



Canadian Professional Police Association **Association canadienne de la police professionnelle**

BRIEF

TO THE STANDING COMMITTEE ON JUSTICE, HUMAN RIGHTS, PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

REGARDING BILL C-16

(An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts)

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INTRODUCTION

The Canadian Professional Police Association (CPPA) welcomes the opportunity to appear today before the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness concerning Bill C-16, An Act to Amend the Criminal Code (Impaired Driving). The CPPA is the national voice for 54,000 police personnel serving across Canada. Through our 225 member associations, CPPA membership includes police personnel serving in police services from Canada's smallest towns and villages as well as those working in our largest municipal cities, provincial police services and members of the RCMP.

We are pleased to have the opportunity today to comment on the provisions found in Bill C-16. Drug use constitutes a significant traffic safety issue, particularly for young drivers, who have the highest rates of both illicit drug use and fatal crashes per kilometre driven. Bill C-16 is a necessary and justified response to this public safety concern.

The Canadian Professional Police Association has partnered with Mothers Against Drunk Driving, Canadian Association of Police Boards, Canadian Association of Chiefs of Police in calling for a legislative framework to deal with this issue. We have also called for parliament to stop the race to pass the controversial marijuana Bill, C-17, that is before the House of Commons, until such time as our concerns related to police discretion, drug impaired driving, marijuana grow operations, border delays and the introduction of an effective national drug strategy have been properly addressed.

Canada Needs a National Drug Strategy

Recent public debate surrounding changes to Canada's drug laws have reinforced the need to adopt a national approach to drug use in Canada, and to ensure that young people have accurate information concerning the harms associated with the use of drugs, including marijuana. Unfortunately, the debate surrounding Cannabis reform has sent mixed messages to young Canadians. While Canadians, including our young people, have been positively influenced by measures to reduce alcohol impaired driving,

the perceptions differ concerning drug use and driving. Studies consistently show that young people are more likely to “toke and drive” than “drink and drive”.

As front-line professionals who see first-hand the impact of drugs in our society, police officers share a goal of encouraging all Canadians, particularly children and our youth, to “stay drug free”. We advocate a balanced approach that reduces the adverse effects associated with drug use by limiting both the supply of and demand for illicit drugs, enabling an integrated approach to prevention, education, enforcement, treatment, rehabilitation and research. Greater emphasis and resources must be provided for stakeholders involved in both demand and supply reduction, with a focus on public education and awareness.

DISCUSSION

Drug Impaired Driving is a Threat to Road Safety

Driving while intoxicated by drugs presents significant risks due to impaired judgment and motor coordination. Canadians share our concerns regarding drug impaired driving, and support the implementation of legislative measures to detect and prosecute drug impaired drivers. In a 2003 public opinion survey conducted by the Traffic Injury Research Foundation, Canadians identified driving after the use of illegal drugs second only in importance to drinking and driving on the list of important road safety issues. Almost 82 % of the respondents believe that drivers suspected of being under the influence of alcohol or drugs should be required to perform sobriety tests.

There is ample cause for such concern; countless studies and indicators confirm that drug use constitutes a significant traffic safety issue, particularly for young drivers, who have the highest rates of both illicit drug use and fatal crashes per kilometre driven:

- North American studies of blood samples from drivers involved in motor vehicle crashes have consistently found that positive results for THC, the main psychoactive compound in cannabis, are second only to alcohol.
- A 2003 Transport Canada report, “The Impact of Cannabis on Driving”, concluded “The evidence is very clear that a moderate or higher dose of cannabis impairs driver performance and several of the skills necessary for safe driving”.
- Studies published in British Columbia and Quebec demonstrated that 20% of drivers killed in crashes have drugs or a combination of low level alcohol and drugs in their blood.
- A 2001 Manitoba Student Survey on the prevalence of drug use indicated that young people were more likely to “toke and drive” than “drink and drive”.
- A 2002 Nova Scotia Student survey on drug use found that 26 % of the students admitted driving within one hour of using cannabis at least once in the last year.

- The 2003 Ontario Student Drug Use Survey found that close to 20% of high school drivers reported driving within one hour of using cannabis at least once in the preceding year. 23% of grade 7 to 12 students reported being in a vehicle driven by someone who had consumed drugs prior to driving
- In a 2002 national survey conducted by the Traffic Injury Research Foundation, 17.7% of licensed drivers (the equivalent of 3.7 million Canadians) reported driving, at least once in the past 12 months, within two hours of having taken a drug that could potentially affect their ability to drive. The most common drugs reported were over-the-counter medications (15.9%), prescription drugs (2.3%), cannabis (1.5%) and other illegal drugs (0.9%).
- In a 2004 follow-up survey, the percentage of individuals who reported driving within two hours of using cannabis had risen to 2.1%.
- A Québec study of fatally-injured drivers between April 1999 and November 2001 indicated that 22.6% were positive for only alcohol, 17.8% were positive for only drugs and 12.4% were positive for both. The most common drugs, other than alcohol, were cannabis (19.5%), benzodiazepines (8.5%), cocaine (6.8%), and opiates (1.4%).
- A 2002 national study estimated that drug use alone, or in combination with alcohol, contributed to approximately 290 traffic fatalities, 17,100 injuries and 37,220 property damage only crashes.
- Columbia University's National Center on Addiction and Substance Abuse released a study showing that cannabis is second only to alcohol as the drug most detected in fatal accidents.
- Toronto's Centre for Addiction and Mental Health released a study that found that more teens (about 20%) admit to using cannabis and driving than the 13.8% that admit to drinking and driving.

Several Parliamentary Committees have considered and reported on the issue of drug-impaired driving:

- In May 1999, the House of Commons Standing Committee on Justice and Human Rights released its report entitled *Toward Eliminating Impaired Driving*. The Committee recognized that drugs play a contributory role in some fatal motor vehicle accidents, and that the extent of drug-impaired driving has been underestimated because police have no easy means to test for drugs under current legislation. The Committee identified the need to implement better measures for detecting drug-impaired driving and for obtaining the evidence necessary for successful prosecution.
- In September 2002, the Senate Special Committee on Illegal Drugs issued a report entitled *Cannabis: Our Position for a Canadian Public Policy*. This report found that between 5% and 12% of drivers may drive while under the influence of cannabis. Emphasizing the use of cannabis among young drivers, the report stated that this percentage increases to over 20% for men under 25. The Committee suggested an amendment to the Criminal Code to admit evidence from expert police officers trained in detecting persons operating vehicles under the influence of drugs.
- In the fall of 2003, the House of Commons Special Committee on the Non-Medical Use of Drugs called for Parliament to develop a strategy to address the issues of drug-impaired driving.

The Current Law is Inadequate

While section 253(a) of the Criminal Code prohibits driving while one's ability to do so is impaired by a drug, it does not provide any practical means of gathering the evidence necessary for such charges. As a result, those who drive while impaired by drugs alone or by a combination of drugs and alcohol are largely immune to criminal prosecution.

Unlike the breathalyser test used for alcohol, there is no objective test to measure drug impairment. In order to support a prosecution for drug impaired driving, a police officer must demonstrate impairment and the presence of drugs active in the body. Police officers must rely on symptoms of drug impairment such as erratic driving behaviour and witness testimony when investigating a suspected drug impaired driver. The

present law does not allow a police officer to demand sobriety testing, nor demand a body fluid sample. While a suspected alcohol-impaired driver can be compelled, by demand, to provide a breath sample to measure the concentration of alcohol in their blood and determine if it exceeds the statutory level, this does not apply in the case of a suspected drug impaired driver.

Drug evaluation tests are admissible as evidence in court, but only if the driver participates voluntarily in a drug evaluation.

Bill C-16 will provide the necessary statutory authority to compel a suspected drug impaired driver, by demand, to complete Standard Field Sobriety Tests or complete a Drug Recognition Expert evaluation, and, upon failing these tests, to provide a bodily fluid sample – urine, oral fluid, or blood. This new legislation affords police similar authorities to those that currently exist to deal with alcohol impaired drivers.

Drug Recognition Experts (DRE)

The use of Standardized Field Sobriety Tests and Drug Recognition Expert evaluations provides the only reliable method for police to gather the evidence necessary to determine if a subject is impaired, and determine the cause of that impairment. While DRE evaluations have been accepted in Canadian courts, a legislative framework is required to compel suspected drug-impaired drivers to submit to tests.

This form of testing is widely used in Australia, New Zealand, and some European countries. At present 38 American states use this process to detect and prosecute drug impaired drivers and the process has survived court challenges up to the United States Supreme Court.

Canadian police forces are currently only using DRE evaluations in cases where the driver participates voluntarily. This process was first implemented in the Province of British Columbia with the support of the Insurance Corporation of British Columbia, in 1995. It has been of limited success in terms of drug-impaired driving convictions due to the lack of Field Sobriety Testing and body fluid demands. It has, however, enabled

suspected impaired drivers to be removed from the road, through the use of the province's 24 hour road side suspension provision.

To obtain DRE certification, an officer must undergo a rigorous training program and pass eight exams and two practical tests. This includes the requirement to perform 12 DRE evaluations on four different classes of drugs that are subsequently confirmed by toxicology results.

The program has been scientifically validated, both in the laboratory and at roadside. The Department of Justice states that DRE officers have proven to be more than 90% accurate in determining impairment and the type of drug that caused impairment, while the U.S. National Institute of Highway Traffic Safety found DRE analyses to be accurate 98% of time. As well, DRE testing can rule out drug impairment in drivers who have a medical condition and get these drivers medical attention.

The DRE program also assists police in identifying persons suffering from medical conditions, such as uncontrolled diabetes, epilepsy, and stroke, that may impair driving ability. DRE procedures are designed to help police officers identify medical disorders causing impairment. A DRE-trained officer encountering a person suffering from a medical condition would seek medical assistance for the driver involved.

Bill C-16

We are pleased that Justice Canada adopted many of the recommendations that the CPPA, MADD Canada, CACP and CAPB had made in consultations prior to the introduction of this legislation.

Bill C-16 proposes amendments to the *Criminal Code* and other Acts intended to strengthen the enforcement of drug-impaired driving offences in Canada.:

1. As a first step, police officers will be authorized to administer Standardized Field Sobriety Tests (SFST) at the roadside if the officer has a reasonable suspicion that the driver has a drug in his or her body.

2. If the driver fails the SFST, the officer will then have reasonable grounds to believe that a drug-impaired driving offence has been committed, and can escort the driver to a police station for administration of a Drug Recognition Expert (DRE) evaluation. As soon as is reasonable in the circumstances, a peace officer who reasonably believes that a person has been driving while impaired by a drug, or a combination of alcohol and a drug, within the preceding three hours may demand that the driver submit to a DRE conducted by a DRE officer at a police station.
3. A qualified DRE officer will conduct an evaluation involving a combination of interviews and physical observations.
4. If the DRE officer identifies that a specific family of drugs is causing impairment, and has reasonable grounds to believe that the driver's ability to operate a vehicle is impaired by a drug or a combination of alcohol and a drug, the DRE officer may demand that the driver provide a saliva, urine, or blood sample.
5. Samples of blood may be taken only by a medical practitioner or technician who is satisfied that taking samples would not cause injury to the individual.
6. Charges will not be laid without confirmation of preliminary DRE results through a toxicology report, but the results of such tests can then be used as evidence in drug-impaired driving prosecutions.
7. A driver's refusal to comply with an officer's request for a physical sobriety or bodily fluid sample test constitutes a criminal offence punishable under the same provisions that are currently applicable for refusing to perform an alcohol breath or blood test.

Implementation

Bill C-16 will not have the desired and required effect if sufficient front line police officers are not afforded the necessary training to implement it. In May 2003, the government allocated \$910,000 in new funding over five years towards DRE and put in place a National DRE Coordinator both to work with law enforcement agencies across the country and to develop an operational framework for DRE in Canada. As well, the RCMP reallocated \$4.1 million from its budget to get a National DRE Program under

way. While these are positive initiatives, we contend that unless a sufficient proportion of front-line police officers are trained and certified to conduct standard field sobriety and drug recognition testing, Bill C-16 will rarely be used.

There must be sufficient laboratory and toxicological resources available to process the blood and other samples seized under Bill C-16 in a timely fashion. Canadian judges must be educated concerning standard field sobriety and drug recognition evaluation, to develop an appreciation of the rigorous elements and scientific underpinnings of these tests. The federal government also needs to support research on standard field sobriety and drug recognition testing, and ensure that this information is widely disseminated in the Canadian legal and traffic safety communities.

CONCLUSION

Driving while intoxicated by drugs presents significant risks due to impaired judgment and motor coordination. Drug use constitutes a significant traffic safety issue, particularly for young drivers, who have the highest rates of both illicit drug use and fatal crashes per kilometre driven.

Bill C-16 is a necessary and justified response to this public safety concern. The Canadian Professional Police Association supports the Bill, and urges Parliament to amend and pass this legislation without delay. It must be passed and fully implemented before any action is taken on *Bill C-17*.

The CPPA recommends the following amendments, as detailed in the following pages:

1. A comprehensive and adequately resourced implementation strategy.
2. Authorize police to videotape field sobriety and drug recognition tests.
3. Extend the presumptions of temporality from two to three hours.
4. Authorize licensed health practitioners to collect blood samples under the impaired driving provisions.
5. Permit field sobriety and drug recognition test results to be used in the provincial and territorial highway traffic safety programs.

The federal government must ensure that funding is available to train sufficient numbers of police officers, expand toxicological services, and support research on standard field sobriety and drug recognition testing.

SUMMARY OF RECOMMENDATIONS

1. A comprehensive and adequately resourced implementation strategy.

Police training, the expansion of toxicological resources and research on standard field sobriety and drug recognition testing are essential to achieving the goals of Bill C-16. We would urge this Committee to strongly recommend to the federal government and Transport Canada that these initiatives be properly funded and implemented as soon as possible.

We maintain that debate over Bill C-17 should be deferred until such time that Bill C-16 is fully implemented and our concerns related to police discretion, marijuana grow operations, border delays and the introduction of an effective national drug strategy have been adequately addressed.

2. Authorize police to videotape field sobriety and drug recognition tests.

Where practical, police should have the authority to videotape and submit, as evidence, the testing of impaired drivers. Many police agencies have found that the use of such technology assists police in demonstrating the demeanour, behaviour and condition of an accused person. It reduces the potential for frivolous public complaints and reduces the potential for dispute over test results.

3. Extend the presumptions of temporality from two to three hours.

This would enable evidentiary breath and blood samples taken within **three** hours of the alleged impaired driving offence to be admissible

as evidence of the accused person's blood-alcohol concentration (BAC) at the time of the offence.

In 1999 the *Criminal Code* was amended to increase from two to three hours the time period within which the police could demand evidentiary breath and blood samples from suspected impaired drivers. However, Parliament failed to make any corresponding amendments to the presumptions of temporality. Consequently, the breath and blood analyses are still only presumed to reflect the suspect's BAC at the time of the alleged offence, if the samples are taken within two hours.

The time constraints under the criminal code can be a problem for police officer if the arrest occurred in a rural area or on a busy night, or if the officer was delayed in assisting crash victims or securing an accident scene.

The presumptions relieve the prosecutor of the time-consuming and costly obligation of calling a toxicologist in each impaired driving case. A prosecutor who wishes to introduce samples taken outside of the limit must still call a toxicologist to testify. Given the time, expense and complexity of obtaining such evidence, the charges will most likely be withdrawn except in cases involving death and serious injury.

4. Authorize licensed health practitioners to collect blood samples under the impaired driving provisions.

Under Bill C-16 and the Criminal Code, a blood sample may only be taken by, or under the direction of, a medical doctor who is satisfied that doing so would not endanger the suspect's life or health. It is often difficult for police officers to find a doctor who is available and willing to take time from their other responsibilities.

These restrictions in Bill C-16 and the Criminal Code are unnecessary and impractical, given that nurses and other similar regulated health practitioners routinely draw blood samples as part of their daily responsibilities.

5. Permit field sobriety and drug recognition test results to be used in the provincial and territorial highway traffic safety programs.

All provincial and territorial jurisdictions have highway traffic safety programs that support efforts to reduce impaired driving and the corresponding carnage on our roads. These provincial and territorial programs play an extremely important role in Canada's overall highway traffic safety strategy.

Bill C-16, as presently drafted, would prevent provincial and territorial officials from using these test results in deciding to: issue short-term roadside or 90-day administrative licence suspensions; require impaired drivers to participate in a remedial education, assessment, treatment, or alcohol interlock program; or impound the vehicle of an impaired driver.