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Chair

Mr. Robert Oliphant

Standing Committee on Public Safety and National Security

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● (1530)

[*English*]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I call to order this 26th meeting of the Standing Committee on Public Safety and National Security.

Thank you, witnesses. I would ask that you indulge us for one minute. We have one piece of committee business we would like to do before we begin our actual work today, and that is to correct something that happened during the last meeting.

I understand that Ms. Damoff has a motion to present.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): I do. It's on the title of our report. A word was put into the record incorrectly. I said “occupational” instead of “operational“ stress.

The motion I have is:

> That the motion adopted on September 27 regarding the English title of the Committee's report on Operational Stress Injuries and Post-Traumatic Stress Disorder be rescinded and replaced by the following: That the report be entitled "Healthy Minds, Safe Communities: Supporting our Public Safety Officers through a National Strategy for Operational Stress Injuries”.

I'm sorry about that.

The Chair: Is there any discussion? Our report all the way through says, “operational stress injury”. It was a mistake and we simply want to correct it. Thank you.

(Motion agreed to)

The Chair: We have one other little piece of business we could get done today, which will be helpful, and that's with respect to next week.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Chair, I'd like to move:

> That the analysts and the Clerk, in consultation with the Chair, prepare a news release for publication on the Committee's website and for distribution in relation to its upcoming public consultations on Canada's National Security Framework.

(Motion agreed to)

The Chair: Thank you.

Thank you, witnesses, for indulging us. That is the last little piece of work to get a study done that we have been working on as a committee.

We have now moved our attention, at least for the moment, to a bill that has been referred to our committee, Bill C-226, amending the Criminal Code and consequential amendments to other acts.

We have with us today three witnesses, two in person and one by video conference. I'm going to suggest that we begin with the video conference, only because when things go wrong, as they sometimes do, it's easier if we have someone else talking while our technical people heal all wounds. I suggest that we start with a 10-minute presentation from Micheal Vonn, the policy director at the B.C. Civic Liberties Association, and after that we'll hear from Michael Spratt from the Criminal Lawyers' Association, and Abby Deshman from Canadian Civil Liberties Association.

We'll begin first with Ms. Vonn

Ms. Micheal Vonn (Policy Director, British Columbia Civil Liberties Association): Thank you, Mr. Chair.

On the subject of impaired driving, of course there are no two sides. We are all on the same side. Everyone advocates for road safety. The only points of contention relate to the best way to achieve that, while maintaining the integrity of the justice system.

In our view, this bill misses the mark in some crucial areas, I'm going to be addressing three aspects of the bill, which are sentencing, procedural protections at trial, and police searches.

To begin with sentencing, this bill contains mandatory minimum sentences that should be reconsidered. The view that general or specific deterrence can be achieved through mandatory minimum sentences is deeply held, but completely mistaken. The evidence shows that mandatory minimum sentences do not deter any more than proportionate sentences reached through the exercise of broad judicial discretion. This is true, even where mandatory minimums constitute a greatly increased penalty.

As MADD notes in their December 11, 2015 report, “...research during the last 35 years establishes that increasing penalties for impaired driving does not in itself have a significant specific or general deterrent impact.”

While failing to provide a benefit in deterrence, mandatory minimums create significant risk of harm. These include excessively punitive and unfair sentences, and shifting the discretion from the public and reviewable process of the courts to the secret, non-reviewable purview of prosecutors.

As research conducted by the Canadian Sentencing Commission shows, plea bargaining increases in the context of mandatory minimums, and this informal criminal justice system serves no one's interests. It can undermine proportionality, equity, and certainty in sentencing, leveraging guilty pleas regardless of culpability, and insulating the process of criminal justice from transparency, accountability, and constitutional safeguards and review.

I have provided the clerk with the link to our association's comprehensive report on mandatory minimum sentencing for your consideration.

Moving to the second point of procedural protections, statutory presumptions and evidentiary matter, in our view there is a very dangerous assumption that appears to be operating in respect of this bill, which is if we reduce the procedural protections for people who are accused of impaired driving we will make our roads safer. This is wrong. We do not increase public safety by putting accused persons at risk of injustice.

This bill would significantly reduce procedural protections in the trial process for those charged with impaired driving through a variety of means ranging from limiting disclosures to the defence, to imposing evidentiary presumptions favourable to the prosecution. None of the procedural diminishments and rights to the accused in the trial process can be justified.

We adopt the submission of the CCLA, which you will be hearing about in a few moments, with respect to the insufficiency of the evidence on the efficacy of drug testing and drug recognition testing. Procedural safeguards that guard against wrongful conviction are always, obviously, dangerous to reduce, but doing so in a setting where critical evidence is likely to be of questionable reliability should not even be considered.

I'd like to draw your attention to evidence that runs counter to the prominent view in some spheres that appropriate prosecutions of impaired driving are regularly derailed.

The StatsCan report, “Impaired driving in Canada, 2011”finds that, “Compared to most...offences, impaired driving cases are more likely to result in a guilty outcome.”

The 2010-11 StatsCan report cites 84% of impaired driving cases resulting in a guilty finding, and this proportion has been maintained in its stability for the past 10 years. There is some regional variation in this proportion, which we see ranging from 81% in Ontario and Alberta to 93% in P.E.I. This is a much higher percentage of guilty findings than for completed cases in general, which stands at 64%.

● (1535)

The evidence from StatsCan is that, for over a decade, impaired driving cases have produced a much higher percentage of guilty findings than have criminal cases in general. It is unclear to me how MADD's paper in 2015 came to cite figures and conclusions that are so different from and at odds with the data presented from StatsCan.

Finally, on police searches and Breathalyzers, arguably the heart of this bill is to provide for randomized Breathalyzer testing, or RBT. It was only yesterday, I confess, that I was able to access a copy of Peter Hogg's opinion on the constitutionality of RBT. Having now received that, we concur in the opinion of our colleagues at the CCLA with respect to the weight of evidence that was relied on regarding the effectiveness of RBT. We have not been able to review this evidence sufficiently in order to come to a definitive position, but it is nevertheless extremely clear that the evidence is highly contested.

Careful attention to methodology is always needed in reviewing studies, and a selective review of studies is always problematic. It is for this reason that systemic studies are so compelling—because they attempt to correct for methodological shortcomings and selection bias. Thus, in our view, the committee should be giving very serious weight to the systemic study of the Traffic Injury Research Foundation cited in the CCLA's submission. That systemic review found no evidence that RBT substantially enhances road safety over our current regime.

Evidence on this subject is, of course, central to the question of the constitutionality of such a provision. Were such evidence to be produced, RBT would be justified and its potential discriminatory impact would nevertheless still be outstanding.

There is considerable evidence in Canada of discriminatory policing, particularly based on race. Even though crucial data for the assessment is often not collected, we are at a juncture where there is great agreement on the need to prevent police targeting of racialized communities.

Advocates of RBT point out that if it is used most often in the context of sobriety checkpoints, then you have a system that is genuinely random and non-discriminatory in its selection; however, proponents of RBT insist that individual officers also be given the discretion to demand testing of drivers outside the context of checkpoints, arguing that remote or rural areas, for example, have resourcing issues that do not extend to having regular checkpoints. Given that these tests would be administered expressly on the basis of having no criteria for suspicion, such unfettered officer discretion facilitates discriminatory selection of drivers.

In our view, RBT, were it to be clearly justified, should nevertheless be limited to checkpoint situations, which proponents concede constitute by far most of the current uses of such programs in other jurisdictions. This would extract the maximum benefit of such programs while still ensuring that RBT use would not be compounding the discriminatory profiling of racialized communities. It would also further facilitate a basis for assessment and review of the program in order to determine whether any changes are needed or justified.

Those are my preliminary comments.

Thank you.

● (1540)

The Chair: Thank you very much.

That was very clear and helpful.

Who would like to go next?

Ms. Abby Deshman (Director, Public Safety Program, Canadian Civil Liberties Association): I have been nominated. I'll go first.

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

Ms. Abby Deshman: Thank you very much for the opportunity to appear before you today.

I am Abby Deshman. I'm a lawyer and program director with the Canadian Civil Liberties Association.

Like the BCCLA, we fully support the goal of this bill. We know that impaired driving is a serious concern in this country. The government clearly has a strong role that it can and should play in combatting this persistent social problem. We know we can do better. Unfortunately, we don't think that this bill, in its current form, is the right answer.

This afternoon, I'll touch on four specific areas of concern. I do have a written brief, but unfortunately it wasn't here in time for the official translation. It is lengthy—it ended up being 19 pages—but I'll go through what I can.

The four areas are as follows: mandatory minimum sentences and fines; the imposition of consecutive sentences; random breath testing; and the new statutory presumptions in the drug-impaired context.

First, simply put, mandatory minimum sentences do not work. They are ineffective and unjust. Decades of research has clearly shown that stiffer penalties do not deter crime. The mandatory minimum sentencing and fine regime that's in place in this bill will not deter drunk driving. It will, however, constrain our courts and impose unjust sentences on a subset of the population that have committed these crimes. Mandatory minimum sentences are a failed public policy experiment, and we think they should be ended. We did welcome the comments of Mr. Blair in the House of Commons. He said that the new mandatory minimum sentences would be removed or should be removed from this bill and he encouraged this committee to do so. We fully support that step; we think we should go further in Canada.

If you just remove the new mandatory minimum sentences, that will still leave a whole slate of mandatory minimums that were in existence before this bill was proposed, including a set of mandatory minimums that were harshened as recently as 2008 under a previous government. We do not think that they are necessary in order to combat impaired driving.

We similarly believe that mandatory minimum fines are not useful in combatting impaired driving. There is no reason to think that where mandatory minimum sentences do not deter crime that fines will somehow be more effective. In fact, fines operate to discriminatorily target those who do not have as much money as other Canadians.

Mandatory minimum sentences may impose unjust sentences on some Canadians. Mandatory minimum fines will always impose unjust sentences on those who are living on social assistance or disability, whereas they will not be a hardship for wealthy Canadians. That kind of sentencing regime is unfair. We don't think it's necessary. It does not contribute to public safety, and we encourage this committee to repeal the mandatory minimum sentences and fines in this bill.

Of secondary concern is the imposition of consecutive sentences. I know this has been addressed in the House of Commons as well, so I'll be brief, but proposed subsection 320.22 (2)—that's the mandatory imposition of consecutive sentences for impaired driving causing death— is extremely concerning, and, we believe, unconstitutional. The mandatory minimum for impaired driving causing death in this bill right now is five years. That means that one accident, which tragically kills more than one person, will result in 10, 15, 20 or more years of a mandatory jail sentence. For us it's clearly a contravention of the right to be free from cruel and unusual punishment. It needs to be removed from the bill.

Our third area of focus is the expansion of arbitrary police stop and search powers through the introduction of random breath testing. As you will be able to see from our written materials, we have significant concerns about the likely impact and ultimately the constitutionality of this new proposed power. We have looked at the extensive research that has been published relative to the Canadian context in papers as well as Mr. Hogg's opinion. We do not believe that the key question in Canada, the most relevant question in Canada, is answered by the existing literature.

For Canada, what we need to ask is not whether random breath testing is effective; it's clear that it is. It is clear that random breath testing does work. What we need to ask is whether it will be more effective in deterring impaired drivers than is our current regime, which involves selective breath testing and which we have had in place for many, many years. That is the question that is extremely difficult to answer and I think, frankly, it is not possible to answer with regard to the existing international comparators and research.

There are two main problems with the studies and international comparisons that I've seen.

First, while it's true that the introduction of random breath testing has been revolutionary in many countries, the vast majority of those jurisdictions did not have any roadside testing program before they introduced random breath testing, so we're not comparing it to the situation in Canada, which has had decades of RIDE programs in which drivers are stopped on the side of the road; we're comparing it to a situation of having almost no real enforcement at all.

As a result, in Canada we have had our own revolution in impaired driving due to selective breath testing, as well as other initiatives. We've seen the percentage of driver fatalities involving alcohol drop from 62% in 1981 to 33% in 1999, and we are now below that. It has definitely slowed down in Canada in the past 10 years as it has in other countries where random breath testing has been implemented.

● (1545)

Given the significant legal, cultural, and educational shifts that have occurred in this area over the past few decades we do not think that other jurisdictions' early experience with random breath testing is a useful comparator for Canada. We are simply not in the same place as those countries.

Second, while there are a few jurisdictions that did implement selective breath testing first, followed by random breath testing, they also introduced a host of other measures to combat impaired driving at the same time. I have some examples. I'll leave them to the question period if you're interested.

But it is extremely difficult to separate the impact of random breath testing from the other initiatives they also implemented. Many of these jurisdictions drastically increased enforcement at exactly the same time as they implemented random breath testing. They also had very large media campaigns, very large education campaigns, and it's simply not possible to tease apart the impact of implementing random breath testing and all of the other considerable efforts that went on at the same time.

As summarized by the Traffic Injury Research Foundation in 2012:

> ...the available evidence supports both...[selective breath testing]

—which we already have,

> —and ...[random breath testing] and suggests that what really matters is the balance between enforcement levels that are sufficiently high and publicity about the enforcement to establish the required general deterrent effect.

As a result of this review, we view the projected impact of random breath testing implementation in Canada as more speculative than certain, and we view some of the papers that we have read championing random breath testing as overly optimistic assessments of what that evidence actually demonstrates.

On the other side of the scale, we're deeply concerned about the additional impact that an additional arbitrary police search power will have on individuals, and in particular those who come from minority communities. The current proposal would not limit this search power to stationary checkpoints, where discretion is curtailed and therefore the risk of racial profiling or other improper exercises of police powers is reduced. Those who are already disproportionately stopped while driving will now not only be pulled over and questioned, but required to exit the vehicle, stand on the side of the roadway or sit in the police cruiser, and provide a breath sample.

I have never been pulled over to have my licence registration or my sobriety checked, and I have actually never gone through a ride checkpoint. I am not the person who experiences this. But for those individuals who are singled out disproportionately and required to submit to a Breathalyser, they will frequently be...experience that is humiliating, degrading, and offensive. This is not necessarily something that is going to be quick and happen within a car.

This factual background, the speculative benefits of random breath testing in Canada with the significant extension of police powers, underlies the constitutional analysis that we provide in our submissions. You recognize that, again, there are very learned written opinions that have suggested that this power be constitutional. We take a different view.

Our own conclusion is that the implementation of random breath testing as currently proposed would raise significant constitutional issues and is likely an unjustifiable violation of section 8, arbitrary search and seizure, and section 9, arbitrary detention, of the charter.

Finally, I'd like to say a few words about some of Bill C-226's statutory presumptions. You will hear, I think, from the Criminal Lawyers' Association about the elimination of the Mohan test for evaluating officers. That is the requirement that they be certified as experts in individual cases. We share those concerns.

We are also very concerned about the evidentiary presumption related to drunk and impaired driving that is in proposed new subsection 320.32(7). Briefly, that new subsection would use consistent results from a drug evaluation officer, the results that are consistent from the DRE evaluation and the bodily fluid analysis, to establish a statutory presumption that this drug was the cause of impairment at the time of driving. Basically it takes the two results from those two tests and says that if they're consistent, we will presume that this person was impaired by this drug at the time of driving.

Both of these testing mechanisms, though, the DRE evaluation as well as the bodily fluids analysis, are flawed in their own ways. In a Canadian study of DRE evaluations, one in five innocent individuals who had not taken any drugs was wrongfully identified as impaired. That's 20% of people who had not taken any drugs.

● (1550)

Saliva and urine samples are also very limited in their utility. Those who have taken drugs many days, weeks, or even months previously will often receive a positive drug test, depending on the type of drug or the specific bodily sample that was run.

Simply put, you cannot take these two pieces of information and combine them to create a presumption in the way that this bill does. It seems to be trying to mirror the breath-testing regime. The science on breath testing is much more reliable, much more certain, and much less varied than the science on drug impairment. We think if you keep these presumptions in, they will lead to wrongful convictions and imperil the presumption of innocence.

The Chair: I need you to wind up quickly.

Ms. Abby Deshman: My last sentence is to thank you very much for your time today.

I look forward to your questions and further discussion.

The Chair: Thank you. You used up the time that Micheal had left. That's good.

Our third witness is Michael Spratt from the Criminal Lawyers' Association.

Over to you, and thank you.

Mr. Michael Spratt (Member, Former Director and Member of the Legislative Committee, Criminal Lawyers' Association): I'll try to be as efficient as that.

I guess the first step is to dispense with my normal pleasantries and get right to the heart of things. This is a massive bill, and we won't have enough time to cover everything. I submitted a 32-page brief. I decided to one-up my friends here. I did crib a little bit of their work, though, so credit should be given. In typical criminal lawyer standing, I submitted it late last night. It's not yet been translated, but I'm happy to answer questions and follow up if anything comes up.

The CLA supports legislation that's fair, modest, and constitutional. While the CLA supports the objectives of protecting society from the dangers of impaired driving, we are unable to support this bill in its current form. The CLA cannot support legislation like this in its current form, or actually not much of this legislation at all. Nonetheless, in my written brief I offer some suggestions for amendments should this committee come to a different conclusion.

This once government bill, now introduced as a private member's bill, requires a real enhancement of scrutiny and study commensurate with the massive changes it brings to the Criminal Code in relation to impaired driving and related offences. Changes as fundamental as those proposed in this bill should be the subject of extensive review, full justice department reports, broad consultation, and ideally an examination by a body such as a law reform commission.

I do adopt the submissions of my friends as our own, in addition to what I'm about to say.

In our view, any provision of this bill that imposes mandatory minimum sentences, fine or jail, must be removed, and current mandatory minimums should be examined. Mandatory minimum sentences are an ineffective method of achieving the principles of sentencing. Minimum sentences are a one-size-fits-all solution that sacrifices fairness and proportionality without any resulting increase to public safety. Minimum sentences result in economic costs, place undue burdens on the correctional system, and, perhaps more importantly, they devalue the principles of judicial discretion and basic fairness. The mandatory minimums contained in this bill are unconstitutional.

We are also deeply concerned by the new random breath-testing regime. Increasing police powers does not come without societal cost. The experience of carding or street-checking—disproportionate arrest and charging of visible minorities for marijuana offences—makes this clear. The exercise of police authority can and does disproportionately affect visible minorities.

There are opinions, which I'm sure this committee will hear, that come to a different conclusion and suggest that the random breath-testing measures in this bill are constitutional. I would suggest that the evidence that those opinions rely on should be examined very carefully. Even if that evidence is correct, it's only the most charitable view of the circumstances of those random breath tests that will pass muster. I give an example in my paper of some situations that would not pass muster at all and that I think would be offensive to many members on this committee.

Bill C-226 also represents a significant expansion of state powers and contains numerous evidentiary shortcuts. I don't want to minimize it, because they're not really shortcuts. They're shortcuts to the pre-existing shortcuts. Those shortcuts risk trial fairness. They include, as outlined in my paper, number one, charges to the very offence of driving with a blood alcohol level of over 80 milligrams. That would no longer exist. It would be having a blood alcohol level of over or equal to 80 milligrams within two hours of driving. These are massive changes.

The de facto reverse onus provisions included in this bill are problematic. The presumptions about blood alcohol level represent a dangerous shortcut that needs careful evaluation. The relaxed standards with respect to obtaining breath samples for the purposes of screening should be of concern as well, as is the complete relaxation and abdication of any judicial oversight with respect to the evaluation of expert evidence that this bill, in some cases, makes definitive with respect to guilt or innocence.

These shortcuts will impact trial fairness. They will engage significant charter concerns. Ultimately, and perhaps more importantly, these shortcuts will devalue and limit the quality of evidence that's presented in our courts.

● (1555)

Finally, there are some sections to the bill that are unquestionably unconstitutional such as the amendment that permits the use of compelled statements for the purposes of grounds to make a breath demand.

The Ontario Court of Appeal and the Supreme Court, over the last 15 years, have found this to be a violation of the charter that's not saved by section one. There's no need to have a Supreme Court reference on the section. We already have it, and the results are not good.

In light of the breadth of this bill and the massive changes the study detailed here—but limited—that this bill will receive, we simply cannot support this legislation, and I would urge the committee to carefully examine our written submissions along with our detailed suggestions for amendments should this committee see fit to approve any of these sections.

Thank you.

● (1600)

The Chair: Thank you.

I often say I'm looking forward to the written submissions and I sometimes mean it. I actually am looking forward to your written submissions.

Thank you, all, for your testimony.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Mr. Chair, could I just ask for consideration by the committee to move to five-minute rounds? We're half over our hour already, so I'll just throw that out.

The Chair: I need unanimous consent to move to five-minute rounds.

No. Okay.

Mr. Spengemann.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Thank you, Mr. Chairman.

The Chair: If anyone doesn't need their seven minutes, we'll move on.

Mr. Sven Spengemann: I was just going to say, if I don't take up the full seven minutes, I'm happy to delegate some time to Mr. Mendicino.

I'm going to take you right to the heart of what I think some of the controversy relates to, and that is the issue of random testing.

This bill brings into conflict or into the discussion two very important currents of thought. One is the level of condemnation of drunk driving offences, which is probably akin to other forms of homicide or racially motivated crimes. It's very high in the minds of the public. Then, of course, our civil liberties, procedural rights, and charter rights....

I'm going to put to you the idea that the very concept of randomness is misplaced here because the human mind rarely, if at all, does anything randomly. So, when we talk about randomness, are we talking about randomness from the perspective of the motorist who or may or may not be caught in a traffic stop or from the perspective of the police officer who has, in my view, full discretion under this bill to decide whether to apply the breath test to somebody or not?

It isn't just racial minorities, I would put to you, who are potentially negatively impacted. It could be old people, young people, women, or people driving pickup trucks. There's all sorts of room for discretion on the part of the officer when she decides whether or not to apply the test. The only way to truly randomize that decision is for her to punch the licence plate into a computer, and the computer, on a binary random selection, spits out a yes or a no to apply the breath test.

I think we're outside of the domain of randomness, and I wanted to ask you if you agree with that, and if we are, if that strengthens the argument—presumably, it does—in terms of not following through with this provision. But if we left randomness in, you'll in see in 320.27(3), it is really only the title of that paragraph that says "random testing".

Would the bill, as it's currently framed, lead to the possibility of a non-randomness defence? In other words, if somebody was pulled over by an officer and then some research reveals that, yes, she does pull over everybody who drives a pickup truck but not anybody else, would that, in your mind, lead to an avenue of criminal defence that really is an unexpected consequence of the bill?

The second question, time permitting, is to take a broader look at the principles that we're expounding here and let us know your views on how they may or may not apply to the question of legalization of marijuana. In terms of resources of committee time, we're working here on a bill that may well be a forerunner to questions that arise on legalization. We want to get it right, if possible, on both fronts, as early as possible.

The Chair: So, those are two big questions I think to, ideally, all three of our panellists.

Mr. Spratt first.

Mr. Michael Spratt: Briefly, the proposition that random testing won't really be random is a common-sense proposition that plays out on our streets on a daily basis. To suggest that defences can be raised based on non-randomness because of an officer's history or other evidentiary matters often places a tremendous burden, practically speaking, on indigent and discriminated-against individuals.

So, that's not an answer, and I don't think that it saves the provision. I think the point you make actually points in the opposite direction.

Mr. Sven Spengemann: Sorry to interrupt, but what I was getting at is, would it be likely that a non-randomness defence would develop if the bill is enacted in its current form, in terms of judicial resources and, again, the disparities that you point out with respect to socio-economic status and the ability to raise that defence in court? Is it going to result in a bubble of non-randomness claims if it goes forward?

● (1605)

Mr. Michael Spratt: That will be an issue that is raised, but for all intents and purposes it's an issue that will not be raised, and in my opinion it will not be successful. It provides no solace to individuals who will inevitably be targeted due to this provision.

The Chair: Ms. Deshman.

Ms. Abby Deshman: I'll briefly agree. Random is not an appropriate word in this context when there are people making choices about who to stop and who not to stop. People are not random. They have thought processes that are sometimes legitimate and sometimes biased, and sometimes unconsciously so. All of that will come out when you give police officers unfettered discretion.

In terms of the defences, I defer to my colleague, the defence lawyer, who's in court.

With the drug-impairment and the legalization of marijuana, there is still a lot more work that needs to be done on what an effective drug-impairment regime looks like. Some of that work is scientific work. The legislature cannot jump the science. You cannot push beyond the science.

I think that trying to pass a comprehensive reform of impaired driving provisions while you have an enormous outstanding question related to drug-impaired driving doesn't make a lot of sense. If you're going to comprehensively reform impaired driving, then you should do it in concert with the science and do it once, so you get it right one time and you do it in the best way you can.

The Chair: Ms. Vonn, on either or both of those questions.

Ms. Micheal Vonn: Sorry, I have nothing to add to either one of those responses.

The Chair: Passing to Mr. Mendicino, you have about a minute and a half.

Mr. Marco Mendicino (Eglinton—Lawrence, Lib.): Can we assume for today's purposes that RBT might infringe section 8 or section 9, and can we just cut to section 1 and ask you to expand on why you say this bill would not meet the rational connection test, the minimal impairment test, or the proportionality test? I'm sure we all agree it's a pressing and substantial objective to keeping our streets safe.

Ms. Abby Deshman: Absolutely. You're right, section 1 is where it's at, and for section 8 it's the reasonableness.

For a rational connection, it is about whether random breath testing will deter impaired drivers more than what it already does.

Mr. Marco Mendicino: Can I stop you right there for a moment? There is evidence to suggest that there is some efficacy there. I think those challenging the legislation would have to present other evidence that would supersede that. Is that a fair assumption?

Ms. Abby Deshman: I think we have a lack of evidence. There are anecdotes from other countries, but I raised some reasons why those other countries are not great comparators for where Canada is right now. There are some meta studies that have come out and said that there appears to be no difference between RBT and SBT. Those suffer from the flaw, which is noted in Professor Solomon's work, that there are no studies designed to compare these two regimes. That is the problem and that's the rational connection difficulty.

Mr. Marco Mendicino: Okay.

I think embedded in your presentation were references to those groups who, for one reason or another, have suffered as a result of stops.

The Chair: I'm going to be a bit tight because we're very tight, if that makes sense.

Mr. O'Toole.

Hon. Erin O'Toole (Durham, CPC): Thank you, Mr. Chair.

Thank you all for appearing.

I'm a lawyer, like many of you. There's an irony here that likely all of us studied Professor Hogg in our constitutional classes, regardless of what school. I know Michael and I were at Dalhousie. I think his examination of rational connection and reasonableness should be quite compelling.

I started my debate in the House of Commons on this bill. I'm going to start today with the names Harrison Neville-Lake, Milly Neville-Lake, Daniel Neville-Lake, and their grandfather, because criminal law is our society's way of expressing moral blameworthiness related to action.

My first question is for you, Michael. You said this bill would be ineffective in achieving the principles of sentencing in section 718 of the Criminal Code. I'm assuming you're referring to deterrents. Is that correct?

● (1610)

Mr. Michael Spratt: Deterrents, rehabilitation, specific and general deterrents.

Hon. Erin O'Toole: This is where mandatory minimums always come down and it reminds me of the old law school expression *audi alteram partem*, I have the other side of this than you do.

There are two other sentencing principles that are often not discussed at all, and one is denunciation and one is protection. In talking with my constituents, which is how I help formulate the law... A totally avoidable crime like the case of the Neville-Lake family is so egregious when it comes to moral blameworthiness, I think those pillars of the sentencing principles should be examined in far more detail, because society created these laws in 1921 and updated them almost every decade in response to increasing societal disgust with the loss of life attributable to something that is absolutely avoidable.

This is not a crime of passion or anything like that. This is absolutely avoidable. In 1969 the 80-milligram level was introduced as a testing feature. Would you not agree that now that there are more ways that can deter, denounce and protect the public, they should be considered, including the randomized Breathalyzer testing?

Mr. Michael Spratt: I would disagree with your starting premise that this bill would assist in making impaired driving and impaired driving-related deaths, which are so tragic, avoidable. I think the weight of the evidence, arguments at the Supreme Court in the case of Nur, which I'm sure you're well aware of, and the expert evidence, which was accepted by the Supreme Court, by Dr. Anthony Doob, and many of the other studies that are referenced in my paper and the other written submissions that you'll have, dispel the notion that this bill will do anything to avoid those tragic, tragic cases that you speak of.

However, this bill will result in unfairness. It will result in the targeting of individuals. It will result—

Hon. Erin O'Toole: I'm going to stop you there. I think we've heard concerns about carding and targeting and that humans will have to implement this. In the ways in which law enforcement may exercise where a roadside RIDE test is levied, so that it's not targeting certain neighbourhoods, could we not come up with operating principles that were almost randomized in advance in terms of where randomized testing would be so that it wouldn't target groups?

Is it not possible to come up with an operational approach to avoid some of the prejudices you're suggesting?

Mr. Michael Spratt: Yes, if I can briefly explain. Recommendation 4 of my written brief—and I think it may be one of the parts I lifted from the Canadian Civil Liberties Association, which it echoes—suggests the sort of compromise of which you speak, that if these random breath samples are deployed as part of a RIDE program that would eliminate some concerns.

Having said that, there are still potential issues even in those situations if police are under-resourced and there are massive delays and detentions while everyone at a RIDE program is being screened.

It's my opinion that it's an abdication of responsibility when you're legislating to say in an ideal world if everything works out, this should be fine—

Hon. Erin O'Toole: But what if I may—

Mr. Michael Spratt: —when the evidence is quite to the contrary.

Hon. Erin O'Toole: What about if, say, there were regulations with respect to the passage of this law on the deployment of RBT that required adherence to an operational approach similar to the RIDE? Would that mollify some of your concerns?

Mr. Michael Spratt: It may very well. I'd need to see those regulations and study those regulations, but I think it very well could. But there are still massive problems that exist beyond just the random breath testing in this bill that I would really commend this committee to take a deep study of.

Ms. Abby Deshman: Can I just jump in?

I don't know how you regulate true randomness into a power that doesn't only exist at the RIDE stop.

Hon. Erin O'Toole: Can I make a suggestion?

● (1615)

Ms. Abby Deshman: We've tried to actually do that in the Ontario context with street checks. I do not think it's possible.

Hon. Erin O'Toole: I ran into one of the Google map cars the other day. We've seen them around. You probably have a lot of issues with those cars, too, I'm sure. I asked the fellow—because I've seen them, but never seen them stopped—how he is given his routes? It's by algorithm from California. He doesn't speak to anyone. He maps trails.

I think we could actually leverage technology to take the human potential bias out of the equation, and shouldn't we explore that? I do add once again on the denunciation aspect to this, that the public, certainly in southern Ontario, wanted to see stiffer penalties and in any approach, even we don't think deterrence is achieved, isn't denunciation of the conduct also important?

Mr. Michael Spratt: I'll just add very briefly that the true randomness that you're suggesting would do little to accomplish one of the goals that underpins this random testing; that is, the effective detection of drivers who might be over the limit, and yet, nonetheless, not display any signs. A needle in a haystack.

The Chair: We'll read it in a book. Thank you.

[*Translation*]

We are continuing with Mr. Dubé.

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Mr. Chair.

Mrs. Deshman, I'd like you to expand a little on something you mentioned that I think is important. You said that similar legislation had been adopted in other jurisdictions where there had been media and education campaigns.

We think that one of the biggest weaknesses in the bill is that we do very little to prevent people from getting in their cars. We can impose penalties after the fact, but our objective remains ensuring that no one dreams of getting behind the wheel after drinking too much alcohol.

I'd like you to talk about how it worked. How could we incorporate those suggestions and methods to better correct the situation?

[*English*]

Ms. Abby Deshman: I can go through some of the other measures the other jurisdictions had in place when they moved from selective breath testing to random breath testing. New Zealand, for example, when it implemented random breath testing in 1993, increased their enforcement, so that they had 1.5 million breath tests annually in a country of 2.3 million registered vehicles. That's a massive number of breath tests. That year, 7 in 10 licensed drivers were pulled over.

To increase that level of enforcement would send an incredibly strong message of denunciation. It would have an incredibly powerful impact as a deterrent, regardless of whether you have selective breath testing or random breath testing. Imagine what a powerful symbol that would send across the country.

Similarly, Ireland has drastically increased enforcement and they had massive publicity campaigns. They lowered alcohol regulatory requirements in New Zealand. In Australia, they said that at the very minimum, one in three drivers needs to be pulled over annually, ideally, one out of two.

Those are all measures that are within our power, within the existing legislative regime, that have had enormous impacts in other countries. They would have some of the denunciation impacts that you are very concerned about as I am.

[*Translation*]

Mr. Matthew Dubé: Thank you.

My other question has to do with minimum sentences. Any of you can answer.

Correct me if I'm wrong, but I think that someone who assesses the consequences of drinking and driving isn't really concerned about the severity of the punishment, but rather the chances of getting caught by a police officer and the speed with which sentencing occurs. Is that correct?

Could we rectify what is before us in this bill? I'd like to hear everyone's opinion on this.

[*English*]

Mr. Michael Spratt: Yes, the evidence definitely supports that contention. When individuals are engaging in a crime, they're not necessarily thinking of the mandatory minimum sentence or the likely consequences, and that might be even more so in the context of impaired driving.

It's not the punishment necessarily, according to experts, that deters crime. It's the criminalization of the conduct itself, and the likelihood of being detected. This bill falls down on various aspects of that analysis as well.

● (1620)

Ms. Abby Deshman: I agree. It's the likelihood of detection and the swiftness of the punishment. That is what the literature suggests. An increased enforcement would allow for both of those to occur, especially if swift punishment happens under provincial driving suspensions as opposed to a lengthy criminal process. Those punishments can be equally effective in deterring many individuals.

[*Translation*]

Mr. Matthew Dubé: Ms. Vonn, do you have anything to add?

[*English*]

Ms. Micheal Vonn: I'm not an expert in this kind of research at all, but what I have seen indicates very clearly that the key component here is enforcement. We do realize that's a resource-intensive solution to the problem, but it does appear to be the one that is ubiquitous upon all jurisdictions that have seen massively improved road safety.

Mr. Matthew Dubé: There are several lawyers around the table. I'm not one of them, so if you'll bear with me I do have another question.

My reading of these situations is that the judge's discretion has always been important and that mandatory minimums take away from that. I've read that some folks are concerned with this bill. By imposing the mandatory minimum despite the fact that society is moving toward more and more disdain for drunk driving, as Mr. O'Toole rightly pointed out, there is a risk that by sort of forcing a judge's hand you actually get the opposite effect, and that some folks might get off free because the judge feels they don't deserve the mandatory minimum. Is that a potential consequence of what we have in front of us?

Mr. Michael Spratt: That's a consequence of the inevitable and likely successful constitutional challenge. It's also a consequence of many of the other provisions, including the evidentiary shortcuts, the watering down of requirements such “as soon as practicable”, the officer having a reasonable belief that the motor vehicle was operated within a certain time, of the reading-back provisions. All of those shortcuts as well are all pathways to courts not sanctioning people who may truly be guilty and would have been captured under the existing legislation.

Mr. Matthew Dubé: My final question would be on police resources that were mentioned. How does that play into what we have before us? I mean, we sometimes hear there are certain jurisdictions where resources can be an issue. Does that amplify some of the problems you have all brought up?

Ms. Abby Deshman: I think all of the studies I've read say that enforcement is critical. There are interesting cost analyses, which I am not an expert in, that try to look at the benefits in terms of the health care costs versus the dollars spent on the enforcement costs, but you'd have to talk to other witnesses about that.

Mr. Matthew Dubé: Sure.

Thank you very much, Chair.

The Chair: Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: Thanks very much.

I agree with much of what you've said today, but I'm going to try and play devil's advocate here.

Bolus and intervening drinking defences, I take it, are extremely rare. We had the Department of Justice attend before us and I think they said they accepted that. Still, when they were before us, justice said that courts have referred to these defences, this behaviour, as reckless. Who would have drinks and use that as a defence in the wake of a charge for impaired driving?

Is there a way to amend the legislation and eliminate these defences, or significantly curtail them, and keep it constitutional?

Mr. Michael Spratt: I think there would be a way to do that through specific amendments that may contemplate it. The problem is, as you've put it, you consume a bunch of alcohol and you get in a car, you're still absorbing that alcohol. When you get pulled over, you've yet to absorb enough to put you over the legal limit, but if that officer pulled you over 10 minutes later, you would have been over the legal limit.

This is obviously highly morally blameworthy behaviour, there is no question about that, and there certainly can be some limited amendments that might allow a court to consider that absorption rate, with the proper expert evidence, to say that if you had been over the limit within a certain time of driving, if you were caught driving.... Amendments of that nature and that limited scope may correct the problem.

What this bill does, unfortunately, is to eliminate this bolus drinking and sort of after-driving drinking defences problem, which is rare. I've consulted widely with people who do a lot of work in this area, and they are rare defences. But what the bill does to eliminate those rare defences is that it criminalizes, and will criminalize, people who have driven with no alcohol in their system—

● (1625)

Mr. Nathaniel Erskine-Smith: And then had drinks afterwards.

Mr. Michael Spratt: —and had a drink after. Or people who had no alcohol in their system, or some alcohol in their system but not close to the legal limit, who had a drink after, and then were unable to comply with the exceptions, including hiring a toxicologist to read back their readings. So it not only creates unfair situations where stone-cold sober driving is criminalized, but it also penalizes those individuals who can't afford to mount that sort of evidence to overcome those very repressive exceptions.

Mr. Nathaniel Erskine-Smith: I'd like to move to RBT.

Ms. Deshman, I appreciated your argument. There are a number of studies, there's conflicting evidence, and so if we took it to section 1 there's perhaps not enough justification there on the evidence.

Picking up on what Mr. O'Toole said, if it were limited to a RIDE check, do you think it might be constitutional?

Ms. Abby Deshman: I think the scope of the power you're looking at would be very different.

If you only implement random breath testing, I think there are still serious questions about whether that's actually going to have any impact in the absence of all the other measures that we're looking at.

Limiting it to RIDE stops is something that we put in our recommendations as an alternative.

I would also like to see, not only limiting it to RIDE stops, but actually having those RIDE stops be randomized. If you cannot test every single driver running through that RIDE stop, then make sure it's every fifth driver—

Mr. Nathaniel Erskine-Smith: Right.

Ms. Abby Deshman: —or every sixth driver, so that we really do eliminate many of the profiling concerns that we've raised in our bill. That would be quite a different proposal, and I think my analysis might well be different.

Mr. Nathaniel Erskine-Smith: Ms. Vonn, do you have a different analysis, or would you largely agree with Ms. Deshman?

Ms. Micheal Vonn: No. I largely agree with that. We came to the same conclusion.

Mr. Nathaniel Erskine-Smith: As the representative of a Toronto riding, I'm certainly very concerned about racial profiling. I contacted Professor Hogg over the summer and went through his brief to MADD. We spoke about the case of Orbanski.

In that case, it appeared one of the accused was stopped randomly and given a screening breath test, and then went on to be charged.

Do the police not have existing powers to pull folks over on a random basis and administer a screening breath test? What's the additional concern with RBT?

Mr. Michael Spratt: The police do have the power to pull over individuals and check for licence, registration, and sobriety, but the breath test isn't random in that case because there has to be reasonable suspicion, which is another problem with this bill. Some of the reasonable suspicions and presumptions in this bill are settled case law. If there's alcohol emanating from your breath, there's reasonable suspicion. There are a lot of other cases in this bill where the reasonable suspicion standard is deluded and, in the case of the random section, eliminated.

In your case, it's not truly random if the breath test is administered because there would be a constellation of objectionably discernible facts that would lead to that decision.

Mr. Nathaniel Erskine-Smith: In conversation with the professor, profiling was my primary concern. Yet, in the Orbanski case, it seemed that at least one of the accused was initially stopped in a random stop. That case appeared to be the answer to the profiling concern, but it was not the answer. I'm not asking you to answer this today, but if you could review that case and submit something in writing I would appreciate that.

Mr. Michael Spratt: I will.

Mr. Nathaniel Erskine-Smith: With respect to R. v. Mohan and exemptions from the Mohan criteria, we had justice department officials come before us and say that in the wake of a recent Supreme Court case there's been significantly increased court time. I think there have been a wave of applications for the procedures that the police employed at the time of the stop, and that's what this exemption is trying to get at, to eliminate the burden on the courts.

Does that jive with your experience? Do you think it's proportionate to the problem we're trying to solve?

Mr. Michael Spratt: The increased burden on the courts largely comes from legislation from a previous government that was read down quite significantly in some court cases.

Sometimes legislation to eliminate burdens on the courts can result not only in unfairness but in increased burdens on the courts, and it's particularly problematic.

The case of expert evidence will be before the Supreme Court, so we may have an answer on it, and I may be proven wrong very quickly in my analysis. But there is a danger to having a judicial abdication of that gate-keeping function, especially when the expert evidence at issue—maybe before a jury, maybe highly persuasive, maybe overly-relied upon—is the cause of many wrongful convictions. In these regulations, of course, we're not able to examine that expert qualification, and it's also outsourced by regulation to an entity completely divorced from any court oversight.

That is a large abdication of the judicial gatekeeping function that has been so necessary and has been reinformed again and again by our appellate courts.

● (1630)

Mr. Nathaniel Erskine-Smith: Thanks very much for your time.

The Chair: We're at 4:30, which is the end of the first hour. Because we started five minutes late, I'm going to suggest splitting the difference in the two panels and giving Mr. Miller three minutes to end this. We'll have a 55-minute panel next.

Mr. Miller.

Mr. Larry Miller: Thank you very much, Mr. Chair.

I hardly know where to start, but thank you very much to all the witnesses for being here.

We all want to see the tragedies caused by impaired driving ended, but personally I have quite a problem with this bill, for all the reasons that all of you have mentioned here today.

In the short time that I have, let me say that I've already been contacted by a member of one of my native reserves who was concerned should an officer who maybe has a dislike target somebody on the reserve or that kind of thing, and I think you've pointed that out here.

Mr. Spratt, could you explain briefly what a compelled statement means? I'm not a lawyer, and I wasn't aware of that term.

Secondly, I'll let the two ladies here comment, if they could, on impairment by alcohol, drugs, prescription drugs, texting, or whatever. Even driving down the road texting impairs your ability to drive, and in terms of treating one form of impairment differently from the others, is that a legal issue out there?

I'll leave it at that.

Mr. Michael Spratt: Very briefly, on the admissibility of statutorily compelled statements—it's on page 30 in my brief—the basic legal reality is this: in some cases you are compelled to provide information to the police. In Ontario, under the Highway Traffic Act, if you're in an accident, you must provide a police report. You must provide details. You must hand over that information to the police.

The basic principle is that it violates section 7 of the charter to then have the state use that material that is extracted by legal force from you in your prosecution. Our courts have gone farther. Our Supreme Court, in R. v. White, has gone farther, and our Court of Appeal in Ontario has gone farther, to say that you can't use that forced statement, which was given under the pain of incarceration for non-compliance, even for the officer to form grounds to do something. It's that important to keep the state out of that sort of business.

Mr. Larry Miller: Would Ms. Vonn or Ms. Deshman comment on the second part?

Ms. Micheal Vonn: Certainly, I can do that. Of course, we want to see equity here. We want to see equity between drug-impaired driving and alcohol-impaired driving.

The problem is that the science of our understanding about alcohol impairment is so much more advanced than our understanding of drug-impaired driving. That's the inequity that is at the heart of the scientific problem. As Ms. Deshman was indicating, we can't get ahead of the science, and we can't just will it forward. We don't have it, and that's the simple truth.

Mr. Larry Miller: Understood.

Ms. Deshman?

Ms. Abby Deshman: I have nothing to add.

The Chair: I'll ask two quick questions.

First, several people have referred to Mr. Hogg's opinion. I have a copy of a 2010 written opinion that is not about this legislation or even the predecessor legislation. Does someone have any other written opinion that I don't have?

A voice: No.

The Chair: Okay. I wanted to confirm that.

Secondly, you referred to amendments versus the original statement that we need a new law that should go through a rigorous procedure. At the end, you were talking about amendments. I wanted to confirm which is your preference.

Mr. Michael Spratt: Our position is to scrap it holus-bolus—

The Chair: So to speak....

Mr. Michael Spratt: —but I've included some suggestions for amendments that might alleviate our great concerns to some minor degree.

The Chair: Thank you very much. That was wonderful testimony.

Thank you for being with us today.

We'll take one minute to change the panel and then continue.

● (1630)

(Pause)

● (1635)

The Chair: We're going to continue with the second part of our meeting.

We very much welcome Monsieur Therrien, *commissaire à la protection de la vie privée du Canada*. It's a great pleasure to have you with us, as well as Ms. Kosseim, Mr. Brown, and Ms. Ouimet.

[*Translation*]

Thank you for being here today.

[*English*]

I am going to suggest that we start with Mr. Therrien.

We have 10 minutes for a presentation, and then we'll see where we are at.

[*Translation*]

Mr. Daniel Therrien (Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada): Thank you, Mr. Chair.

Members, thank you for the invitation to appear before you today to discuss Bill C-226.

As you mentioned, Mr. Chair, I am accompanied by Patricia Kosseim, senior general counsel of my office.

I would like to be clear from the outset that I fully understand the seriousness, societal impact and clear dangers of impaired driving. Impaired driving affects far too many Canadians each year and is indeed a grave social problem.

At the same time, the legislation you have invited comment on is multi-pronged. I will focus mainly on the issue of random checks.

My remarks today are intended to offer a framework, drawn from charter jurisprudence, not with a view to predicting the constitutional fate of the bill. There are criminal lawyers who can advise you on that. My goal is simply to analyze relevant privacy policy questions.

In upholding random vehicle stops for the purpose of police questioning to check for sobriety, the Supreme Court of Canada has taken into consideration several factors, including the compelling state objective of ensuring highway safety; the limited purposes connected to that objective and grounded in appropriate statutory authority; the invasiveness, effectiveness and proportionality of the police activity; and the reasonable expectations of the individual as informed by the context.

For the purposes of analyzing the bill before you, among the factors I just listed, the state objective of ensuring highway safety is certainly compelling. However, let me address some of the other important policy considerations such as random breath screening and disclosures of various test results.

As you will note, subsection 320.27(3) of the bill introduces a new ability for police to require individuals operating a conveyance—whether in motion or not—to immediately provide a breath sample on demand for random screening using an approved screening device, where police have an approved screening device in their possession.

Currently, this type of breath screening test can only occur where the police have reasonable grounds to suspect that an individual has consumed alcohol.

● (1640)

[*English*]

In assessing whether it is reasonable to move away from the suspicion standard, I would suggest that Parliament consider the following factors.

First, how invasive would a new state power be, compelling everyone to provide a breath sample on demand? While more intrusive procedures are certainly possible—for instance, the taking of a blood sample—I would suggest that there is a level of intrusiveness in the mandatory procedure suggested, particularly for individuals who are not suspected of any wrongdoing.

Second, how necessary is it to move from the suspicion standard to random sampling in order to reduce the occurrence of impaired driving? To what extent has the current system proven effective or ineffective, and what is the evidence for this?

Third, what does the experience of other countries show, from an evidentiary perspective, as to how much more effective the proposed system in Bill C-226 would be?

I do not have the evidence required to answer these questions, but I do think that these would be relevant questions to ask of those who are proponents of this bill.

Furthermore, I would be remiss if I did not remind members of the privacy risks inherent in a collection that is over-broad and could potentially open the door to disproportionate targeting. I would add that, if you are inclined to approve random testing, I would encourage you to consider prescribing conditions to prevent arbitrariness, a certain way to organize this random testing so that it is not purely at the discretion of individual peace officers.

The other substantive privacy issue I would like to raise is the broadening of purposes for which test results and analysis of bodily samples can be shared.

Proposed subsection 320.37(2) would permit the sharing of the results of any evaluation, physical coordination test, or analysis of a bodily substance, for the purpose of the administration or enforcement of any federal or provincial act. Currently, the use and disclosure of this type of information is restricted to specific Criminal Code, Aeronautics Act, and Railway Safety Act offences, or administration enforcement of provincial law. The bill clearly would widen the potential uses and purposes for which such results may be utilized by authorities.

While I began my testimony by agreeing that ensuring highway safety is a compelling state objective, the same cannot be said about the administrative objectives of all other federal or provincial laws. Therefore, in considering this question of broader sharing, I suggest that you examine whether the objectives of these other laws, for which results could be shared, are sufficiently important to justify the sharing of sensitive, state-compelled personal information. I further suggest that sharing should be limited to those specific laws that meet that standard.

You may also wish to prescribe that the results of random tests, once they have served their purpose, should be destroyed. That would be another way to minimize privacy risks.

In summary, I would encourage members to consider the fuller privacy implications of random breath screening and the broadening of purposes for which results can be shared using the analytical framework proposed.

I look forward to your questions.

● (1645)

The Chair: Thank you.

[*Translation*]

Thank you very much.

[*English*]

You have a choice. Who would like to go first?

Mr. Brown.

Dr. Thomas Brown (Assistant Professor, Department of Psychiatry, McGill University, As an Individual): Thank you.

My name is Dr. Thomas Brown. I'm a senior researcher and director of the addiction research program at the Research Centre of the Douglas Mental Health University Institute in Montreal; assistant professor in the Department of Psychiatry, McGill University; and a licensed clinical psychologist in the province of Quebec. I'm also a mental health specialist designated by the U.S. Consulate to Canada to assess non-U.S.-citizen visa applicants who are suspected of suffering from substance use disorder related to harmful behaviour, mostly impaired driving. My expert opinion is sought as part of the U.S. visa waiver program, and I have provided it hundreds of times. I am honoured to be provided an opportunity to participate in this session.

Mr. Chair, I would like to express my opinion on two issues with respect to my understanding of the amendments to Bill C-226. The first issue is a general one and relates to value of increasing severity of punishments following a conviction. The severity of punishment to a conviction sends an important message and may on its own deter some individuals from this criminal behaviour. At the same time, my understanding of the available evidence is that the deterrent effects of sanctioned severity are achieved when they are coupled with certainty and celerity in the enforcement of relevant laws. This is also observed in other forensic contexts.

Clinically, while I observe that sanctions in many cases do hurt and appear dissuasive for many offenders, they are frequently seen as unjustified and prosecutory by many other offenders who I and other authorities would consider the most at risk for recidivism and therefore the ones we should be most worried about.

One aspect of this response is that these drivers have probably driven many times, if not by some estimates hundreds of times, without being arrested or suffering mishap. This personal experience is a powerful narrative that distorts their risk assessment when deciding to take the wheel of a car, especially after drinking excessively. They often say, “I can do it”, “I have done it plenty of times in the past”, “I'm only four blocks away from home”, etc. Indeed, it competes quite successfully, especially in a significantly impaired state, with any deterrent effect from the remote possibility of an arrest and other severe negative consequences, including injury.

Our research, as well as that of others, runs in the same direction as these clinical observations. Changing this narrative for offenders requires something more, and measures that facilitate and enhance the use of highly visible enforcement measures, and in particular the addition of checkpoints and random roadside testing, will go a long way in making severe sanctioning more persuasive for primary prevention as well as prevention of recidivism.

My second issue, Mr. Chair, relates to the provisions regarding blood alcohol concentration as a benchmark for an aggravating condition for sentencing purposes. The meaning of BAC in impaired driving is surprisingly controversial. Excessive alcohol use is a necessary precondition for impaired driving, though the actual BAC level for per se conviction is very arbitrary. BAC is an established marker of crash risk, which rises exponentially as BAC increases. Increased risk for injury from all causes starts much lower however, at .02, and, by the time it reaches .05 or .08, it is already several-fold greater than zero BAC. Hence, it is a good marker for impairment and crash risk and is pragmatic as well.

At the same time, the available scientific literature suggests that arrest BAC has not been proven to be a particularly reliable predictor of recidivism risk. Therefore, this confuses me as to its justification as part of a deterrent strategy and possibly triggering more severe sanctions. What does this provision seek to accomplish? Most impaired drivers do not intend to break the law or harm others, but they still must take responsibility for their criminally negligent behaviour.

● (1650)

We have set our criminal per se threshold at .08%, and the law is the law. We have selected the current per se limit for many reasons, but in terms of riskiness and the degree to which it impairs judgment, .08% is already significant. For most Canadians, it represents an excessive amount of alcohol intake. In my opinion, this amendment seems to be saying that being arrested at a BAC of .08% is bad, but a BAC of .12% is worse, even if a crash had not occurred in either case.

We have set a reasonable, some would argue excessively liberal, per se limit for impaired driving. Why would we want to diminish or confuse the significance of our current benchmark by adding another higher benchmark?

Another facet of this concern relates to the utility of an arrest due to BAC. As noted above, an arrest has not proven to be a particularly reliable predictor of recidivism. I also have never heard an impaired driver report to me that being impaired at over .08% was not enough, and that they were motivated to be even at a higher BAC level when driving.

More typically, they drink excessively, frequently to the point of being over the per se limit while having access to a vehicle, and the proclivity to drive it. To what extend they drink over the per se BAC limit involves factors other than greater negligence or more disregard for the safety of others. Indeed, most individuals do not and cannot drink that much.

Impaired drivers frequently report that they felt fit to drive just before an arrest, which we and other researchers hypothesize is a signal for disordered drinking. Moreover, highly elevated BACs suggests the capacity for drinking a lot of alcohol, which again flags the possibility of tolerance, which is also a signal for disordered drinking. In other words, the ability to appraise the level of impairment, which is already difficult for most people, frequently appears even weaker in impaired drivers, and they are also more likely to suffer from bona fide alcohol use disorder.

From this perspective, an arrest due to BAC is likely a more useful indicator of disordered drinking and alcohol use disorder than risk for more impaired driving. Both are characterized clinically by poor control over drinking.

Raising sanctions in the case of a highly elevated BAC risks punishing individuals who are more likely to have a problem that, in many cases, would meet thresholds for alcohol use disorder. In these cases, punishment is an inappropriate deterrent or preventative measure.

In many jurisdictions, an arrest due to BAC is used for remedial and therapeutic decision-making during re-licensing. I consider this to be the more appropriate method to intervene in disordered drinking indicated by elevated BAC, namely as a public health strategy rather than a legal strategy for deterrence or punishment.

Thank you.

The Chair: Thank you very much.

Madame Ouimet.

[*Translation*]

Dr. Marie Claude Ouimet (Associate Professor, Faculty of Medicine and Health Sciences, Université de Sherbrooke, As an Individual): Mr. Chair, committee members, thank you for inviting me to appear.

I am a professor and researcher at the faculty of medicine and health sciences at the Université de Sherbrooke. My main research areas are impaired driving and young drivers.

In fact, I too would like to offer you suggestions for clarification of the new subsection 320.27(3), which deals with random testing and its definition. I would suggest that the wording of the proposal be clarified. Can we talk about random testing, mandatory testing during specific police action to reduce impaired driving, or mandatory testing at any time under any circumstances when operating a vehicle? There are significant differences between these three definitions.

First of all, when we talk about something random, we often say that it is done or chosen haphazardly. So a string of random tests should be generated, for example, using a sequence of random numbers. That sequence would indicate which vehicles should be stopped to subject the driver to a breathalyzer, or which drivers stopped for various reasons by the police should provide a breath sample. These random techniques are already used by customs officers, who can ask travellers to press a button on a device, which will indicate whether the person will have to undergo a full search.

The word “mandatory” will be defined as “that which is required by law, and which cannot be escaped”. Therefore, the word “random” is not a synonym for the word “mandatory”, whether it's considered during specific police actions or at any time and under any circumstances when operating a vehicle. However, the words “random” and “mandatory” could be used to describe two types of compatible activities, which I will describe later.

The definition of “random testing” found in subsection 320.27(3) is instead similar to the description of mandatory testing, at any time and under any circumstances, when operating a vehicle. It in no way suggests the notion of randomness or of reasonable grounds. It even suggests the obsolescence of reasonable grounds since mandatory testing at any time will include reasonable grounds.

So, it seems to me that the definition in subsection 320.27(3) allows mandatory screening other than that done in the context of specific police action to reduce impaired driving in which all drivers are stopped. The wording also suggests that mandatory testing could be done by officers of the peace who work singly or in pairs. It does not include the screening of all drivers without the need for reasonable grounds to suspect alcohol consumption.

I would suggest supervising these police actions that don't involve the systematic mandatory inspection of all drivers. It might be possible, for instance, to use a random sequence to determine which vehicles to stop, or a random sequence of controlled drivers, once they have been stopped for various reasons. A random sequence could be archived to show the public the random nature of the requested mandatory testing, and also to protect the work of the police. This involves combining the random selection, made at random, with the mandatory testing. Random selection could also be used when there are high traffic volumes, for example, and the police don't want to stop everyone.

In short, it is recommended that the meaning of the terms “random” and “mandatory” be clarified. In addition, there is a grey area in the definition of mandatory testing in the circumstances in which all drivers are not tested systematically and there aren't reasonable grounds to suspect alcohol consumption. Therefore, combining random testing and mandatory testing in these circumstances could help to make the public feel that their rights are being respected, while participating in the demonstration that the probability of being tested is high. It would also help to protect the work of the police.

● (1655)

I would like to raise another point. Mandatory alcohol checks seem associated with reducing impaired driving. however, as the document prepared by the Canadian Centre on Substance Abuse summarizes well, the number of checks that should be done in Canada to reach reduction targets is in the millions.

This will require that, in tandem with the changes, the provinces and police forces need to be given the capacity to put in place these procedures relating to educating the public, police officers and judges. It will also be important to think about the costs and the personnel required on the ground.

In addition, considering the scope of the proposed bill and its ramifications for the codes of the various provinces, as well as the need to inform and train all parties, I suggest an effective date much later than 90 days. There must be a minimum of nine to 12 months on the ground so that all stakeholders can be ready and fully understand all the proposed changes. The objectives could therefore be achieved much more effectively.

I also wish to give my support to paragraph 320.27(2)(d), which states that the fact that the person's involvement in an accident that resulted in bodily harm to another person may amount to reasonable grounds to suspect that a person has alcohol in their body. I think this initiative is important both on the ground, after a collision, and to screen injured drivers who are sent to the hospital.

On one hand, adding the involvement in a collision to the reasonable grounds to suspect that a person has consumed alcohol gives police the ability to identify the collision as a reasonable ground, whey they often had difficulty doing before. On the other hand, paragraph 320.27(2)(d) is a possibility for the police, and not an obligation. I think that mandatory testing is necessary in the case of a collision with injuries.

If testing becomes mandatory or more easily constitutes a reasonable ground to suspect that a person has consumed alcohol, it does not mean that it will be applied systematically. My general suggestion is that the provinces and heads of the police forces in the various jurisdictions strongly suggest to the police that they apply testing, otherwise take the necessary measures to systematically test all drivers involved in collisions with injuries who are taken to the hospital.

The information collected as part of these actions could help to demonstrate that the probability of being tested is high, which is what everyone wants. It would also help to better assess the extent of alcohol use in collisions with injuries.

To conclude, I would also like to extend my support to the elements that will enable police officers to take samples from injured drivers at the site of an accident. We know that the majority of drivers who are injured in a collision and taken to the hospital and whose blood alcohol above the legal limit are not convicted. A review of the 2015 documentation by Robert S. Green and his colleagues, which covers five Canadian studies, reveals that the conviction rate in these cases is below 20%. Several factors explain these low rates. In particular, there is the difficulty in identifying the type of intoxication and obtaining an eligible sample. There is also a lack of resources to apply the law properly.

The changes to the act, including paragraph 320.27(2)(d) that adds collisions with injuries to the reasonable grounds to suspect that a person has consumed alcohol, and the changes that describe the procedure for issuing warrants—think of the longer delays in obtaining them—will make it possible to consider several problems described in the review of the documentation.

● (1700)

However, it's also important to note the need for more assistance in applying the legislation. It sometimes takes the police a long time to proceed in the case of hospitalization. I strongly suggest giving the police forces the capacity to use these new procedures to maximize their effectiveness.

[*English*]

The Chair: We're going to begin seven-minute questions.

[*Translation*]

We'll start with Mr. Di Iorio.

Mr. Nicola Di Iorio (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chair.

First I'd like to thank the witnesses, both the ones who have already testified and the ones in the room right now. Your cooperation and the quality of your presentations are a big help to us.

I have a question first, Mr. Therrien and Ms. Kosseim. I will summarize it and then I will briefly explain why I'm asking it this way.

Should the bill be adopted as is, especially subsection 320.27(3), what would you do? How would you implement the exercise of your jurisdiction and the powers related to it? It is the provision on random testing.

Mr. Daniel Therrien: In the case of random checks, a procedure that could be helpful to mitigate the risks to privacy would be to require police to conduct a privacy impact assessment.

Before using random checks, I encourage you to explore the possibility of establishing parameters so that not only are the checks not random, but they aren't arbitrary either or left to the full discretion of the peace officer. That would be the first thing to do. If you don't think there should be such controls, I strongly encourage you to try to structure this and have parameters for the exercise of police powers on the matter.

Beyond those criteria that would give legal parameters for the exercise of police powers, there is, in the right to privacy, the mechanics of the privacy impact assessment. Based on that assessment, government authorities would be asked to assess how they would implement the power in question. They would reflect on how to do it, how the risks to privacy could be mitigated and how to manage these things.

● (1705)

Mr. Nicola Di Iorio: Would the entry into force of this provision require an amendment to the legislation governing your institution?

Mr. Daniel Therrien: Are you talking about the assessment of factors?

Mr. Nicola Di Iorio: If subsection 320.27(3) was adopted as is, would an amendment to your organization's enabling legislation be required?

Mr. Daniel Therrien: If the idea is to require police forces to conduct these evaluations, the answer is no. As far as the federal police or federal organizations—including the RCMP—are concerned, they must do these evaluations. That's at the federal level only. At the provincial or municipal level, other sets of rules would be in place.

Mr. Nicola Di Iorio: Thank you.

My next question is addressed to Dr. Ouimet first; Dr. Brown can respond afterward.

I do understand the distinction you're making with regard to subsection 320.27(3). You're saying that the provision, as worded, is more mandatory than random. The heading contains the word "random", but there is no reference to that in the provision itself.

I'd like you to enlighten me about the following situations.

First, let's consider the case of a Canadian citizen who has had a meal and a few drinks, and then assesses his or her condition poorly, sincerely believing that he or she is below the limit. And now, let's consider the case of another person, who behaves with disrespect for the safety and welfare of others—a person for whom the pleasure of drinking alcohol is the only thing that counts, and who then takes the wheel of a car.

Could you enlighten me about how these situations would be handled?

Dr. Marie Claude Ouimet: I will let Dr. Brown respond.

Mr. Nicola Di Iorio: If you like, you can complete the answer afterward.

Dr. Thomas Brown: The reasons that lead to driving while impaired vary widely. There are all kinds of motivations, and different people find themselves in such a situation. Certainly, a good number of those people have made an error in judgment, and it's simply one episode. In other cases, it reflects a lack of consideration for public safety, or a lack of respect for the law.

As researchers, we try to find ways to better personalize our approach so this risky behaviour can be prevented. There is no easy answer. It must be considered a progressive strategy, with assessment.

I would add one consideration to the discussion. We've observed that alcoholism and impaired driving are not synonymous. They are different. There are alcoholics plain and simple who don't drive, and there are heavy drinkers who constantly drive while impaired.

We must therefore avoid simplifying things, and saying that it's only a lack of judgment. For some, it's a lack of judgment, but for others, it's a sign of a substantial lack of control in relation to alcohol.

For others still, it's a negligent, almost criminal act, and while alcohol is what precipitates the arrest and conviction, it's not necessarily at the root of the behaviour.

● (1710)

Mr. Nicola Di Iorio: If we take the first example I gave—that is, the person who assesses their condition poorly, are there technological means that can rectify that?

Dr. Thomas Brown: Judgment is often subjective, and can lead to confusion. People are often unable to measure their level of impairment.

There are means, such as making breathalyzers available in places where alcohol is consumed. There's also educating and raising people's awareness about the number of drinks which, given a person's weight, can bring their alcohol level above the legal limit.

There are means. Is there a motivation...

The Chair: We need to end it here. Sorry.

Many thanks for the questions and answers.

We'll continue with Mr. Généreux.

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Thank you, Mr. Chair.

I thank the witnesses for being here.

Let's continue this discussion. I'll give you the opportunity to continue, because I'd like to hear from all three of you. Clearly, there is room for improvement to the bill. What elements would you suggest we add in order to improve it?

Earlier, a lawyer told us he would scrap the bill, and draft a new one. Do you think there's a chance of improving this bill, rather than taking such radical action? If so, what elements would you change?

Dr. Marie Claude Ouimet: I would say subsection 320.27(3). I would determine exactly what the intent is.

Personally, I would suggest combining the random and mandatory aspects of the testing. I don't think anyone will oppose roadblocks, or mandatory testing of everyone at roadblocks.

However, detection—that is, police officers, working alone or as a pair, stopping people and having them undergo a test without reasonable cause—might be the most problematic.

If the mandatory and random aspects are combined, a police force could order that, during, say, a certain week, a test will be imposed on every three arrests. In other words, a person will be tested every three times someone is arrested. Consequently, it would be documented. This way, there would be no concerns about the fact that a police officer had to exercise judgment.

Mr. Bernard Généreux: The person would have been arrested for another reason, perhaps.

Dr. Marie Claude Ouimet: They would have been arrested for another reason. However, a random sequence would make it possible for us to do this kind of testing. It could not be argued that the person was arrested because of personal characteristics.

Legal drafting is obviously not my field, but if the random sequence is also retained, I think it's an acceptable approach, which would allow the testing to be carried out, while protecting the police officer's work.

Mr. Bernard Généreux: Mr. Brown, I'd like you to continue with the answer you were giving to Mr. Di Iorio. I find it very interesting.

Technologically, you say there's a way to do a test in certain places where alcohol is sold. There has been equipment of this kind in bars for a long time. Do you think we could go further? I imagine certain technologies have evolved. Maybe there are new technologies with which I'm unfamiliar, because I don't go to bars often.

In your opinion, can people's psychological behaviour be influenced by such equipment?

Dr. Thomas Brown: It's difficult to say. It's a very persistent risky behaviour. By definition, certain people are risk-takers, and have a greater sensitivity to alcohol than we do. It's difficult; it's a challenge.

We did an experiment to measure the impact of the presence of a device that rang if someone came into a vehicle with a rather high alcohol level. It was not particularly determinative in the decision whether or not to drive. I wish I could be more optimistic.

● (1715)

Mr. Bernard Généreux: If the car didn't start, it would be even better.

Dr. Thomas Brown: Yes, the ignition kill system is very effective.

Mr. Bernard Généreux: I want to make sure Mr. Therrien speaks.

Privacy is an issue, whether the testing is random or not. In the document you provided us, you ask the following question: how invasive would a new state power be, compelling everyone to provide a breath sample on demand?

In your view, would mandatory or random testing—we won't debate the semantics—be very invasive?

Mr. Daniel Therrien: Many things are more invasive than that. The insertion of a needle into a human body, for example, would undoubtedly be more invasive.

However, even if it isn't very invasive, the very fact of having to answer, and of being subjected to the procedure when one has not done anything wrong and there is no suspicion, is invasive. It's like having to go through an X-ray machine at an airport, for example. In both cases, there is no direct intervention on the human body—something which, absent judicial authorization, would constitute assault.

Mr. Bernard Généreux: The person is asked to blow into some kind of device.

Mr. Daniel Therrien: That's correct. So it's not very invasive physically, but the fact of being subject to it—of having to comply when there is no suspicion that one has broken the law—is invasive in and of itself. It's easy to imagine more invasive things, but the procedure in question is invasive in nature.

If you can give me two seconds, I'd like to answer your question about possible improvements. Several countries, particularly in Europe, have adopted measures requiring people to provide breath samples even in the absence of suspicion. However, these European programs are subject to a range of conditions, which vary by country. I haven't done a study of the systems in question, but I know that the conditions precedent to the application of the concept differ by country. That's why I strongly encourage you to hear from people about this question, or to study it to see what a reasonable approach would be.

Mr. Bernard Généreux: When you refer to conditions, do you mean the way the sample is taken?

Mr. Daniel Therrien: No, I mean the conditions precedent, which must be met in order for a state authority to be able to require the sample to be given, regardless of the technique for obtaining it.

Mr. Bernard Généreux: Understood.

Mr. Daniel Therrien: Speaking practically, a judgment from the United States, which is a bit dated, states that there should be a legal framework of rules for things like obtaining approval for the conditions precedent.

This ties in with what Ms. Ouimet said when she referred to mandatory testing in specific police actions. So it would not really be random; it would be mandatory, but under conditions approved in advance—by a higher police authority, for example, as opposed to an officer in the field. Ideally, the approval would be given based on evidence that links the demand to circumstances where a certain incidence of impaired driving has been observed. So it would have to be tied to, say, statistical evidence.

The new Criminal Code provision, as currently presented, speaks of random testing, and could go as far as giving an officer complete discretion. I don't think that's ideal. So I recommend that you consider specifying conditions, or a framework, that would tie the requirement to scientific evidence, based on European models, or on that court decision from the United States.

● (1720)

The Chair: Thank you, Mr. Therrien.

Mr. Dubé, you have the floor.

Mr. Matthew Dubé: Thank you, Mr. Chair.

I thank the witnesses for being with us today.

Mr. Therrien, I'd like to address the new subsection 320.37(2) proposed in Bill C-226. It's about the sharing of information for the enforcement of any federal or provincial act.

Making assumptions, especially in the kind of work you do, is probably never very appropriate. Nonetheless, perhaps you have an idea that would help us better understand why the provision is there. Does it truly serve a purpose?

Mr. Daniel Therrien: We don't understand the reason for it; we can't tell why it's there. Perhaps you could ask the bill's sponsor to explain it, but, no, I have no explanation for it.

Mr. Matthew Dubé: Thank you.

It refers to evaluations, physical coordination tests, and analyses of bodily substances. I'm not a lawyer, so I'm not sure what might be meant by "evaluations". Could an oral statement be included in this provision?

Mr. Daniel Therrien: Possibly, to the extent that the way the person responds, and their vocal rhythm, are helpful in assessing a person's alcohol level.

Mr. Matthew Dubé: Great. Thank you.

In Quebec and Ontario, the most isolated regions are served by the provincial police. In other provinces, it's the RCMP that does the work.

When you analyzed the way this bill addresses information sharing, did you notice potential problems tied to the different geographic areas, owing to the fact that in most provinces, the RCMP is the police force, whereas in Ontario and Quebec, especially in rural areas, it's the provincial police?

Mr. Daniel Therrien: We didn't note any specific problems. What we're saying about the sharing of analysis results is that, given how serious the problem of drunk driving is, taking mandatory samples from people who are not suspected of drunk driving could well be justified. The social problem of drunk driving is a major one.

If the test results are used for another regulatory purpose that is much less pressing, such as obtaining a fishing licence, it no longer works. There's no longer a connection between compliance with a legal obligation for an important state purpose, and the ultimate use in that example—that is, a fishing licence issue.

Mr. Matthew Dubé: I understand. Thank you.

Dr. Brown, Dr. Ouimet, I have a question for you.

We discussed resources. We began a conversation about technological questions. We spoke about behaviour and risk aversion. Often, the possibility, or probability, of getting caught by the authorities is what motivates behaviour. I spoke about this with the earlier witnesses, and they seemed to confirm that this is what the studies usually said. Even if our alcohol level is high, and we know it, our attitude will not necessarily change. Ultimately, even though we know we shouldn't be driving, it's the fact that we know we could be arrested that will change our attitude.

You both mentioned this briefly, but I'd like to hear you speak at greater length about the resources allocated to media campaigns and education. The preceding witness told us that, in other places that apply similar rules and conduct random testing, there was, for example, an awareness campaign in parallel. In my view, one would have to do even more if the goal is to eradicate this scourge altogether. Doing more prevention would be better than simply looking after the consequences.

What do you think? I'd like to hear your opinions on that.

[*English*]

Mr. Thomas Brown: From my point of view, the idea is not to catch people; it's to prevent the behaviour.

By raising the probability, or at least the perception among drivers that they are likely to be stopped, and if they have been drinking excessively, they will be arrested and convicted, is extremely important. That perception is something that has been served well by public information campaigns, even alerting people that there will be a barrage here and there.

It's not to catch people; it's to prevent the behaviour from occurring. As you mentioned, one way is to increase the sense that the probability of being arrested under the effect of alcohol is high.

● (1725)

[*Translation*]

Dr. Marie Claude Ouimet: I would say that it's absolutely necessary to do both together, and that the results can be seen.

Roadblocks are effective, but very often, the strategy needs to be complemented by publicity. That's why I think more time—9 to 12 months—is needed for implementation. People have to be made aware. There needs to be publicity, and the people need to be informed.

We also need to devote the appropriate resources. If the law allows it, but the millions of tests requested in order for it to be effective are not done, the whole thing will probably not be effective. For me, education campaigns and funding for additional tests are a major concern.

Mr. Matthew Dubé: Perhaps you have the scientific knowledge to substantiate this, but ultimately, you seem to be saying that education has a bigger influence on lowering alcohol levels than any other criminal or judicial measure.

Dr. Marie Claude Ouimet: I wouldn't go that far, but I would say that it needs to be coupled with action. Because what's the point of saying people will be stopped if they never see a roadblock, and never see anyone being stopped? Personally, I don't know anyone in my circles who has been stopped in the last five years.

Mr. Bernard Généreux: You do, and that person is me.

Dr. Marie Claude Ouimet: There you go; there's someone in the room.

One out of every three people should experience a roadblock.

There is publicity, but if it's limited to that, it's pointless.

Mr. Matthew Dubé: Thank you very much.

[*English*]

The Chair: Ms. Damoff.

Ms. Pam Damoff: Thank you very much.

I want to focus on the mandatory minimums. You talked about whether you saw it as a deterrent. If people are being sent to a facility for a mandatory minimum sentence, are there resources to deal with their issues, whether it's the risky behaviour or addictions? Are we doing a good job of ensuring they're not going to reoffend when they get out?

Mr. Thomas Brown: Under the current circumstances, I see a lot of people who have been arrested and confined or sanctioned, and I see many who recidivate. We know that anywhere from about a third to 50% of those people we catch over a certain period of time will recidivate. We suspect that's an underestimation.

I think that punishment alone is not necessarily going to be adequate.

There is a very specific narrative that I often hear clinically, and it's very disconnected from any kind of moral or rational thinking or retrospection about someone's responsibility in possibly risking the lives of themselves or others.

We conduct studies and conduct research to find novel ways to intervene on an individual basis with these people. It is very difficult. Some, simply, are alcoholic. That's rather a simple thing to deal with.

Ms. Pam Damoff: But if an alcoholic has a DUI, and they go to prison, is it dealt with while they're there? If you're not dealing with the alcohol addiction, then they will come out and reoffend.

Mr. Thomas Brown: Indeed. I can't speak for the state of the penal system right now, in terms of providing those services, but those individuals who have difficulty in controlling their alcohol use will need a specific approach that may not be provided in a punishment milieu; whereas with others, really, it's irresponsible, negligent behaviour that deserves to be punished and, possibly, that is enough.

It is a very heterogeneous phenomenon.

● (1730)

Ms. Pam Damoff: Ms. Ouimet, you've done some research on the effectiveness of new technologies in reducing risky behaviours.

Can you tell us anything about those that might be, perhaps, more effective than just using random breath testing or mandatory minimums? Are there any that would apply?

Ms. Marie Claude Ouimet: We did research on individual devices in vehicles to see if they would be helpful, but it's very preliminary. We heard that some companies are working on devices that could be implemented in individual cars and could prevent the car from starting if someone has had a drink, but they don't seem to be working very well.

While we're talking about autonomous driving, it seems that it could be simple to have a device in the car, but it doesn't seem to be.

There are a lot of issues, and they have not resolved them. Obviously, if it happens, we will all change jobs in my field, and I would be happy to.

We tested a simple feedback device on young people after they had been drinking, in a lab, and they had drunk a relatively high amount of alcohol and it actually didn't help. It was only a feedback device installed in a car. They were alone in a car, and 60% decided to drive the simulator anyway. A lot of them told us that they had driven in the past feeling the same way that they felt in the lab.

Basically, in terms of individual devices, in the short term, I don't see much. I have not heard about much happening right now. I think the study we did was one of the first ones with people under the influence, and it's not very promising.

Ms. Pam Damoff: Do either of you see a benefit to reducing the 0.08 to 0.05, or whatever the number is?

Mr. Thomas Brown: It's 0.05. Many jurisdictions have actually done that.

Generally, although it's hard to specify exactly what effect an individual program has, because usually it's combined with many elements including education and other dispositions and possibly increased enforcement for a while, generally the results are fairly positive that if you lower the BAC level, in fact, you reduce the rate of impaired driving.

Ms. Pam Damoff: Okay. Thank you.

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

[*Translation*]

Thank you once again for your testimony.

[*English*]

That was a good meeting. We will continue on Tuesday.

The meeting is adjourned.