



House of Commons
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 005 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Wednesday, February 25, 2009

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Chair

Mr. Ed Fast

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• (1535)

[English]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call the meeting to order.

This is meeting 5 of the Standing Committee on Justice and Human Rights on Wednesday, February 25, 2009.

You have before you the agenda for today. Please note that we have allowed 15 minutes at the end of our meeting to debate Mr. Ménard's motion on adding "social condition" to the Human Rights Act. I understand that Mr. Storseth also wants to move forward with his motion on a human rights review.

Today we are continuing our study on impaired driving. That's why we have the witnesses here today.

First of all, we have with us representatives from the Canada Safety Council, those being Emile Therien and Raynald Marchand. We also have with us the Insurance Bureau of Canada, represented by Dennis Prouse and Robert Tremblay; the Canadian Police Association, with Charles Momy and David Griffin; and finally, the Criminal Lawyers' Association, with Joseph Di Luca and Jonathan Rosenthal.

Gentlemen, welcome. I believe you've been told how much time you have to present. Most of you have 10 minutes. If you can, restrict your comments to that time, because we have a lot of questions we want to ask.

We'll start with either Monsieur Tremblay or Mr. Prouse.

Mr. Dennis Prouse (Director, Federal Government Relations, Insurance Bureau of Canada): Thank you, Mr. Chairman.

I'll begin. I'm the director of federal government relations for the Insurance Bureau of Canada. With me is my colleague, Robert Tremblay, our director of road safety and special projects.

I want to thank you and the committee members for inviting us here today.

[Translation]

It will probably be easier for everyone if I speak in English, and my colleague, Mr. Tremblay, will speak in French.

[English]

IBC is the national trade association for Canada's home, car, and business insurers. We provide employment for over 106,000 Canadians coast to coast. Our members paid over \$6 billion in taxes last year to the three levels of government and paid out in

excess of \$20 billion to help Canadians rebuild their lives after tragic accidents.

We feel very strongly, Mr. Chairman, that our industry needs to be about far more than just taking in premiums and paying out claims. This is why, for a number of decades now, IBC has been at the forefront of road safety and injury prevention issues.

In fact, it was over a generation ago that the insurance industry began speaking out very loudly in support of a crackdown on impaired driving. As the committee members will know, that was a time when attitudes towards impaired driving were remarkably different than they are today. Great progress has been made, but as I'm certain we will hear today, a great deal more remains to be done.

We also led the charge on seat belt use, again at a time when attitudes towards seat belt use were worlds away from where they are today.

About a decade ago we began leading the campaign on graduated licensing at the provincial levels. That was very controversial at the time. It is now widely accepted as being good public policy. That has acted significantly to cut road deaths and injuries amongst the 16- to 19-year-old age group.

Some of you may know that we've been very actively involved in a campaign on issues surrounding driver distraction.

Over the last two years, other issues on which we have been active include medically at risk drivers, an issue on which we testified in front of a Senate committee last year, and the issue of driver fatigue.

Operation Red Nose—some of you may know of this—is very much a favourite charity of ours, one that we think delivers tremendous value to the over 100 communities in which it was active over this past year. It may well operate in some of your ridings.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Speak more slowly; you're going to kill the interpreters.

[English]

The Chair: We want to make sure the translation comes through clearly, so could you just slow down a little?

[Translation]

Mr. Dennis Prouse: That's the fault of the Chairman, who says we only have 10 minutes.

[English]

Operation Red Nose is a favourite charity of ours, one that we believe does deliver tremendous value to those 100 communities. Some of you are aware of those communities. This is a volunteer-based and community-based charity, and each year it continues to grow. It offers rides home to potentially impaired drivers during the holiday season. Our industry proudly supported Operation Red Nose last year; it's about \$2 million per year.

Most recently, we became national sponsors of the Brain Injury Association of Canada. This group is doing tremendous work with victims of brain injury. One thing we've noticed is that most of the volunteers in the Brain Injury Association tend to be friends and family of those who have been brain injured, many of them in car accidents and some at the hands of impaired drivers. We see their struggle, and we know that many of the people watching these proceedings today are likely the friends and family of those killed by impaired drivers. We are extremely mindful of that as we proceed.

With that, I'd like to ask my colleague, Robert Tremblay, to talk about some of the specifics on the issues we're facing today.

Mr. Robert Tremblay (Director, Road Safety and Special Projects, Insurance Bureau of Canada): Mr. President, *monsieur le président*, I will start my remarks in French and I will then transfer to English, and I will try to keep the English translator going at a reasonable pace.

[Translation]

In the past 30 years, Canada has made major progress and significant changes in society's attitude toward the problem of impaired driving. And, in our view, that must be considered a major victory.

Despite that progress, however, the struggle against impaired driving has now hit a plateau, and additional progress will obviously be increasingly hard to achieve. If we look at the figures for the period from 1996 to 2001, compared to results for that between 2003 and 2005, we note a decline in the number of deaths among young drivers between 16 and 35 who died after consuming alcohol.

On the other hand, we note a 16.7% increase in the number of older drivers, particularly those 55 to 64, between those two periods. Progress has thus been achieved, but has now reached a plateau.

In view of this situation, one very legitimate question obviously arises. How can we achieve greater success? In the struggle against impaired driving, we must not confuse the objective with the tools we use to achieve it. Here in Canada, there is a very strong consensus in society that impaired driving is unacceptable and that driving with a blood alcohol concentration of 0.08 is criminal. However, there is no consensus at this stage that we should criminalize driving with a BAC of 0.05. Many people do not feel that that's necessarily the best route to take to achieve more success.

As director of road safety at the Insurance Bureau of Canada, I am of the view that, for the moment, criminalizing driving with a blood alcohol concentration of 0.05 is not the most effective way to

achieve our objectives of reducing impaired driving on Canada's roads.

I'll now continue in English.

• (1540)

[English]

We believe there are other venues that should be further developed. In this presentation we will touch on three elements. The first one is better enforcement of the current 0.08 BAC. We will also talk about the implementation of 0.05 roadside suspension programs. Finally, I would like to talk a little bit about random breath testing as it is currently used in Australia.

A recent survey conducted by the Traffic Injury Research Foundation on behalf of the Canadian Council of Motor Transportation Administrators sampled 1,035 crown prosecutors and defence lawyers. It highlighted a number of issues with the way the current 0.08 criminal BAC is being enforced that deserve to be addressed.

The first thing the survey noted was that the conviction rates had dropped from 90% in the 1990s to 72% at the time of the survey.

The second element highlighted—although there were many things that were highlighted in that report, and I'm just citing a few—is that there is an imbalance between defence and crown resources, especially as pertains to preparation time. The defence has about five to six times longer to prepare. In other words, if a crown prosecutor has two hours to prepare for a case, the defence lawyer is likely going to have 10 to 12 hours. There is, therefore, a clear imbalance. The survey demonstrated that it's mostly due to the large caseload that crown prosecutors have.

On a positive note—and it might not necessarily have been highlighted, but we believe it is an encouragement to pursue this route—in the 1990s a study was conducted showing that at the time, the bulk of the prosecutions under criminal blood alcohol content were for between 1.6 and 1.8 blood alcohol content. The interesting fact is that in this most recent survey, the average blood alcohol concentration was between 100 and 160, leading us to believe that the prosecutors are starting to prosecute lower blood alcohol content, or closer to 0.08, which is certainly an encouraging movement in this area.

The second point we would like to talk about is the promising avenue of the various roadside administrative suspension programs. In Canada, most jurisdictions have a roadside administrative suspension program under their provincial or territorial highway safety acts. Under those provisions, law enforcement can and does have the authority to issue immediate licence suspension for drivers operating a motor vehicle with a blood alcohol content between 0.04—in Saskatchewan—and 0.08, although most jurisdictions will issue a roadside suspension at 0.05.

The effectiveness of this is interesting. Saskatchewan has analyzed its effectiveness and has found that fewer than 8% of the drivers who were served an administrative roadside suspension re-offended. That low rate of re-offending is a good indication that it served as a deterrent or at least taught a good lesson to people who might not have thought they had a blood alcohol content that was too high to operate a motor vehicle.

From an insurance perspective, in Canada there are four jurisdictions that do not record those suspensions on a driver's abstract; therefore, we cannot use them as an underwriting criterion when we are rating insurance rates of drivers. We know that all of those jurisdictions are currently considering it, but there are a number of stumbling blocks that prevent it. If we were able to rate with a 0.05 blood alcohol content, that would serve as yet another level of deterrence in the fight against impaired driving.

The third point I would like to bring to your attention is the success of random breath testing as practised in Australia. We are all familiar with the RIDE programs used by law enforcement agencies in Canada. Those programs are usually enforced during the holiday season or long weekends. They are not necessarily as systematic as we would like, but they are there. Random breath testing is different, in that they test all drivers without exception; in other words, when you come to a roadblock, every driver who goes through has to provide a breath sample. That helps in the perceived likelihood of being caught.

• (1545)

A recent study published by the Monash University Accident Research Centre by Professor Delaney and associates established the strategic principle of drunk driving enforcement as it pertains to the proper use of random breath testing. Essentially, what they are saying is that random breath testing is a critical element to support the administrative licence suspension and criminal 0.08 BAC levels.

The systematic use of RBT operations increases the perception that a drinking driver would get caught with all the consequences attached to this situation.

The Chair: Monsieur Tremblay, we're at the end of our time, so could you just wind up very quickly?

Mr. Robert Tremblay: Yes.

Essentially, they went as far as to suggest a proper level of concentration, and they basically said that the optimal threshold is 20 hours of operation per week per 100 square kilometres. With that, you achieve a reduction of 36% in injuries and 69% in fatalities, and the effect remains for at least two weeks following the operation.

To summarize, we would recommend maintaining the 0.08 criminal threshold for blood alcohol content, supporting administrative licence suspension, and considering the implementation of random breath testing as it's being used in Australia.

Thank you.

The Chair: Thank you to both of you.

We'll move on now to Mr. Momy, representing the Canadian Police Association. You've already appeared before this committee once on this study, so you have three minutes to refresh us.

Mr. Charles Momy (President, Canadian Police Association): Thank you very much, Mr. Chair. I have with me as well Mr. David Griffin, who is a former police officer and an executive officer with the Canadian Police Association. He'll be here to assist me today.

[*Translation*]

The Canadian Police Association welcomes the opportunity to appear today before the House of Commons Standing Committee on Justice and Human Rights, concerning your Study on Matters Related to Impaired Driving.

The CPA is the national voice for 57,000 police personnel serving across Canada. Through our 160 member associations, CPA 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.

Motor vehicle collisions that are caused by impaired drivers are not accidents; these are crimes. Impaired Driving remains the number one criminal cause of death in Canada. Despite our collective best efforts and intentions, it is apparent that the problem of impaired driving is worsening in Canada, and we are losing ground in our efforts to eliminate impaired driving. The most recent data available, from 2006, demonstrates that operating motor vehicles and vessels while impaired by alcohol or drugs is at the highest level it has been since 1999. This is not acceptable; the time for action is now.

[*English*]

Canada needs a coordinated and integrated approach involving the federal government, provincial governments, and all stakeholders in the justice system. We welcome the work of the committee in this regard. We would point out, however, that there have been numerous committees, bills, and studies over the past decade. The real problem seems to be in moving forward, beyond consultations, with adequate legislation and implementation.

We believe the areas that need to be addressed in this review include, first, random roadside breath testing. Currently Canadian police officers may administer a roadside test using an alcohol screening device only when the officer has reason to suspect that a driver may have consumed alcohol. Unfortunately, this is not always practical, especially when dealing with drivers involved in motor vehicle collisions. Some countries have permitted the use of random roadside breath testing with significantly increased results. We heard of one, and New Zealand is the other.

This recognizes that driving on Canadian roads and highways is a privilege, not a right. Random testing of drivers is a reasonable and efficient measure to deal with a serious public safety concern. It is no more inconvenient to submit to a random test on our roadways than to be screened and searched at airports, or, as we were today, on entering this building.

If this committee chooses to do only one thing, we would encourage you to consider this proposal. Random roadside breath testing would introduce a significant deterrence for people who might otherwise choose to take the chance and drive while impaired.

Second is hospital testing. A significant enforcement issue for police deals with suspected impaired drivers who are injured and taken to hospital. Often there are challenges in obtaining breath samples within the prescribed time limits and difficulties in obtaining blood sample authorizations.

• (1550)

The Chair: Mr. Momy, I'm going to have to interrupt. You're already a minute over time. Please just summarize briefly.

Mr. Charles Momy: I'll mention the other factors, Mr. Chair, and won't go into detail.

Certainly the 0.05 BAC is another issue that we would like considered. Again, as we have seen in many different countries, the European Union is also looking at adopting that type of circumstance, in those European countries, and bringing the BAC down from 0.08 to 0.05.

The Chair: I'll tell you what, the committee members are going to have an opportunity to ask questions, and you can continue on at that time.

Mr. Charles Momy: Thank you.

The Chair: We also have with us Monsieur Therien, as well as Monsieur Marchand.

Monsieur Marchand, you have three minutes as well.

[*Translation*]

Mr. Raynald Marchand (General Manager of Programs, Canada Safety Council): Thank you, Mr. Chairman. Thanks to the other committee members.

With me today is Émile Thérien, past President of the Canada Safety Council. My presentation will be in English, but we are prepared to answer questions in both official languages.

[*English*]

Our submission in February 2008, a year ago, explained why the government should leave the legal blood alcohol content, or BAC, at its current level of 80 mg%. The Canada Safety Council strongly urges Justice Canada to work with Canada's national strategy to reduce impaired driving, also called STRID. The strategy is a collaboration of Transport Canada with all provincial and territorial jurisdictions and many safety organizations, including the Canada Safety Council. STRID takes advantage of Canada's most respected traffic safety experts and applies the best research and practice.

Since our presentation last February, STRID has published three major reports. First, let's look at some abstracts.

Let's look at their July 2008 survey of over 1,000 crown prosecutors and defence counsel. That survey found, among other things, that it takes longer and longer to process impaired driving cases, from up to six months for a negotiated plea agreement to well over a year. We would like to point out that such delays would only be increased if criminal charges were laid below the current level.

Almost 30% of cases that go to trial result in an acquittal. Given the reliability of breathalyzer technology, this leads us to ask whether many of those charged are getting off thanks to the good preparation of their defence counsel, when in fact they were impaired.

Repeat offenders account for about one-third of all impaired driving cases. This new information reinforces our recommendation that Justice Canada should focus on sentences that will prevent recidivism by ensuring remedial programs are part of the sentencing and are readily available.

The report concludes that people challenge a criminal charge due to the severe consequences of a conviction. Again, this reinforces our recommendation that lower-BAC drivers should continue to be dealt with outside the Criminal Code, where the consequences are much more sure and immediate.

Secondly, a fall 2008 report on trends in alcohol-related crashes reinforces our point that progress is being made in the fight against impaired driving. The problem group is not drivers under the current legal limit; it is still those with BACs over 80 mg%, and specifically those with BACs over twice the legal limit. Over half of impaired driving fatalities are the impaired drivers themselves.

Finally, the STRID monitoring report for 2007 shows that more and more jurisdictions are strengthening their administrative sanctions for drivers under 80 mg%. New last year, Ontario is adding administrative licence suspensions to the driver record and increasing those suspensions from 12 hours to three days, and even longer for repeats.

These three reports support the Canada Safety Council's position that lowering the criminal blood alcohol level is not what is needed to reduce Canada's impaired driving problems. They confirm that public safety is best served by dealing with drivers with BACs lower than 80 mg% outside the Criminal Code.

• (1555)

The Chair: Mr. Marchand, you're going to have to wrap up now.

Mr. Raynald Marchand: One minute, I'm done.

The Chair: No, you're going to have to conclude.

Mr. Raynald Marchand: Okay.

In summary, the new information that has emerged over the past year reinforces and confirms the recommendations in the Canada Safety Council's February 2008 submission. In the interest of reducing the impaired driving problem in this country, I strongly urge the government to remove the proposed changes to the BAC from the bill and rather to continue on the well-thought-out strategy now in place.

Thank you.

The Chair: Thank you.

And you will have an opportunity to answer questions, and we'll continue the dialogue at that time.

Mr. Di Luca, you're on.

Mr. Joseph Di Luca (Vice-President, Criminal Lawyers' Association): Thank you, Mr. Chair, honourable members.

The Criminal Lawyers' Association welcomes the opportunity to appear before the standing committee on what is obviously a fundamentally important study.

Our organization represents 1,000 criminal defence lawyers across the Province of Ontario. Together with the crown attorneys, we are in many ways the front-line workers of the criminal justice system, so we experience on a day-to-day basis the net impact of the laws you folks make here in Ottawa.

Today I'm here with Jonathan Rosenthal, who is widely recognized as a leading expert in the defence of drunk driving cases. Mr. Rosenthal has a wealth of experience, and we're prepared to share our thoughts on any questions you have.

I will just start out very briefly with a small thought or overview, and I'll turn it to Mr. Rosenthal to address the issue of the 0.05 blood alcohol limit.

I just want to start with the observation that there should be no mistake about it, our members all support fair and constitutional measures aimed at ensuring the safety of our streets. All people, and I add criminal lawyers in that group as well, have a direct interest, obviously, in seeing the reduction of the carnage caused by drunk driving.

Now, having said that, we urge this committee, like we've urged committees in the past, to carefully consider any change, to deliberate on the impact that change will have on the administration of justice across the nation.

The criminal justice system is blunt. It's also delicate. It's blunt in the sense that it's an instrument that does not always change the way society acts. So it's not an answer in all cases to fixing our problems. By way of delicacy, I just want to suggest that the criminal justice system is already near the breaking point in terms of delay and load, and anything you do here has the potential for an exponential impact on the criminal justice system in terms of delay.

The only thing I want to point out to you on that issue is that the Province of Ontario has recently started looking at the issue of court delays through an initiative called the justice on target initiative. That's an effort to try to speed up the delivery of fair justice.

One of the issues you look at in Ontario is that we have an effective trial rate of about 7%—7% of our cases are sent to trial and 93% are either dealt with by way of guilty plea, withdrawn, or stayed. If you change that 7% trial rate by 1% or 2%, you will have an effective change of 15% to 20% in the number of trials that take place in the system. So it's a delicate system. And if the system is strained right now, we have Askov problems recurring in the Province of Ontario at every courthouse. If cases are being stayed and thrown out, if you tinker with that system by 1%, it's a 15% change in the number of trials. It doesn't take a mathematician to figure out what will happen. So I just urge the committee to keep considerations like that in mind, but of course we support the committee in its work.

I'll just turn it over to Mr. Rosenthal briefly.

• (1600)

Mr. Jonathan Rosenthal (Counsel, Criminal Lawyers' Association): I can't tell you about the numbers or percentages, as Mr. Di Luca did, but what I can tell you, as a lawyer who appears almost daily in the Ontario Court of Justice, is that in Ontario, at least, our courtrooms are in crisis. Every day, charges are being stayed on the basis of unreasonable delay.

And I can tell you, the harder you make the penalties for drinking and driving offences, the harder people fight them. It used to be that the only concerns people had were about licence suspensions, but I can tell you that in the last five or ten years, people have been equally concerned about the consequences of a criminal record.

I think I read somewhere that changing the rate to 50 mg% from 80 mg% will increase charges by about 40%. Our system is already in crisis and it can't handle what we now have, and I don't know how it's going to handle more charges. If you add 40% to the caseload without significant injections of resources, you will be responsible for a crisis of delays far worse than the Askov crisis of 1991.

Our crowns in Ontario are already grossly overworked and grossly short of resources. Believe it or not, senior crown attorneys in Ontario are responsible for tasks such as faxing and photocopying. If you add 40% to their workload, we're obviously going to have a very significant problem.

You also have to think about the police. I'm sure at some point you're going to hear, or have already heard, how long it takes a police officer to process someone from the time of arrest till release. Right now, if someone is pulled over and they blow over 50 mg%, their licence is immediately suspended on the spot, and the time the police have is probably only minutes. Suddenly, every time someone blows a "wam", or blows over 50 mg%, they're going to be off the road for significant periods of time. Add to that the fact that breath technicians have to take tests if someone is arrested for over 80 mg%. They are also obligated by statute to administer those tests forthwith or as soon as practicable. Again, if you increase the load by 40%, we're not going to have enough breath technicians and we're not going to have enough machines.

So unless you're prepared to ensure that there is a massive injection of resources, you're heading towards what I would say is a disaster.

The Chair: Excuse me, Mr. Rosenthal. May I ask you to slow down a little bit, because this is being translated.

Mr. Jonathan Rosenthal: I had the honour of appearing before this honourable committee in June of 2007 with regard to Bill C-2 amendments. Perhaps I'm surprised I've been invited back. At that time I cautioned you about what would occur if those amendments were passed. I told you the white flag would not be waved and no one would be giving up. Let me tell you what's happened since July 2 and the Bill C-2 amendments passed, and this is only the start.

In Ontario we're still fighting about whether or not the legislation is retrospective or prospective. In about seven months we have judgments going in every direction, with no binding authority. That issue will likely finally be resolved years from now when it makes its way to the courtroom down the road. We've only started litigating about disclosure. We haven't even got close to dealing with the constitutionality. A simple, straightforward non-accident over-80 mg % case now is being set for about two to three days of court time. That is the case that not so long ago you would set about half a day for. I can't tell you how many thousands of cases are going to be in the system waiting for the final determination of retrospectivity and prospectivity disclosure issues and then eventual constitutionalities.

I can go back to the 80 mg% or 50 mg% debate. There is no universal agreement among scientists about whether everyone is impaired at 50 mg% or not; there's a debate. And regardless of what someone blows, if the police officer believes someone is impaired, they arrest them for impaired driving regardless of the reading. The test for whether or not someone is convicted of impaired driving is whether their ability to operate a motor vehicle is even slightly impaired.

So let me conclude. From a selfish perspective, if you lower the legal limit I can tell you'll make a lawyer such as me a much busier lawyer than I already am. Lowering the legal limit will certainly let the uninformed public know how hard the government is coming down on drinking and driving. Finally, I can guarantee you will undoubtedly ensure a greater backlog than has ever been seen, and more charges—and I'm not just talking about drinking and driving charges, I'm talking about all sorts of criminal charges—will be withdrawn and will be stayed if this amendment or this legislation is seriously considered.

If that's all my time, I'll wrap up now and won't touch on any of the other topics.

• (1605)

The Chair: You have two minutes left.

Mr. Jonathan Rosenthal: All right.

I'll briefly talk about random breath testing. I'm not an expert on the Constitution, but I think there'd be great difficulties from a constitutional perspective in having random breath testing. I don't think we can forget about what the requirement is for the police to at least administer a roadside test. All it is, is reasonable suspicion that the person has alcohol in their body. That is the odour of an alcoholic beverage on their breath, the admission that they consumed some amount of alcohol. That is all that is required. So to randomly stop people, I think you're going to have great difficulties with the constitutionality of it. In the interim you have to remember if that legislation gets passed, until it's finally resolved by the Supreme Court of Canada, you're going to have thousands and thousands of cases in the system. We don't need it. We have experienced police officers out there every day in Toronto administering RIDE programs to look for impaired driving. In a very brief period they form whether or not they have a reasonable suspicion to administer a roadside test.

Thank you.

The Chair: Thank you.

We'll open the floor now to questions from each of you.

I will begin with Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chairman.

Thank you, witnesses.

[*Translation*]

Thank you very much for your testimony today.

[*English*]

I just want to be clear that at least I think we're here to study the issue of impaired driving, not any particular legislation or any particular amendments to the Criminal Code.

There have been a number of suggestions floated. The prime one, I guess, that's been floated publicly is the idea of lowering the BAC limit to 0.05, but I do think where we've come—and I don't pretend to speak for everyone—is that there's good esprit de corps here and we actually want to make some changes to be efficacious.

I think where we're going is not to introduce or support legislation that would lower the BAC in the Criminal Code to 0.05, but to support various provincial initiatives in almost every province for administrative licence revocation, and to support that by allowing police officers to have things like the presumption of temporality, which, if given more time, Mr. Momy would have got to, like having randomized roadside breath testing in order to cover the blanket of supervision of our roads on a given day or evening in a safer manner.

I really wanted to ask everybody a question, but you cut to the crux of it, Mr. Rosenthal, when you said there might be a constitutional challenge. I've been here three years, and we always talk about that, that ghost in the other room, which is the charter challenge, but tell me about Oakes and tell me about proportionality.

Is it okay to be searched at an airport, as the insurance people say? The gross penalty there is not to be let on the plane or to lose your can of Gillette shaving cream. It's proportional. It's accepted.

If we are not advocating a criminal offence for driving if you're between 0.05 and 0.08, but a suspension, a much lesser penalty, wouldn't it be proportional? Wouldn't, then, the RBT be proportional if the penalty were less? Isn't that the whole idea of Oakes?

Mr. Joseph Di Luca: Maybe I'll take over that question from a constitutional perspective.

Ultimately, one of the key features of the balancing act is a penalty that involves jail. So yes, if you structure a penalty system that removes the possibility of jail and reduces it to a fine or suspension, you are going to alter the constitutional playing field for the balancing.

Just from a basic constitutional premise, though, randomly detaining citizens is generally a violation of rights. Then you're going to switch to your section 1 analysis and figure out whether the path you choose on that—

Mr. Brian Murphy: [*Inaudible—Editor*]...if I have to stop at a red light?

Mr. Joseph Di Luca: No—

Mr. Brian Murphy: What you're doing is saying you have to stop here because we're taking random breath samples of people and you may lose your licence if you're between 0.05 and 0.08.

After 0.08 there may be a whole new proof mechanism there, but how is it different going through an airport? I'm not convinced by what you're saying.

• (1610)

Mr. Joseph Di Luca: The Supreme Court of Canada, thankfully, is on my side on the issue of detention, in the sense that they have spoken very clearly, and for 20-plus years at this stage, and have said that stopping a motorist is a detention from a constitutional perspective.

Mr. Brian Murphy: Okay, but it's section 1 approved, essentially.

Mr. Joseph Di Luca: Well, so far to date, yes, the balance has been struck. We say it's been struck because you need reasonable and probable grounds to arrest and because you need reasonable suspicion. You need some basis for asking for a breath sample, right?

But leaving aside the detention issue, there is the search issue as well, because ultimately it is a search and seizure to take a sample of someone's breath. Now, it may not be one that most people are accustomed to or like, but from a constitutional perspective, it is.

We know from Hunter and Southam and the various cases that have come following that generally speaking we look to some standard, be it prior judicial authorization, which might be the highest or articulable cause, which might be the lowest or reasonable suspicion at this stage. But having absolutely no standard would render the legislation, in my opinion, constitutionally in peril.

Mr. Brian Murphy: Okay. In seven minutes we're not going to get to the end of this, but your group would do this committee a great service if you boned up on the Oakes and proportionality, if we're going towards supporting administrative changes.

I wanted to ask Mr. Momy, because he didn't get a chance to get to temporality and the presumption, how important is that?

Mr. Charles Momy: Actually, that was point 5, as you've seen in our presentation, and certainly there's the whole issue with the three hours.

Just to make sure the committee fully understands this, the whole issue is around the fact that we have a limit. In fact, in 1999 the Criminal Code was amended to increase from two to three hours that time period in which the police could demand breath or blood samples from suspected impaired drivers. The difficulty is that if you go beyond that two-hour limit, you now need an expert to come in.

So if we can make that consistent—whether it's three hours, and on both sides of the fence, if I can say that—it would certainly make it a lot easier for a police officer to be able to stick with that three hours and then go into court with that three hours. Again, every time you go over that two-hour limit, you now have to call in an expert.

Mr. Brian Murphy: We can do this through the code, so I think it can be done.

I'll ask the Canada Safety Council this question.

In one of your submissions you wrote that the argument that criminal BAC should be lowered because police do not normally charge drivers below 100 milligrams—that's 0.10, I guess—is frivolous.

Why did you write that? It has been said by some politicians that this is the case now, that in effect you don't have 0.08, you have 0.10.

Mr. Raynald Marchand: This is an argument by some groups that says because we're not going to take them at 0.09 or 0.08, we should lower it—we're not going to pick them up at 0.05, we're going to pick them up at 0.07 or 0.08.

Our view is that this basically says the police are not doing the job. We think that's frivolous.

If the person is at 0.08 or above, particularly in cases where there are injuries, we do know they are being picked up, so this argument by some group is just not valid.

Mr. Brian Murphy: I have a brief question to the insurance bureau.

You said there are four provinces that do not report the administrative licence suspensions, and that the reporting would be helpful in your underwriting procedures and be a deterrent to future recidivist driving activity.

Which provinces are those?

Mr. Robert Tremblay: I don't have them. I will get back to you.

However, I have to specify one more point. Even if it is recorded in the driver's abstract, it doesn't mean that the insurance industry has the authority to use that as an underwriting criterion. Because automobile insurance is regulated provincially, we have to also have authorization of the provincial regulator to do so, and we do not have that authorization in all jurisdictions.

Mr. Brian Murphy: Perhaps I could get that information from you subsequently.

Mr. Robert Tremblay: I will do that.

The Chair: If you can just deliver it to the committee, that would be great. We'll circulate it.

Monsieur Ménard, seven minutes.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): I have three questions, with your permission, Mr. Chairman.

I don't believe either that the Bloc Québécois will recommend lowering the BAC from 0.08 to 0.05.

In one province or another, when a driver's licence is revoked, is it the various car insurance companies or the municipal courts that can give it back? That's the first question I'm asking.

Who can give me that information? Is it the insurance bureau, the police or the defence lawyers who see to restoring a licence?

• (1615)

[English]

Mr. Jonathan Rosenthal: In Ontario, if you lose your licence, administratively it automatically comes back. There's no application; it's automatic.

[Translation]

Mr. Réal Ménard: To your knowledge—and I'm speaking to all the witnesses—there are no measures in place, such as the obligation to go to municipal court to get your licence back. That can be done through the various car insurance companies, but there's no administrative measure requiring someone to appear in municipal court. All right.

Next, if the police officers' recommendation is approved, I want to understand exactly what mechanism you would like. I thought I understood that, when a police officer stopped someone for impaired driving on reasonable grounds, there were two tests: one involving approved detection devices and, if the grounds are proven, a second test with the aid of what's called “approved alcohol screening devices”, according to our research notes. So there are two mandatory tests, if there are grounds.

In the second test, technicians are trained by various police departments. They take courses, and there's really one way of doing things, which is approved in accordance with a methodology of the Canadian Society of Forensic Science.

If we approved your demand that we allow police officers to set up road blocks, then there will be no more reasonable grounds; people will have to submit to the tests. Will the two-test system remain in effect? The reasonable grounds criterion will not apply, if I understand correctly. How do you see that in practice?

Mr. Charles Momy: Simply put, once the person was stopped, no test would be required at first. At that point, that would not give the police officers authority to take the person to the police station to conduct the second test.

Mr. Réal Ménard: The approved screening test?

Mr. Charles Momy: The approved screening test.

That would give us only one thing: we wouldn't need to administer the first test to the driver because that test would be automatically administered at a road block. At that point, the alcohol screening test would be administered in the field.

If the result was positive, we could then take the person to the police station to conduct the official second test.

Mr. Réal Ménard: All right. You say that's done in certain states; you refer to the case of Australia.

When I was a student, I took some courses in constitutional law. You've no doubt noticed that I am the youngest member of this committee, and thus the last to have taken constitutional law courses. We were told that, under section 8 of the Charter, when someone was stopped, that constituted an arbitrary detention, but one that was warranted on the ground that it would prevent carnage. The word used in the courses was “carnage”, and that was warranted in a democratic society.

I am prepared to take a favourable view of the police request. However, if we granted your argument, I don't know whether it would pass the Charter test in the Supreme Court—and on that point, perhaps we could get the opinion of your colleague, Mr. Rosenthal.

[English]

Mr. Jonathan Rosenthal: As Mr. Di Luca said, we don't think it would at all survive a charter challenge, because there is now not only an entirely random stopping of vehicles but an entirely random seizure of someone's breath.

[Translation]

Mr. Réal Ménard: In Ontario, if I remember correctly, Mr. Chairman, there was a challenge against what was called the RIDE program, and it passed the Charter test. It's true that there were two tests at the time, and there had to be reasonable grounds.

Lastly, let's say we have an obligation as parliamentarians to consider the question of Charter compliance.

Do you think that would pass the Charter test?

• (1620)

Mr. Charles Momy: Yes. Let's look at what's also going on in Australia and New Zealand, which are democratic countries. Even though the constitutions of those two countries differ from that of Canada, I assume we could use the same tests there.

Mr. Réal Ménard: I don't know whether Australia has a charter of rights, because it's mainly the Charter that's at issue. Well, we'll have to be aware of that when we prepare our report.

However, that would simplify your lives as police officers. There would be a single test, no reasonable grounds and everyone at the road block would be stopped, without reasonable grounds.

Mr. Charles Momy: Absolutely.

Mr. Réal Ménard: Let me sleep on it.

[English]

The Chair: Thank you, Monsieur Ménard. I will move on to Mr. Comartin, for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Mr. Marchand or Mr. Therien, I think probably the single biggest concern we have about not moving the test from 0.08 to 0.05 in the code is that Quebec still is not in the system administratively. I know that when you were here last year you were holding out some hope that we might see some progress. We've already heard from the department that nothing much has happened; it has sat there since they turned it down 14 to 15 months ago. Is there any reason for us to have optimism that they might come onside?

Mr. Emile Therien (Past President, Canada Safety Council): They came out with some road safety initiatives, and this was included with the package, but when they went through, it was one of the things that was left out. It's hard to understand. But we think that in time they will certainly go there, because it's right across the country.

I was speaking with someone in Quebec. I think what they want to see is how it is working in the other provinces, especially Ontario.

Mr. Raynald Marchand: We certainly believe there is a willingness, but there wasn't the political acceptance yet in the province of Quebec. We believe that in time Quebec will likely follow suit.

Mr. Emile Therien: When you move to administer licence suspensions, the administration involved is very detailed and onerous. We know from experience talking with Ministry of Transportation people in Toronto that they wanted to make absolutely sure these worked. They had no sanctions on your licence. Prior to this they would take your car away and give it back to you, I think, in 12 hours. Now they are moving to other sanctions, because they feel pretty sure that the administration is in place to handle these administrative licence suspensions.

Mr. Joe Comartin: To both you and the Insurance Bureau, we've had some discussion already in the committee about the use of the interlock device. I know what I'm going to hear from the Insurance Bureau, because they always tell us the same thing. They always want to leave it as a choice—and if that's not the case, Mr. Tremblay, you can tell me otherwise.

Mr. Marchand, do you have any position? Where is the Canada Safety Council on that point, on the use of it, and under what circumstances should it be compellable?

Mr. Raynald Marchand: As per our presentation last year, we're very much in support of the interlock system, particularly when it is applied early on. We do know that many drivers continue to drive, but there is provision under the code to provide a reduced time to get the licence back under certain circumstances, such as the interlock system. By controlling the driver, we feel that we can reduce collisions and then bring them into a system where they will respect the law.

What happened here in Ontario is very interesting, because what we had was a year without a licence and then a year with the breathalyzer, as opposed to what Quebec was doing, where after three months they could get a limited licence with it.

In Ontario, after a year, people didn't go under the interlock system. They just waited another year before they got their licence, which meant that in that first year they got used to driving without a licence and they figured they were not going to get caught, and they just kept right on going until they could get their full licence after two years.

I think most drivers can respect it for a little while, and then if there is an opportunity to get the interlock system, they will enter it so that they can be legal. But if they wait too long and get into the practice of driving without a licence, they will just stay that way.

• (1625)

Mr. Joe Comartin: Mr. Tremblay.

Mr. Robert Tremblay: As regards the insurance industry, as long as someone is legally entitled to drive in the province, with or without an interlock ignition, they can be insured, usually by a facility association. Individual companies that take higher risk may or may not decide to underwrite that risk, but in the end they can be insured if they are allowed to drive legally in the province.

The second point I would like to mention is that there are jurisdictions that do not inform the registrar. They are New Brunswick; Quebec, because it doesn't have a program right now; Ontario, but this has changed since it introduced its new legislation; and Alberta, which we're looking at as the other jurisdiction. Those are the four jurisdictions that do not, as of now, record those infractions with an abstract.

Mr. Joe Comartin: Thank you for that.

Monsieur Marchand and Monsieur Therien, just going back to the jurisdictions where they've used the interlock, is there one in particular we can look to that has used it effectively, in your opinion? Are there any studies?

Mr. Raynald Marchand: Yes, I believe both Alberta and Quebec are two jurisdictions you could look at where this practice has been in use for a few years now. We do believe it's an effective way to get them into a controlled system as opposed to saying they don't exist.

Mr. Joe Comartin: Have you seen any study or analysis of what has happened over the two years?

Mr. Emile Therien: I think the Traffic Injury Research Foundation of Canada has done work on this. They are the most valid body for this type of work. They are Ottawa-based.

Mr. Joe Comartin: Would you have that available to you to get it to the committee?

Mr. Emile Therien: Yes, or Robert could get it for you.

Mr. Raynald Marchand: Actually, I can easily provide that piece of research to the committee.

Mr. Joe Comartin: If you could, please. Thank you.

Mr. Robert Tremblay: As another point on the interlock, I think it's important to realize that a lot of these chronic offenders are people at the lower end of the socio-economic scale. Interlock is \$100 a month and it's user pay, so there is a deterrent for a lot of people to be on it, because they just can't afford it, and that is a concern.

Mr. Joe Comartin: Mr. Tremblay, I don't just pick on the Insurance Bureau when it comes to this industry. I pick on the auto industry as well.

Is there any analysis as to whether people are just getting ripped off?

Mr. Emile Therien: No comment.

Mr. Joe Comartin: Mr. Di Luca or Mr. Rosenthal, on the use of the interlock, do you see any problems with it from a defence perspective?

Mr. Joseph Di Luca: If I could offer my clients an incentive either to plead guilty early or to not fear the consequences—and the biggest one they ask about is the ability to drive—if I could tell them I can get them back driving, albeit in a manner that is controlled and safe, with the use of an interlock device, that would be a significant feature that I think would mitigate both towards earlier resolution, higher resolution, and greater acceptance of responsibility.

The Chair: Thank you, Mr. Di Luca.

We're moving on to the next questioner, Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thanks, Chair.

And thank you to all the witnesses. Your testimony today has been interesting.

We are talking about a number of important issues. We're talking about safety on the roads in the context of impaired driving. To that end we're also talking about the blood alcohol levels.

I find that what's been provided by the Canadian Police Association is extremely helpful, but also interesting. On this graph you provided, under our current law of 0.08 someone could have what you've called five standard drinks over the course of two hours and be below that 0.08 level. And in fact someone could have three standard drinks in two hours and be below the 0.05 level, where in most provinces there would be some administrative penalty if they had gone over 0.05. This is the case of a 200-pound male having three drinks in two hours. He would be below that administrative level. In fact, by having five drinks in two hours, someone would be below the Criminal Code level.

Since you are on the front line, I'll ask the Police Association whether individuals are more genuinely shocked when they blow over or when they go under. I'm wondering if you ever get a sense that someone, maybe in an honest moment, says, "Wow, I can't believe it. I'm out of here."

• (1630)

Mr. Charles Momy: I'll have David answer that, because Dave was a breathalyzer technician for a few years with Peel. He certainly has some experience in that area.

Mr. David Griffin (Executive Officer, Canadian Police Association): I was probably the most surprised when somebody would blow under. Sometimes the symptoms of a less experienced driver blowing only 0.90 and being behind the wheel of a car were quite frightening. So it does vary, based on a person's size and also their tolerance.

I did about 400 tests over 20 years ago when I was a breathalyzer technician. The other big factor for me is that in most cases by the time a person gets to the breathalyzer it's probably one to two hours since they were driving, so there's probably at least another drink in their system, perhaps two, that has burned off during that period of time. They're going to lose about 0.015 every hour from the time they stop drinking.

Mr. Rob Moore: I find that number pretty surprising. And we've heard quite a bit of testimony about the administrative penalties that most provinces have at 0.05.

I'll throw this open to our panel. Is there any one province that you would hold out as a success story? What is the appropriate penalty? Should the penalties increase for someone who has had multiple offences?

And I have another question. Anyone can feel free to answer who feels competent to do so. What does someone who is drinking and considering driving look at as the more significant penalty: the Criminal Code sanction or the inconvenience of the loss of a licence? We've heard some testimony I found a little surprising, that the most serious thing is the loss of their licence. People are more worried about that than a Criminal Code conviction. I find that hard to believe, but maybe that's what you're hearing.

I'll throw those questions out.

Mr. Joseph Di Luca: I'd be happy to help on that latter question. The primary concern for most people is the ability to drive, because it's usually the contingent factor on their employment.

We'll often get clients who come in, for example, a truck driver with a family, and the only way to support the family is by driving. Losing a licence ultimately leads to loss of gainful employment and puts the family in a crisis situation. The ability to drive in a controlled fashion goes some distance to removing impediments in these types of cases.

Now tied to that, and increasingly post-9/11, the imposition of a criminal record has become a significant factor. While years ago I didn't hear that complaint all that often, I'm starting to hear that more now. I appreciate I can't have my cake and eat it too. I think if I took a survey of my clients, the ability to drive would likely still place first, but the criminal record is a close second.

Mr. Emile Therien: I think if you look at the Criminal Code of Canada...I'm pretty sure it goes back to the year 1890, and if you look at the thing that deals with bank robberies, it goes on and on and on, and impaired driving falls under this. I think most Canadians would not really know what the Criminal Code is, but they know that the penalties under the Criminal Code are very severe. I think most Canadians don't know the law regarding impaired driving, but they know it's a bad thing to do—"don't get caught".

Mr. Charles Momy: I believe MADD is actually providing a presentation as well. I do know that they provide report cards, if you want to call them that, on the different provinces and so on. I'm sure they could probably assist you with providing you with further information on which success stories are out there in the different provinces.

Mr. Robert Tremblay: The only point I would like to add to everything that has been made is regardless of how severe or how extensive the licence suspension is, if it is not supported by law enforcement, in other words RIDE programs, and significant enforcement, the risk of being apprehended will still remain low, and in the minds of people who would be tempted to drive at the range close to 0.05, that will not be a deterrence to them.

The study that mentioned Australia, when it analyzed what works and what reduces the incidence of drinking and driving...the perception drivers have that if they are taking the wheel while they are under the influence of alcohol is high. As long as the general public thinks, "I can take a chance, there are not a whole lot of RIDE operations, I'll take my chances"—as long as that mentality and that attitude lasts, you can have the best administrative licence suspension in the world, it's not going to make a difference.

•(1635)

The Chair: Sorry, we're done.

Mr. Rob Moore: Done? Okay.

The Chair: Yes, you'll have another chance.

We are moving on to Mr. LeBlanc for five minutes.

[Translation]

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you very much, Mr. Chairman.

I also want to thank the witnesses for their presentations.

I'll begin by asking Mr. Momy a question. Since you didn't have enough time to make your presentation, this may give you a chance to continue.

In your presentation, you raised the 0.05 BAC issue. Unless I'm mistaken, you have an opinion on the idea of lowering the legal BAC to 0.05. Did I understand correctly?

Are you talking about a provincial administrative procedure, or do you think we should amend the Criminal Code to lower the BAC to 0.05?

I want to make sure I understood correctly.

Mr. Charles Momy: The CPA has no official position on the matter. Our suggestion is that the committee should specifically look at the Criminal Code rather than the administrative measure. That would be a possible change and an advantageous one, based information from other countries.

The European countries have established random testing and the maximum BAC is set at 0.05. Based on the information gathered, it's effective.

Hon. Dominic LeBlanc: Let's continue on the matter of random testing. I want to make sure I clearly understood the question by my

colleague Mr. Ménard. He claims to be younger than I am, but he's obviously much older.

In his question, he addressed the subject of random roadside testing. Unless I'm mistaken, you think that at no time, and in no way, should we prevent a police officer from asking someone to undergo a random roadside test. Is that correct?

Mr. Charles Momy: That's correct. For example, we mentioned the RIDE program, police road blocks set up at various locations in various cities. When someone was stopped, he would automatically be asked to undergo a test. If that person failed the test, he would then be taken to the police station and officers would continue the procedures as established.

[English]

Hon. Dominic LeBlanc: Merci beaucoup.

Mr. Chairman, perhaps a question to Mr. Rosenthal. In your work as a criminal defence counsel, when you have successfully defended your clients against an impaired driving charge, more often than not if they're acquitted, what grounds is it on?

Mr. Jonathan Rosenthal: I would say they're acquitted quite often on charter grounds—either unreasonable delay, or issues involving unreasonable search and seizure, or issues involving rights to counsel. Quite often they're acquitted on a number of technical defences. The Criminal Code is very technical. There are expressions such as that the crown has to "cross their t's and dot their i's", and to some extent it's a very technical defence.

It's interesting. If you have a very experienced police officer, such as an officer who's assigned to a traffic squad and does pretty well nothing but investigate impaired driving offences, they don't make many errors. When you have an inexperienced officer who may just be working in a division, running a whole myriad of crimes all the time, quite often they make some technical mistakes, and that's really due to a lack of proper training.

Hon. Dominic LeBlanc: Can you give me an example of what kind of technical mistakes they would make? When you meet one of your clients who is agitated and he's been charged, what are you looking for in terms of mistakes that may have been made?

Mr. Jonathan Rosenthal: Most of the mistakes that are made are made when the officer testifies. He forgets to say something he ought to have said, or he says something he ought not to have said. For example, there are two breath demands under the Criminal Code. There's a demand for a roadside breath test—the screening device—and there's an approved instrument demand. Occasionally they'll read the wrong demand. That would be grounds for an acquittal.

Hon. Dominic LeBlanc: I understand that in court they make mistakes in testimony, so that there's not the right evidence before the court, and that leads to an acquittal. You talked about the charter grounds. Give me an example of what kind of case you would have had thrown out or acquittal entered on a charter violation.

Mr. Jonathan Rosenthal: I think the police generally get it right. They read the right thing, for example, as "right to counsel". Of course, an accused person is entitled to exercise that right to counsel, and there are a great number of issues and disputes as to whether the police effectively allowed someone to exercise their right to counsel.

Another issue is “reasonable and probable grounds”, whether the police acted too quickly in going right to the breath demand when they should have used a roadside demand, or something along those lines.

• (1640)

The Chair: Thank you.

We'll move on to Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Good afternoon.

Since I've spent a lot of time practising criminal law on the defence side, I like to look at the documents. I have a problem with some of the statements by the Canadian Police Association.

In your brief, which I've read twice, you say this:

Despite our collective best efforts and intentions, it is apparent that the problem of impaired driving is worsening in Canada [...]

I don't have the same figures as you. In 1999—and this number comes from the department—the total number of impaired driving cases in Canada was 85,997 and the number of persons charged 73,143. In 2006, there were 74,331 charges or incidents and 60,402 persons charged. I have in my possession the figures covering the period from 1986 to 2006, 20 years. A constant decline can be observed. Don't come and tell me that the problem is getting worse, unless the people at the Department of Justice have lied to us, in which case we should summon them and ask them the question. My figures, which come from the government, show a constant decline. If you're telling me you have figures, I'd like to receive them by courier. It's clear that initiatives have been taken, that things have been done. As a defence lawyer, I can tell you that the burden on the defence is a lot heavier now. Let's remember that, in 1986—and I don't know whether Mr. Rosenthal was a lawyer at the time—we regularly saw acquittals. But there are a lot fewer today because the work is being done better.

In Quebec, they're going to install radar to control road traffic. We're given figures and we're told that, by simply reducing speeds by five kilometres an hour, we would reduce the number of accidents by 25%. Fear of being caught by police officers and of being arrested is probably a significant incentive, but you also have to consider the fear of administrative penalties. Isn't that greater? Since 2000 in the provinces, particularly Quebec, it's been much harder to get back your driver's licence after being arrested the first time for impaired driving. Imagine what it's like the second time. I know there are reoffenders; I've had multiple reoffending clients.

Instead of lowering the BAC from 0.08 to 0.05, shouldn't we allow stiffer administrative penalties? I agree with you on random breath testing. I invite my colleague Mr. Rosenthal to consult the Supreme Court decision in *R. v. Orbansk*; *R. v. Elias*, [2005] 2 S.C.R. 3. In 2005, the Supreme Court held that, if the question were put to it again, if it had to consider that possibility under section 1 of the Charter... The government may have valid and compelling objectives for intervening in this regard, but wouldn't it be preferable, so as to avoid lengthy debate, to allow the provinces to take much more draconian action to assist police officers?

• (1645)

[*English*]

The Chair: Whoever wishes to respond, you have 20 seconds.

There are a lot of questions there. If there's further statistical evidence you want to submit, please submit it to the clerk and we'll distribute it.

[*Translation*]

Mr. Charles Momy: I'll try to answer your questions, Mr. Lemay. With regard to the first, concerning the statistics we presented, I'll definitely tell you where we got them. I want to point out that they include all modes of transportation. I'll send you that information.

As for the second, from an administrative standpoint, the difference between 0.08 and 0.05 definitely produces results. It helps police officers.

[*English*]

The Chair: We're actually out of time.

Mr. Charles Momy: Basically it's administrative, certainly, but to the extent of the consequences, if they're much higher, certainly we'll assist.

The Chair: Monsieur Momy, we're a minute over.

We'll move on to Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair.

Thank you, gentlemen, for coming here as witnesses.

For Mr. Griffin's edification, I was also a breath tech for many years and did many hundreds.

I'd like to say one thing. If I were ever charged with impaired driving, I'd like Mr. Rosenthal to defend me. I've been up before what we consider to be high-priced impaired driving specialists, and it's never the innocence or guilt of a person; it's the mechanics part of it. I suppose in a country like ours that's good, because the police are kept on their toes, etc.

To let folks know, when we discussed this at our last meeting on impaired driving, we had some witnesses, and the defence counsel brought up the antiquated devices police were using. I think they were referring to the Borkensteins and the fact that they had been in service since the 1940s or 1950s. My son was telling me he's taking the transition training on Intoxilyzers, but even if we get the newer Intoxilyzers, there are still many defences, so it doesn't really matter what science is brought forward. We can go to the hospital and out of one drop of blood, or a very small amount of blood, they can tell you what your blood alcohol content is. Nobody disputes that, because it may or may not save your life.

I really don't think anybody here seriously wants to reduce and make .05 the impaired driving limit. What we want to do is reduce the number of impaired drivers on the road, by education as one part, but as legislators by working with other legislators to bring into effect those programs that would adequately serve the purpose of reducing impaired driving. As I said before, people who are killed by impaired drivers don't have access to the charter. Their charter rights are finished. The victim's charter rights are finished.

Thank goodness we have a charter, but other countries don't have it and they're able to reduce impaired driving. I think if we look at best practices, I don't think people like Mr. Rosenthal would stand in the way if we, as legislators, tried to do things—and he's already challenged it—with being stopped at a RIDE program. Right now police officers do have to smell it coming out of the car. They have to stick their nose in your mouth, basically, to smell your breath and be subject to all the things you're carrying.

My question to you, Mr. Momy, to the Insurance Bureau, to the Canada Safety Council, and to the defence lawyers is this. Could you help us out here and give us your two top priorities? I like to deal with priorities, and perhaps you could voice quickly here the two top priorities in order of preference, with the first one being what we can do to improve the situation without having to overtax the system. I'm saying reasonable priorities—the ones that don't cost an arm and a leg. In this day and age, folks don't have a lot of money to put forward to their government to bring in thousands of police specialists. But we are going to increase the number of police officers.

• (1650)

The Chair: You only have one minute. It'll have to be really short.

Mr. Robert Tremblay: I would say that allowing random breath testing would definitely help as a better deterrence. If people think they're going to get caught, they will change their behaviour.

Mr. Charles Momy: We would say random roadside breath testing, and you certainly have heard many of us talking about it.

The second priority for us would be the hospital testing environment. It's more and more difficult for police officers to obtain warrants, and so on, to get those samples.

Mr. Raynald Marchand: I would like to see the federal government exercise leadership with the provinces to bring them all on the same page. Ontario, for example, will go from three days to seven days to thirty days for the 0.05 starting this May. If this were across the country it would be much easier for the Canada Safety Council, or anyone, to explain to Canadians. Many people don't know what they're getting into until they actually are charged.

Mr. Joseph Di Luca: Let me just add a few minor points.

One is to add flexibility to the criminal justice system, because right now there's inflexibility, which leads to an insistence on trials in drunk driving cases and an insistence on fighting these cases tooth and nail to the very end. If there were a measure of flexibility in terms of punishment, matters would be different.

Second, let's not ever forget the role of public education, which certainly goes a long way towards teaching people a better way of living and avoiding this type of offence. I agree that the risk of getting caught deters people, but the same is accomplished by having

a RIDE program alone on every street corner. If you think you're going to get stopped by RIDE or a police officer—leave aside the mandatory breath sample—you'll think twice about driving drunk.

The Chair: Thank you.

We'll move to Mr. Murphy for five minutes.

Mr. Brian Murphy: Thank you.

I just want to say to the Insurance Bureau that I was surprised that New Brunswick was on that list. Both Monsieur LeBlanc and I will be taking that up with our Liberal friends in New Brunswick who, with their no-fault legislation in the past, have been quite friendly to the IBC.

I guess I'm going to cut to the chase with the criminal defence lawyers on this point. The Police Association has put some very specific suggestions forward here that I think are workable. One is a legislative preamble. Now, they're not lawyers, but they're saying that from their experience, if a legislative preamble is in the legislation, it gives the judge some guidance as to the inherent harm inflicted by impaired driving and so on.

My first question to one of you is, how much impact do you think that will have? How much would it change the status quo if there were a really good preamble?

The second question I have is about a suggestion from Mr. Therien's group that the alcohol test committee be given the authority to approve the alcohol ignition systems. I presume, and I'll just take it as a quick yes, that you have no problem with that. It's almost an administrative thing.

So back to my original question about the preamble. How important is that?

Mr. Jonathan Rosenthal: Well, a judge's job is to determine whether someone has been proven guilty beyond a reasonable doubt. I don't think any preamble telling the judge there's carnage on the highway will in any way—nor should it—affect a judge's decision. If he thinks someone is innocent or there's reasonable doubt that they're innocent, he ought not to convict that person because of some preamble about how seriously we're taking drinking and driving.

Mr. Brian Murphy: Well, Mr. Rosenthal, I'm going to stop you in the snow right there, right in your tracks, because guilt or innocence is not going to be judged by a preamble, but the importance of this is in terms of its proportionality, which was my original question to you, whether section 1 of the charter saves the section.... Wouldn't a preamble be very important for that? I know it is in other cases.

• (1655)

Mr. Jonathan Rosenthal: I don't think a preamble is going to save the day. To say you can randomly stop someone and randomly demand that they provide a sample of their breath or other bodily substance without reasonable suspicion or reasonable probable grounds, when there is legislation in place already under subsection 254(2) authorizing a police officer, if he reasonably suspects a person, is an exceedingly low threshold for investigative purposes in making that sort of determination.

You commented earlier that if it were administrative and not criminal, perhaps that would be all right, and you're probably right. The difficulty is, they don't know whether the person is going to blow 50 mg% or 80 mg% until they get them back to the station. So as a practical matter, the suggestion you made, I think, is unworkable.

Mr. Brian Murphy: Let's concentrate on the word "randomized" then, because I think the wording is actually pretty important when we're talking about legal challenges. It implies to me, or at least I infer, that there is no thought to it. In other words, there's no targeting. It is fair to everyone on the road because you do not know whether it's going to be on Mountain Road or St. George Street in Moncton that you will be stopped. It's irrespective of any symptoms of driving one way or the other. As the Canada Safety Council will say, you can be up 19 hours—as many of the hardworking members of Parliament often are—and not be within your own faculties to drive, or you can just be a bad driver, frankly, and have signs that would alert a police officer previously to have that trigger.

But with this randomized aspect, let's just pretend you're the devil's advocate, that you're the respondent or appellate lawyer for the crown, protecting a section that is based on randomized breath tests, with a very, very good preamble to the legislation—

Mr. Jonathan Rosenthal: With the greatest respect, I think you made the best submissions from the defence standpoint that could possibly be made. If it's totally random, without any basis, sir, that is what would make it an unreasonable search and seizure.

Mr. Brian Murphy: What if it applies to everyone, then?

Mr. Joseph Di Luca: If you look at the section 9 jurisprudence, it's the arbitrariness, which is defined by randomness, that is actually the nature of the charter violation. Tied to that, we know from all the case law coming back earlier, on the section 1 analysis, that randomly stopping motorists for a friendly chat is fine, but if you're going to put a breathalyzer in their face or at least a roadside screening device, you have to meet some minimum constitutional standard, because it is a seizure. So removing that next hurdle would likely be the next battlefield for the section 1 analysis.

Mr. Brian Murphy: Is the opposite of randomized, universal, such as the airport security check?

Mr. Joseph Di Luca: Well, if you stopped everyone on the street and demanded every time you get in the car you need to provide a breath sample, apart from moving a step closer to a Big Brother police state—it is a step closer to that, but leaving that aside—it would no longer be random; it would be universal. You might find other constitutional matters or problems with it, because we can't require all our citizens to provide bodily samples just for the sake of it, but yes, you would remove certainly the randomness of it.

The Chair: Thank you.

We'll move on to Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair, and thank you to all the witnesses for your excellent and very helpful presentations.

Following up on Mr. Murphy's questions with respect to random testing, I have a couple of questions and perhaps concerns that I'd like to direct to the Police Association.

Certainly the public is outraged by violent crime, and street crime and gang activity. We've heard some evidence this afternoon that the courts are burdened with respect to delays, which ultimately results in some charges being stayed or otherwise dismissed.

I wonder if you could comment from the police perspective. If we were to go down the road with random roadside breath testing, clearly I accept your proposition that it would lead to further charges of impaired operation of motor vehicles. Ought those resources—both police investigative and court—be better used to fight more violent crime, street crime?

Mr. David Griffin: In our view, if you look at the evidence from some of the other jurisdictions that have random breath testing—most of the European Union countries now have it, as the EU has recommended that it be applied to all their member states—the deterrent effect will in fact address the workload problem. You will in fact have fewer people potentially charged with impaired driving or fewer people involved in serious motor vehicle collisions as a result of driving impaired, because of the deterrent effect of the fear of apprehension. If people believe that every time they go out they have the chance of getting stopped in a roadside check and we have the type of enforcement that has been discussed, the likelihood is that the behaviour is going to change significantly.

• (1700)

Mr. Brent Rathgeber: So you believe roadside testing will actually result in fewer charges being laid.

Mr. David Griffin: Potentially, yes.

Mr. Robert Tremblay: I would like to add one more point that is very important regarding the random effect of it.

Those operations are not traps. The recommendation on the strategic principles of driving enforcement stated that those operations have to be highly publicized. In other words, on every radio station they'll say, "There's a random testing operation going on in Moncton, so beware." Essentially the objective is not to trap but to prevent a behaviour in the first place.

Mr. Brent Rathgeber: Go ahead, Mr. Therien.

Mr. Emile Therien: I'll raise as an issue that your real chronic offender listens to the radio and television and reads the newspaper. It's known that they are not going to go out when they know there are RIDE programs, or CounterAttack, or whatever it is. They know.

Mr. Brent Rathgeber: Thank you.

I have great respect for police officers and the work you do. I'm just concerned, or I'd like your comments, as to whether a device such as the roadside screening device takes an important bite out of the investigative powers that a police officer has, police work, whether the human element is being replaced by a mechanical element.

Mr. David Griffin: I think the reality is, and I'm certainly not a lawyer, but I think the courts recognize, that the technology removes the doubt and human frailty. So the more we can rely on technology to provide accuracy, whether it's on impaired driving or whether it's DNA, in the long run it's an investigative aid and in fact reduces the time that's applied otherwise for investigation.

Mr. Brent Rathgeber: So the Police Association has no concerns, from its members' perspective, that the members' discretion and ability to investigate a possible impaired operation is being compromised by the reliance on a roadside screening device.

Mr. David Griffin: No, not at all. I mean, really, we're discussing the goal here, which is to reduce the number of impaired drivers on the road. It's also the police officers who are going to these horrific accidents and seeing the consequences of people making the wrong choices.

Mr. Brent Rathgeber: Thank you.

Those are my questions.

The Chair: We'll move on to Mr. Calkins.

Mr. Blaine Calkins (Wetaskiwin, CPC): Thank you, Mr. Chair.

It's certainly a pleasure for me to be back at the justice committee. Even though I'm filling in today, I'm certainly glad to be back at this table. I look across and I see a lot of colleagues from the last session of Parliament.

Getting on to my question, I have a bee in my bonnet, gentlemen, and it's with regard to some instances I've had, or experiences I've had, both as a civilian and as a law enforcement officer. The question, for the purpose of this report, is whether this committee should make a recommendation, via a report, to basically put the reverse onus on an impaired driver when that driver who has been in a motor vehicle accident has consumed alcohol within a two- or three-hour timeframe, which is what we normally have. Typically, these individuals, if they've been in an MVA or have driven off the road into the ditch, especially those who have experienced or are veterans of the impaired driving system, might have been counselled as to future defences if they get themselves into a situation like this again.

My question to you is whether a change to the Criminal Code that actually puts a reverse onus, or puts sort of an automatic guilty stamp on someone who consumes alcohol after being involved as an operator of a motor vehicle within that two-hour timeframe... you and I both know that if you consume alcohol or consume anything

that might alter a breath test, particularly alcohol, it is one of the technical defences that is quite well used. I'm just wondering if there is anything we can do in the Criminal Code or if there is a recommendation coming forward that we could put to government in the hope of maybe closing this loophole.

My question is for the Police Association and the others.

● (1705)

Mr. Charles Momy: As you know, right now there is certainly law that is provided when an individual decides not to blow. Obviously, there's a presumption that by not blowing... They are charged accordingly for not providing a sample when that sample is being asked for. So to a certain degree, it's addressed in that fashion. I certainly haven't thought of any other pieces of legislation that would have that kind of reverse onus.

Mr. Raynald Marchand: At the Canada Safety Council we're really about prevention. This is a bit more after the fact. Certainly we'd like to see people just not drink, and under the highway codes there are certainly penalties that are there right away. You don't have to prove it. If the vehicle is in the ditch, then obviously there'll be a charge of sorts. If the person is under any level of impairment, above 0.05, there will be a charge. And it's automatically guilty, whereas with the Criminal Code there's a presumption of innocence.

We even question, at the 0.05 level, if within three hours there is going to be enough left for the instrument to even measure it in an average man.

Mr. Blaine Calkins: If I can rephrase my question to the folks from the Police Association, the perspective I'm coming from is obviously that it's tampering with evidence. The evidence is the sample.

Now, I know there are provisions in the Criminal Code that provide for tampering with evidence. Are they applied? Are those provisions for tampering with evidence sufficient in this case? Or do changes need to be made to the Criminal Code when it comes to evidence such as breath samples and so on so that we can close off some of these loopholes?

Mr. David Griffin: If I understand what you're talking about, it is that their defence is that they consumed after driving.

Mr. Blaine Calkins: Yes.

Mr. David Griffin: The challenge, I think, for the police officers, in terms of being able to deal with that offence, is that they're not necessarily aware of that until the person gives evidence at trial. There's not necessarily disclosure or awareness beforehand that this defence is going to be raised.

Mr. Blaine Calkins: A hypothetical situation would be a person involved in an MVA. They leave the scene of the accident. They are later found at a local bar, and they've been seen drinking alcohol within two hours of being in that motor vehicle accident. There are people to testify as such. No charge can be laid for impaired driving. That is a problem, in my estimation. I would like to know if that issue is big enough that anybody here at this table would like to see something changed in the Criminal Code to allow an impaired driving charge to be made in that case.

Mr. David Griffin: There are certainly those types of issues. There's the last drink defence. There are different concerns around those types of technical defences or behaviours. The difficulty is in coming up with a solution that doesn't create a whole host of other problems.

Mr. Blaine Calkins: Because there will obviously be some.

I'd be interested in hearing any last comments from the witnesses.

Mr. Joseph Di Luca: You can already charge. Right now, if you can prove that a person was drinking alcohol following a motor vehicle accident in order to frustrate the taking of the test later, if you can establish that, you can already charge them with obstructing justice or obstructing a police officer. There are sections in there. If you can prove that, you can charge them. As for a proof of that, if you were able to get a conviction on that basis, that's a serious offence. There is already a legislative tool there for catching people in that.

But I agree with the officer here that a lot of times you will not hear that until it comes time for trial. I have had cases where you will see a client who was followed and was observed chugging alcohol after an accident. I think an inference would be open to a trier of fact, to a judge or a jury, that the person was doing that to frustrate the process. There is an appropriate charge that sits in the Criminal Code for that.

The Chair: Thank you.

Monsieur Petit, five minutes. You'll be the last one.

[Translation]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): I'm mainly going to speak to the officials from the Canada Safety Council and perhaps those from the Canadian Police Association as well.

You know as well as I do—and Mr. Rosenthal clearly explained it to you—that the random system can be dangerous. A slightly different system is used in Quebec. Authorities use section 624 of the Highway Safety Code. The police officer comes up, tells the driver that a light on his vehicle is out or that he didn't mark a stop at a given place, always under the Highway Safety Code. So these are not the same rules. The individual is stopped, opens his window, and the smell of alcohol emerges. The police officer then asks him to follow him. The random system is already in existence. We agree that it isn't perfect; however, it has never been challenged in Quebec. The Highway Safety Code allows it and it's used there regularly.

My second question concerns the fact that we often agree that there will be excess costs, more cases, and so on. We witnessed a fairly singular event in Quebec. For a brief period of time, the cases prosecuted in the Criminal Division of the Court of Quebec, which at the time was called the Court of the Sessions of the Peace, became the responsibility of the municipal courts, and thus of the municipalities. And do you know who complained about that? It was the people from the Criminal Division of the Court of Quebec. They said that nearly 80% of their caseload had been taken away from them. It's a serious thing to say, but it's a fact.

Police officers come and testify before the Criminal Division of the Court of Quebec, but also in municipal court. The costs are not the same because there aren't the same conventions, the same judges

and so on. I'd like you to tell me whether that's a problem or whether someone wants us to believe that it is.

• (1710)

Mr. Raynald Marchand: In the case of the municipal courts, we view the matter somewhat as a form of decriminalization, since the Criminal Code does not apply. We acknowledge in a way that this is a better way to handle impaired driving cases, particularly when there are no deaths or injuries. For that reason, we think, particularly with regard to the 0.05 BAC, that Quebec's Highway Safety Code or Ontario's highway safety code, for example, are really a response to the current situation. The code is an additional tool for police officers. They can use it or not, rely on the 0.05 BAC or on the Criminal Code, depending on the situation. They have a number of tools at their disposal.

Mr. Daniel Petit: In Quebec, to avoid appearing in the Court of Appeal too often, we usually proceed by filing applications under the summary procedure. You know what that means? It means that we are required to file a specific application for the Court of Appeal to hear us again if we are not satisfied. Previously, this was always considered an indictable offence, which made it possible to file an appeal *de plano* with the Court of Appeal. They did that because approximately 50% or 60% of accused were people on legal aid. As you know, a summary proceeding costs less than a proceeding by way of indictment. So these people all found a system that made it so it would cost less. For that reason, I wonder whether costs are really an issue in the context of the debate we'll be having later, in light of what you've just said, among other things. Mr. Rosenthal could also answer that question.

Mr. Raynald Marchand: We don't believe it's just a matter of cost, but also a matter of the number of cases that can wind up in criminal court, which has an effect on the time required.

According to the review by the attorneys general, it's much longer today; it takes way too much time. Coming up with a simpler and quicker system would not only help reduce costs; it would also ensure greater justice.

[English]

The Chair: You're out of time. Thank you.

Gentlemen, thank you for appearing before us today. Your testimony has been very helpful, and we'll certainly take it into consideration as we prepare a draft report.

Again, thank you for coming.

Mr. Emile Therien: Thank you very much. You were very fair-handed. You did a great job.

The Chair: Thank you.

We'll take a break for two minutes as we clear out the room.

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• (1715)

The Chair: I'll ask you to take your seats.

We have some committee business to do, which we'll do in public, unless someone wants to take it in camera. I don't think there's any reason to do it.

We have a number of motions before us. We also have the second report of the subcommittee, which met on Tuesday.

Have all of you had a chance to read the report?

If you've had a chance to review the report and there's consensus that we adopt it, we can do that right now and get it out of the way.

Some hon. members: Agreed.

The Chair: We have consensus on that, so we'll move on.

We have a number of motions. First of all, we have Mr. Storseth's motion, and Mr. Ménard's motion as well. Both of them deal with the Canadian Human Rights Act.

I get a sense there's probably less contentiousness related to Mr. Storseth's motion. He would like to deal with it separately, so I'll move ahead with that.

If you want to make that motion formal, we'll move to a discussion of it.

Mr. Brian Storseth (Westlock—St. Paul, CPC): Absolutely. Mr. Chair, I would move that:

Whereas concerns have been raised regarding the investigative techniques of the Canadian Human Rights Commission and the interpretation and application of section 13 of the Canadian Human Rights Act; and

whereas the Commission operates independently and reports to Parliament;

Be it resolved that the Justice and Human Rights Committee examine and make recommendations with respect to the Canadian Human Rights Commission, and in particular:

- a) review the mandate and operations of the Commission;
- b) review the Commission's application and interpretation of section 13 of the Act;
- c) Solicit and consider oral submissions from the Chief Commissioner and oral or written submissions from other interested persons or organizations;
- d) Submit a report, including any proposed amendments to the *Canadian Human Rights Act* arising out of the results of the Committee's inquiry.

The Chair: Thank you.

Is there any discussion?

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, first I support the wish of a majority of colleagues that the two motions that we have before us deal with subjects that are ultimately different under the law and that it would no doubt be wiser for the committee to prepare different reports.

I believe we should vote on the motion of Mr. Storseth, who has a debate ahead of him on the commission and on section 13, but I want to say right away that the fact that we would like this debate to take place does not mean that we in the Bloc Québécois would subsequently support the idea of deleting section 13. I have realized—and I have had occasion to say so to colleagues on the subcommittee—that there is a major controversy surrounding this debate and that we are ultimately bringing in elements that can... I'm not at all saying that's the mover's intent, and I want him to know I am attributing no motive to him. However, some people want to limit the tools involved in the operation of human rights. I myself have received submissions from people who thought the Human

Rights Tribunal should no longer be directly allowed to convene, and so on.

I'm going to support this motion, and I believe my colleague Mr. Lemay is going to do the same. We're going to support it, but we will be extremely vigilant on the need for a Canadian Human Rights Commission that is functional and effective.

• (1720)

[*English*]

The Chair: Thank you. Is there anybody else?

Mr. LeBlanc.

[*Translation*]

Hon. Dominic LeBlanc: Mr. Ménard has expressed an opinion that I share.

[*English*]

We're going to support this motion. The Liberals are going to support this motion, but we, too, want colleagues to understand that some people... I don't pretend to understand all of the operation of section 13. I have read and heard different versions of how that may or may not be working, and I'm prepared and interested to hear people who have experience and something concrete to add to that discussion. I wouldn't want people to think we are inclined to abolish it, or limit it, or restrict the Human Rights Commission in a way, certainly until we've heard very compelling and authoritative evidence with respect to that.

The Chair: Is there anybody else?

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): I'm very pleased with the fact that a member has brought forth this motion, precisely because of the fact that the commission's authorities have been attacked, and there has been a lot of propaganda done that section 13 should simply be scrapped, whereas most of the groups that are actually targeted by hate crimes, for instance, and by discrimination want 13 but would like to see it improved so that it becomes more effective. So I'm pleased that this committee, it appears, is going to conduct this study.

The Chair: Very well.

Anybody else? If not, I'll call the question.

(Motion agreed to)

The Chair: The motion is carried unanimously.

We have the second motion, which is Mr. Ménard's motion.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, I was elected in 1993 at the age of 31, and I have been re-elected five times since. I know that my baby face may confuse some of my colleagues. My intention was not to refer to my age, but merely to tell you that I took an interest in this matter starting in 1995. I have previously introduced a number of bills and I would say that, in my life, I have merely contributed to the addition of social condition as a prohibited ground of discrimination, and that I am very proud of that. My life has obviously been much richer; everyone agrees on that.

Why social condition? Because a lot of provinces have social condition as a prohibited ground or related ground. Some provinces refer to prohibited discrimination against beneficiaries or on the ground of insufficient income. This doesn't always concern the ground of social condition. Even Quebec uses that term.

Mr. Chairman, I am convinced that, if litigants had this ground in the Canadian Human Rights Act, it would be a benefit for aboriginal people, for people who are denied loans at financial institutions, for people who have grievances against the Canada Mortgage and Housing Corporation, for the disadvantaged groups of our society.

We have a lot of information. I will definitely be stirring up happy memories for some of my colleagues, and perhaps bad ones for others, but I can assume nothing, Mr. Chairman. When Anne McLellan was Minister of Justice, she established a task force to review the Canadian Human Rights Act. Mr. Justice LaForest chaired that task force, and those people had already ruled that it was appropriate to amend the Act. So we'll have a great deal of information, and I hope that the government will ultimately support this committee's recommendations, which, I hope, will be to that effect.

• (1725)

[English]

The Vice-Chair (Mr. Brian Murphy): Does anyone else have anything on the motion from Mr. Ménard?

I recognize Monsieur Petit.

[Translation]

Mr. Daniel Petit: Thank you, Mr. Vice-Chair. I'm very pleased. I've read Réal Ménard's motion and I will support it because, as soon as I see the Bloc working for the federal government, that makes me happy. So I'm going to support the motion.

Mr. Réal Ménard: Anything that gives you an intellectual orgasm—

[English]

The Vice-Chair (Mr. Brian Murphy): Anyone else on the motion?

I'm going to call the question.

(Motion agreed to)

[Translation]

The Vice-Chair (Mr. Brian Murphy): Is there any other business on the committee's agenda?

[English]

Yes, Mr. Norlock.

Mr. Rick Norlock: Now that we're in such a convivial mood, I would like to ask the clerk—and this has to do with the impaired driving study—if we've had a witness decline or been unable to make it.

The Vice-Chair (Mr. Brian Murphy): For Monday, Madam Clerk?

I don't know the answer to that, Mr. Norlock.

Mr. Rick Norlock: That's why I'm asking the clerk.

The Vice-Chair (Mr. Brian Murphy): Why doesn't the clerk respond to that question, Mr. Norlock?

Why don't you respond?

Mr. Rick Norlock: Thank you.

She said yes. Then may I respectfully request that the committee consider a stand-in. As we studied impaired driving I didn't see on the witness list anyone who can attest to the physiological effects of different levels of alcohol.

For the edification of people, since we're studying impaired driving as a whole and this person is employed as a toxicologist by the Centre of Forensic Sciences in the province of Ontario and has been a toxicologist for 10 years, she indicates that upon speaking to the clerk, she would be able to attend before this committee at short notice. I think it would behoove us to at least have some scientific evidence along with a lot of the other evidence.

The Vice-Chair (Mr. Brian Murphy): Normally the list of witnesses would be approved at steering committee. Since there's been a withdrawal and a suggested inclusion of someone else, I don't see any reason why that wouldn't happen.

Is anybody against the proposition? No? It's a wonderful idea?

Mr. Rick Norlock: I'm for that.

The Vice-Chair (Mr. Brian Murphy): Is there any other business before the committee? No.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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