there was an increase, although that number has levelled off a bit. To give you truly accurate numbers as to what the impact has been on traffic safety in our state, I think we're still struggling to answer that question.

Hon. Rob Nicholson: In your previous role, you mentioned part of the role you had was advising the government on rural issues. Was there any difference in your experience between impaired driving in the cities or in the rural areas? Were there more in the rural areas or less or about the same? Is it completely consistent, or is there no base to be able to judge that by?

Mr. Chris Halsor: It's difficult for me to say. Typically, in most of the states that allow a form of recreational or medical marijuana, there's a lot of deference to local governments to decide whether they will permit marijuana businesses such as the retail-facing dispensaries. I think geography and cultural aspects determine how often and how much people are going to use.

However, I will say that the difference between urban and rural law enforcement often has to do with resources. In terms of the availability and accessibility of training, certainly, I understand that in Canada, you have a tremendous amount of territory and not necessarily a large population, especially in the interior part of the country. Getting resources and access to good training for these officers to adapt to this—not just on impaired driving but being able to adapt to the law in and of itself—I think is going to be a challenge that this committee and the Parliament is going to have to consider.

● (1945)

The Chair: Thank you very much.

We're going to move on to Mr. Fraser.

Mr. Colin Fraser: Thank you very much to our witnesses for their presentations and for answering our questions. It's much appreciated.

Dr. Kelsall, I'll start with you.

Do you accept that Canada has the highest or one of the highest usage rates of marijuana for young people in the world?

Dr. Diane Kelsall: Thank you, Mr. Chair. I would like to reply to the member that while I don't know all the international statistics, we do have very high levels here. When you look at past use in the last year, depending on the study, you'll see levels above 30%, in terms of youth.

Mr. Colin Fraser: Do you believe that has been going up over the last number of years?

Dr. Diane Kelsall: It appears that it's going up.

Mr. Colin Fraser: You mentioned tobacco earlier in your testimony, and used that as a comparison. You said that it took a long time with public education in order to see the usage of tobacco start going down, especially, I presume, among young people, or perhaps in the general population.

Along with that, of course, came in stricter regulations regarding its sale, its advertisement, and all manner of things, including a public education campaign.

Wouldn't you agree that the reason the tobacco usage rates have gone down is because of a whole-of-government sort of approach, where you're able to actually do these things in a regulated and restricted regime?

Dr. Diane Kelsall: I absolutely agree that a public education campaign is certainly not the sole piece. As I mentioned, it took a multi-faceted, targeted approach at multiple levels of government to be able to do that, but the point I was making is that it did not take six months. It took decades to be able to turn the tide.

Mr. Colin Fraser: Would you agree with me that if a product is illegal, then you can't regulate it?

Dr. Diane Kelsall: You cannot regulate it. That is correct.

Mr. Colin Fraser: In your presentation, I don't believe—and correct me if I'm wrong—that you touched on any specifics in the bill, or made any suggestions with regard to the actual text of the bill. Do you have any suggestions for this impaired driving bill?

Dr. Diane Kelsall: The addition that I suggested was that I believe there is not a provision in the bill for a targeted campaign on driving. There is some money. There's a provision in Bill C-45. From what I understand the amount of money that has been set aside is not gigantic. I really believe that Bill C-46 should have a built-in, specific provision for a targeted campaign on driving.

Mr. Colin Fraser: Do you think that a bill that is addressing the impaired driving laws in our country should have a framework in place for how we're going to do a public education campaign?

Dr. Diane Kelsall: I think it could be part of the bill, certainly from what I'm hearing today.

Mr. Colin Fraser: Thank you.

Mr. Compton, I'll turn to you if I could. Is there a safe level or a safe amount of cannabis that could be consumed before driving a motor vehicle?

Mr. Richard Compton: I would answer that with a no. I think the fact that someone's a cannabis user is not a bar to driving, but when someone smokes cannabis, you usually will see impairment for two to three hours, sometimes stretching out to four or five. I think people who want to use marijuana, whether it's for therapeutic purposes or recreational, should understand they should not get behind the wheel for probably six to eight hours after use. With edibles, it's a whole different question because of the mechanics of how that's absorbed into the body and the effects can last for longer periods of time.

No, there's no safe level, just like with alcohol. The evidence is pretty clear that with the first drink, risk goes up with alcohol. The more you drink, the greater the risk. We place the burden on the legislatures, like the House of Commons, to determine how much risk is acceptable. The fact that you set a level, like we have 0.08% in the U.S. or 0.05%...if you want zero risk, you set the BAC level to zero. I think the same thing is going to be true about marijuana.

● (1950)

Mr. Colin Fraser: If I can back up a moment, as you probably know, the way this is structured is that an oral fluid sample could be taken to have reasonable suspicion in order to go further with the investigation into whether the person is impaired by cannabis, for example. That oral fluid test could then eventually lead to a blood sample being taken to prove the amount of THC content in the blood.

Do you believe that a two-step process would be a good idea? We heard testimony earlier that relying on the oral fluid test alone would be enough.

Mr. Richard Compton: I think that the oral fluid screening devices are probably an aid to law enforcement because they give an almost immediate indication, usually within three minutes to five minutes. When pulling a blood sample or taking an oral fluid sample to send to a lab, you can wait weeks, if not months, to get a test result back. In order to make a case, I do believe that a police officer has to make careful observations and I think a judge or jury would like the corroboration that the person had ingested marijuana. The blood or oral fluid is simply indicating that there's evidence of marijuana use, corroborating an officer's observations.

Mr. Colin Fraser: Mr. Halsor, thank you very much for your testimony. You say that there was a rise in marijuana-impaired driving charges after legalization in Colorado.

What regime did Colorado put in place when it legalized marijuana, in order to deal with impaired driving ?

Mr. Chris Halsor: We went down the path of trying to create a per se law. We went three years into our state legislature to try and pass a five-nanogram of delta-9 THC per se law. We did not end up with that. Instead, we ended up with what is called a permissible inference. If somebody is arrested for a DUI case involving marijuana, they are given a blood test, and if that toxicology reveals that they have five nanograms of delta-9 THC per millilitre of blood, and if the case went to trial, in Colorado at least, even with our misdemeanour DUIs, they are jury eligible. The jury would be given an instruction that, at five nanograms or more, you can infer that this person is substantially incapable of safely driving a motor vehicle. That tracks with what would be our DUI statute.

What distinguishes a permissible inference from a per se law is that, if you hit that limit, that's a violation of a per se law. It's not even really proving impairment, whereas, with a permissible inference, the way the instruction works is that it's a nudge to the finder of fact to say yes, they're impaired. However, then the other parts of the instructions say that you can consider other evidence and the defence is allowed to offer up anything that suggests that the person wasn't impaired. It's not the functional equivalent of a per se law.

That was one thing we did.

Mr. Colin Fraser: That's my time. Thank you, sir.

The Chair: Mr. Rankin.

Mr. Murray Rankin: Thanks to all the witnesses.

I'd like to continue with Mr. Halsor, if I could. I'd like to first of all ask you about a point you made during your testimony, that if a person dies in a car crash, the autopsy ought to require testing. I think that's what you said, that there ought to be a mandatory test. Is that a function of Colorado law, or is that just a best practice? Is it reduced to a statute, or is it just something that is done?

● (1955)

Mr. Chris Halsor: Mr. Rankin, to answer that question, I would tell you it is something that could be articulated in statute and a requirement, but it is simply not in Colorado. Now, as I said in my testimony, I am doing work for the State of Nevada where the State of Nevada actually has that requirement in law. Their coroner's office, or their forensic pathologists, are required to draw blood samples and test for delta-9 and some of the other THC metabolites. In order to utilize that information, having those requirements and the funding in place to allow for the collection and publishing of that data is essential.

Mr. Murray Rankin: Is there a difference between rural and urban areas in either state that you're familiar with insofar as the availability of blood tests? That is, if you're in the middle of nowhere versus in a city where you can get a blood test done quite readily, are there statistics that show those differences, if there are indeed any differences?

Mr. Chris Halsor: There aren't statistics, but I can tell you anecdotally that, absolutely, there are extreme differences in that. One of the concerns, of course, with delta-9 THC is that it's ephemeral. I'm grossly oversimplifying it, but let's just say delta-9 dissipates from the blood very quickly.

Here in the state of Nevada, about 78% of the population lives in Las Vegas, another 17% lives in Reno, and the seventh largest state in the United States has the other 4% living everywhere else. There are huge swaths of land separating things. We have two counties in Nevada that don't have hospitals, so to get a blood sample in some instances, the closest location is 200 miles away.

We also have limitations on that. For law enforcement to even have the ability to collect blood is a challenge, and I definitely foresee that happening in Canada as well.

Mr. Murray Rankin: Given your expertise as someone who's prosecuted, I want to talk about the nature of the evidence that's used. You mentioned police using standardized field sobriety tests. Canada has employed a number of people who are experts, called drug recognition experts, and their testimony has been accepted as expert opinion evidence by our highest court.

I'm wondering how it works in either state that you're familiar with. Are police simply applying the standardized field sobriety tests and bringing people in on the basis of that? Does it have to go to someone like a drug recognition expert? How does it work?

Mr. Chris Halsor: Thank you, Mr. Rankin. That's a lot to unpack.

I would say to you that I think the United States and Canada, in terms of impaired driving training, operate fairly parallel. For a police officer who is going through a basic training program to become a police officer will typically receive a 24-hour training in the standardized field sobriety tests. They are the three tests that are employed as basic alcohol impairment detection methods: horizontal gaze, nystagmus, walk and turn, one-leg stand. That's the standard basis, and your average patrol officer will have that training.

Within the last 10 years a new training has been developed. Its acronym is ARIDE. It's a 16-hour training that is a bridge training between the basic program and the much more advanced drug recognition expert program. Typically, it helps law enforcement officers identify seven different categories of drugs. Those seven categories are largely taken from the drug recognition expert program which, of course, is the most advanced training.

Drug recognition experts are very good at what they do. They are typically a very small percentage of the entire police force. They're good at what they do, but there aren't that many of them, in part because their curriculum is incredibly challenging. It's very difficult not only to become a DRE but to maintain your DRE status. There are different levels of police officers. Can you have a police officer who is trained in the basic SFSTs identify a marijuana-impaired driver? Yes, you can, but there are also degrees of impairment.

When I run my green lab classes, we have people who put on varying degrees of impairment. The difficult thing with marijuana impairment is that a lot of the deficits are mental, not physical. I'm guessing most of us can sit here and imagine how drunks present themselves. They'll have a lot of physical manifestations of that. The panel can ask themselves, what does a high person look like? I suppose if you've seen one you could try to put it into words, but I pose this question to my police officers all over the country and they struggle with it. Proving marijuana cases is often proving mental impairment, and that's a much taller task.

● (2000)

Mr. Murray Rankin: Thank you very much.

The Chair: Mr. Boissonnault.

Mr. Randy Boissonnault: Thanks, Mr. Chair.

I want to start with putting some facts on the record.

In a letter that comes from the Governor of Colorado and the Attorney General of Colorado to the Honorable Jeff Sessions, Attorney General of the United States, it was clear that in 2016 after the national survey on drug use and health, there was:

> ...no statistically significant change in marijuana use among Colorado's youth since 2007-08. In fact, the most recent report indicated that between 2013-14 and 2015-2016, the period in which adult-use marijuana businesses opened their doors, youth marijuana use declined by 12%.

Also there was no increase in use by adolescents of eighth, 10th, or 12th grades following legalization.

I also think it's important to note for Mr. Halsor—and this is for the record:

> In the first six months of 2017, the number of drivers the Colorado State Patrol considered impaired by marijuana dropped 21 percent compared to the first six months of 2016.

The letter goes on to say that, while this is encouraging, they are going to continue to do their facts.

So, Mr. Halsor, you said that the number of people pulled over by police in Colorado increased in that period. The Attorney General and the Governor say otherwise, a 21% reduction. So I think it's important for us, if we're going to talk about data and facts, that we get our facts correct.

Dr. Kelsall, are you aware that in 2016 your journal published an article that said, very clearly, that public health experts urge realistic pot laws. They brought together 100 people from the Canadian Public Health Association. They asked the federal government to have some of the most restrictive legalization and regulatory frameworks in the world because, in their words, what we had been doing as a country for the last 40 years has not been working and we have the highest incidence of students and young people abusing cannabis. They urged us to have a system that would tightly control this and that wouldn't have the same kind of trade-offs that we had in the alcohol system.

I'll give you an example. I'm quoting the article from 2016:

> Portugal's National Drugs Coordinator Dr. João Castel-Branco Goulão noted that decriminalization of all drugs in 2001 allowed his country to refocus on harm prevention and addiction treatment, while freeing up police resources to hunt criminal "big sharks."

We've stayed way off C-46 tonight and we're into C-45 territory. So let's have some C-46 territory tonight. Dr. Kelsall, do you think in this framework that we proposed with C-46, interlock devices will keep repeat offenders off the roads, and would that keep people more safe?

Dr. Diane Kelsall: I'm not an expert in interlock devices.

Mr. Randy Boissonnault: If you have people who are repeat offenders and who offend again and are caught, it's a device put in their car so they can't use their car.

Dr. Diane Kelsall: I cannot comment on that. I'm not an expert.

Mr. Randy Boissonnault: All right. Do you think that, if we have mandatory roadside screening of people where the police don't have the discretion but just test everybody they pull over, that will screen more people out of the system who otherwise would get through in the current system we have?

Dr. Diane Kelsall: I'm not an expert in that.

Mr. Randy Boissonnault: So, you don't think, just thinking out loud, that it would keep more people off the road?

● (2005)

Dr. Diane Kelsall: I'm not going to make suppositions that way.

Mr. Randy Boissonnault: Okay.

Mr. Halsor, for you, what are the most effective ways to keep people from getting behind the wheel after using cannabis or alcohol? Is it jail time, the threat of getting caught, or is it what they just saw on their smart phone or their TV about the negative effects of cannabis or alcohol?

Mr. Chris Halsor: Well, Mr. Boissonnault, I would say statistically—or at least this is what the research says—that the greatest deterrent to impaired driving is fear of getting caught. So, I don't know what the policy answer to that is. They usually say it's high-visibility enforcement, which means law enforcement that is trained and on the lookout for impaired drivers. I think perception is a huge issue in all of this. You know, one of the difficulties with the marijuana legalization question, I think, in many polls in the United States—I don't know what the polling is in Canada—is that the public is supportive of this. It might just be a few percentage points, but it's starting to tip where more people out there are in support of this.

What I would say to you is that the big challenge is that the policy of legalization is outstripping the science. So, there are a lot of questions out there related to public safety—and that can extend to medical efficacy and all these other things involving marijuana—but it becomes difficult to answer these questions. So, looking at alcohol impairment, the deterrent is there, but I think education.... One of the witnesses alluded to edibles, just the way that people take them, the way they process, delayed onset. I would agree with Dr. Kelsall that the public needs some information too, so that they can make wise decisions.

Mr. Randy Boissonnault: Indeed. It's interesting, because our government a couple of weeks ago committed $274 million to provide police officers with the training they need, to pay for the road screen devices, to make sure there's capacity-building in the system, and to have a robust public awareness campaign, some of which we've already seen roll out with what Dr. Kelsall talked about. It's also important to note that in budget 2017, we committed $79.5 million over five years for these similar activities.

What's interesting...and this is our challenge as policy-makers, as we heard yesterday from Dr. Louis Francescutti, one of the pre-eminent scholars and physicians in the area of injury reduction, in everything from distracted driving to impaired driving. He was categorical: we could spend half a billion dollars and not reach the people we need to reach on a public education campaign. All of the data points to the fact that it's the fear of getting caught, losing your vehicle, losing your licence—those immediate sanctions when you're caught—that actually motivates people to change their behaviour.

That is, in my humble opinion, what I think our government has done and has tried to put in Bill C-46.

Thank you, all.

The Chair: Thank you, Mr. Boissonnault.

Assuming there are no other questions, I want to thank the witnesses.

I really appreciate our two American friends agreeing to join us to offer their expertise. It's very, very much appreciated.

Mr. Compton, we read your report to Congress and very much appreciated it.

Dr. Kelsall, thank you very much for joining us. We really appreciate it.

Again, thank you to everyone.

The meeting is adjourned.

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