ASSOCIATION MÉDICALE CANADIENNE
CANADIAN MEDICAL ASSOCIATION

Leadership for Physicians... Health for Canadians
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June 11, 2007

Mr. Art Hanger, MP
Chair, Standing Committee on Justice and Human Rights
c/o Ms. Diane Diotte, Clerk
180 Wellington Street, Room 622
House of Commons
Ottawa, ON K1A 0A6

Dear Mr. Hanger:

The Canadian Medical Association (CMA) welcomes the opportunity to provide comments to the Standing Committee on Justice and Human Rights of the House of Commons concerning the study of Bill C-32 (*An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts*).

The CMA supports 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.

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* (attached). While our 1999 brief focuses 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.

Recently, the CMA has published the 7th edition of its guide, *Determining Medical Fitness to Operate Motor Vehicles* (attached). 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 (attached), 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.

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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.

While supporting the intent of the proposed legislation, the CMA urges caution on several significant issues. With regard to Clause 4 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 health information privacy. 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 9 of Bill-32 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 9(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 9(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 be of individuals who are not actually convicted of an offence.

One should query whether the Clause 9(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 issues, especially given the highly sensitive nature of the material.

CMA would ask whether clause 9(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 5, 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 5)

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.[1] A lower limit would recognize the significant detrimental effects on driving-related skills that occur below the current legal BAC.[2]

In our 1999 response to this Committee's issue paper on impaired driving[3] 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.[4]

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1 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.

2 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

3 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

4 Mann et al

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%.

Finally, CMA believes that comprehensive long-term efforts that incorporate deterrent legislation, such as Bill C-32, must be accompanied by public awareness and education strategy. This constitutes the most effective 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 cause 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,

Colin J. McMillan, MD, CM, FRCPC, FACP
President

Attachments (3)