

**The Canadian Council of Motor Transport Administrators
(CCMTA) Submission to the Standing Committee on Justice
and Human Rights Regarding Impaired Driving**

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Submitted on behalf of CCMTA by:

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The Canadian Council of Motor Transport Administrators (CCMTA) wishes to thank you for the opportunity to speak to the Standing Committee on Justice and Human Rights on the issue of alcohol impaired driving. CCMTA is a non-profit organization comprised of transportation representatives from federal/provincial/territorial governments and includes associate members from the private sector, non-government organizations and other government departments. CCMTA reports through a Board of Directors to the Council of Ministers Responsible for Transportation and Highway Safety.

CCMTA oversees Canada's Road Safety Vision 2010 (RSV 2010), which targets a 30% reduction in deaths and serious injuries on Canadian roads by 2010. RSV 2010 has a number of sub-targets related to key road safety challenges, including an impaired driving target of a 40% decrease in the percentage of road users fatally or seriously injured in crashes involving a drinking driver.

Impaired driving remains a serious road safety, health and economic problem. A recent project on the societal costs of collisions conducted by Transport Canada and the Ministry of Transportation Ontario concluded that the full annual cost of collisions to Canada and Canadians is \$63 billion, of which approximately 1/3, or \$21 billion, is related to impaired driving. In real terms this translates into approximately 3 deaths and 200 injuries per day on Canadian roads related to alcohol and driving.

Telephone surveys sponsored by Transport Canada such as the annual Road Safety Monitor (RSM) conducted by the Traffic Injury Research Foundation and a recent survey conducted in partnership with MADD Canada show that Canadian drivers believe impaired driving is a significant road safety concern. However, this concern does not always translate into appropriate behaviour. The RSM shows that the percentage of drivers who drive despite believing themselves to be over the legal limit is on the increase (5.6% in 2004 to 8.2% in 2007). The TC/MADD survey indicated that Canadians believe eliminating impaired driving should be a priority for governments and that this is a completely preventable problem.

CCMTA's Strategy to Reduce Impaired Driving (STRID) is a national transportation strategy with a target of achieving a 40% decrease in the percentage of road users fatally or seriously injured in crashes involving a drinking driver. This ambitious strategy involves a close partnership with the police community, a good working relationship among different levels of government and other safety partners and an appropriate level of monitoring and evaluation to help monitor the current situation and implement effective, cost-efficient programs.

Figure 1 which shows the percentage of fatally injured drivers who had been drinking from 1987 to 2005 indicates there have been improvements in the number of fatally injured drivers who had been driving, but much of the improvement occurred in the 80s and 90s. Over the past 7 years, the rate of improvement seems to have plateaued.

The federal/provincial/territorial partnership has been effective in the past in its efforts to reduce the incidence of alcohol impaired driving. While this partnership remains

important, it will be necessary to take a more systemic view of impaired driving policies and penalties across all jurisdictions if we are to further reduce the carnage on our roads due to alcohol impaired driving.

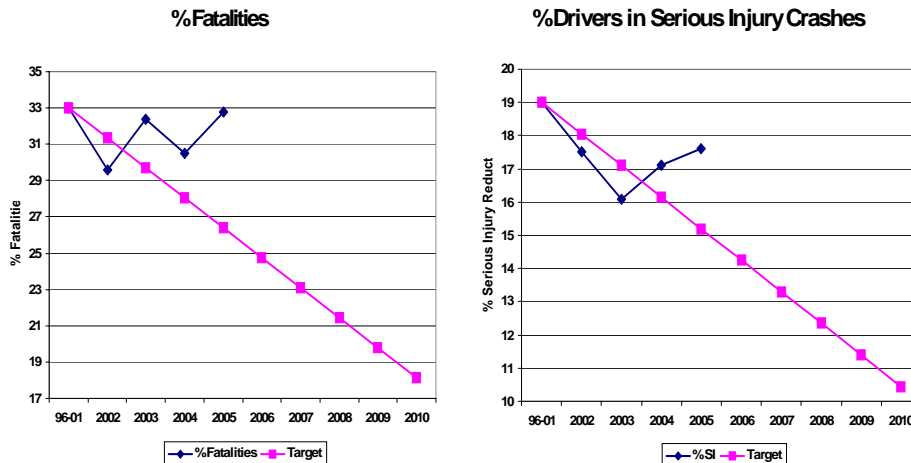
Figure 1



Road Safety Vision 2010 (RSV 2010), of which STRID is one element, has the objectives of *increasing public awareness of road safety issues, better collaboration and cooperation among safety partners, enhancing the level and effectiveness of enforcement and better and timely data.* The STRID targets four groups: *new (young) drivers, hardcore impaired drivers, first sanctioned drivers and social drinkers* through 7 key elements, which are *Education and Awareness, Policing, Policy/Legislative Initiatives, Health Promotion, Linkages, Monitoring, Research and Evaluation and Other Elements.*

The results from a recent mid-term review of RSV 2010 suggest that we are not on track to achieve our STRID sub-target of a 40% reduction in the percentage of deaths and serious injuries due to alcohol impaired driving as seen in Figure 2, which shows the projected reductions required in order to achieve the target and the actual values as of 2005, the latest available data year, for both fatalities and serious injuries.

Figure 2



It can be seen that the numbers are no longer trending along the projection line, and in fact have been moving in the wrong direction for the past few years. This is consistent with the data presented above suggesting that improvements have plateaued and that the status quo will not achieve the requisite reductions in deaths and serious injuries by 2010.

The mid-term review, which was undertaken by an independent contractor (Canadian Traffic Safety Institute), made a number of recommendations regarding impaired driving including the need for a full Parliamentary hearing to review policies, programs and legislation surrounding impaired driving from a multi-disciplinary, multi-jurisdictional (federal/provincial/territorial) approach. It was also recommended that this review should look at issues such as making the penalty for a refusal to provide a breath sample a more serious offence than a simple conviction, lowering the BAC threshold from the current 80 mg/dl, including a zero BAC for some groups such as young drivers, public transport vehicle drivers and multiple serious offenders. The mid-term review also emphasized the need to reduce legislative loopholes in order to prevent technical defences, delays and plea-bargaining. Also recommended was the full use of Random Breath Test (RBT) programs and consideration for enhancing alcohol ignition interlock programs so that more convicted drivers utilize the technology and are subject to vehicle impoundment programs and medical assessment and treatment for convicted drivers.

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

1) Lowering the Criminal Code Blood Alcohol Concentration Threshold from 0.08 to 0.05

CCMTA believes there is sufficient evidence to suggest that drivers pose a safety risk below the current legal threshold of 80 mg/dl. A number of other countries currently take action at levels below our current legal threshold. As mentioned above, CCMTA believes that swift and certain action must be taken against these drivers. At issue is how a lower threshold can best be incorporated into the existing process of enforcing, adjudicating, penalizing and reinstating impaired drivers, while minimizing any adverse systemic impacts of such a change.

Currently, all jurisdictions except Quebec have existing administrative programs to address the issue of lower BAC drivers. These programs generally entail the issuing of short-term administrative suspensions to quickly remove low-BAC drinking drivers from the road. These programs can be used by police officers for drivers below the legal threshold but above the 40mg/dl or 50mg/dl range depending on jurisdiction. The rules regarding the suspension differ, but the suspension is typically short, approximately 24-72 hours, with typically no escalation for repeat offences and often no record is kept of the administrative sanction.

While knowledge of the current legal limit among drivers is high (e.g. 70% of respondents correctly identified the limit of 80 mg% in a recent TC/MADD survey), evidence suggests that the administrative limits and the associated penalties are not as well known, perhaps because the penalties do not seem to be severe enough or not enough public awareness has been done to educate drivers of the dangers related to a lower BAC level.

In 1997, Transport Canada and the Canadian Association of Chiefs of Police conducted a survey of front-line police officers on their attitudes and perceptions regarding impaired driving. The results suggest that pursuing an impaired driving investigation, by way of the Criminal Code, and subsequent charge (almost 3 hours) and testimony is time-consuming (1.7 appearances by the officer in a 4.4-hour trial with police testimony taking an average 33 minutes). It takes about 15 weeks for a typical case to clear the courts when the accused pleads guilty and 35 weeks if the defendant pleads not guilty.

A more recent survey of Crown and Defence Attorneys undertaken by the Traffic Injury Research Foundation on behalf of Transport Canada and CCMTA found that the Crown typically carries four times as many cases as individual defence lawyers and hence are not able to devote as much time into preparation for trial. In addition, respondents felt the effectiveness and efficiency of the criminal justice systems to handle impaired driving cases has been deteriorating over time. A survey of the judiciary is being considered to complete the information from the point of view of the major participants.

To strengthen and increase the effectiveness of existing short-term administrative sanctions, STRID formed a working group comprised of a number of jurisdictions and MADD Canada to develop a model program for addressing the lower BAC driver administratively without the additional burden imposed by pursuing a criminal charge.

The resulting Strategy to Address Lower BAC Drinking Drivers is an administrative licensing program with the following elements:

1. An immediate roadside suspension of 7 to 14 days if the driver registers a BAC of 50 mg/dl or more on an approved screening device or instrument or an accepted bodily fluid sample. This penalty was felt to be a significant deterrent, but not too onerous a sanction for a lower BAC limit.
2. Police must forward the surrendered driver licence to the licensing authority to increase the risk of being caught if driving during the suspension period.
3. Should the driver receive a 2nd, 3rd or 4th offence during the following 3 years, the suspension would increase to 30, 45 and 60 days, respectively.
4. Drivers with 2 or more suspensions within a 3-year period should have to attend an alcohol assessment and complete all identified treatment to have their licence reinstated.

5. Drivers with 3 or more suspensions in a 3-year period will have to have an ignition interlock installed on the vehicle they drive at their own expense.
6. The Registrar of Motor Vehicles will record all roadside suspensions on the driver record for a period of 10 years from the date of offence.
7. Drivers who receive a roadside suspension should be required to pay a reinstatement fee of \$120 to \$300 and the fee should be increased for subsequent offences.
8. Jurisdictions should run a continuing public awareness campaign educating drivers of the safety and legal consequences of driving with a BAC of over 50mg/dl.
9. A process should be developed for drivers to require a review of the suspension, but the grounds of the review should be limited to mistaken identity of the driver, or an incorrect BAC reading.

This model has been approved by the CCMTA Board of Directors as a standard for jurisdictions to consider as they update their existing roadside suspension programs for drivers with lower BACs. Indeed, a number of jurisdictions have strengthened existing systems since the toolkit was approved¹. However, a recent attempt in Quebec to introduce a roadside suspension for lower BACs was not successful.

The model takes a swift and measured approach to lower BAC drivers without unduly increasing the workload on police, court services or transportation agencies. Based on our experience with STRID over the past 15 years, CCMTA believes that while moving towards this strategy across all jurisdictions will take some time, elements of this administrative model will be adopted by the different jurisdictions and they will be able to decide how to deal with suspended drivers as they cross jurisdictional boundaries in a fair and safe fashion regarding reciprocity of suspensions.

2) Random Breath Testing

A number of surveys have indicated that the motoring public do not have a high expectation that impaired drivers will be caught by police. In the recent TC/MADD survey, on average Canadians felt that police would stop 27% of impaired drivers on a weekend and only 15% would be caught during the week. In the same survey, fully 80% of respondents indicated they had not been in a vehicle as a driver or passenger that had been checked for a drinking driver within the past year. It appears the public perception is that there is a low probability of an impaired driver being caught on the road – i.e., the certainty or perception of certainty of apprehension is low.

¹ Some jurisdictions such as PEI, Saskatchewan and Ontario are improving their systems to reflect the model with escalating penalties, and the information is maintained on the driver record.

The goal of Random Breath Testing (RBT) programs is to increase the probability of an impaired driver coming into contact with the police and to increase noticeable police presence in a region. This more frequent contact increases the perception of apprehension by the driving public, thereby increasing the general deterrent effect of police enforcement.

Under provincial/territorial highway traffic acts, police are allowed to stop a vehicle to check on the driver's licence, vehicle condition and fitness to drive, including sobriety. However, police may not request a breath sample using an Approved Screening Device (ASD) unless the officer has a suspicion that the driver has recently consumed alcohol. While the threshold to form the suspicion is not high, studies and data from roadside screening indicated that a police officer is not an expert at detecting alcohol and many drivers who have been drinking pass the check-stop undetected.

The use of RBT where all drivers stopped in the check-stop would be required to provide a breath sample, or be charged with failure to provide a breath sample, would significantly increase the number of drivers tested who had been drinking. While such a system would be challenged under S. 8 and 9 of the *Canadian Charter of Rights and Freedoms*, the Supreme Court has indicated a number of criteria for such a violation to be justified.

The objective must relate to concerns that are pressing and substantial in a free and democratic society. Impaired driving is a significant health, social and economic problem and progress towards reducing the carnage that it causes has stalled with approximately 1/3 of fatalities and almost 18% of serious injuries on Canadian roads involving a drinking driver.

The law must be rationally connected to the objective. RBT programs are widely used in Australia and New Zealand and have been recommended as a key traffic safety measure for all European Union country members. Evaluations have shown that such programs contribute to significant reductions in serious alcohol-related road collisions by about 20%.

The law must be minimally impairing. For drivers who are not over the preset limit for police action, either administrative or legal, the stop and request for breath is very short and easy, likely less than 90 seconds.

There must be proportionality between the objective and the limitations. The goal of reducing the carnage related to drinking drivers is significant, and the effort required by individual drivers to contribute to this solution is minimal. The impact on drinking drivers would also be more proportionate in a tiered system of sanctions ranging from administrative, beginning at least at 50 mg/dl and increasing to criminal for those drivers over the legal 80 mg/dl threshold.

RBT programs also have the advantage of raising police presence in a region during the program. This police presence has been associated with a corresponding decrease in

other criminal behaviour given that a vehicle is often used in various criminal enterprises and the desire of these participants to avoid police attention.

3) Advances in technology to enforce the laws

The most significant technologies currently available to enforce impaired driving are Approved Screening Devices (ASD) and Approved Instruments (AI) for enforcement as well as ignition interlocks for convicted impaired drivers. If RBTs are to be allowed and significant roadside sanctions are to be promoted, either administratively or legally, consideration needs to be given to ASDs and what information they may display and what evidence would be retained and stored to support the action.

Ignition interlock programs have been shown to be effective when installed on the vehicle of a convicted impaired driver and the driver uses that vehicle. However, a number of challenges exist with interlock programs. Currently there is no national standard for these devices, although most jurisdictions use similar devices, partly due to a single equipment provider in Canada. However, a number of the patents related to the Canadian supplier will be expiring over the next few years, which may open the market to other manufacturers. Transport Canada has engaged the National Research Council (NRC) to develop a new standard and testing procedure for these devices. The project is also developing scientifically-based recommendations on a best practices program to accompany the equipment use. These practices will be considered by the CCMTA Board with a view to recommending to jurisdictions that they consider using the new interlock standard and program guide when developing or updating their programs.

Currently, the Alcohol Test Committee of the Canadian Society of Forensic Science is responsible for approving ASDs and AI but not for ignition interlocks, as the programs are fully within provincial/territorial jurisdiction. In order to improve national consistency and elevate the technical standard for ignition interlocks, it would be beneficial if the Alcohol Test Committee could be given responsibility for approving specific ignition interlock devices as meeting an approved standard.

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

Transport Canada is a member of an international committee examining the development of next-generation alcohol ignition interlocks, which would be installed on all new vehicles as original equipment. It is likely this type of device would be mostly transparent to the driver and would only activate if it were determined that the driver had a BAC over a pre-set limit. Research and policy development continues on this

technology, but it is realistically a number of years from fruition and other effective short-term measures will have to be developed in the interim period.

CCMTA also believes that research into other technologies that can be used to immobilize a vehicle or monitor the alcohol use of an offender should be pursued further with a goal of integrating these approved technologies into existing provincial/territorial programs related to impaired driving and licence reinstatement.

4) Federal/provincial/territorial programs

The partnership between provincial/territorial programs and the federal CCC have been effective in reducing the incidence of impaired driving. Many of these programs have been recommended by STRID and implemented in the jurisdictions. Provincial/territorial jurisdictions have invested a great deal of time and resources in impaired driving programs that have been developed over the years. For example, they have promoted administrative alcohol ignition interlock programs without having to involve the judiciary.

As new programs are developed, it will be important to consider the impact on existing programs and resources before a specific initiative is implemented. Often a change may seem to be appropriate as an individual element, but when viewed in the context of the entire process, the unintended negative consequences can be significant and may in fact be greater than the benefits from the program.

Bill C-2 amends S. 255 of the CCC, making it imperative to consider the issue of resources. Changes included in Bill C-2 are the procedures for assessing drug use while driving, increases in fines and a number of procedural changes. These are likely to be significant with respect to human and fiscal resources; for example, training for police and prosecutors, purchase of new equipment and changes to the handling of evidence and cases. These must all be managed along with other changes, which might be suggested as a result of this review, or other federal or provincial/territorial changes. It is necessary to consider the capacity of police, courts and transportation agencies to implement and support new programs or program changes in an efficient and timely manner. In addition, each proposal must be fully costed out and a funding source identified before implementation can be considered.

Many of these problems can be overcome by streamlining the necessary forms and processes between the federal and provincial/territorial legislation, as has been initiated in Bill C-2. This streamlining should be a priority, as it speaks directly to the provincial/territorial capacity to deal with new programs or additional changes generated by RBTs or changing the BAC threshold.

Conclusions

Impaired driving remains a significant challenge, which Canadians believe can and should be addressed by governments. To do so effectively requires coordination and cooperation between the different agencies within a government, such as police, justice, health and transportation, as well as a strong partnership across levels of government. Federal legislation must dovetail with provincial/territorial programs and have the support of police agencies and the general public as well as the necessary funding to be successful. Such a cooperative system requires an ongoing comprehensive program of research and cooperative policy development. Scheduled system-wide reviews of impaired driving processes and outcomes should be conducted every five years with a view to improving the system based on new technology or laws.

We must be cognizant of the comprehensive impaired driving programs that are in place in the various jurisdictions and be careful to ensure that new broad and far-reaching initiatives do not jeopardize our goal of having swift, certain and significant initiatives to help reduce the incidence of impaired driving and its consequences in Canada.

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

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

Recommendations

- 1. That the existing CCC BAC threshold not be changed and remain at 80 mg/dl and that provincial/territorial jurisdictions be encouraged to strengthen roadside suspension in line with the approved CCMTA strategy.**
- 2. That Parliament makes a demand for a breath sample by a police officer at a RBT stop mandatory without requisite suspicion of drinking as is currently required. Failure to provide the breath sample should carry the same penalty and a guilty conviction.**
- 3. That Parliament authorize the Alcohol Test Committee to approve alcohol ignition interlock systems for use in provincial/territorial programs and the development of programs which increase the perception of the risk of being caught driving impaired or without a licence.**

- 4. That a comprehensive research and evaluation program be developed and funded to monitor the impacts of federal and provincial/territorial impaired driving legislation and programs and identify a process to cooperatively develop effective countermeasures. Priority should be given to reducing unnecessary technicalities related to impaired driving enforcement and prosecution which place an undue burden on police, the courts and transportation agencies.**