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COMMENTARY PAPER

COMMENTAIRE

Proposed Amendments to the *Criminal Code of Canada* (Impaired Driving)

Response to Issue Paper of the Standing Committee on Justice and Human Rights

March 5, 1999
Ottawa, Ontario

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CANADIAN MEDICAL ASSOCIATION

The Canadian Medical Association (CMA) is the national voice of Canadian physicians. Founded in 1867, CMA's mission is to provide leadership for physicians and to promote the highest standard of health and health care for Canadians.

On behalf of its members and the Canadian public, CMA performs a wide variety of functions, such as advocating health promotion and disease/accident prevention policies and strategies, advocating for access to quality health care, facilitating change within the medical profession, and providing leadership and guidance to physicians to help them influence, manage and adapt to changes in health care delivery.

The CMA is a voluntary professional organization representing the majority of Canada's physicians and comprising 12 provincial and territorial divisions and 43 affiliated medical organizations.

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I. Introduction

The Canadian Medical Association is the national voice of Canadian physicians. Our mission is to provide leadership for physicians and to promote the highest standard of health and health care for Canadians. The CMA is a voluntary professional organization representing the majority of Canada's physicians and comprising 12 provincial and territorial divisions and 43 affiliated medical organizations. On behalf of its 45,000 members and the Canadian public, CMA performs a wide variety of functions, including advocating health promotion and disease and accident prevention policies and strategies. It is in this capacity that we present our position on proposed amendments to the *Criminal Code* sections on impaired driving.

The CMA welcomes this opportunity to comment on the issue of drinking and driving and the safety of our public roadways. **The injuries and deaths resulting from impaired driving present a major public health concern.** Physicians see the consequences of impaired driving in their practices. In 1996, 3,420 persons were killed in motor vehicle crashes. Alcohol was involved in 39.7% of those fatalities[i].

In CMA policy documents and publications like the *Physicians' Guide to Driver Examination*, the CMA has advocated for measures to reduce injury and death resulting from drinking and driving. The CMA has previously endorsed legislation aimed at reducing the incidence of drinking and driving, including the use of the breathalyser test, more severe penalties for those convicted and the taking of a mandatory blood sample if the individual is unable to provide a breath sample[ii]. Several of CMA's provincial and territorial divisions have also issued policy statements on impaired driving (Appendix 1).

II. Multidimensional Approach

From 1987 to 96, there was a general decline in the percentage of fatally injured drivers who had been drinking[iii]. In 1996, of tested drivers fatally injured in motor vehicle crashes, 41.6% had been drinking (with a Blood Alcohol Content (BAC) over 1 mg%>) while 34.9% were legally impaired (BAC >80 mg%)[iv]. CMA believes that to reduce the number of fatalities and injuries even further, a comprehensive, multidimensional approach encompassing the expertise, resources and experience of health professionals and all levels of government is required. This approach encompasses: (1) public education, (2) medical assessment and treatment interventions and (3) legislation.

1. Public Education

Drinking and driving must be viewed as socially unacceptable behaviour and until this change in attitude occurs, the judicial system cannot be completely effective in controlling the drinking and driving patterns of individuals. Education and information programs which increase society's awareness of the consequences of using alcohol in combination with driving are integral parts of any attempt to reduce injuries and fatalities.

The CMA supports and recommends the development of awareness campaigns and education programs, particularly at the high school level where the pattern of alcohol misuse is often established.

2. Medical Assessment and Treatment Interventions

CMA shares the belief of specialists in the field of addiction medicine that punishment in the form of incarceration will not solve the problem of impaired driving[v]. Rather, in addition to public education campaigns and criminal law sanctions, government must create and fund appropriate assessment and treatment interventions.

Impaired drivers may be occasional users of alcohol. They may also suffer from the disease of Substance Dependence. In the case of alcohol, this disease is commonly known as alcoholism. There are several assessment tools and screening tests to diagnose chronic alcoholism[vi].

The term "Hard Core" drinking driver has also been coined to describe impaired drivers who repeatedly drive after drinking, often with a high BAC of 150 mg% or more. They are also resistant to change despite previous actions, treatment or education efforts[vii]. Although roadside surveys have revealed a general decrease in the overall level of drinking-driving in Canada, drivers with very high levels of BAC (over 150 mg%) seemed immune to this trend[viii]. "Hard Core" drinking drivers are most likely suffering from substance dependence or alcoholism, a condition requiring significant treatment intervention[ix].

Physicians, in their educational capacity, can assist in establishing programs in the community aimed at the recognition of the early signs of alcohol abuse or dependency. These programs should recognize the chronic, relapsing nature of alcohol addiction as a disease. There is also good evidence that physician interactions like the Alcohol Risk Assessment and Intervention program developed by the College of Family Physicians of Canada can have a positive impact on the behaviours of moderate drinkers[x].

Another tool to aid physicians in the assessment of patients who drive impaired is the CMA publication, *The Physicians' Guide to Driver Examination.* The *Physicians' Guide to Driver Examination* is a collection of guidelines and expert opinions designed to help physicians assess their patients' medical fitness to drive. The *Physicians' Guide* discusses the impact of a variety of medical conditions on driving, including alcohol use, abuse and dependency. **The *Physicians' Guide* underlines the fact that alcohol-induced impairment is the single greatest contributor to fatal motor vehicle accidents in Canada[xi].** The *Physicians Guide to Driver Examination* takes a strong stance on the status of drivers with chronic alcohol problems. It recommends that a chronic alcohol abuser should not be allowed to drive any type of motor vehicle until the patient has been assessed and received treatment. *The Physicians' Guide to Driver Examination* is currently under revision with an anticipated distribution date in the fall of 1999 for the sixth edition.

(a) Discharge for Curative Treatment

The Standing Committee on Justice and Human Rights has asked whether it is appropriate under Section 255(5) of the *Criminal Code* to allow the courts to discharge an impaired driver who is in need of "curative treatment" by placing that person on probation with a condition that he or she attends such treatment.

Section 255(5) of the *Criminal Code* reads:

> Notwithstanding subsection 736(1), a court may, instead of convicting a person of an offence committed under section 253, after hearing medical or other evidence, if it considers that the person is in need of curative treatment in relation to his consumption of alcohol or drugs and that it would not be contrary to the public interest, by order direct that the person be discharged under section 730 on the conditions prescribed in a probation order, including a condition respecting the person's attendance for curative treatment in relation to his consumption of alcohol or drugs.

The CMA believes that Section 255(5) should remain within the *Criminal Code*. Section 255(5) is an important recognition within the punitive framework of the *Criminal Code* of the necessary medical and rehabilitative elements at stake in the issue of impaired driving. CMA believes that there are sufficient safeguards within the wording of Section 255(5) to conclude that it does not invite misuse. There are several hurdles to meet in Section 255(5) before the court may award curative treatment. First, the court hears "medical or other evidence".

In essence, the granting of the curative treatment order is not merely dependent on the pleas of the impaired driver. Second, the court must be satisfied that the discharge is not contrary to the public interest. In determining what is in the public interest, the courts look to the accused's motivation and good faith, whether he or she was already subject to a driving prohibition, the risk of recidivism, previous convictions for impaired driving, prior curative discharges and the circumstances of the offence, including consideration of whether the accused was involved in an accident which caused death, bodily harm or significant property damage[xii]. Finally, it is highly unlikely that the "curative treatment" at issue in Section 255(5) would be involuntary or enforced against the wishes of the accused because his or her motivation or good will in pursuing treatment as an alternative to conviction is a key factor in the court's decision[xiii].

The CMA recommends retaining the curative treatment provision found in Section 255(5) of the *Criminal Code*.

(b) Assessment and Rehabilitation

Rehabilitation can occur through education and treatment programs designed for impaired drivers. The CMA believes it is important to provide comprehensive treatment suited to the needs of the individual person. The CMA recognizes that as an exception to the general rule that medical interventions should be voluntary, individuals repeatedly convicted of the offence of impaired driving should be considered for mandatory assessment. This mandatory assessment, followed by medical recommendations for appropriate treatment, would not only benefit those with a chronic alcohol problem but could also help to reduce the incidence of drunk driving incidents attributable to repeat offenders. Physicians have the training, knowledge and expertise to assist in developing alcohol assessment, treatment and rehabilitation programs. Currently, nine jurisdictions have some form of mandatory assessment and rehabilitation programs[xiv].

The CMA recommends providing comprehensive treatment suited to the needs of the individual person. Those repeatedly convicted of impaired driving should be considered for mandatory assessment.

3. Legislation

(a) Impoundment

On the issue of whether the current penalties provide sufficient deterrence, the CMA is in general agreement with the impoundment measures currently found in eight provincial and territorial jurisdictions[xv]. CMA would encourage jurisdictions that do not have these impoundment programs to consider enacting them.

Since 1989, the CMA has recommended that if an individual is charged with impaired driving while his or her licence is suspended because of a previous impaired driving conviction, the suspended driver's vehicle should be seized or impounded for the length of the licens e suspension.

(b) Blood Alcohol Content (BAC)

In response to the question of whether the legal BAC limit should be lowered from 80 mg%, since 1988 the CMA has supported 50 mg% as the general legal limit. Studies suggest that a BAC limit of 50 mg% could translate into a 6% to 18% reduction in total motor vehicle fatalities or 185 to 555 fewer fatalities per year in Canada[xvi]. A lower limit would recognize the significant detrimental effects on driving-related skills that occur below the current legal BAC[xvii]. Finally, the CMA notes that many jurisdictions have 50 mg% as the limit for impairment[xviii].

The CMA recommends lowering the legal BAC limit to 50 mg%.

The CMA has also supported the 1987 recommendation of the former Standing Committee of National Health and Welfare on Alcohol and Drug Abuse in Canada that the provinces establish a probationary or graduated licence system for new drivers that would make it an offence to drive a motor vehicle during this probationary period with any measurable alcohol in the body. Several studies have remarked on the significant reduction in casualty collisions when there is a 0 BAC limit for novice drivers [xix]. The CMA notes that several provinces have instituted such a graduated licensing system[xx].

The CMA supports probationary licence systems for new drivers that would make it an offence to drive a motor vehicle during this probationary period with any measurable alcohol in the body.

(c) Police Powers

On the issue of police powers to demand breath, blood or saliva samples for alcohol and/or blood testing, the CMA reiterates its earlier support for mandatory blood alcohol testing as outlined in the *Criminal Code*. At the request of CMA, physicians and other health care workers who take blood samples under this law are specifically protected from criminal and/or civil litigation, but it is not an offense for these health care workers to refuse to take a blood sample[xxi].

III. Conclusion

The CMA believes that comprehensive long-term efforts that incorporate both deterrent legislation and public awareness and education campaigns constitute the most effective policy in attempting to reduce the number of lives lost and injuries suffered in crashes involving impaired drivers. It is prefererable to use countermeasures that prevent the occurrence of motor vehicle crashes involving impaired drivers rather than those that deal with the offender after the fact.

The multifaceted nature of the issue of impaired driving requires multidimensional countermeasures as part of a comprehensive policy involving all levels of government, private organizations, communities and individuals. The CMA urges all Canadians to support such efforts to reduce the prevalence of drinking and driving.

IV. Appendix 1

A List of Some Policy Statements and Resolutions on Impaired Driving from CMA Provincial and Territorial Divisions:

- Alberta Medical Association, 1983:

  That the AMA recommend to the Government of Alberta that it take whatever steps are necessary to ensure that there are adequate penalties for impaired driving and that such penalties are well enforced.

- New Brunswick Medical Society:
  February, 1988."Statement on Driving Impairment"
  October, 1992. "NBMS Position Statement on Alcohol"

- Northwest Territories Medical Association:
  Endorsed June, 1998. "Strategy to Reduce Impaired Driving in the Northwest Territories: Interagency Working Group on Impaired Driving. June, 1996."

- Ontario Medical Association:
  November, 1994. "An OMA Position Paper on Drinking and Driving".

V. Endnotes

i.Traffic Injury Research Foundation (TIRF) (1998).Strategy to Reduce Impaired Driving 2001: STRID 2001 Monitoring Report: Progress in 1996 and 1997. Ottawa: Traffic Injury Research Foundation at 25, 28.

ii.Canadian Medical Association (1989). Substance Abuse and Driving: A CMA Review. Ottawa: Canadian Medical Association at 3.

3. Mayhew, D.R., S.W. Brown and H.M. Simpson. (1998) Alcohol Use Among Drivers and Pedestrians Fatally Injured in Motor Vehicle Accidents: Canada, 1996. Ottawa: Traffic Injury Research Foundation at 19.

iv.Ibid at 13-14.

v. Hajela, Raju CD, MD, MPH, CCFP, CASAM, FASAM, President of the Canadian Society of Addiction Medicine. Letter to CMA dated January 13, 1999.

vi.American Psychiatric Association (1994). Diagnostic and Statistical Manual of Mental Disorders, DSM-IV. Washington, D.C.: American Psychiatric Press.

vii. Beirness, D.J., H.M. Simpson, and D.R. Mayhew (1998). Programs and policies for reducing alcohol-related motor vehicle deaths and injuries. Contemporary Drug Problems 25/Fall 1998. See also the Century Council (1998) National Hardcore Drunk Driver Project. http://www.dwidata.org.

viii. Beirness, D.J., Mayhew, D.R., Simpson, H.M. and Stewart, D.E. (1995) Roadside surveys in Canada: 1974-1993. In Kloeden, C.N. and McLean, A.J. (eds). Alcohol, Drugs and Traffic Safety-T'95.Adelaide, Australia:NHMRC Road Accident Research Unit, University of Adelaide, pp. 179-184 as cited in Mann, Robert E., Scott Macdonald, Gina Stoduto, Abdul Shaikh and Susan Bondy (1998) Assessing the Potential Impact of Lowering the Blood Alcohol Limit to 50 MG % in Canada. Ottawa: Transport Canada, TP 13321 E at 14-15.

ix. Hajela, note 5 at 2.

x. Brison, Robert J., MD (1997). The Accidental Patient. Canadian Medical Association Journal, 157 (12) 1661-1662.

xi. Canadian Medical Association (1991).Physicians' Guide to Driver Examination. Ottawa: Canadian Medical Association at 51.

xii. *R* v. *Storr* (1995), 14 M.V.R. (3d) 34 (Alta. C.A.).

xiii. Ibid.

xiv.Traffic Injury Research Foundation (TIRF), note 1 at 12.

xv.Ibid.

xvi. Mann et al., note 8 at 54.

xvii. Moskowitz, H. and Robinson, C.D. (1988). Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence. Washington, DC: National Highway Traffic Safety Administration, DOT-HS-800-599 as cited in Mann, et al., note 8 at page 12-13.

xviii.Mann et al., note 8 at 24.

xix.Hingson, R., Heeren, T. and Winter, M. (1994) Lower legal blood alcohol limits for young drivers. Public Health Reports, 109, 738-744 as cited in Mann et al., note 8 at 36.

xx.Mann et al., note 8 at 29.

xxi.Canadian Medical Association, note 2 at 3.