

# Memorandum

**To: A. Murie, CEO, MADD Canada**

**From: R. Solomon, National Director of Legal Policy, MADD Canada**

**Re: Mandatory Post-Crash Screening and Bill C-73**

**Date: October 23, 2015**

## INTRODUCTION:

Impaired driving is the leading criminal cause of death in Canada, accounting for approximately 1,082 deaths, 63,821 injuries, and as much as \$20.62 billion in financial and social costs in 2010.<sup>1</sup> Ironically, the impaired driving suspects who cause crashes and generate these statistics are less likely to be held criminally responsible than impaired driving suspects who are not involved in crashes. This is largely due to legal and practical difficulties in gathering breath or blood samples from hospitalized impaired drivers. Without evidence of the driver's blood-alcohol concentration (BAC), there will rarely be sufficient grounds to lay an impaired driving charge, let alone secure a conviction. The current law frustrates the police and prosecutors, puts hospital staff in a no win situation, angers victims and their families, and thwarts Parliament's intent in enacting the 1985 *Criminal Code* impaired driving amendments.<sup>2</sup>

Parliament had recognized the difficulties in obtaining evidence from impaired driving suspects who were hospitalized or physically incapable of providing breath samples due to injuries suffered in the crash.<sup>3</sup> It was also acknowledged that many impaired drivers were able to avoid breath testing by feigning illnesses or injuries, or by demanding to be taken to hospital.<sup>4</sup> In an effort to address these problems, the 1985 *Criminal Code* amendments authorized the police to demand blood samples from impaired driving suspects who were incapable of providing breath samples or whose physical condition made it "impracticable" to obtain them.<sup>5</sup>

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<sup>1</sup> S. Pitel & R. Solomon, *Estimating the Number and Cost of Impairment-Related Traffic Crashes in Canada: 1999 to 2010* (Oakville: MADD Canada, 2013) at 3. In contrast, there were only 554 homicides in 2010, including first and second degree murder, manslaughter and infanticide. T. Mahony, *Homicide in Canada, 2011* (Ottawa: Canadian Centre for Justice Statistics, 2011) at 3.

<sup>2</sup> *Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19.

<sup>3</sup> *House of Commons Debates* (20 December 1984) at 1388 (Mr. Crosbie) and 139 (Mr. Waddell) [Debates].

<sup>4</sup> *Ibid.*

<sup>5</sup> *Criminal Code*, R.S.C. 1985, c. C-46, s. 254(3)(b).

Similar concerns had arisen regarding impaired driving suspects who were unconscious or otherwise incapable of responding to a police demand for a breath sample. Except in rare circumstances, the police had no means of establishing an unconscious suspect's BAC, or proving that his or her ability to drive had been impaired by alcohol.<sup>6</sup> In response to these problems, the police were given a limited right to apply for a judicial warrant to take blood from suspects involved in fatal or personal injury crashes who were unable to respond to a blood sample demand.<sup>7</sup>

The 1985 amendments addressed another concern, namely that impaired drivers who killed or injured others were only being convicted of impaired driving, instead of the more serious offences of manslaughter, or criminal negligence causing death or bodily harm.<sup>8</sup> Parliament specifically created the offences of impaired driving causing death and impaired driving causing bodily harm to ensure that such conduct was subject to more appropriate sanctions. These new indictable offences were intended to be easier to prove and prosecute than either manslaughter or criminal negligence.<sup>9</sup> To better reflect the gravity of their consequences, these new offences also carried lengthier maximum driving prohibitions and terms of imprisonment than the simple impaired driving offences.<sup>10</sup>

## CURRENT CHARGE AND CONVICTION RATES

### (a) Alcohol-Impaired Drivers

Unfortunately, the blood seizure amendments were exceedingly complex and technical, and included narrow time limits for demanding samples from suspects. The courts strictly

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<sup>6</sup> For example, the police might have been able to obtain BAC evidence if: blood samples were drawn from the suspect for medical purposes and tested for alcohol; the police were aware that the samples had been taken and tested; and the police could satisfy a judge that there were reasonable grounds to believe that the suspect had committed an impaired driving offence. Pursuant to the *Criminal Code's* general search warrant provisions, a judge could issue a search warrant authorizing the police to enter the hospital to search for and seize the suspect's blood samples or the related blood-alcohol report.

<sup>7</sup> *Criminal Code*, *supra* note 5, at s. 256.

<sup>8</sup> Debates, *supra* note 3, at 1384. Then Justice Minister John Crosbie was frustrated with the "anomaly that driving offences should explicitly condemn conduct that creates a grave risk to public safety but fails specifically to condemn the conduct when the risk results in bodily harm or death."

<sup>9</sup> Department of Justice, Policy Sector and Legislative Services Branch, *Impaired Driving Case Study* (Ottawa: Department of Justice, 2000).

<sup>10</sup> *Criminal Code*, *supra* note 5, at ss. 255(2) and (3). At that time, the maximum sentences for impaired driving causing bodily harm and death were 10 and 14 years' imprisonment, respectively. There was a maximum 10-year driving prohibition for both offences. In 2000, the maximum sentence for impaired driving causing death was increased to life imprisonment, and the sentencing judge was authorized to impose whatever driving prohibition he or she considered proper. *An Act to amend the Criminal Code (impaired driving causing death and other matters)*, S.C. 2000, c. 25, s. 2.

interpreted and applied these amendments. The collection of BAC evidence from hospitalized impaired driving suspects requires the cooperation of law enforcement and medical personnel. In order to make a valid demand for a blood sample, the police must have reasonable grounds to believe, among other things, that the suspect's physical condition renders him or her incapable of providing breath samples or the suspect's condition makes it "impracticable" to obtain breath samples in the circumstances.<sup>11</sup> As well, the blood sample must be taken by or under the direction of a qualified medical practitioner.<sup>12</sup> Similarly, in applying to a judge for a blood sample warrant or general search warrant, the police must submit information about the suspect that is only readily available from medical staff.<sup>13</sup> The courts have criticized police officers for seeking blood samples without obtaining sufficient information about the suspect's medical condition.<sup>14</sup> However, the courts have also criticized medical staff for sharing patient information with the police.<sup>15</sup> This has resulted in uncertainty about the suspect's rights, the powers and obligations of the police, and the role of medical staff in the process.

The situation is further complicated by the expanding body of common law principles, and fiduciary, professional and statutory provisions governing the confidentiality of patient information. Contrary to what the criminal courts have suggested, there is no clear line between "neutral" and "incriminatory" health information. Even if a disclosure is permissible under the *Criminal Code* and the *Canadian Charter of Rights and Freedoms (Charter)*,<sup>16</sup> it may be inconsistent with a healthcare practitioner's various confidentiality obligations. The wrongful disclosure of patient information could result in the responsible healthcare practitioners being fired by their employer, sued for breach of confidence, sued for breach of their fiduciary duty, and/or disciplined by their professional college. They could also be fined or sanctioned by the provincial privacy agency and prosecuted for violating any other relevant statutory confidentiality obligations.<sup>17</sup>

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<sup>11</sup> Pursuant to s. 254(3)(a)(ii) of the *Criminal Code*, the police must also have reasonable grounds to believe that that the suspect committed an impaired driving offence within the preceding three hours.

<sup>12</sup> *Ibid.*, at s. 254(4). Moreover, the physician must be satisfied that taking the sample will not endanger the suspect's life or health.

<sup>13</sup> *Ibid.*, at s. 256(1).

<sup>14</sup> The courts have generally held that police should not make decisions about the driver's inability to provide breath samples unless they have consulted a medical professional. For instance, in *R. v. Brooke*, 1999 ABPC 9, the court excluded the blood sample evidence because the officer had not first asked the attending physician about the extent of the accused's injuries.

<sup>15</sup> See for example, *R. v. Dymont*, [1998] 2 S.C.R. 417; and *R. v. Dersch*, [1993] 3 S.C.R. 768.

<sup>16</sup> *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11.

<sup>17</sup> For a review of these confidentiality provisions and the consequences of breaching them, see E.

The Canadian Medical Protective Association (CMPA), which provides medical liability protection to Canadian physicians, has advised its members not to disclose any patient information to the police unless the patient has consented or the disclosure is required by law.<sup>18</sup> The CMPA's cautionary approach is hardly surprising, given the confused and challenging state of the law. Since the *Criminal Code* authorizes but does not require physicians to participate in taking blood samples,<sup>19</sup> they may choose to avoid all of these confidentiality problems by not becoming involved.

The inadequacies of the current law have made hospitals a legal safe haven for impaired drivers who kill and injure others. For example, a 2004 British Columbia study involving six hospitals found that the average BAC of the alcohol-positive hospitalized drivers was .156%.<sup>20</sup> Nevertheless, only 11% of the hospitalized drivers with BACs above .08% were convicted of any *Criminal Code* impaired driving offence, despite the fact that the police listed alcohol as a contributing factor in 71% of these cases.<sup>21</sup> Similarly, only 16% of alcohol-impaired drivers admitted to an Alberta tertiary care trauma centre following a crash between 1995 and 2003 were convicted of any federal impaired driving offence, even though their average BAC was .019% or almost 2½ times the *Criminal Code* limit.<sup>22</sup> The authors of a 2012 Nova Scotia study reported that only 23% of hospitalized impaired drivers were even charged with any *Criminal Code* impaired driving offence.<sup>23</sup>

These problems do not exist in many comparable countries. For example, 85% of alcohol-positive hospitalized drivers in Sweden were convicted of impaired driving.<sup>24</sup>

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Chamberlain & R. Solomon, "Enforcing Impaired Driving Laws Against Hospitalized Drivers: The Intersection of Healthcare, Patient Confidentiality, and Law Enforcement" (2010) 29 Windsor Review of Legal & Social Issues 45, at 71-80.

<sup>18</sup> General Counsel, The Canadian Medical Protective Association, "Reporting of gunshot and stab wounds" (April 2009); See also K. Evans, *A Medico-Legal Handbook for Physicians in Canada* (Ottawa: The Canadian Medical Protective Association, 2005), at 18.

<sup>19</sup> *Criminal Code*, *supra* note 5, at s. 257 (1) and (2).

<sup>20</sup> R. Pursell *et al.*, "Proportion of injured alcohol-impaired drivers subsequently convicted of an impaired driving criminal code offence in British Columbia" (2004) 6(2) Canadian Journal of Emergency Medicine 80, at 80 [Pursell].

<sup>21</sup> *Ibid.*, at 84.

<sup>22</sup> M. Goecke *et al.*, "Characteristics and conviction rates of injured alcohol-impaired drivers admitted to a tertiary care Canadian Trauma Centre" (2007) 30(1) Clinical and Investigative Medicine 26, at 26.

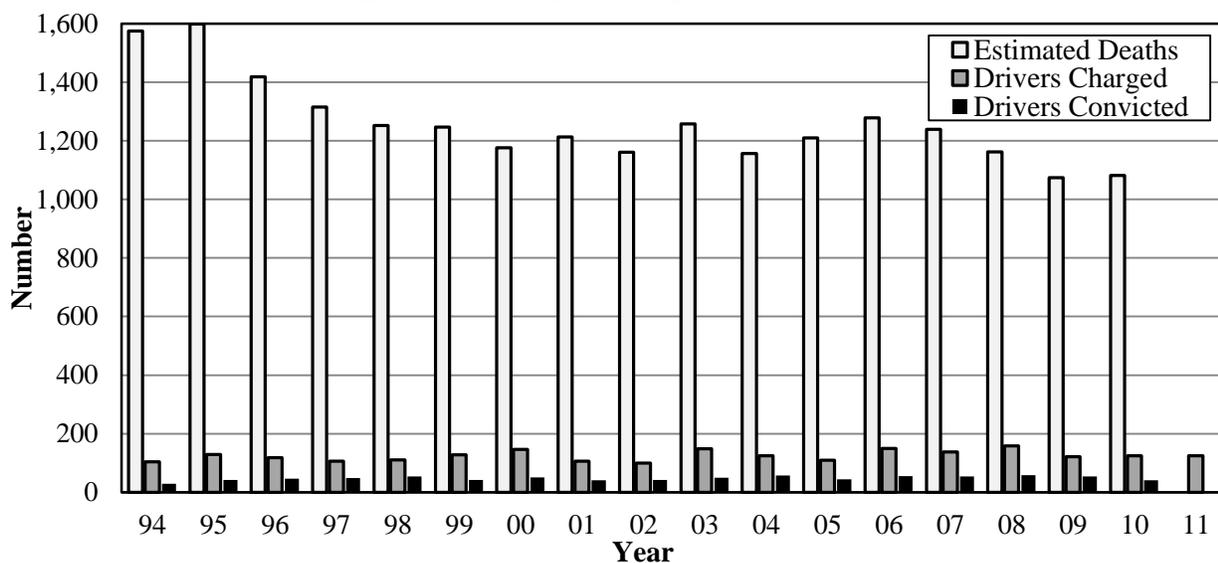
<sup>23</sup> W. Fieldus & E. Cane, "Impaired driving charges in injured impaired drivers requiring treatment in an emergency department" (2012) 14(5) Canadian Journal of Emergency Medicine 290, at 290.

<sup>24</sup> S. Mattsson, A. Eriksson & H. Sjogren, "Conviction rates among hospitalized DUI/DWI drivers" (2000) 28 Journal of Traffic Medicine 21.

The comparable conviction rate in the state of Victoria, Australia is over 90%.<sup>25</sup> The primary reason for the dramatically higher conviction rates in Sweden and Victoria is the broad legal authority given to police to demand breath and blood samples.

As Chart I illustrates, the failure of Canada's blood sample amendments are reflected in the discrepancy between the number of impaired driving deaths and injuries, and the number of related charges and convictions. In 2010, the latest year for which national data are available, there were an estimated 1,082 impairment-related traffic fatalities, but only 125 charges and 48 convictions for impaired driving causing death.<sup>26</sup> Even accounting for multi-fatality crashes and impaired drivers who were killed, only a small fraction of surviving impaired drivers who cause a fatal crash are charged with impaired driving causing death. Of the drivers charged, less than 40% are convicted of this offence. The charge and conviction rates for impaired driving causing bodily harm are far lower. In 2010, there were an estimated 63,821 impairment-related traffic injuries, but only 747 charges and 321 convictions for impaired driving causing bodily harm.<sup>27</sup>

**Chart I: Impairment-Related Traffic Deaths, and Charges and Convictions for Impaired Driving Causing Death: 1994-2010\***



\*Death and charge data are reported by calendar year, and conviction data are reported by fiscal year.

Thus, the overwhelming majority of impaired drivers who kill or injure others escape criminal liability altogether, or are only convicted of a lesser offence. The current

<sup>25</sup> Pursell, *supra* note 20, at 86-87.

<sup>26</sup> R. Solomon & A. Berger, *Impairment-Related Traffic Deaths and Injuries, and Associated Charges, Dispositions and Sentences: Canada, 1986-2012* (Oakville: MADD Canada, 2013) at 3.

<sup>27</sup> *Ibid.*, at 10.

situation undermines the seriousness of impaired driving, angers and frustrates victims and their families, and thwarts Parliament's goals in enacting the 1985 amendments.

Perhaps more importantly, these drivers have high rates of recidivism and pose an ongoing risk to the public. For example, a British Columbia study indicated that 30.7% of the hospitalized impaired had a subsequent alcohol-related crash, impaired driving conviction or alcohol-related administrative licence suspension over the next 4½ years.<sup>28</sup>

### **(b) Drug-Impaired Driving**

Although drug-impaired driving was first prohibited in 1925,<sup>29</sup> the police were not given any specific means of enforcing the law until 2008.<sup>30</sup> Consequently, drug-impaired driving charges were rarely laid during this period, even after the sharp increases in recreational drug use starting in the mid-1960s. There were no statistics on drug-impaired driving charges and convictions prior to the 2008 amendments because the drug cases were lumped in with the alcohol-impaired driving cases. Nevertheless, there is every reason to believe that drug-impaired driving charges were very infrequently pursued. This was acknowledged by the Standing Committee on Justice and Human Rights in 1999 when it lamented the lack of enforcement mechanism regarding drug-impaired driving.<sup>31</sup>

Despite the fact that a driver had consumed drugs and was obviously impaired, the Crown was usually required to adduce expert evidence to prove that the drug caused the driver's impairment.<sup>32</sup> This made drug-impaired driving an onerous and uncertain offence to prosecute. A 2003 Department of Justice report indicated that prosecuting a drug-impaired driving offence based on the observations of a non-expert police officer, such as one who would make an arrest on routine patrol, was "nearly impossible."<sup>33</sup>

Canadian survey data, roadside screening studies and post-mortem reports indicate that the incidence of driving after drug use has increased during the last 20

<sup>28</sup> Purssell *et al.*, "Proportion of Injured Drivers Presenting to a Tertiary Care Emergency Department Who Engage in Future Impaired Driving Activities" (2010) 11 *Traffic Injury Prevention* 35, at 40.

<sup>29</sup> *An Act to Amend the Criminal Code*, S.C. 1925, c. 38, s. 5. The 1925 provision prohibited driving under the influence of "narcotics." In 1951, this criminal provision was broadened to include driving while under the influence of any drug. *An Act to Amend the Criminal Code*, S.C. 1951, c. 47, s. 14(1) and (2).

<sup>30</sup> *Tackling Violent Crime Act*, S.C. 2008, c. 6, ss. 18-26.

<sup>31</sup> House of Commons, Standing Committee on Justice and Human Rights, *Toward Eliminating Impaired Driving* (May 1999), at 26.

<sup>32</sup> *R. v. Hollahan*, [1970] 1 C.C.C. 373 (N.S. Co. Ct.), at paras. 16-17; *R. v. Kurgan* (1987), 2 M.V.R. (2d) 79 (Ont. Dist. Ct.), at paras. 10-14; and *R. v. Beaulne* (1993), 46 M.V.R. (2d) 135 (Ont. Prov. Div.), at para. 9.

<sup>33</sup> Canada, Department of Justice, *Drug-Impaired Driving: Consultation Document* (Ottawa: Department of Justice Canada, 2003), at 4.

years.<sup>34</sup> Various provincial, regional and national surveys indicate that driving after drug use is now commonplace, particularly among young people.<sup>35</sup> These surveys are consistent with the Canadian roadside screening studies.<sup>36</sup> Finally, a post-mortem study of 6,000 drivers fatally injured between 2000 and 2007 found that 54.6% were positive for alcohol and/or drugs, and that the extent of drug use (33%) was comparable to that of alcohol use (37%).<sup>37</sup>

In response to the increase in driving after drug use and the aforementioned enforcement difficulties, Parliament amended the *Criminal Code* in June 2008 to authorize the police to demand “physical coordination tests”<sup>38</sup> (*i.e.* Standard Field Sobriety Testing) and a drug “evaluation” (*i.e.* Drug Recognition Evaluation or DRE) from suspected drug-impaired drivers in limited circumstances.<sup>39</sup> Unfortunately, the new drug-impaired driving law has proven to be very costly, time-consuming and cumbersome to enforce and prosecute. As well, the cases that have proceeded to trial have been readily susceptible to legal challenge.<sup>40</sup> The inadequacies of the 2008 amendments are reflected in the poor apprehension and charge rates for the drug-impaired driving offences.

Survey data on driving after drug use indicate that the likelihood of being

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<sup>34</sup> See E. Adlaf, P. Begin & E. Sawka, eds. *Canadian Addiction Survey (CAS): A National Survey of Canadians' Use of Alcohol and Other Drugs: Prevalence of Use and Related Harms: Detailed Report* (Ottawa: Canadian Centre on Substance Abuse (CCSA), 2005); and M. Young *et al.*, *Cross-Canada Report on Student Alcohol and Drug Use: Technical Report* (Ottawa: CCSA, 2011).

<sup>35</sup> See M. Asbridge, C. Poulin & A. Donato, “Motor vehicle collision risk and driving under the influence of cannabis: Evidence from adolescents in Atlantic Canada” (2005) 37 *Accident Analysis & Prevention* 1025; D. Patton, T.-L. Mackay & B. Broszeit, *Alcohol and other Drug Use by Manitoba Students* (Winnipeg: Addictions Foundation of Manitoba, 2005); and J. Flight, *Canadian Addiction Survey (CAS): Substance Use by Canadian Youth* (Ottawa: Health Canada, 2007).

<sup>36</sup> See C. Dussault *et al.*, “The contribution of alcohol and other drugs among fatally injured drivers in Quebec: some preliminary results” in D. Mayhew & C. Dussault, eds., *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: International Council on Alcohol, Drugs and Traffic Safety and Société de l'assurance automobile du Québec, 2002) 423; and D. Beirness & E. Beasley, “A Roadside survey of alcohol and drug use among drivers in British Columbia” (2010) 11 *Traffic Injury Prevention* 215.

<sup>37</sup> E. Beasley, D. Beirness & A. Porath-Waller, *A Comparison of Drug and Alcohol-Involved Motor Vehicle Driver Fatalities* (Ottawa: CCSA, 2011).

<sup>38</sup> *Criminal Code*, *supra* note 5, at s. 254(2)(a). The applicable regulation defines these physical coordination tests in terms of the three-part Standard Field Sobriety Test. See *Evaluation of Impaired Operation (Drugs and Alcohol) Regulation*, SOR/2008-196, at s. 2.

<sup>39</sup> *Ibid.*, at s. 254(3.1). See the *Evaluation of Impaired Operation (Drugs and Alcohol) Regulation*, SOR/2008-196 which sets out the various components of the DRE.

<sup>40</sup> For a detailed review of the limited impact of the new drug-impaired driving law, see E. Chamberlain, R. Solomon & A. Kus, “Drug-Impaired Driving in Canada: Moving Beyond American Enforcement Models” (2013) 60(2) *The Criminal Law Quarterly* 238.

apprehended is extremely small. For example, the Canadian Centre on Substance Abuse estimated that 10.4 million trips were made in 2012 by drivers after using cannabis.<sup>41</sup> However, only 1,140 drug-impaired driving charges were laid in 2012 for all categories of drugs.<sup>42</sup> Thus, even if all of the 2012 drug-impaired driving charges involved cannabis, a person would have to consume cannabis and drive once a day for 25 years before being charged, let alone convicted, of drug-impaired driving.

As Chart II illustrates, the number of drug-impaired driving charges has never exceeded 3% of total impaired driving charges, even though the incidence of driving after drug use and after drinking is roughly comparable.

**Chart II: Persons Charged for Drug-Impaired Driving, by Offence: Canada, 2008-2014<sup>43</sup>**

Offence	2008	2009	2010	2011	2012	2013	2014
Total impaired driving charges (drugs & alcohol)	65,822	68,338	65,188	60,164	60,261	54,107	51,637
Drug-impaired driving charges as a % of total impaired driving charges	0.29%	1.16%	1.43%	1.56%	1.89%	2.21%	2.62%
Total drug-impaired driving charges:	188	796	929	941	1,140	1,194	1,355
Impaired operation causing death	0	2	2	2	3	6	4
Impaired operation causing bodily harm	3	11	11	19	11	8	15
Impaired operation	180	752	890	892	1,100	1,159	1,311
Failure to comply or refusal	4	22	23	23	21	15	20
Failure to provide blood sample	1	9	3	5	5	6	5

There are no data on the current number of crash deaths and injuries involving drugs alone or drugs in combination with alcohol. Nor are there data on the percentage of drug-impaired crash deaths and injuries that result in any impaired driving charges, let alone charges of impaired driving causing death or bodily harm. However, from 2008 until 2014, the annual number of charges for drug-impaired driving causing death never exceeded 6, and the number of charges for drug-impaired driving causing bodily harm

<sup>41</sup> D. Beirness & A. Porath-Waller, *Clearing the Smoke on Cannabis: Cannabis Use and Driving – An Update* (Ottawa: CCSA, 2015), at 2. In a 2013 report, the CCSA estimated that 15.6 million trips were made per year by drivers after using cannabis. CCSA, *Report in Short - Drugs and Driving* (Ottawa: CCSA, 2013). However, this report is no longer available.

<sup>42</sup> R. Solomon, A. Berger & M. Clarizio, *Drug-Impaired Driving Charges: Canada, 2008-2014* (Oakville: MADD Canada, 2015), at 3.

<sup>43</sup> *Ibid.*

ranged from 3 to 15.<sup>44</sup> Unfortunately, there is no way of determining how many of these charges resulted in a conviction, because drug-impaired driving convictions continue to be lumped into the total impaired driving convictions. Despite these gaps in the data, the charge and conviction rates for drug-impaired driving causing death and bodily injury appear to be worse than the comparable alcohol-related charge and conviction rates.

### **BILL C-73**

On June 16, 2015, the Conservative government introduced Bill C-73, the *Dangerous and Impaired Driving Act*.<sup>45</sup> The Bill was introduced several days before the end of the parliamentary session, and consequently it died on the order paper. The timing of the Bill appears to have been driven by political factors related to the calling of the fall federal election. With the election of a Liberal majority government on October 19, 2015, it is doubtful whether the Bill, or any elements of it, will be re-introduced.

Among other things, the Bill provided that a driver's involvement in a crash that resulted in bodily harm or the death of another person would constitute reasonable grounds to suspect that the driver has alcohol in his or her body.<sup>46</sup> The police would then be authorized to demand that a driver provide a breath sample for analysis on an approved screening device (ASD). The Bill would also broaden police authority to demand blood samples from hospitalized impaired-driving suspects,<sup>47</sup> and qualified technicians, as well as medical practitioners, would be empowered to take the sample.<sup>48</sup> In addition, Bill C-73 would authorize judges to issue warrants requiring medical practitioners and qualified technicians to take blood samples from hospitalized impaired-driving suspects.<sup>49</sup>

### **CONCLUSION**

The current impaired driving law functions in a perverse manner, sheltering from criminal sanction drivers who commit the most serious impaired driving offences. It also generates a profound sense of injustice among impaired driving victims and their families. Not only do these impaired drivers escape the penalties and remedial programs

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<sup>44</sup> *Ibid.*

<sup>45</sup> Second session, Forty-first Parliament, 2015, cl. 5 (first reading 16 June 2015).

<sup>46</sup> *Ibid.*, at s. 320.27(2)(d).

<sup>47</sup> *Ibid.*, at s. 320.29(1)(a) and (2)(b).

<sup>48</sup> *Ibid.*, at s. 320.29(6).

<sup>49</sup> *Ibid.*, at s. 320.3(1).

prescribed for their conduct, but they are allowed to return to the roads and again endanger the public.

If re-introduced, passed and upheld under the *Charter*,<sup>50</sup> Bill C-73's breath and blood-testing provisions would increase the number of impaired driving offenders who are held accountable for killing or injuring others. Nevertheless, these provisions could be strengthened. First, involvement in a crash of any kind should constitute reasonable grounds to suspect that the driver has alcohol and/or drugs in his or her body. This would broaden police powers to demand evidentiary breath and blood samples, and drug evaluations from drivers involved in crashes.

Second, the *Criminal Code* should be amended to authorize the police to demand breath or blood samples from suspected impaired drivers who are taken to hospital. This change would eliminate many of the current obstacles to effective enforcement of the alcohol-impaired driving laws. Police would not be required to evaluate whether the suspect's condition is sufficiently poor to justify a demand for a blood sample. Nor would they be forced to transport a complicated and sensitive evidentiary breath-testing machine to the hospital, where administrators may or may not have suitable space to conduct the tests. Further, the police would not be required to seek confidential patient information from hospital personnel, who risk violating their various confidentiality obligations to provide it. Rather, the police could demand that the suspect consent to a blood sample being drawn, thereby ensuring that impaired driving suspects do not escape criminal liability simply by reason of their hospitalization.

Third, the police should be authorized to require hospital staff to take a blood sample from impaired driving suspects who are unconscious or otherwise unable to respond to a blood sample demand. This amendment would eliminate the need for the complex judicial warrant provisions, which have proven to be unworkable. Although Bill C-73 addresses some of the problems with the current judicial warrants, the proposed provisions would be susceptible to numerous legal challenges and remain difficult to implement.

MADD Canada should support Bill C-73's post-crash breath and blood-testing amendments because they would strengthen the current, albeit dysfunctional, law. However, additional amendments are essential to create workable laws that protect the public, rather than alcohol and drug-impaired drivers who kill and injure others.

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<sup>50</sup> *Charter*, *supra* note 16.