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# **Standing Committee on Public Safety and National Security**

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**EVIDENCE**

**Tuesday, September 27, 2016**

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**Chair**

**Mr. Robert Oliphant**



## Standing Committee on Public Safety and National Security

Tuesday, September 27, 2016

• (1640)

[English]

**The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)):** Today we are starting our consideration of Bill C-226, which has been passed at second reading and referred to the Standing Committee on Public Safety and National Security. This reference, which has come to us, is an act to amend the Criminal Code (offences in relation to conveyances) and the Criminal Records Act and to make consequential amendments to other acts that are indicated in the bill.

This is a private member's bill, and Mr. Blaney, the proposer of the bill, is not here yet. He will be coming at some point during our study of the legislation. However, to kick us off, we thought it would be helpful to have officials from the Department of Justice. We have also requested that an appropriate witness from Public Safety be available for your questions.

As I mentioned to the committee members, we won't be having opening statements from the witnesses. However, they are available for committee members to question with respect to the substance and issues related to this private member's bill.

We welcome Carole Morency, director general and senior general counsel of the criminal law policy section at Department of Justice; Greg Yost, counsel from the same section; and Talal Dakalbab, executive director general at the Parole Board of Canada.

Thank you very much for joining us. We have questioners and we're in a seven-minute round. We begin with Mr. Mendicino.

**Mr. Marco Mendicino (Eglinton—Lawrence, Lib.):** Thank you very much, Mr. Chair, and I thank the witnesses very much for their anticipated testimony this afternoon.

Bill C-226, which is an act to amend the Criminal Code (offences in relation to conveyances) and the Criminal Records Act and to make consequential amendments to other acts, is essentially about our criminal law justice approach to driving under the influence of alcohol.

As I read the bill, it can be broken down into several general buckets or categories. One is the introduction of random Breathalyzer testing. The second is the introduction of mandatory minimum sentences for offences under this particular category of offence, applied, some might argue, more strictly than in the past. Third is another category of technical provisions that have an impact on the way these offences are both investigated and eventually prosecuted in the event that charges are laid.

The area I'd like to focus on first is the one addressing mandatory minimum sentences. As I assume most if not all of you will know, the Supreme Court of Canada recently commented on mandatory minimum sentences and on how in certain circumstances they can be vulnerable constitutionally. I'm looking in particular at proposed section 320.19, proposed paragraphs 320.2(a) and 320.2(b), and proposed subsections 320.21(1) and 320.21(3). I don't think we need to go through them verbatim, but looking at them through that lens, given that there are a number of provisions, could you comment generally on whether the introduction of a mandatory minimum sentence regime in the context of this bill might be vulnerable to a similar constitutional challenge.

**Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice):** There will undoubtedly be a constitutional challenge to any higher mandatory minimum penalties.

I think it would be fair to say that the bill introduces a higher mandatory minimum penalty for a fourth offence by someone reconvicted of impaired driving. It also introduces higher mandatory minimum penalties when you proceed on indictment. There are also a number of changes for the mandatory minimum penalties coming in for causing bodily harm and causing death offences, and they're extended beyond the impaired driving to dangerous driving and other offences. There are actually a large number of new mandatory minimum penalties in the bill.

We are, of course, aware of Supreme Court jurisprudence. The people who supported higher mandatory minimum penalties in the past considered that a gradation—going first, second, third, starting at a low level of \$1,000 fine, and working towards a one-year minimum on a fourth offence—would be defensible.

I'm not going to say it would be upheld, but it would be defensible, and the same would be true if it were extended to dangerous driving and other offences. That was the reasoning behind that, which I'm sure you realize was the case in the previous government's Bill C-73.

**Mr. Marco Mendicino:** Would either Ms. Morency or Mr. Dakalbab like to comment?

**Ms. Carole Morency (Director General and Senior General Counsel, Criminal Law Policy Section, Department of Justice):** I'd like to affirm that, as you know, the Supreme Court recently pronounced on the issue of mandatory minimum penalties, the most recent case being *R. v. Lloyd* before April of this year, and before that, *R. v. Nur*. In both of those instances, the Supreme Court pronounced in a more fulsome way on how an MMP may run afoul of the charter and slightly tweak the analysis that they had been using to that point.

That said, some mandatory minimum penalties have been upheld in the past, including by the Supreme Court. There's no question that moving forward, to the extent that mandatory minimum penalties are being proposed—and remember that this is a private member's bill and not a government bill—that will be in the new environment of the Supreme Court's pronouncement on mandatory minimums.

I believe the parliamentary secretary to the Minister of Justice has indicated, as part of the second reading debate, that the government would not be supporting higher mandatory minimum penalties as proposed by this bill with the exception of these mandatory fines.

The committee may also be aware that the Minister of Justice is currently reviewing the whole Criminal Code approach to the use of mandatory minimum penalties. That review has, of course, not only been informed by the round tables she's been engaging in with stakeholders across the country as part of the criminal justice system review but also been part of a specific review of the issues of mandatory minimum penalties, and has been conducted in light of Supreme Court jurisprudence.

There are indeed issues and how the Supreme Court will address the issue will indeed be a bit of a new territory for it moving forward.

• (1645)

**Mr. Marco Mendicino:** I'd like to build on both of your answers.

Citing the recent Supreme Court of Canada case, the majority wrote as follows. This begins at paragraph 35 of *R. v. Lloyd*:

If Parliament hopes to sustain mandatory minimum penalties for offences that cast a wide net, it should consider narrowing their reach so that they only catch offenders that merit the mandatory minimum sentences.

Another solution would be for Parliament to build a safety valve that would allow judges to exempt outliers for whom the mandatory minimum [sentence] will constitute cruel and unusual punishment.

Set aside the last sentence. I guess the first sentence begs the question of whether or not the author of this bill—you take it from the introduction of these MMPs—believes that the current regime does not sufficiently either deter or denounce this particular category of offence, and that the introduction of these MMPs does not offend that principle that I just referred to, namely, that it doesn't cast the net too broadly.

Can you respond to that?

**The Chair:** I'm afraid you're over the time. It was a long introduction.

**Mr. Marco Mendicino:** Thank you, Mr. Chair. I'll hope that one of my colleagues will pick up on that.

**The Chair:** All right.

Mr. Miller.

**Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC):** Thank you, Mr. Chairman.

Thank you to the witnesses for being here today.

I want to touch again on what Ms. Damoff talked about, the constitutional rights in here. I want to be clear. Random breath-taking is what we're talking about here in a nutshell. It's being able to stop anybody at any time. It could be for good reasons; it could be for bad reasons. In your opinion, I think I'm hearing that it would

probably or definitely be challenged under the Charter of Rights and Freedoms. Is that correct?

**Mr. Greg Yost:** Again, I would say we would expect a challenge. I would say, however, that the power to stop someone at random flows out of provincial legislation and common law, and it has been upheld by the Supreme Court of Canada on several occasions.

What is different here is that instead of, when the person is stopped, the police officer developing a suspicion of alcohol in the body by smelling alcohol or whatever in order to justify an approved screening device demand under mandatory alcohol screening, as it's called in Ireland these days, the police officer will present the approved screening device to the person and demand that they provide a breath sample so that he can get a scientifically valid indication of whether or not they are above the legal limit.

**Mr. Larry Miller:** Just on that, before I go to the other witnesses, Mr. Yost, is what I think you just said not already happening today? I just went through a spot check last Thursday night in my riding. Of course, I wasn't drinking. They do them all the time, but unless they can see, or smell, or suspect that I've had alcohol or something, the officers can't go any further. Obviously, if I'm sitting there with an open drink of some kind in the vehicle, then they can do it. Is what you just said not already possible today?

• (1650)

**Mr. Greg Yost:** The random stopping is definitely possible. I think we all know that if an officer indicates to us that we are to stop and pull to the side of the road, then we are obliged to do so, and that's under provincial law.

As I said, once you roll down the window, he'll start asking you some questions about whether you've had a drink, and he'll ask you to show your driver's licence and your registration. That police officer is looking for clues, such as the smell of alcohol, your fumbling with your documents, or something to develop the suspicion of alcohol. Only then can he ask you to provide a breath sample into an approved screening device. Under what's called random breath testing, the police officer, for whatever reason he may have pulled you over, purely randomly, can say, "Show me your registration and your licence, and, by the way, prove your sobriety by blowing into this approved screening device". That's the fundamental difference.

**Mr. Larry Miller:** Okay, but here in Ontario an officer has to have a reason. Mind you, sometimes they stop people without good reason. We all hear about that every now and then, but under the law, they are not supposed to be able to stop you without good reason, such as, for example, your licence plate light is out; a tail light is out, or you're swerving on the road. Is that not true?

**Mr. Greg Yost:** I'm not an expert on the Ontario Highway Traffic Act. I do know they run RIDE programs in which they pull everybody over at random. I shouldn't say everybody. They fill it up, and they talk to those people, and then when they're finished with them they bring in some new people. I am aware of several court cases in which the police, as part of an anti-drinking and driving campaign, have started to pull drivers over at random—generally in the wee hours of the morning in the party section of town—and they're doing it to check for sobriety. That's their reason, and that's been upheld by the courts.

**Mr. Larry Miller:** Okay, thank you.

Ms. Morency or Mr. Dakalbab, do you care to comment on the constitutional aspect of it or on the rights part of it?

**Ms. Carole Morency:** I wouldn't have anything to add other than the fact that impaired driving provisions in the Criminal Code today and historically have been among the most litigated parts of the Criminal Code. When there is a reform in this area, be it small or significant, as private member's Bill C-226 proposes, it's reasonable to expect that there will be charter challenges. That does not mean that provisions would necessarily fail because of the charter challenges, but it is a reality.

**Mr. Larry Miller:** Do you have anything further to add?

Do you know of any province or place, even in another country, where this law is in place? I'm not aware of any, but I'm just asking.

**Mr. Greg Yost:** There are laws for various types of random breath testing. It's hard to be sure in how many countries. I have a document here from the World Health Organization that claims there are 121 countries that have some form of it. I'm dubious of that number. A paper was produced by Professor Chamberlain, the legal adviser to MADD Canada, who might perhaps be one of your witnesses. He listed 73 countries with a form of random breath testing; that I do know. The department's discussion paper in 2010 included a recommendation by the European Commission that random breath testing be conducted in all countries in the commission as part of an overall program to combat impaired driving. I have the laws of the seven states of Australia here. They all have purely random breath testing. I say that because there are some places, and Ireland is one of them, where they have it at a check stop. They bring the people in and they blow, but they do not have any roving police officer pulling people over. Australia has what I would call purely random breath testing. Let's just say running random breath testing checkpoints in rural Canada could be difficult.

•(1655)

**Mr. Larry Miller:** Am I out of time, Mr. Chairman?

**The Chair:** Yes. We might come back to you again.

[*Translation*]

We will continue with Mr. Dubé.

**Mr. Matthew Dubé (Beloeil—Chambly, NDP):** Thank you, Mr. Chair.

I also have questions about mandatory prison sentences. If Bill C-226 had one element that was not up for debate, it would definitely be drunk driving. It's important to point that out. We all agree that we have to reduce the number of drunk driving cases and the resulting tragic consequences.

This is our first meeting on this bill. So we have not yet had an opportunity to hear MADD's testimony. Unless I am mistaken, that organization said that one of its concerns about Bill C-226 is that mandatory prison sentences may lead to a drop in the conviction rate because, ultimately, it's all or nothing.

In that spirit, if judges were given some discretion, do you believe that drunk drivers would be convicted more often? Judges actually have the discretion to make their decision based on the circum-

stances that, tragedies notwithstanding, can still vary from case to case.

**Mr. Greg Yost:** Judges currently have discretionary power with respect to mandatory minimum sentences, which are already part of the Criminal Code. For a first conviction, the penalty is a \$1,000 fine. The sentence is 30 days of imprisonment for a second conviction and 120 days for a third conviction. In the case of a summary conviction, the prison sentence can be up to 18 months, and up to five years if the prosecution proceeds by indictment.

If the bill were passed, added to those first three sentences on summary conviction would be a fourth penalty consisting of one year of imprisonment. Maximum sentences would be increased practically throughout the legislation. That should not lead to any issues in terms of the charter because judges' discretionary powers would not be limited. Those powers may actually be slightly increased.

I don't know what MADD said about the possibility of judges refusing to convict someone if they feel that the mandatory minimum sentence is too high.

A clause of the bill empowers a judge—if no bodily harm or death was caused—to delay the sentencing to allow the offender to attend a treatment program to resolve their substance abuse problem. If the individual manages to resolve their problem, the judge would not be required to impose a mandatory minimum sentence. The Criminal Code currently contains a similar provision, but it is not in force in British Columbia, Ontario, Quebec or Newfoundland and Labrador. So the bill would extend this idea to the entire country.

**Mr. Matthew Dubé:** Okay.

I am curious about something.

You said that this would not be an issue in terms of the charter, and I understand that. When we talk about mandatory prison sentences, we are also talking about the effectiveness of measures. Yet there has been no drop in the number of drunk driving cases over the last 10 years.

Do you think this measure is ineffective in the justice system?

**Mr. Greg Yost:** I will not criticize judges. I won't do that.

Over the past two or three years, we have started to see a drop in the number of cases. It's true that a lot of progress was made in the 1980s and 1990s, when records were set in this area.

In 2009, the Standing Committee on Justice and Human Rights called for higher penalties for repeat offenders and individuals with a high blood alcohol level. Naturally, the government at the time accepted that recommendation. So we tried to respond to that request or recommendation. That is why Bill C-226 does not provide for higher mandatory minimum penalties.

**Mr. Matthew Dubé:** Thank you.

I have another question, and I'm not sure who could answer it.

I am not a lawyer, and I am curious about something. Bill C-226 has not yet been passed, but let's take it out of the equation anyway. Based on what we are hearing, marijuana could be legalized within a year. Would it be complicated to then amend the existing legislation in light of that new situation?

• (1700)

**Mr. Greg Yost:** The bill contains elements that would help a bit in the fight against drug-impaired driving. With this bill, we are trying to make the testimony of evaluating officers more effective. If an evaluating officer determines that a person's ability to drive is impaired by a drug after analyzing a sample of bodily substances, it is presumed that the drug that caused an issue during the evaluation was also causing a problem on the road. It has nothing to do with the legalization of marijuana. It's already a crime to have your driving ability impaired by a drug, be that drug legal or illegal. So there is no change in that respect.

Regardless of what will happen with this bill, I think that marijuana-impaired driving will continue to be a crime.

**Mr. Matthew Dubé:** Don't worry, I am not suggesting otherwise. I just want to understand the situation. In the context of this debate, as legislators, we have to think about the future. I am just trying to get a good grasp of the current state of the legislation. Of course, changes in police work are to be expected. My question was more about that aspect.

[English]

I don't have very much time, Mr. Dakalbab, but I wonder how the parole board sees this current debate on Bill C-226.

[Translation]

**Mr. Talal Dakalbab (Executive Director General, Parole Board of Canada):** We are an independent tribunal. So we apply the law in the normal way. As far as we are concerned, the bill has an impact only on record suspensions, since there is currently an exclusion. The majority of our claims for record suspension or our pardons have to do with that provision. If there was a change, it would mostly affect claims for record suspension and pardons.

**Mr. Matthew Dubé:** Thank you.

[English]

**The Chair:** Thank you.

Mr. Erskine-Smith, go ahead.

**Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.):** Thanks very much.

My first question picks up on what Mr. Mendicino, Mr. Miller, and Mr. Dubé said about the constitutionality. This bill is based on Bill C-73, which was drafted by the justice department. Do you have a charter compliance opinion related to Bill C-73 that you could provide to this committee?

**Ms. Carole Morency:** It's true; Bill C-226, as a private member's bill, reflects very much what was introduced as a government bill in the previous Parliament.

It would not be for us to comment on what advice the sponsor himself has received on Bill C-226. When ministers of justice, including the one in the previous government, introduce a bill in the

House, they have to certify it according to the Department of Justice Act, so, yes, that would have been the process.

**Mr. Nathaniel Erskine-Smith:** Can you provide a copy of all charter compliance opinions on Bill C-73 to this committee?

**Ms. Carole Morency:** We are appearing as subject matter experts to assist the committee in its study on this private member's bill. As lawyers, we provide advice to the Minister of Justice and not to the committee, so that is not something we are in a position to do. We are here to assist the committee with its study.

It would be under solicitor-client privilege and related issues.

**Mr. Nathaniel Erskine-Smith:** Okay. In preparing Bill C-73, presumably there was a department rationale, which that you haven't provided. Obviously, it is now a private member's piece of legislation, so there was no rationale, and there was no opening statement today. I would ask for any rationale, any briefing documents, reports, or any material prepared by the department in support of Bill C-73 that would be relevant to this committee in its study of almost identical legislation, Bill C-226.

**Ms. Carole Morency:** Again, I think we would find ourselves in a difficult situation with solicitor-client privilege on that, but certainly we could undertake to provide to the committee what I suspect the committee may already have access to, which is some of the materials that are normally released when the government introduces a bill. There would be the news release, the background—

**Mr. Nathaniel Erskine-Smith:** I have that information. Thanks very much.

I understand, from the material we have from the Library of Parliament, that the conviction rate for impaired driving is 84%. Sorry, this is from Juristat 2011. It is higher than the general conviction rate of 64%.

Are we looking for a problem to fix here with respect to getting rid of the bolus defence, getting rid of the intervening drinking defence, and the other procedural changes? Again, with Bill C-73, you would have more intimate knowledge of this, without specific reference to Bill C-226. Are we aiming for a much higher conviction rate with these changes? Have the courts suggested these changes are necessary to improve the conviction rate?

• (1705)

**Mr. Greg Yost:** First, I'll address the bolus and intervening drink changes. In the *R. v. St-Onge* decision, the Supreme Court repeated its criticism of both of those defences.

You will perhaps want to hear from the alcohol test committee, but it is my understanding that a person downing several drinks and getting into his or her car represents a danger to the public, even if he or she hasn't quite gone over 0.07%.

The proposal to have the offence being 80 milligrams or over within two hours actually follows a common model in the United States and other countries to get around that issue of, “Was I just under 80 as the police pulled me over?” That’s more a matter of a public policy issue.

The 84% is well above others, but we are dealing with a situation in which, in the overwhelming majority of cases, the person has been found behind the wheel; the police officers have developed suspicion; the person has failed an approved screening device, and he has been shown to be over 80 milligrams on the approved instrument back at the station.

Consequently, 84% is nowhere near the United Kingdom’s 98%, and its laws are similar to ours.

**Mr. Nathaniel Erskine-Smith:** With respect to the previous Carter defence, there was a worry brought by the court that there was a disconnect between the success rate of acquittals under the Carter defence and the scientific evidence.

Is there the same worry with respect to the bolus defence and the intervening drink defence regarding the numbers? Do we have those numbers?

**Mr. Greg Yost:** No, I do not have numbers as to when those defences were used.

The Canadian Centre for Justice Statistics only gets raw numbers, acquittals and such. The 84% is up from what it was at one stage. It was about 70%, 15 years ago or thereabouts. I think you’ll find that number in the 2002 Juristat on impaired driving. It was 72%, so some of the changes have been helpful.

The proposals are in fact to respond somewhat to criticism in the St-Onge decision that Parliament had never specified in detail the conditions that the alcohol test committee considered to be required. The alcohol test committee has clarified its position in several ways since that time, and the bill actually says that if you follow what the alcohol test committee did, there is conclusive proof that it was right.

**Mr. Nathaniel Erskine-Smith:** With respect to that Supreme Court case that you’ve referenced, I understand from Bill C-73 and the information the department raised publicly that the bill was to get at the wave of applications and the increased court time that occurred in the wake of that Supreme Court decision.

Do we have any numbers to justify that wave of applications? Was it a sustained wave? What are we looking at in terms of numbers, and what evidence do we have?

**Mr. Greg Yost:** I don’t know how many cases have been decided.

Back on my desk, I have one that I received this week from Quebec, which was an appeal from 100 decisions consolidated into one appeal. The person was pulled over in 2009. The expectation is that they are going to try to appeal that to the Court of Appeal.

There have recently been some judgments, particularly in Ontario, that have been helpful in terms of delineating what’s required in terms of discovery. I do know that all of the provinces—and we deal with them regularly—said they were facing a wave of appeals. Alberta is going to its Court of Appeal in October, with a consolidation of something like 15 cases dealing with it.

There’s been a wave, but I can’t give you exact numbers.

**Mr. Nathaniel Erskine-Smith:** Thanks very much.

**The Chair:** Monsieur Généreux.

[*Translation*]

**Mr. Bernard Généreux (Montmagny—L’Islet—Kamouraska—Rivière-du-Loup, CPC):** Thank you, Mr. Chair.

I want to thank the witnesses for joining us today.

Mr. Yost, you said earlier that random testing in Canada’s rural regions would be more difficult. If the testing was random, it would mean that it can be done at any time, without even a specific traffic stop. Does the term random mean that the testing can be done anytime? Did I understand what you said?

• (1710)

**Mr. Greg Yost:** If the proposal in Bill C-226 was accepted, the answer would be yes. Any police officer in their patrol vehicle could administer the test to identify the presence of alcohol on the road. In major cities, a dozen police officers may stop traffic and select five or six individuals to test. In a rural setting, the police force may consist of four or five officers. So it would be a bit difficult to do the same.

**Mr. Bernard Généreux:** In Quebec, the majority of police forces in small municipalities are part of Sûreté du Québec and are grouped by regional county municipality, RCM.

I was the mayor of the town of La Pocatière for four years, and I saw a number of roadside tests. The town has a population of 4,500. What do you mean by rural? Are you talking about villages of 200 people? In reality, those small municipalities or regions are often covered by Sûreté du Québec in a much broader way, you could say. Sûreté du Québec patrols the highways, but it is also in municipalities through RCMs.

I could give you the example of Rivière-du-Loup, with a population of 20,000 people. It used to have its own police force, but that role has been taken over by Sûreté du Québec, which is increasingly present everywhere. So it can carry out roadside tests in villages that still have a bar, even though their numbers are dwindling. So I don’t see where the difficulty lies.

**Mr. Greg Yost:** I assume the committee would like to hear from police officers about the situations they face on the roadside. I am a lawyer in Ottawa, and I don’t really know what issues they may be facing.

**Mr. Bernard Généreux:** You are a lawyer. You say that this would be more difficult to apply in a rural setting. At the end of the day, the consequences for a randomly selected driver would be the same in rural and urban areas. What do you think about that as a lawyer?

**Mr. Greg Yost:** The consequences would be the same if they were stopped by a police officer. The question is whether the police could set up checkpoints for all sorts of vehicles in a rural setting. There are also all kinds of vehicles in Toronto. Police officers can set up checkpoints almost anywhere. On the road I use regularly in Ontario—Highway 17 between Marathon et Wawa—there aren't many towns and villages.

**Mr. Bernard Généreux:** I understand what you are trying to say. Clearly, the consequences will be the same. Random testing is essentially the most important change in this bill. If I have understood correctly, MADD has some apprehensions over that, or it's the other way around. I'm no longer sure.

You said earlier that random testing was done in a number of countries. In particular, you were thinking of the Australian legislation. Are there any fundamental differences between the current laws in Australia or other countries and the legislation we will potentially pass here, in Canada?

**Mr. Greg Yost:** What's in Bill C-226 is based on the Australian model and not on the legislation in Ireland, where major road testing is carried out, there are advertisements, and so on.

**Mr. Bernard Généreux:** Thank you very much.

**The Chair:** Thank you.

[English]

Ms. Damoff, go ahead for five minutes.

**Ms. Pam Damoff (Oakville North—Burlington, Lib.):** Thank you very much.

Mr. Yost, in your testimony to the Justice and Human Rights Committee you talked about random breath testing in relation to the European Commission as part of their strategy to reduce fatal car accidents. I saw numbers like Ireland with a 28% decrease in fatalities, New Zealand with a 30% decrease, and Australia with a 35% decrease. That was part of the series of measures that they took, and there wasn't simply random breath testing. I'm wondering if you could speak to that just a bit so that we can get a sense of what we're missing by only dealing with random breath testing.

• (1715)

**Mr. Greg Yost:** I think you are absolutely correct.

One of the problems with the research is that in Australia, random breath testing was brought in along with lowering the BAC to 0.5, with high publicity, and enforcement, etc. The state of Victoria has something like eight “booze buses”. They're out on the road every day, and they do somewhere in the neighbourhood of three million breath tests in a state that has a population of about six million. Just about every driver is being tested, so, yes, there's no question that no matter what you put in the law, if you don't have enforcement, then it's not going to work.

The Irish experience is interesting, because they brought in 0.5 first, and then they brought in their former random breath testing. You could divide those two. Random breath testing is one of the measures, but it's a relatively small country. I have the numbers here. They do about 70,000 road checkpoints a year. That's a couple of hundred every day.

**Ms. Pam Damoff:** Would you be able to provide us with those numbers?

**Mr. Greg Yost:** They are all taken from the website of the Garda, so I can certainly do that. In 2008, they had 18,013 for “driving while intoxicated”, which was reduced to 7,962. Traffic fatalities went from 279 to 188. This is what I was talking about: 78,290 MAT—which is their way of saying RBT—checkpoints were set up in that country, so more than 200 a day. You're very likely to run into a checkpoint in Ireland, and that has an enormous effect.

**Ms. Pam Damoff:** We don't know whether that, in isolation, is going to work as well as the suite that was provided.

**Mr. Greg Yost:** No. One of the studies in New Zealand, which I believe was referenced by the standing committee, made an effort to break down the 49% reduction they had, and it attributed 22% of it to RBT and 20-some per cent to the lowering of the BAC, etc. It is a difficult thing to break up.

**Ms. Pam Damoff:** My other question is to you, Mr. Dakalbab. Part of this bill deals with mandatory minimums. For impaired driving charges, do you have the resources to reintegrate these people back into society when they leave? Obviously, our goal is to send people out so that they don't drive impaired again. Do we have programs in place and the resources to actually do that for people who are sentenced for impaired driving?

**Mr. Talal Dakalbab:** Thank you for asking. Obviously, at the Parole Board we don't manage the sentence, and we don't supervise. We really just make the decisions.

**Ms. Pam Damoff:** But you require programs for people when they are released, do you not?

**Mr. Talal Dakalbab:** Usually programming helps to address some of the factors that might contribute to their criminality, but not always. There are other tools available, such as follow-ups and treatments, and they could do them in the community sometimes.

Our role, really, is to assess the risk according to the criteria and the law in the CCRA. Obviously, CCRA is something else.

For us, these changes don't really impact our decisions. We address whatever offenders are in the system. We look at them separately and according to the law.

The programming will be something that CSC will provide, but from our end, there are the same risk assessment criteria.

**Ms. Pam Damoff:** I think they are coming to see us.

I think I have only a few seconds left.

**The Chair:** Do you want the seven seconds?

Mr. Liepert has a question.

**Mr. Ron Liepert (Calgary Signal Hill, CPC):** I have one question, and then I'll let my colleague Mr. Miller finish his questioning from earlier.



I just heard you mention briefly the 0.05 somewhere. I think it was about four years ago that Alberta brought in 0.05. In Alberta, at 0.05, I believe you lose your vehicle and your keys for three or four days. You are not charged with impaired driving, but it's sort of that warning step.

Do you have any evidence that this has been helpful, or is there anything you could add relative to what has happened in those four or five years in Alberta?

•(1720)

**Mr. Greg Yost:** I don't have anything for Alberta at my fingertips. British Columbia did something very similar. In British Columbia, if you are over 0.08, they will take your vehicle for about 30 days, I believe. The British Columbia fatalities dropped sharply. I believe the same thing has happened in Alberta.

The administrative sanctions—which I am pleased to say I pioneered in Manitoba more than 30 years ago now—are immediate, and they are effective. People don't like losing their cars. They don't like having their driver's licence pulled. They don't like having to pay several hundred dollars to get back on the road. I understand that, in British Columbia, it can cost you approximately \$4,000 to get back on the road if you are over 0.08. They very often prefer to proceed by the administrative procedure. It's faster and very effective, from what we can see.

The number of Criminal Code charges in British Columbia has dropped. The number of administrative suspensions has gone up. However, whether to introduce those measures is a decision that provinces make.

**Mr. Ron Liepert:** I understand that, but I guess the question becomes whether this is the answer or there are other potential answers to reduce drunk driving. That's what I was getting at.

**Mr. Greg Yost:** There is no one answer. This may be part of the answer. More enforcement would be part of the answer. Given the demands on police officers these days and budget problems, I think that's hoping for something that's not likely to happen. Stronger administrative measures are part of the program. Education in the schools, things like MADD does regularly, are definitely part of the solution to the problem.

We've now reached the stage where there appears to be less drinking among the 15- to 21-year-olds than there is pot smoking, so they're less likely to be involved in impaired driving than they were.

There is no silver bullet. This thing would give the police a new tool. It might be useful in the provinces as well, because if they are doing the random breath testing and the person turns out not to be over 0.08 but is over a provincial limit of 0.05, they can impose sanctions for that, as well.

**Mr. Larry Miller:** Stiffer penalties have been put in place, certainly in Ontario and I'm sure across other provinces. There's also education. When I say education, I'll admit that when I was as young as my boys are, at one time, everybody took a drink. It was like smoking. Smoking today is unacceptable inside buildings and whatever. My kids and their friends wouldn't think of driving drunk today. They get a designated driver

. Are stiffer penalties going to do it? Will it be education?

Do you have any comments on that?

**Mr. Greg Yost:** I don't think even MADD would say that stiffer penalties are what we need. We have stiffened the penalties repeatedly over the years, from a \$300 fine for a first offence to putting people in jail for a second and third offence. The penalties are high by the time you add what your insurance is going to do to you, etc. I don't think anyone coming before this committee will argue that the only thing you need to do is raise penalties. Penalties are high and people are still willing to take their chances.

As for education, I happened to be at MADD's annual general meeting last weekend and I saw their latest movie. It's 15 minutes long, and it's going to go into something like 2,000 high schools thanks to the LCBO—it's raising money for MADD—to bring this message to the students. That's a vital part as well.

•(1725)

**The Chair:** I need to stop you there.

We have six minutes left, so I think we're going to have time for Mr. Di Iorio.

I have one question, as the chair, that I'd like to ask. Is there in this bill, or somewhere in the Criminal Code, a definition of the word "random"? What is the legal definition of the word "random", and where could I find it?

**Mr. Greg Yost:** There is nothing that says "random" in this bill. It's called mandatory alcohol screening, which is what the Irish call it. Random breath testing is what the Australians decided to call it, and because they were the first, it's RBT.

There have been court cases dealing with whether something was truly random, or whether in fact they were picking people based on inappropriate criteria, such as ethnicity, colour, and those things. There's nothing in this bill that—

**The Chair:** These are not random breath tests. We should not be using that terminology.

**Mr. Greg Yost:** It's caused a lot of trouble. When we did our consultation, most of the objections to random breath testing were about the power of the police to stop at random, which is a power that they already have, and that has been upheld by the Supreme Court of Canada. People don't like "random", and I understand that.

**The Chair:** This is mandatory unless you don't get picked.

**Voices:** Oh, oh!

**Mr. Greg Yost:** It's mandatory if the police officer pulls you over, yes.

**The Chair:** Okay, good.

Mr. Di Iorio go ahead for five minutes.

[Translation]

**Mr. Nicola Di Iorio (Saint-Léonard—Saint-Michel, Lib.):** Thank you, Mr. Chair.

I want to thank the witnesses for their work.

[English]

**The Chair:** Excuse me, just to correct, there is “random testing” in the bill. It’s in the headline.

**Mr. Greg Yost:** Is that the headline? Is that what you call it?

**The Chair:** That’s why I knew I didn’t make that up, but it’s not in the text.

**Mr. Greg Yost:** I apologize for that. There’s a marginal note. It is there.

**The Chair:** Go ahead, Mr. Di Iorio.

[Translation]

**Mr. Greg Yost:** Tracking of changes concerning what? Are you talking about the current code?

**Mr. Nicola Di Iorio:** Are you familiar with the expression “track changes”?

**Mr. Greg Yost:** I am very familiar with that expression.

**Mr. Nicola Di Iorio:** The provisions of the bill are inspired by the existing legislation. In some bills, what has been removed is crossed out, and the additions are pointed out. Do you have such a document?

**Mr. Greg Yost:** There is a concordance that indicates, for instance, that clause 320 would become section 19.12 and that the provision is a new addition.

**Mr. Nicola Di Iorio:** That is not my question.

Do you have a document that tracks the changes?

**Mr. Greg Yost:** No, I don’t have such a document.

**Mr. Nicola Di Iorio:** So no such document was produced?

**Mr. Greg Yost:** We started almost from scratch. This is a completely new part of the bill. These are not amendments.

**Mr. Nicola Di Iorio:** Let’s come back to random testing.

Let’s go to subclause 320.27(3), titled “Random testing”.

Of course, we are familiar with the restrictions imposed on the use of titles in the interpretation of a piece of legislation. Those restrictions are still important and ensure that the court must rely on the wording of the provision rather than the title.

In the provision, the only parameter provided is the passage that says, “that, in the peace officer’s opinion, are necessary...”. We can agree that, in this context, the peace officer is given a great deal of discretion.

Here is my question about that.

There is clearly random testing, but there may also be arbitrary testing. How can we ensure that peace officers are conducting real random testing and avoiding arbitrary testing?

**Mr. Greg Yost:** There is a key restriction whereby the peace officer must have an approved screening device. They cannot make the individual wait for five minutes until another police officer arrives on the scene with a device. The intervention must be immediate, and the peace officer must have the device with them.

**Mr. Nicola Di Iorio:** Nothing is preventing them from having the device with them during each shift.

**Mr. Greg Yost:** To my knowledge, the authorities in British Columbia and Alberta have decided to equip every patrol vehicle with an approved screening device to avoid a delay and any resulting issues. However, I must say that I don’t see how testing that is random can be made arbitrary.

• (1730)

**Mr. Nicola Di Iorio:** But you do recognize that the provision imposes no restrictions on arbitrary testing.

**Mr. Greg Yost:** I would not say that, as this is not our bill and this provision was not part of Bill C-73.

The sponsor of the bill, Mr. Blaney, followed the model used in Australia, where testing is random and nearly without any restrictions. I found only one restriction in the Australian piece of legislation, and it was the requirement that the peace officer must be in uniform.

**Mr. Nicola Di Iorio:** So they could not currently carry out random testing in Montreal.

**Mr. Greg Yost:** Pardon?

**Mr. Nicola Di Iorio:** They could not currently carry out random testing in Montreal.

**Mr. Greg Yost:** That would have been the case if the restriction was added to our legislation. Only one Australian state requires the police officer to be in uniform to be able to administer a test in their patrol vehicle. That is the only restriction.

Another provision requires that a police officer apply the procedure that minimizes problems and delays for the public.

**Mr. Nicola Di Iorio:** I know that my time is running out. So I will quickly put one last question to you.

Why are provisions from one section being removed only to be included in another section?

**Mr. Greg Yost:** That’s a matter of drafting. We wanted to draw attention to a new beginning by creating a new part. That was planned in the Department of Justice discussion paper, which was published in February 2010.

I was somewhat surprised when the drafters told us that we could not replace the numbers found there because it would create a part within another part. Things don’t work that way. We had to find another spot for them. That’s the kind of expertise those people have. They told us to create a new part, which starts with section 320.22, unless I am mistaken.

[English]

**The Chair:** I’m afraid we’re out of time, but we may get a further response.

This is a private member’s bill, so I am concerned, because in your answer you were saying “as the government had written it”. We have to be very cautious. As a parliamentarian, I am concerned about that. It’s confusing for this committee, because we’ve been told we can’t get briefing data around a previous bill written by a previous government, while at the same time, a witness who is an official has said, “We wrote this bill. We wanted to do this; we wanted to do that.” I’ll just point that out to the committee.

As the chair of the committee, I'm concerned, because a member asked for information about a bill that was in a previous Parliament, and that request was declined. That is a concern and I wanted to put that on the record.

Thank you very much.

The meeting is adjourned.

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