



February 19, 2008

The Honourable Joan Fraser, Senator  
Chair, Senate Committee on Legal and Constitutional Affairs  
Room 236, East Block  
The Senate of Canada  
Ottawa, Ontario K1A 0A4

Dear Senator Fraser:

The Canadian Medical Association (CMA) welcomes the opportunity to provide comments to the Senate Committee on Legal and Constitutional Affairs concerning its study of Bill C-2 (An Act to amend the Criminal Code and to make consequential amendments to other Acts). We will confine our comments to the portion of the proposed legislation that relates to impaired driving.

Canada's physicians support measures aimed at reducing the incidence of drug-impaired driving. We believe impaired driving, whether by alcohol or another drug, to be an important public health issue for Canadians that requires action by all governments and other concerned groups.

Published reports indicate that the prevalence of driving under the influence of cannabis is on the rise in Canada. We note that:

- Results from the Canadian Addictions Survey suggest that 4% of the population have driven under the influence of cannabis in the past year, an increase from the 1.5% in 2003 and that rates are higher among young people.<sup>1</sup>
- It was estimated that in 2003, 27.45% of traffic fatalities involved alcohol, 9.15% involved alcohol and drugs, and 3.66% involved drugs alone while 13.71% of crash injuries involved only alcohol, 4.57% involved alcohol and drugs, and 1.83% involved drugs alone.<sup>2</sup>
- In a 2002 survey, 17.7% of drivers reported driving within 2 hours of using a prescribed medication, over-the-counter remedy, marijuana, or other illicit drug during the past 12 months.
- These results suggest that an estimated 3.7 million Canadians drove after taking some medication or drug that could potentially affect their ability to drive safely.
- The most common drugs used were over-the-counter medications (15.9%), prescription drugs (2.3%), marijuana (1.5%), and other illegal drugs (0.9%).
- Young males were most likely to report using marijuana and other illegal drugs.
- While 86% of the drivers were aware that a conviction for impaired driving results in a criminal record, 66% erroneously believed that the penalties for drug-impaired driving were less severe than those for alcohol-impaired driving. In fact, the penalties are identical.

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<sup>1</sup> Bedard, M, Dubois S, Weaver, B. The impact of cannabis on driving, Canadian Journal of Public Health, Vol 98, 6-11, 2006

<sup>2</sup> G. Mercer, Estimating the Presence of Alcohol and Drug Impairment in Traffic Crashes and their Costs to Canadians: 1999 to 2003 (Vancouver: Applied Research and Evaluation Services, 2005).

- Over 80% of drivers agreed that drivers suspected of being under the influence of drugs should be required to participate in physical coordination testing for drug impairment. However, only about 70% of drivers agreed that all drivers involved in a serious collision or suspected of drug impairment should be required to provide a blood sample.<sup>3</sup>

The CMA has, on several occasions, provided detailed recommendations on legislative changes concerning impaired driving. In 1999, the CMA presented a brief to the House of Commons Standing Committee on Justice and Human Rights during its review of the impaired driving provisions of the *Criminal Code*. While our 1999 brief focused primarily on driving under the influence of alcohol, many of the recommendations are also relevant to the issue of driving under the influence of drugs.

In June 2007, the CMA provided comments to the Standing Committee on Justice and Human Rights of the House of Commons during their study of Bill C-32 (*An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts*) which was later incorporated in the omnibus Bill now before your Committee.

Last year, the CMA published the 7<sup>th</sup> edition of its guide, *Determining Medical Fitness to Operate Motor Vehicles*. It includes chapters on the importance of screening for alcohol or drug dependency and states that the abuse of such substances is incompatible with the safe operation of a vehicle. This publication is widely viewed by clinical and medical-legal practitioners as the authoritative Canadian source on the topic of driver competence.

While changing the Criminal Code is an important step, the CMA believes further actions are also warranted. In our 2002 presentation to the Special Senate Committee on Illegal Drugs, the CMA put forth our long standing position regarding the need for a comprehensive long-term effort that incorporates both deterrent legislation and public awareness and education campaigns. We believe such an approach, together with comprehensive treatment and cessation programs, constitutes the most effective policy in attempting to reduce the number of lives lost and injuries suffered in crashes involving impaired drivers.

Drug-impaired drivers may be occasional users of drugs or they may also suffer from substance dependence, a well-recognized form of disease. Physicians should be assisted to screen for drug dependency, when indicated, using validated instruments. Government must create and fund appropriate assessment and treatment interventions.

Physicians can assist in establishing programs in the community aimed at the recognition of the early signs of dependency. These programs should recognize the chronic, relapsing nature of drug addiction as a disease, as opposed to simply viewing it as criminal behaviour.

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<sup>3</sup> D. Beirness, H. Simpson and K. Desmond, *The Road Safety Monitor 2002: Drugs and Driving* (Ottawa: Traffic Injury Research Foundation, 2003). Online:  
[www.trafficinjuryResearch.com/whatNew/newsItemPDFs/RSM\\_02\\_Drugs\\_and\\_Driving.pdf](http://www.trafficinjuryResearch.com/whatNew/newsItemPDFs/RSM_02_Drugs_and_Driving.pdf)

While supporting the intent of the proposed legislation, the CMA urges caution on several significant issues, with regard to Clause 20 that amends the act as follows:

- 254.1 (1) The Governor in Council may make regulations
- (a) respecting the qualifications and training of evaluating officers;
  - (b) prescribing the physical coordination tests to be conducted under paragraph 254(2)(a); and
  - (c) prescribing the tests to be conducted and procedures to be followed during an evaluation under subsection 254(3.1).

CMA contends that it is important that medical professionals and addiction medicine specialists in particular, should be consulted regarding the training offered to officers to conduct roadside assessment and sample collection.

Provisions in the Act conferring upon police the power to compel roadside examination raises the important issue of security of the person and the privacy of health information. As well, information obtained at the roadside is personal medical information and regulations must ensure that it be treated with the same degree of confidentiality as any other element of an individual's medical record. Thus, the CMA would respectfully submit that Clause 25 of Bill-C2 on the issue of unauthorized use or disclosure of the results needs to be strengthened because the wording is too broad, unduly infringes privacy and shows insufficient respect for the health information privacy interests at stake.

For instance, clause 25(2) would permit the use, or allow the disclosure of the results *"for the purpose of the administration or enforcement of the law of a province"*. This latter phrase needs to be narrowed in its scope so that it would not, on its face, encompass such a broad category of laws.

Moreover, clause 25(4) would allow the disclosure of the results *"to any other person, if the results are made anonymous and the disclosure is made for statistical or other research purposes"* CMA would expect the federal government to exercise great caution in this instance, particularly since the results could concern individuals who are not actually convicted of an offence.

One should query whether the Clause 25(4) should even exist in a Criminal Code as it would not appear to be a matter required to be addressed. If it is, then CMA would ask the government to conduct a rigorous privacy impact assessment on these components of the Bill, studying in particular, such matters as sample size, degree of anonymity, and other privacy related issues, especially given the highly sensitive nature of the material.

CMA would ask whether clause 25(5) should specify that the offence for improper use or disclosure should be more serious than a summary conviction. Finally, it is important to base any roadside testing methods and threshold decisions on robust biological and clinical research.

CMA also notes with interest Clause 21, specifically the creation of a new offence of being "over 80" (referring to 80mg of alcohol in 100ml of blood, or a .08 blood alcohol concentration level or BAC) and causing an accident that results in bodily harm which will carry a maximum sentence of 10 years and life imprisonment for causing an accident resulting in death. (Clause 21)

We would also urge the Committee to take the opportunity that the review of this proposed legislation provides to recommend to Parliament a lower BAC level. 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.<sup>4</sup> A lower limit would recognize the significant detrimental effects on driving-related skills that occur below the current legal BAC.<sup>5</sup>

In our 1999 response to the Standing Committee on Justice and Human Rights' issue paper on impaired driving<sup>6</sup> and again in 2002 when we joined forces with Mothers Against Drunk Driving (MADD), CMA has consistently called for the federal government to reduce Canada's legal BAC to .05. Canada continues to lag behind countries such as Austria, Australia, Belgium, Denmark, France and Germany, which have set a lower legal limit.<sup>7</sup>

CMA expressed the opinion that injuries and deaths resulting from impaired driving must be recognized as a major public health concern. Therefore we once again recommend lowering the legal BAC limit to 50 mg%. or .05%.

We also wanted to note our support for Clause 23 which addresses the issue of liability by extending the existing umbrella of immunity for qualified medical practitioners to the new provision under 254(3.4)

**23. Subsection 257(2) of the Act is replaced by the following:**

(2) No qualified medical practitioner by whom or under whose direction a sample of blood is taken from a person under subsection 254(3) or (3.4) or section 256, and no qualified technician acting under the direction of a qualified medical practitioner, incurs any criminal or civil liability for anything necessarily done with reasonable care and skill when taking the sample.

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<sup>4</sup> 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.

<sup>5</sup> 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

<sup>6</sup> 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

<sup>7</sup> Mann et al

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Finally, CMA believes that comprehensive long-term efforts that incorporate deterrent legislation, such as Bill C-2, must be accompanied by a public awareness and education strategy. This constitutes the most effective long-term approach to reducing the number of lives lost and injuries suffered in crashes involving impaired drivers. The CMA supports this multidimensional approach to the issue of the operation of a motor vehicle regardless of whether impairment is caused by alcohol or drugs.

Again, the CMA appreciates the opportunity to provide input into the legislative proposal on drug-impaired driving. We stress that these legislative changes alone would not adequately address the issue of reducing injuries and fatalities due to drug-impaired driving, but support their intent as a partial, but important measure.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Brian Day". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian Day, MD  
President