

Presentation to the Standing Committee on Justice and Human Rights

PROPOSED LEGISLATION ON DRUG-IMPAIRED DRIVING

A recent survey¹ found that 87 percent of respondents consider the problem of young drivers impaired by alcohol or drugs to be serious; 61 percent consider the issue of older drivers impaired by prescription medication to be serious.

Drug-impaired driving is addressed in Canada's Strategy to Reduce Impaired Driving (STRID)² which was initiated in 1991 and is coordinated by the Canadian Council of Motor Transport Administrators (CCMTA), a non-government agency that receives its mandate from the Council of Ministers Responsible for Transportation and Highway Safety. CCMTA provides leadership for all jurisdictions in the fight against impaired driving. Transport Canada is a member of CCMTA and a strong supporter of STRID.

STRID enjoys a high level of commitment and collaboration among jurisdictions across Canada. The 2010 target is a 40 percent decrease in the percentage of road users fatally or seriously injured in crashes involving drinking drivers. With this long-term national strategy already in place, Justice Canada must not take unilateral action on impaired driving.

The *Criminal Code of Canada (Impaired Driving)* already covers drivers impaired by alcohol or drugs. In the face of rising concerns about drug-impaired driving, the government has introduced Bill C-32 to strengthen the enforcement of drug-impaired driving offences.

However, the changes proposed in Bill C-32 are premature, and may stand in the way of more effective countermeasures. Immediate precautionary measures are in order – but the priority must be public safety rather than simply criminal sanctions. To that end, the Canada Safety Council urges the Government not to proceed with these amendments to the *Criminal Code* at this time, but instead to focus on the Recommendations presented in this submission.

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Canada's impaired driving laws are among the strictest in the world. This, combined with leadership from STRID, has led to significant progress in the fight against impaired driving. In 2000, road crashes involving a driver who had been drinking killed 864 people, down by one-third from 1995, when 1,296 motor vehicle deaths involved a drinking driver. During that time, the U.S. saw no substantial change in drink-driving fatalities.

That said, impaired driving remains a safety problem of the highest priority. In 2004 (the latest year for which comprehensive statistics are available), road crashes involving a driver who had been drinking killed 815 people, of which 48 percent were drivers whose blood alcohol concentration (BAC was above the legal limit). Including off-road vehicles and pedestrians who had been drinking, 1,143 people died in alcohol-related crashes that year.³ There are no national statistics on motor vehicle fatalities or crashes involving drug impairment.

1. Missing Prerequisites

The amendments proposed in Bill C-32 cannot realistically be implemented without a solid scientific basis and technological support, both of which are currently lacking. There will certainly be court challenges to the legislation. The following challenges must all be resolved before effective *Criminal Code* legislation can be implemented.

- *Which Drugs?* A variety of legal and illegal substances are considered "drugs." These include not only cannabis, but also other illicit substances as well as prescription and over-the-counter medications that can impair driving ability. Separate body fluid tests may be required for different drugs.
- *Criminal Impairment Levels:* For an impaired driving charge to stand in a criminal court, making body fluid tests will be necessary. However, defensible criminal impairment levels have not been established for any of the potentially impairing drugs and combinations covered in the proposed legislation.
- *Impairment vs. Presence:* Some drugs can be detected in the body long after their effect has worn off. For example, THC (the active ingredient in cannabis) can be detected in the body for up to four weeks, although its impairing effects do not last.
- *Measurement:* Once criminal impairment levels have been established for all potentially impairing drugs, tools must be approved to measure levels for all of them, after which police must be trained to use those tools. This could take years, because the evidence produced must meet the rigorous demands of a criminal court.

RECOMMENDATION

Put Bill C-32 on hold, focusing in the short term on action outside the *Criminal Code* to prevent drug-impaired drivers from endangering the public.

Provide resources to do the necessary groundwork for effective criminal legislation on drug-driving. Identify drugs which can impair driving ability. Establish defensible impairment levels for each drug, and specify the measurement technology to be used.

2. Countermeasures Outside the Criminal Code

Canada uses both criminal law and provincial/territorial traffic codes to address issues related to impaired driving. Government leadership in the fight against impaired driving has traditionally come from ministries of transportation.

Increasing numbers of impaired driving cases are being pleaded outside the *Criminal Code*. For example, in British Columbia 20 percent of charges for impaired driving result in a guilty plea to a lesser offence under the Motor Vehicle Act.⁴ By expanding the use of the *Criminal Code*, Bill C-32 risks failure because it ignores the reasons behind this trend.

Administrative licence suspensions have proven effective in the fight against impaired driving. Under traffic codes, most Canadian jurisdictions impose 12-to 24- hour suspensions on drivers whose blood alcohol concentration (BAC) is below the 80 mg% criminal limit.⁵ Provinces and territories require physicians to report drivers with impairing medical conditions (e.g. dementia) so that ministries of transportation can impose driving prohibitions. These suspensions remove potentially dangerous drivers from the road. They provide a stern and effective warning without the punitive lifetime consequences of a criminal record and a costly criminal court case.

Under current traffic regulations, police can immediately suspend the driver's licence of an individual whose driving endangers the public. However, the suspension may not be classified as an offence or violation. A ticketable offence would increase the real and perceived consequences and enable authorities to maintain records on offenders.

The Canada Safety Council has encouraged provincial and territorial governments to impose administrative licence suspensions on drivers who show impairment by substances other than alcohol. For example, police with reason to believe a driver is drug-impaired should be able to suspend that driver's licence under provincial highway traffic safety acts. If alcohol is also involved, appropriate action should be taken.

RECOMMENDATIONS

Collaborate with STRID to ensure any amendments to the *Criminal Code* with respect to drug-impaired driving fit with existing strategies and countermeasures.

Re-direct federal resources earmarked for implementation of Bill C-32 to help provinces and territories deal with drug-impaired driving under their traffic codes.

3. Cannabis

Proponents of this Bill say a driver impaired by cannabis poses as much a risk to other road users as a driver who is above the legal limit with alcohol. This argument ignores that Bill C-32 is not restricted to cannabis, and that there is no scientific basis to establish impairment by cannabis (or the many other potentially impairing substances covered in the Bill). It should be noted that the evidence does not indicate a similar risk level; it clearly shows alcohol carries a higher risk.

A survey released in November 2004⁷ found that 14 percent of Canadians reported using cannabis in the past year. This was nearly double the rate reported in 1994 (7.4 percent). Almost 30 percent of youth 15-17 years old and just over 47 percent of those 18 to 19 had used cannabis in the past year. In a more recent survey released in November 2006¹ some 2.4 percent of respondents admitted to driving after using marijuana/hashish in the past year. Although this represents a very small proportion of drivers, it suggests by extrapolation that half a million Canadians have driven after using cannabis at least once in the past 12 months. Moreover, the findings show an increase in cannabis use and driving over the past three years.

Studies have found that cannabis is the most commonly detected drug other than alcohol in fatally and seriously injured drivers.⁸ In about half of all cases, alcohol is also present.

Cannabis is an illegal substance. The underlying problem is not that Canadians are driving after using it, but that so many are using it at all. Its negative health and safety effects extend far beyond impairment while driving. A national strategy is needed to reduce cannabis use, with an emphasis on youth.

To what extent do cannabis-impaired drivers endanger the public? Surprisingly, there is little evidence that drivers who have used cannabis on its own are more likely to cause crashes than drug-free drivers. However, only fatalities and serious injuries have been analyzed in the available research. To what extent cannabis is a factor in less serious collisions still needs to be investigated.

Current research indicates the effects of cannabis on driving are complex.^{8,9} The psychoactive chemical in marijuana is tetrahydrocannabinol (THC). THC has a very different effect from alcohol. Cannabis users are acutely aware of their impairment – they feel “high” – and some compensate by trying to drive more cautiously. THC diminishes psychomotor skills and attention span. It reduces the ability to perform tracking tasks; at high doses, users drive less accurately and show difficulty with steering.

Cannabis reduces a driver’s ability to keep in the centre of the lane, to maintain a constant following distance, and to make quick decisions about manoeuvres such as passing. Faced with an unexpected event, the driver may find it difficult to react quickly.

Alcohol use carries a demonstrably higher crash risk than cannabis. Alcohol impairs cognitive function, including risk perception, decision-making and planning. It can also trigger aggressive driving behaviour such as speeding and following too closely. Drinking drivers show more risk taking and aggression in their driving, have little insight into their impairment, and do not try to compensate.

For alcohol, levels of impairment and crash risk have been correlated with specific concentrations in the blood. No such correlation is available for THC, although research suggests that the effect of cannabis use on driving is related to the dose.¹⁰ Some claim that a single glass of wine will impair driving more than smoking a joint. Assessment is complicated by wide variation in the potency of cannabis.

THC can be detected in the body for up to four weeks, but its impairing effects do not last. Surveys that establish *recent* use of cannabis show that THC-positive drivers, especially at higher doses, are three to seven times more likely to be responsible for their crash than drivers who had not used drugs or alcohol. In other words, *recent* use of cannabis may increase crash risk, while past use of cannabis does not.

An Australian study found that habitual use of marijuana is strongly associated with car crash injury.¹¹ This finding suggests that intervention targeted towards high use groups should be part of a national strategy to reduce cannabis use.

Relatively few road fatalities test positive for THC alone. Most often, it is found in combination with alcohol. Controlled studies show this combination produces severe impairment. Driver casualty statistics confirm that using cannabis with alcohol dramatically increases crash risk.

Roadside breathalysers provide an effective and convenient way for police to detect and measure the presence of alcohol. At present there is unfortunately no reliable, non-intrusive roadside method to test for cannabis. Even if a such a test were available, a defensible limit must be set, at which a cannabis-using driver is criminally impaired.

In January 2003, a judge in Pembroke, Ontario acquitted a man charged with driving while impaired by marijuana. The accused had a medical exemption allowing him to smoke marijuana as a treatment for his multiple sclerosis. The judge could not determine with certainty what caused the accused to swerve over the centre line when driving, and to slur his speech and lose his balance when police pulled him over. The cause could have been cannabis impairment, the man's medical condition or some other factor. In cases such as this, when police believe a driver poses a danger to the public, non-criminal sanctions may be more appropriate. The public could be better protected by administrative or medical driving prohibitions to keep such drivers off the road.

Conviction under the *Criminal Code* requires proof "beyond a reasonable doubt." In the absence of definitive research on how cannabis use relates to road crashes, court challenges will likely hinder convictions.

RECOMMENDATIONS

Use sanctions outside the *Criminal Code* until criteria and tools are available to enable criminal conviction.

Establish defensible criteria for THC impairment (alone and in combination with alcohol), and approve detection tools for use by trained police officers.

Develop and fund a national strategy to reduce the use of cannabis, with special emphasis on youth and habitual users.

4. Medications

Canadians over age 65 take an average of nine medications daily, including prescription, over-the-counter and herbal.¹²

Medication can have a positive or negative effect on driving ability. Some people, such as epileptics, may not be able to drive at all without medication. An older driver with untreated depression is at high risk due to decreased concentration and slower decision making. However, treatment may also carry a risk; 10 milligrams of Valium[®] (an anti-anxiety medication) can produce more driving impairment than a BAC of 100 mg%.

Physicians prescribe benzodiazepines to combat anxiety and insomnia among seniors. They can have side effects such as drowsiness, impaired motor function and confusion. A Montreal study of more than 224,000 drivers aged from 67 to 84 found that those on a long-acting form of benzodiazepine had 45 per cent more injury-related collisions.¹³

A UK study on the medicinal use of cannabis¹⁴ concluded that impairment of driving ability from cannabis is within the range of (or lower than) that produced by medications commonly used for similar conditions, in particular benzodiazepenes. Another study found a five-fold higher risk in people who had used benzodiazepenes in the past three months.

Medications that slow a person down also reduce the ability to make decisions and process information rapidly. Seniors taking painkillers which contain codeine or propoxyphene may experience sedation and mild impairment. Even over-the-counter drugs can reduce driving ability. Antihistamines can cause drowsiness and poor concentration. Tranquilizers or cold remedies, such as cold tablets, cough syrup, and sleeping pills, can reduce driving ability. Combinations of medications can also produce unexpected side effects and bad reactions.

Combining alcohol with medications is very risky – especially for seniors. With age, tolerance for alcohol decreases steadily, and the body processes it less efficiently.

In view of evidence that some medications can have a greater impairing effect than cannabis, the federal government must seriously assess whether it wants to criminalize persons (many

of them seniors) who drive under the influence of prescribed and over-the-counter pharmaceuticals. If so, it must identify the potentially impairing medications, set defensible criteria for prosecution (taking into account possible combination with other substances), and approve enforcement tools. Due consideration must be given to the fact that maintaining a driver's license is an important issue of independence for older Canadians, especially to those who have driven for most of their life.

Currently, about 22,000 human drugs are available in Canada.¹⁵ To identify those which can impair driving (alone or in combination with other substances), then set defensible criteria for each and approve measurement tools, poses a gargantuan challenge.

With Canada's aging population, legal medications present a health and safety issue that extends beyond driving, and must be addressed. Solutions will involve medical professionals, patients and their family members, pharmacists and the pharmaceutical industry, safety organizations such as the Canada Safety Council and all levels of government.

Other strategies (some of which are already in place) would be far more effective and appropriate than using the *Criminal Code* to prevent driving under the influence of potentially impairing medications.

RECOMMENDATIONS

Develop and fund a strategy, including public education, to address concerns associated with impairment by medication.

Thoroughly assess the rationale for and potential consequences of using the *Criminal Code* as a legislative tool to address medication-related impairment.

5. Abuse and Illicit Drugs

To a lesser extent, illegal use of prescription medications, such as those with psychotropic properties, as well as use of illicit drugs such as cocaine are factors in impaired driving. By targeting cannabis, Bill C-32 could turn users to other, even more harmful substances.

Our submission will not deal with these other substances in detail. This challenge resides with Canada's public health, addictions and policing agencies.

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