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Chair

Mr. Anthony Housefather

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone. It is a pleasure to welcome you to the justice and human rights committee's meeting on Bill C-46, which we finally can refer to as an "impaired driving law".

I am absolutely delighted to welcome our witnesses today.

[*Translation*]

We welcome Mario Harel, who is president of the Canadian Association of Chiefs of Police, and the director of the police service of the city of Gatineau.

Good afternoon, Mr. Harel.

[*English*]

Also, I welcome Charles Cox, the co-chair of the traffic committee, chief superintendent, highway safety division, Ontario Provincial Police; Gord Jones, superintendent, traffic committee, in Toronto; Lara Malashenko, member of the traffic committee and legal counsel for the Ottawa Police Services; and from DUID Victim Voices, Ed Wood, president.

We're going to start with the Canadian Association of Chiefs of Police.

Mr. Mario Harel (Director, Gatineau Police Service, and President, Canadian Association of Chiefs of Police): Distinguished members of this committee, as president of the Canadian Association of Chiefs of Police, I am pleased to be given the opportunity to meet each of you today. This is my first time as president of the CACP to appear before you, and I am privileged to see so many familiar faces.

You just introduced my colleagues here at the table. I'd like to point out that Chief Superintendent Charles Cox is our chair of the CACP traffic committee, and Superintendent Gord Jones is from the Toronto Police Service. He's our immediate past chair of the same committee. Madam Malashenko is the legal counsel for the Ottawa Police Service and a member of our law amendments committee.

We are here to provide our expertise on this very important issue. The mandate of the CACP is safety and security for all Canadians through innovative police leadership. This mandate is accomplished through the activities and special projects of some 20 committees and through active liaison with various levels of government. Ensuring the safety of our citizens and our communities is central to the mission of our membership, which represents municipal, regional, provincial, and federal police services.

Bill C-46 is a very detailed and technical bill, and as a result, I will address it from a high level on our opening statement. In addition to our appearance here today, we are providing you with a more detailed brief, which outlines our position on the bill.

I would like to make some general comments to provide perspective as to the impact of this bill on policing. Our role from the beginning has been to share our expertise with the government to help mitigate the impact of such legislation on public safety. Extensive discussions within the CACP membership and various committees formed the basis of our advice. We participated in a number of government health consultations and provided a submission to the federal task force. Members of the CACP also were involved in the oral fluid drug screening device pilot project.

We produced two discussion papers entitled "CACP Recommendations of the Task Force on Cannabis Legalization and Regulation" on February 8, 2017 and "Government Introduces Legislation to Legalize Cannabis" on April 28, 2017. Both discussion papers can be found on our website.

The recommendations we are providing here today are not intended to dispute the government's intention of restricting, regulating, and legalizing cannabis use in Canada.

There is no doubt that the primary concern of policing in Canada is impaired driving. This is a significant issue today. It is our belief that it will become an even greater issue with the legalization of cannabis.

In fact, I want to be clear. We certainly commend the government for its commitment to consultation of stakeholders and the public. We commend the efforts of ministers, all parliamentarians, and public servants at Public Safety, Justice, and Health Canada who are dedicated to bringing forward the best legislation possible. All share with us a desire to do this right, knowing that the world is watching.

The government has put forward strong legislation not only focused on impairment by drugs but also addressing ongoing issues related to alcohol impairment.

Steps that have been introduced to reform the entire impaired driving scheme are seen as much needed and very positive. The CACP has called for such changes in the past, specifically in support of modernizing the driving provision of the Criminal Code, supporting mandatory alcohol screening, and eliminating common loophole defences. Tough new impairment driving penalties introduced in this legislation are strongly supported by the CACP.

We also acknowledge funding announced recently to support law enforcement for cannabis and drug-impaired driving. The government has been listening.

● (1535)

The natural question would be why those in policing would have a concern with the July 2018 start date. The problem exists today; what will be different with legalization? What does policing need in order to successfully implement and operationalize legalization?

The question many in policing have is what level of readiness the government, and more importantly, our communities, expect law enforcement to deliver. We can be ready at some level July 2018, but are we delivering on the public safety objectives Canadians would expect of us? We are 10 months away, so allow me to put this into perspective.

We have 65,000 police officers in Canada who require training to understand the new legislation once it is passed into law. Standards for oral fluid drug screening devices are being developed. Devices are yet to be screened against standards approved by the Attorney General of Canada and made available to law enforcement to allow for implementation and training. Provincial governments for the most part are still developing regulatory and delivery schemes, which directly impact law enforcement.

While funding has been announced, details regarding how the funding will be allocated through the provinces and into the municipal police services' hands remain unclear. We need that to meet the training and implementation objectives. We clearly require many more officers trained in standard field sobriety testing and as drug recognition experts. Quite frankly, the capacity currently is not there to deliver the amount of training required.

Although the RCMP has recently conducted pilots in Canada, DRE accreditation currently involves sending officers to the United States at significant cost and based on availability of courses. We asked the government to come forward with a commitment and details to develop Canadian-based training for our officers, including reducing or eliminating the reliance on the practical training portion that is predominantly only available in the United States. We need to increase forensic laboratory capacity to process bodily fluids and sustain our ability to enforce this legislation.

This represents just a snapshot of what confronts law enforcement as we move forward. We remain hopeful that many of these issues will be clarified and/or resolved over the coming months, laying the groundwork needed to support effective and efficient enforcement of these new laws. What really concerns policing overall is that, quite frankly, Canadians have not been getting the message when it comes to impaired driving, whether that be by alcohol or drugs, and it remains a leading criminal cause of death in Canada.

We recognize and commend the government's tougher legislation in this area. However, current perceptions and attitudes toward drug-impaired driving must change, especially among our youth. Greater education in this area should have started long ago. We need to drive home the message that alcohol and/or drugs and driving don't mix.

We are crossing new territory. Like you, we want to see this comprehensive legislation implemented successfully and recognize that doing it right is more important than doing. We all have a responsibility to mitigate the impact on public safety. That is our foremost goal from a policing perspective.

Again, our written submission flags some of the challenges, considerations, and recommendations that we hope will assist in making this bill even stronger. In all, we support the proposed measures, with some amendments. We continue to stress the importance of public education, and the policing community is eager to advance training incentives so that it can effectively support enforcement and public safety goals.

Sincere thanks are extended, Mr. Chair, to all members of this committee for allowing the Canadian Association of Chiefs of Police the opportunity to comment and make suggestions on Bill C-46. We look forward to answering any of your questions.

● (1540)

The Chair: Thank you very much, and you are a very important organization to hear from, so we're very glad you're here.

Now we will move to Mr. Wood.

Mr. Wood, the floor is yours.

Mr. Ed Wood (President, DUID Victim Voices): Thank you very much.

Ladies and gentlemen, marijuana's THC does not impair a driver's blood; neither does alcohol, for that matter. Both of these substances impair a driver's brain, making the person unsafe to drive. We only test blood as a surrogate to try to learn what's in the brain. For alcohol, blood is an excellent surrogate. THC is not like alcohol. It's different biologically, chemically, and metabolically. For THC, blood is a terrible surrogate to learn what is in the brain.

Bill C-46 is based in part on the report from the Canadian Society of Forensic Science issued earlier this year. I largely concur with their findings, but I strongly disagree with their THC per se recommendations. I will confine my remarks to only that topic.

The two-tier structure in Bill C-46 perpetuates the myth that blood levels of THC correlate with levels of impairment, and they don't, as specified in the CSFS report itself. Drivers testing below five nanograms per millilitre of THC can be just as impaired as those testing above five nanograms. I submit that impaired drivers who kill or maim innocent victims and then test below five nanograms do not deserve protection from criminal prosecution.

Alcohol is unique among impairing drugs in that there is documented correlation between blood levels and impairment levels that simply does not exist for any other drug and has been shown to not exist at all for THC.

I point your attention to slide 1, which is before you right now. Much has been made of the fact that THC remains in the body for an extended period of time. It does not, however, remain in the blood very long at all. Since THC is fat-soluble, it is quickly removed from the blood as it is absorbed by the brain and other highly perfused fatty tissues in the body. The charts all demonstrate how rapidly THC is cleared from blood in both chronic and occasional users of marijuana.

Dr. Hartman's work, as shown in the two right-hand charts, showed that the peak level of THC declined an average of 73% within just the first 25 minutes after beginning to smoke a joint.

With a per se law, if you are above the limit, you are guilty of a per se violation, even if you can drive safely. Conversely, and this is something often overlooked, if you are below the limit, you are innocent of a per se violation even if you are seriously impaired. This latter point is the real problem with any THC per se quantitative level.

On slide 2 are frequency distribution histograms from four different forensic laboratories showing that the vast majority of cannabinoid-positive drivers arrested on suspicion of driving under the influence of drugs test below five nanograms. The largest of these studies showed that 70%, in more than 10,000 cases, tested below five nanograms. These drivers would not be criminally prosecuted under a five nanogram per se law.

There are two reasons for this phenomenon. First is the previously noted rapid depletion of THC from the blood. Second is the time required between arrest and taking a blood sample for testing.

This third chart superimposes the decline, shown earlier, of THC in blood on the elapsed time between dispatch of an officer to the scene of a crash and the time of taking a driver's blood in Colorado in 2013. What this chart shows you is that in the theoretical worst case, over one-half of cases of a driver smoking marijuana at the time of a crash, that driver would likely test below five nanograms, and that's for heavy users. For occasional users, the median level is just two nanograms. But wait. It gets worse.

● (1545)

In Colorado now, dollar sales of marijuana edibles exceed those of marijuana bud. Slide 4 shows THC levels found in blood on the left and in oral fluid on the right. Of users who consumed up to five times the standard 10 milligram THC dose of edibles, none of the subjects ever reached a five nanogram level in blood and very few even reached the two nanogram level. Drivers impaired by marijuana edibles would not be prosecuted under Bill C-46.

The relationship between blood alcohol level and impairment has been well established, perhaps most convincingly by the Borkenstein relative risk curve, shown on the left. As you have more alcohol in your blood, the chance of having a crash is increasing. By the way, this is only valid if alcohol is the only impairing substance in a driver's blood.

The largest similar study for THC was done by the European Union's DRUID project, which found no difference in propensity for crash risk based upon THC levels. Of greater utility, perhaps, are studies of physical impairment assessments versus blood THC levels.

Declues et al., in the right-hand chart of slide 5, found no relationship in “walk and turn”, “one leg stand”, or “finger to nose” assessments versus blood THC levels ranging between two and 30 nanograms per millilitre in whole blood.

Dr. Logan's study last year evaluated 15 different impairment assessments, none of which could distinguish between drivers testing above and those testing below five nanograms. Dr. Logan concluded, “A quantitative threshold for per se laws for THC following cannabis use cannot be scientifically supported.”

I submit further that to do so and to adopt Bill C-46 threatens to not only destroy credibility in the law but also to ensure that the majority of innocent victims of THC-impaired driving in Canada will not see the drivers who committed crimes upon their person brought to justice, and if that's not a crime, it should be.

We know that relying upon roadside impairment assessments alone is problematic. StatsCan figures bear that out. You have now seen that quantitative per se levels for THC also won't work. A combination called tandem per se, however, might be the answer.

Tandem per se requires a sequence of events to prove a driver guilty of driving under the influence of drug per se. Number one is that the driver was arrested by an officer who had probable cause, based upon the driver's demeanour, behaviour, and observable impairment, to believe that the driver was impaired. Number two is proof that the driver had any amount of an impairing substance in the driver's blood, breath, or oral fluid.

You can do better than what you currently have with Bill C-46. I hope you do.

I look forward to your questions.

● (1550)

The Chair: Thank you very much, Mr. Wood.

We'll now move to questions. Mr. Nicholson will start.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much, gentlemen, for your input here today. Let me start with Mr. Wood.

You pointed out on a number of occasions that people who did not meet the chemical test, whether the .08 or the number with respect to the residual level of marijuana, won't be charged. I appreciate that it has been a long time since I've been in criminal court, but for example, the individual may show as only .07. Yes, he or she is not guilty of having violated that particular section of the Criminal Code but can be charged under the impaired driving sections of the Criminal Code. Again, it's a question of evidence. If the officer or whoever in charge says that the car was wobbling all over the place, or the individual can't walk straight, that's quite apart from the actual blood levels. That's a separate offence.

You seem to be indicating that this is not the case, that in fact people who are below the levels established for either cannabis or alcohol somehow won't be charged. I can see that they won't be charged under the specific section, but the impaired driving is a separate offence.

What are your thoughts on that?

Mr. Ed Wood: Let me recall a point, one that was raised, if I may respond to the member. It is possible to prosecute someone for impairment even if you have no laboratory test, but it turns out as a practical matter that if there is a laboratory test and that individual tests below the per se limit, it is very, very rare to find a successful prosecution.

We had a case that occurred just last year in Boulder County, Colorado, of a little eight-year-old girl riding a bicycle and being killed by a driver who was determined by the DRE on the scene to be impaired. The prosecutor said he had enough evidence to convict that person of vehicular homicide due to driving under the influence. The laboratory results came back. The person was below the .08 alcohol level and below five nanograms THC level. The prosecutor said that in spite of that, with the DRE evidence, they had enough to convict. In the end, that person was convicted of careless driving resulting in death, which is a misdemeanour in Colorado, resulting in a 150-day sentence for killing an eight-year-old girl.

That's the kind of thing that occurs.

Hon. Rob Nicholson: I know it can occur, but nonetheless, an individual can be convicted of impaired driving even if they don't meet.... I think you said that. It depends on a person's levels. Somebody who never drinks and who then has a couple of drinks that put them at .07 is probably a lot more impaired than somebody who is at .10 but is used to drinking all the time.

That's just one of the indicators, and it's a separate section of the Criminal Code. I'm sure, as you say, that you can come up with examples in which the crown had a hard time prosecuting a case. Nonetheless it's still the law of this country that if you're impaired, you're impaired, quite apart from the other sections of the Criminal Code that specify that a certain level is an indication of impairment. Wouldn't you agree?

Mr. Ed Wood: In concept I agree. I have gone to prosecutors in the state of Colorado and asked them with respect to alcohol alone to give me examples of cases in which they have had a defendant who tested below .08 yet was convicted of driving under the influence of alcohol. I have not been able to find a single case. I'm sure some exist, but I've not found any.

● (1555)

Hon. Rob Nicholson: Okay. I appreciate that. Thank you very much.

Chief Harel, thank you very much for your testimony.

You said you're going to suggest some amendments, that you will be submitting them. You may have already done so, but I don't have a copy yet. Will we be seeing those amendments?

Mr. Mario Harel: Yes, they are already submitted.

Hon. Rob Nicholson: You said the capacity is not there now for the changes that are under this law, but are you confident that in fact all the changes necessary by way of training will be in place by July 1, 2018?

Mr. Mario Harel: We've talked about this. We've seen the momentum in training pick up in the last year or so on the DRE side and the sobriety test for our field officers in the reality of today. For sure, from the experience of other jurisdictions that have legalized marijuana, we expect an increase in encounters with people under the influence. That's why we're picking up on training and trying to get our numbers up as quickly as possible. It's very complex and tough training, however, and it's going to take a while.

Hon. Rob Nicholson: Thank you. You're confirming what I guess all of us know. There's going to be more impaired driving here in Canada with this particular law.

Mr. Mario Harel: It's already a reality. Our DRE officers are charging people. I think it was about 4% of.... I don't want to mix statistics. I'm always afraid to go into statistics, but 4% of all impaired driving incidents involved drugs in 2009.

That's another matter: statistics are not robust right now. That's one thing we have to work on.

If we look at experience from other jurisdictions, we cannot predict the future, but we expect more encounters with people. That's why the education and sensitization of people, especially youth, is very important in a very short time.

Hon. Rob Nicholson: Education for youth should have been started already, but you've expressed disappointment. Is it in the fact that it's not taking place or that it's not taking place enough?

Mr. Mario Harel: We've seen some campaigns. I've personally seen some on the Quebec side, for sure. Because the statistics show that the perception of people under the influence of marijuana while driving is very different from the case with alcohol, we all know that a lot of work needs to be done. We urge that every jurisdiction undertake more campaigns to educate people about driving under the influence. That's why we say that if you take drugs, don't drive.

Hon. Rob Nicholson: Thank you very much. I think you are going to be facing great challenges next year when this comes into place. I wish you all the best on that. I look forward to seeing your amendments.

Thank you, Mr. Chair.

The Chair: Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you to our panellists.

Before I start my questions, I want to recognize somebody from my neck of the woods, Mr. Stephen Biss, who is in the audience today.

Mr. Biss, welcome to Ottawa. Thank you for your interest in this legislation.

Mr. Harel, you talked in your testimony about a pilot project that a number of police forces took part in. Can you share with us the views of the officers who tested these new devices?

Mr. Mario Harel: Yes. Gatineau and Toronto were police departments that were part of the project. Overall, I think the experience was positive. I know that the report reflects that. The objective was to test the equipment in our climate in the winter, and we did that. We encountered a couple of snowstorms, and so on. Overall, it was positive. There were two models, and some recommendations were made. Overall, the officers managed to operate the devices okay, and overall it was positive.

● (1600)

Ms. Iqra Khalid: Thank you.

The report that was published by Public Safety Canada says:

> While the devices worked in all weather conditions, there were some temperature-related issues that arose when the devices were used in extreme cold temperatures. Proportionally, tests conducted outside of suggested operating temperatures were more likely to produce drug-positive results.

In addition, there were device malfunctions in 13% of the samplings. Do you have concerns about that at all?

Mr. Mario Harel: That was the objective of the pilot. I don't have all the details about the technical aspects of the devices, but it was the objective of the pilot to try to detect how those devices operate in our climate. Any recommendations needing to be made, we made after the pilot. We're waiting on what Public Safety is doing with those devices to see whether any adjustment has to be made.

Ms. Iqra Khalid: If any of the other police chiefs wants to comment, that's fair.

Chief Superintendent Charles Cox (Co-Chair, Traffic Committee, Chief Superintendent, Highway Safety Division, Ontario Provincial Police, Canadian Association of Chiefs of Police): With respect to the devices, there were 53 officers trained. The pilot project went very well. We also piloted the devices in OPP jurisdiction in the province of Ontario.

Numerous recommendations came out of the pilot project. My understanding is that now that they have this report and they have these recommendations, this is something that can be looked at by the drugs and driving committee, which will be developing the standards with respect to these devices so that the manufacturers can go back and make sure they meet those standards. Hopefully, anything that came out of the pilot project will be reviewed by the drugs and driving committee. Then, when the standards are created, we'll have devices that won't have those issues any more.

Ms. Iqra Khalid: Thank you.

Can you please describe how we calibrate the current devices and ensure that the measurements coming out of them are accurate? Is there any data that we collect with respect to inaccuracies or anomalies or false positives, etc., with those that are tested?

Superintendent Gord Jones (Superintendent, Traffic Committee, Canadian Association of Chiefs of Police): I'm sorry, are you referring to the oral fluid devices?

Ms. Iqra Khalid: Yes, I am.

Supt Gord Jones: We don't have any that have been approved. Public Safety Canada looks after that aspect of it.

We're not aware of any, certainly not in Toronto, and I don't believe the OPP or others across the country are.

As far as the devices are concerned, if we don't have them in our hands, then they are not our responsibility.

Ms. Iqra Khalid: Okay. Thank you.

Mr. Harel, you also spoke about training and the expectations we might have with respect to enforcement and implementation of the bill. Can you speak more as to what kinds of supports the federal government can provide to make sure that our police services are ready for implementation and enforcement?

Mr. Mario Harel: Well, as mentioned in the opening statement, as soon as we get the final provisions of the law, we'll be able to work on our procedures and training and everything. With the announcement of the support of the government with money for training.... The money is an issue, because it's a very costly program on top of all the other training that we have to do. As soon as those resources are allocated to the provinces, which we understand will go through either the provincial or municipal police department, we'll accelerate the training.

Ms. Iqra Khalid: Well, those are all the questions I have.

Mr. McKinnon, did you have any?

The Chair: No, you are at six minutes.

Ms. Iqra Khalid: Oh, I'm sorry.

The Chair: Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): Thank you and welcome to our witnesses. I appreciate very much your being here.

Chief Harel, I want to build on a question that my colleague Mr. Nicholson asked. You've testified that the oral fluid devices are not yet approved. You've said concerning the money from the provinces to the law enforcement community that the details are not yet clear. You've testified that the “capacity” is not there.

I don't understand how you can be ready by July 1. Could you comment on that?

● (1605)

Mr. Mario Harel: Well, as I have just said, I know that the money for the training has been announced very recently. We'll work with the provinces and the federal government as quickly as possible to see how this money is going to be allocated.

Concerning the training itself, as I said, for the last year or so most police departments and police academies have been accelerating the availability of the DRE program. In Quebec, in the last year and a half or two years, we have tripled the capacity for DRE training. As I said, as soon as the provisions of the law are adopted in the House and we have a law to work with, we will be able to finalize our training.

It's a massive change in our way of protecting our citizens. There are many provisions and a lot of details in those bills. We'll need to sit our police officers down for overall training and make sure they apply the law effectively.

Mr. Murray Rankin: Thank you.

Mr. Wood, thank you for your very troubling testimony today. You have testified that the per se levels approach to cannabis, the two nanograms per millilitre or the five, are, I think in both cases, you've suggested, simply not going to do the job, based on the experience of your research in Colorado. You pointed out that if someone has less than the per se limit, they will no doubt be found innocent, even though someone may have been affected, unless of course they were found impaired through field sobriety or some other measure, because they will not have violated the per se limits.

I'd like, therefore, to explore your recommendations with you further. You talked about tandem per se limits a moment ago. I'd like you to spend a little more time explaining how that might work in practice.

Of course, you distinguished, I think properly, between heavy users and occasional users. Some of the heavy users will have a level of cannabis in their system that will last for a long time. To your question about those who have less than the per se limits in their system, does that mean your ultimate recommendation is that they be banned permanently from driving? Is that the implication of what you're saying?

Mr. Ed Wood: If they cannot drive safely, they should be banned from driving, yes.

Mr. Murray Rankin: Even though they may have residual amounts? Because your testimony is that per se limits don't make any sense. They may well have a bit in their system, but maybe they won't have impairment. I'd like you to explore that and then also talk about your specific recommendation. Elaborate on the tandem, sir, if you would.

Mr. Ed Wood: I'll talk first of all about this issue of tolerance between the heavy users and the occasional users, which is the fundamental part of your first question. We know that some studies show that people do develop tolerance to all drugs: alcohol, opioids, THC, and so forth.

The level of tolerance that can be developed with THC is on about the same order of magnitude as what can be developed with alcohol, according to Dr. Harold Kalant, a professor at the University of Toronto, so there is some tolerance for THC. What we find is that those people who are chronic daily users of cannabis develop a level of THC in their body that is there durably, and they are impaired for an extended period of time even when they stop taking cannabis. Studies have shown that these people can remain impaired over a three-week period of total abstinence, even when they show zero THC in their blood.

The issue is impairment. If you have somebody who is an addict, basically, which is what these people are, they develop a tolerance, they will be impaired and, yes, they should be banned from driving.

On your question on the issue of tandem per se, I've put forth a concept that needs to be fleshed out and based upon Canadian laws, norms, and values. It's just a bare-bones concept at this point. It is very similar to the zero tolerance laws that are already in place in many states in the United States.

The difference is that zero tolerance laws typically require reasonable grounds to collect a blood sample, and if a person has any level of these impairing substances, that person is then guilty of a violation. What I'm proposing is not reasonable grounds but rather probable cause, which is a little higher level, and also requiring that the probable cause be based upon behaviour and impairment assessments, not simply on finding some weed in somebody's glove compartment. That would not suffice as probable cause.

What I'm suggesting is a concept. It is very similar to an extension of the zero tolerance laws that are already in place and have been working for many years in many states in the U.S.

● (1610)

Mr. Murray Rankin: I guess the question I wanted to—

The Chair: It's your last question.

Mr. Murray Rankin: Last, what is very interesting is the edibles question. I think you've indicated that if you consume edibles you wouldn't be prosecuted under Bill C-46. What is your solution to that problem?

Mr. Ed Wood: Don't adopt the per se limits of Bill C-46. Instead, put in the tandem per se. I think that would fix it.

The Chair: Thank you, Mr. Rankin.

Mr. Blair, welcome to your first questions on the committee.

Mr. Bill Blair (Scarborough Southwest, Lib.): Thank you, Mr. Chair.

First of all, I'd like to begin by thanking all the witnesses for appearing before us today.

In particular, if I may, I'd like to acknowledge the very collaborative and collegial work that has gone on with the CACP, particularly with their traffic committee. Their expertise, their advice, and their advocacy for public safety have been very influential, and I want to commend them for their work.

I want to assure you of our commitment to continue to work with you and learn from your experience on the street. We're very grateful for your attendance here today.

I want to ask you about a couple of things. In your resolution in 2014, which was brought forward by your law amendments committee, the CACP urged the Government of Canada “to improve the safety of Canada's roadways by approving a drug screening tool”. In that resolution, you acknowledge that “advances in technology drug screening tools are readily available” and that, although Canada doesn't currently have a tool, they are widely “used effectively in other countries, including Australia”, as you've noted.

Because you urged us to do this in 2014, could I ask you why you felt a sense of urgency to make that tool available to law enforcement to keep our roadways safe?

Mr. Mario Harel: The DRE program for drugs and driving has been a reality for several years. We have had DRE officers trained since back in 2004 or 2002. With our experience in detecting these drivers and knowing that those tools were available in other countries and wanting to enhance the safety of the public on the roads, that resolution is asking for tools to help us have better safety on the roads.

Mr. Bill Blair: Thank you, Chief Harel. I want to assure you that this government is listening to the advice and the sense of urgency conveyed by the CACP in that resolution.

I'd also like to take you back and canvas your experience. I know that there are people who've spent much of their professional careers in road safety and traffic enforcement. In 2008, the Government of Canada, in the second session of the 39th Parliament, passed Bill C-2, which authorized the use of drug recognition experts and the conducting of standardized field sobriety testing. That law went into effect on July 2, 2008.

About a month later, the CACP, again by resolution, noted that they had received $2 million in allocated funding for the training of DREs and standardized field sobriety testing. They also indicated in 2008 that they felt they were short by about 27,000 officers trained in standardized field sobriety testing and by about 2,600 officers trained as drug recognition experts.

My question is, in the nine years that have followed, what progress have you made with that allocated funding in ensuring that those officers were trained? I would ask you to contrast that with what we hope will be a very positive experience with the $161 million that has been allocated for the training of police officers and also to provide access to the technology you urged us to provide, to ensure that police services across Canada have the training, the technology, the authority, and the resources they need to keep our roadways safe.

Could you could tell me about your experience from 2008 to the present and perhaps talk about how we might more effectively address the priorities you've identified?

● (1615)

Supt Gord Jones: Thank you, Mr. Blair.

The drug recognition evaluator program is administered by the International Association of Chiefs of Police. Within that, it directs the national police service of whatever country is responsible for a DRE program. In Canada, that falls to the RCMP, of course.

The funding Mr. Blair speaks of would have gone to the RCMP in order to support and look after the training for the DRE program. I believe the RCMP is speaking before this committee next week. At that time, in 2008, the DRE program across the country was in its infancy. We were just starting it and were three or four years into it. There were some struggles in getting it started. It was very intense training. We were able to finally get things headed in the right direction.

As a result, we have trained upwards of close to 600 individual officers as DRE evaluators. We do have some issues with attrition of officers, as any organization does, but we have not sat dormant on either the DRE training or the SFST training. Individually, our organizations across the country recognized that the incidence of drug-impaired driving was increasing and that we had an ability through the SFST and the DRE to do this.

From an SFST perspective, since the announcement of the legislation in November 2015, in Toronto and elsewhere across the country we've done seven SFST courses and have another three planned. That's put 107 Toronto officers and 40 other officers from other jurisdictions on the road for the SFST.

The Ontario Police College has taken this under their wing. Between now and July 2018 they've committed to 63 SFST courses for training to be provided to the officers in the province of Ontario, with an additional 32 courses between July of 2018 and the end of 2019. That's close to 100 courses, with roughly 20 students on each course. The goal is to have approximately 2,000 additional SFST-trained officers.

Personally, my experience has been that when we send out a whole group of brand-new SFST officers, there's an uptake in the number of arrests for drug-related impaired driving. I see that on my morning reports every day, so it is working. We haven't sat idle. We are continuing with our ongoing training and, as Directeur Harel says, very aggressively, recognizing that we need this.

Having said that, we're ready. We have a capacity now. Will it meet the demand? I would hazard a guess not, but we are not starting from zero with this legislation. Depending on the day of the week, we have 500 or 600 fully trained DREs across the country. When someone makes a bad decision to get behind the wheel of a car when they've been using drugs, we have that ability to hold them accountable and to keep our roads safe.

With regard to the DRE, Mr. Blair, this year there are two more courses planned. At the moment, between April of next year through February 2019, there are six additional DRE courses that are being planned and are being coordinated by the RCMP.

Mr. Bill Blair: Thank you, Superintendent Jones. You remind me of and reinforce for me my very firm belief and confidence that, given the right resources, you'll get the job done.

Supt Gord Jones: Yes, sir.

The Chair: Thank you. Now we're going to go to short snappers, some short questions.

Mr. Liepert, you had one.

Mr. Ron Liepert (Calgary Signal Hill, CPC): Yes. I don't know if this question is very short or not, and I'm not sure that this panel is the right one to ask. I didn't realize that the RCMP is coming next week. Is that for sure?

The Chair: Yes.

Mr. Ron Liepert: I'll throw this out there anyway.

I believe I heard correctly earlier this week during the testimony of one of our witnesses—again, these were that witness's statistics and not my own—that 70% of impaired driving fatalities occur in rural Canada, not in urban Canada. Do you know if those statistics are correct? If they are, the other thing I've been told is that rural detachments are under tremendous staffing pressures these days, for a number of reasons that I won't go into.

Do you see this as an issue that may have a greater impact on rural Canada? I believe you represent the larger centres in Canada, not necessarily anywhere that has a municipal police force, if I'm correct.

● (1620)

Supt Gord Jones: I represent Toronto. We're the biggest city in—

Mr. Ron Liepert: Yes, but you're representing the Canadian Association of Chiefs of Police. I understand that you would represent any municipal police force.

Supt Gord Jones: Yes.

Mr. Ron Liepert: Okay. Are there any thoughts or comments about the rural situation in Canada?

Mr. Mario Harel: We're looking at each other, but.... I'm sorry, but I don't have any constructive comments to make on that.

Mr. Ron Liepert: Okay. I'll wait until the RCMP come in next week. Thank you.

The Chair: Thank you, Mr. Liepert.

Are there any other short questions? If not, I have one, colleagues, if that's okay.

I have a short question for you, Mr. Wood. I want to understand your testimony a bit better.

You're aware, Mr. Wood, that Mothers Against Drunk Driving has stated that they're very disappointed with your recommendations. They say, first, that your assertion that Bill C-46 may make matters worse for drug-impaired driving victims is unfounded, and second, that your proposed alternative, the tandem per se drug-impaired driving legislation, would pose major enforcement problems and would likely be subject to serious legal challenges under the Canadian Charter of Rights and Freedoms.

You spoke about something concrete, though. You said, and I want to get your words absolutely correct, that it was “very, very rare” that there would be a prosecution if you were under the per se limit. Did I get that right? I believe you stated that in Colorado you had spoken to a number of prosecutors and they said that was very rare.

What I don't understand there is that, as Mr. Nicholson rightly said, proposed subsection 320.14(1), in paragraph (a), says this:

> Everyone commits an offence who
>
> (a) operates a conveyance while the person's ability to operate it is impaired to any degree by alcohol or a drug or by a combination of alcohol and a drug;

It's a totally different offence from the ones that have the per se limit. I'm wondering about this. Have you done any study in Canada or do you have any information about people charged in Canada under this section or under the preceding section that related to this in today's Criminal Code when they were charged? Do you have evidence that such a prosecution very rarely succeeds if they actually do a test and they fall under the limit?

Mr. Ed Wood: I have no such evidence in Canada. Does anyone?

The Chair: Well, but you're the one who made the statement that it was “very, very rare”. I didn't—

Mr. Ed Wood: [*Inaudible—Editor*]

The Chair: —make a statement saying that it was very, very frequent, so I was just wondering if you had any evidence that it was very, very rare in Canada as opposed to in Colorado.

Mr. Ed Wood: In Colorado, it is very, very rare, and what is rare is the conviction. There are prosecutors who have attempted to prosecute people, but none of them have succeeded, that I have found. I have no data on Canada.

The Chair: That's all I wanted to establish. Thank you very much.

Are there any other comments?

Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Certainly, Mr. Wood, I found your testimony to be very interesting and very concerning. I was wondering if the chiefs of police might be able to explain their position with respect to per se limits for drug-impaired driving in light of some of the testimony brought before the committee by Mr. Wood.

Mr. Mario Harel: Well, it was very scientific on how the body reacts and deals with THC. On the disposition in this bill right now, for sure it's clear for us how it works and how we do the proof. Right now, we have the ability.... We sometimes take blood samples for our cases right now for alcohol, and we have drug response as of right now.

Those dispositions are more detailed on the per se limit for THC, which is new, but the procedure is quite similar. The only challenge is in regard to the time limit, the time we have to take those blood samples. That's the challenge we see in all of this.

● (1625)

The Chair: Are there any other short questions?

If not, let me thank this panel.

You were all incredibly interesting and very helpful.

Oh, sorry, Mr. Nicholson, did you have....

Hon. Rob Nicholson: No.

Mr. Michael Cooper: I was just going to ask—

The Chair: Mr. Cooper has one more question before I excuse you.

Mr. Michael Cooper: Just so I understand your testimony, Mr. Wood, in most circumstances, in order to be caught by the proposed limit, a person pretty much has to be a long-term habitual user of marijuana.

Is that accurate?

Mr. Ed Wood: That is not completely accurate. The chart that I showed where we overlaid the times to collect blood versus the decline in THC levels in blood is for cases of crashes where the mean time between the incident and collecting the blood was about two hours. However, for proactive cases where a policeman simply makes a traffic stop, the mean time is about one hour. So, you have a greater chance of getting caught, in your terms, at a proactive stop than you do in cases where somebody has been killed or injured.

We've also had data showing that in rural counties—to answer another member's question—the time to collect blood is longer, as one might expect, because you're just further from the place where you can take a blood sample.

Mr. Michael Cooper: But in terms of impairment—

Mr. Ed Wood: Yes.

Mr. Michael Cooper: —a correlation between THC and impairment, it's your position that there is no correlation.

Mr. Ed Wood: That is correct.

Mr. Michael Cooper: So, if you're at two nanograms, it really has no bearing on your ability to operate a motor vehicle.

Mr. Ed Wood: The problem is that whatever you find in the forensic test tells you absolutely nothing about the level of THC at the time of the incident because of that decline in the blood.

Mr. Michael Cooper: It really raises the question, to state the obvious, that in the event someone is charged because they're impaired, and they may be under two nanograms, what Bill C-46 is going to do is it is going to result in a whole lot of people potentially being charged who very well may not be impaired. They just happen to be above two nanograms in terms of what they register in the way of THC, which unlike alcohol, does not necessarily indicate whether or not they are able to safely operate a motor vehicle.

Is that a fair assessment?

Mr. Ed Wood: That is a dilemma with legalizing marijuana.

Mr. Michael Cooper: Thank you.

The Chair: Mr. Boissonnault.

Mr. Randy Boissonnault (Edmonton Centre, Lib.): I appreciate all the testimony today.

Mr. Wood, I'm reading your submission and what MADD has provided to us. I don't come at this from a legal mind, but I do understand what our government is trying to do, which is to put forward legislation that's going to prevent people who are impaired by alcohol or drugs from getting behind the wheel and causing bodily harm to other people.

I find your testimony and your assertion a little mystifying. Even with all the steps that we have since 2008, that police have the ability to have a 12-step procedure for SFST, excruciating training to become a DRE, defence counsel still object and succeed in making sure that a lot of that testimony is not eligible in court cases. However, you're putting forward a tandem per se program, which would likely be immediately thrown out by a charter challenge and would be extremely difficult to enforce.

How is it possible that a tandem per se approach could actually keep dangerous offenders off the roads?

Mr. Ed Wood: All I can rely upon, sir, are the experiences we've seen in places where we've had zero tolerance laws. It is very similar to the tandem per se. Tandem per se is a little more specific, and it is directed at impairment rather than simply presence and usage of drugs. That's all I can rely upon.

We have no proof that tandem per se as I've constructed it can be designed legally to meet Canadian standards and challenges or that it can be effective. It's simply thrown out there as an alternative because what is being proposed is not going to work, in my opinion. It seems unfair to simply come in here and say it won't work, and then walk away. I'm trying to offer a usable alternative.

● (1630)

Mr. Randy Boissonnault: Thank you.

The Chair: Wow. That's fascinating.

Concerning Mr. Cooper's question, I have to ask the chiefs of police. Mr. Cooper stated that could you have people who are not impaired by marijuana but be over the two nanogram limit.

Let me ask the chiefs of police, is there any safe level to drive at when you have consumed marijuana? Do you believe that anybody who has consumed marijuana is not impaired?

Mr. Mario Harel: No, what we're saying is pretty simple. If you consume marijuana, you don't drive.

The Chair: Thank you. We'll have a lot of fun on this one.

Thank you so much for fascinating testimony, gentlemen. It is much appreciated.

I'm going to ask the next panel of witnesses to come forward. We're going to recess while we change panels.

● (1630)

_____(Pause)_____

● (1635)

The Chair: We will reconvene with our second panel of the day.

Today we have, from the Criminal Lawyers' Association, Mr. Michael Spratt, who is a member partner at Abergel Goldstein and Partners LLP.

Welcome, Mr. Spratt.

From Acumen Law Corporation we have Ms. Sarah Leamon, who is an associate barrister and solicitor.

Welcome.

Ms. Sarah Leamon (Associate Barrister and Solicitor, Acumen Law Corporation): Thank you.

The Chair: We have Ms. Kyla Lee, also an associate barrister and solicitor.

Welcome.

Ms. Kyla Lee (Associate Barrister and Solicitor, Acumen Law Corporation): Thank you.

The Chair: We are going to start with your statements. We'll begin with Mr. Spratt from the Criminal Lawyers' Association.

Mr. Michael Spratt (Member, Partner, Abergel Goldstein and Partners LLP, Criminal Lawyers' Association): Thank you.

My name is Michael Spratt. I'm a criminal defence lawyer. I practise here in Ottawa, and I'm here for the Criminal Lawyers' Association.

In typical defence lawyer fashion, I filed a written brief, and I'll have to ask for an extension of time so that this committee can consider it. It was sent in today, but I'm sure it will be translated and distributed to you, so I won't go into more depth about the organization. That's all in the written submission.

The Criminal Lawyers' Association supports legislation that's fair, modest, and constitutional. While we support the very important objectives of protecting society from the dangers of impaired driving, we're not able to support this bill in the current form, given some of the legal and constitutional problems with it.

Now, in my written submissions, you'll see that we fully adopt the written submissions of the Canadian Bar Association and the brief from the Barreau du Québec, which are available to the committee. There are matters in there that I'm not going to touch on orally or in my written submissions, but we fully agree with them.

I'd like to touch on three areas. The first is the new offence of operating a vehicle or conveyance and being impaired within two hours after operating it; the second area is the method of taking the samples and demanding samples, and the last area is the random breath testing.

I think a bit of history might be important. I'm sure this committee knows it better than me, but this bill, Bill C-46, very closely resembles a private member's bill introduced last year, Bill C-226. I would commend the committee to examine the testimony presented at the public safety committee on that bill, given the overlap.

Of course, Bill C-226 is virtually identical to a bill introduced by the former government, Bill C-73. The reason I bring up that history is that the public safety committee found, for Bill C-226, that the legal problems presented by the bill far outweighed the potential benefits that the bill could deliver. The committee was also not convinced that the majority of the measures in Bill C-226 were appropriate. Much of the same problems exist in this bill.

Now, the first of those problems is the new offence itself. Currently, as you know, it's an offence to operate a vehicle while impaired or over the legal limit. In Canada right now, it's not an offence to drink alcohol, to drive a car, or drink alcohol after you've driven a car. It's an offence to be impaired or over the limit while you're operating the vehicle. Unfortunately, the proposed new section 320.14 dramatically changes that, and dramatically shifts how impaired law is going to play out on our roads and in our courts. That section extends the prohibition to being over the legal limit within two hours after ceasing to operate the vehicle. That is designed to combat what is not really a problem—but the bill says it is—bolus and post-driving drinking.

I can tell you that even the litigators who specialize in impaired cases bring these defences very rarely, and they succeed on an even rarer basis. It's not a problem that is plaguing our courts, but the solution to that problem as proposed by this bill is very problematic. This section is overly expansive and, as I said, it comes with little benefit.

What we're going to see here are constitutional challenges to overbreadth, but, more importantly, constitutional challenges to a reversal of the burden of proof. Under this section, if someone goes to a wine tasting or a cocktail party, drives there with no blood alcohol level, tastes some wine or drinks some scotch, and then comes under police scrutiny for whatever reason, a breath sample is demanded and ultimately that person blows over the legal limit, then it's going to be incumbent on the accused to present evidence about their state of mind, to in effect testify under the second prong of the exception that they weren't operating while impaired, and to call evidence from a toxicologist to read back their consumption to the readings.

This is an unprecedented and very dangerous aspect: reversing the burden of proof. It's even more problematic when this bill requires that the accused present scientific or toxicology evidence. Of course, that puts this defence, this exception, this reversal of the burden, out of the reach of individuals who experience poverty or are even part of the middle class. The court system is already out of the reach of those people, and this only makes the problem worse. It's ironic that the bill reverses that burden and puts that burden on the accused person, at the same time eliminating that burden completely from the crown to call that sort of expert evidence.

● (1640)

The second problem here is in proposed section 320.28, regarding a police officer's reasonable grounds to believe that a person has operated a vehicle or the conveyance with an impairment to any degree under proposed paragraph 320.14(1)(b). Currently, the police officer needs to have the reasonable belief that the vehicle was operated in the last three hours, and of course, the rationale for that is apparent. When you do the tests on the person and when you take the breath samples from the person, you want to do that as close to the time of driving as possible so you can relate the two. With no time requirement here, police officers with reasonable and probable grounds can demand samples from an individual hours or even days after that individual operated a vehicle. It's even more absurd when that provision is combined with proposed subsection 320.31(4), the section that alleviates any burden on the crown to call scientific evidence if the samples are taken outside of two hours to read back.

I'll pause to say that calling of this scientific evidence adds virtually no time to a trial. It can be done through documents. It's often done by calling a witness on video, and defence counsel needs the leave of a court to cross-examine. So this isn't a provision that frustrates justice or impedes the crown in any way, but this new section, which eliminates the need to call a toxicologist and mathematically add up five milligrams of alcohol for every 30 minutes, is a problem, because if an officer demands a breath sample from somebody, say a day after they drove, and that person provides a sample and blows zero because they have no alcohol in their system at all, then through the operation of proposed section 320.31 and the read-back mean that the person is deemed to have blown 240 or deemed to have an alcohol concentration of 240 even though he blew zero a day after driving. It doesn't make any sense. I've had various people look at this, because it can't be right. But that seems to be the reading of it, and that's deeply problematic, and, I would wager—and we'll see if I'm right—unconstitutional.

Now, in the last two and a half minutes, I want to deal with what I think is the most important problem of this bill, and that is the random breath testing. Let's just cut to the chase here. There's nothing random and there will be nothing random with this breath testing. What we know now, from right here in Ottawa and the 2016 Ottawa police traffic data race collection program—arising out of a human rights complaint for racial profiling—in which the police collected race data about everyone they stopped for every traffic violation, is that if you're a visible minority or part of a marginalized group or living in an overpoliced area, you are stopped disproportionately compared to the rest of the population. In simple terms, if you're black, if you're Arab, if you're a visible minority, you get pulled over more often than a white person does. That study went on to find that those people actually were not committing offences at any higher rate than anyone else was; in fact, the rate was lower.

So when you put those things together—and this is what the Ontario Human Rights Commission has done—it means that visible minorities are pulled over by the police more often for no reason. That's what is going to happen here. We've seen it in the enforcement of the current marijuana laws, which disproportionately affect minorities. We've seen it with the carding and street checking programs, which disproportionately affect minorities. This is just legislative carding in a car. That's how it's going to play out.

Now, there has been some constitutional analysis, and I'm sure you'll point me to Professor Hogg's analysis. That analysis, in our opinion, fails to take into account the reality of how this is going to play out. We're talking about people who are already disproportionately stopped, who are taken out of their car, denied right to counsel, and sometimes handcuffed. Their movements are definitely controlled; they are detained, and their car is searched for weapons by the police. They can be questioned and they are searched. If that happens to you or me once in a lifetime, it might be a slight inconvenience. The charter analysis isn't going to look at you and me; it's going to look at the young black man who is stopped five, 10, 20 times. Go and read Desmond Cole's piece in *Toronto Life* about carding and the effect that has on someone. That's the analysis that will take place, so it's a big problem.

● (1645)

Imagine you are a young black father picking up your kid from school and you're pulled over and subjected to this testing for the fifth or sixth time. That is the analysis that will take place. We know that some of these impaired laws already on the books are saved by section 1. They violate the Constitution and are saved by section 1. When we add how this is going to play out on the ground and look at the realities of how it's going to play out, I wouldn't be as confident as Professor Hogg, as respected as he is, to say that it is going to pass a section 1 analysis.

I'd be pleased to answer any of your questions. Of course, there are more expansive comments in my written brief.

The Chair: Thank you very much, Mr. Spratt.

Ms. Leamon and Ms. Lee.

Ms. Sarah Leamon: My colleague Ms. Lee and I would like to thank the committee for providing us with the opportunity to appear before you today.

Ms. Lee and I are both criminal defence lawyers. We practise primarily in British Columbia and also deal primarily in impaired driving law.

The amendments embodied in Bill C-46 are both unconstitutional and unnecessary. They are contrary to the fundamental charter rights and freedoms that are afforded to citizens. The most significantly offending amendments are the sections that deal with mandatory alcohol screening, the prohibition on disclosure and on arguing post-driving consumption, and the increases in punishment.

To begin, limitation on disclosure is extremely problematic. Impaired driving is a highly scientific area of the law. It operates on the presumption that instruments and procedures are accurate; however, that is not always the case.

An accused person has the right to know the entirety of the case against them, and that includes whether or not instruments that were used in the course of the investigation were faulty. They require access to maintenance records in order to determine that. The court has already ruled that these documents are necessary and should be provided to an accused person. This amendment seeks to eliminate this.

The rationale for doing so appears to be in line with attempts to combat the perception of delay in the criminal justice system. The irony here is that this is more likely to contribute to delay. Defence counsels like me will be required to make time-consuming applications in order to access these documents. Crown counsel will have to speak to those, and court time will be allotted to do so.

Instead of limiting disclosure, I would suggest that we adopt measures similar to those seen in some U.S. states, such as Washington, and publish historical Breathalyzer records online. That will allow for free and easy access for the public and will also help to curb delay.

Similarly, the increases in penalties that are contemplated by this bill are likely to exacerbate delays. Increasing punishment while simultaneously introducing a plethora of new, aggravating, and quite frankly unnecessary factors will have the effect, in my view, of deterring accused persons who may otherwise do so from entering early guilty pleas. That will be out of fear of elevated punishment in a more rigid sentencing environment.

Our current penalties are sufficient in order to deter and denounce impaired driving. Moreover, sentencing is best left in the hands of a presiding judge. Open sentences strike an appropriate and meaningful balance between the interests of the community and the individual circumstances of an offender.

Perhaps the most troubling aspects of this bill, however, are the provisions that provide for arbitrary and mandatory breath testing. The justice minister has described this scheme as “minimally intrusive” and has said that providing a breath sample is the same as providing a driver's licence or other documents to police.

With respect, this is not the same thing. The production of a breath sample is physically invasive, it is conscriptive evidence, and it's compelled from a person by law for the purposes of self-incrimination. It is a significant infringement on individual liberties.

We have to remember international comparative examples. Australia, for instance, does have a mandatory breath-testing scheme and does not have a charter equivalent. In that country, there is no bill of rights like the one we have here in Canada to protect citizens.

Moreover, there are legitimate concerns about how this law will be applied, and they cannot be overlooked. There is a real risk that implicit racism will cause visual racial minorities to be disproportionately subject to detention by police for the purposes of these so-called random breath tests.

Quite simply, police officers do not need these measures in order to combat impaired driving. They are already armed with the tools necessary to identify impaired drivers and to remove them from the road in a prompt manner. They require only reasonable suspicion, which is an exceedingly low standard, and of course that's just a suspicion of alcohol in the body, not even that a driver is impaired. As long as they have that suspicion, they are able to compel a roadside breath sample.

It seems that a majority of Canadians also agree that random breath-testing is not necessary. A recent poll I reviewed, conducted by *The Globe and Mail* and Nanos Research, found that only 44% of Canadians support these provisions.

Constitutional compliance is about striking appropriate balance between individual rights and the interests of society. There is absolutely no doubt that if this legislation is passed as is, it will be vigorously challenged. It is going to cost taxpayers millions of dollars.

The role of our government is to pass good, responsible, socially responsible, and constitutionally sound law.

● (1650)

In my view this bill, as it stands today, is not measuring up.

I will now pass the floor to my colleague, Ms. Lee.

Ms. Kyla Lee: Thank you.

I want to thank the other presenters for their comments, and I certainly echo what they've said about random breath testing. As a Métis I am very concerned about how this is going to affect people from the aboriginal community. We see in B.C. already basically an offence of driving while native, and that's only going to get worse.

We also don't need this law. Statistics Canada has been tracking impaired driving rates since the 1980s, and there has been a consistent decline over the years. The laws we have are working. There is a correction in this issue. It is taking place. Provinces also have adopted administrative measures that are working, or so they say. I take issue with that, but they do say they're working.

Dealing with the administrative laws in British Columbia, which is one of the areas our office handles frequently, I see first-hand every day the way that giving police unfettered power causes abuses of that power. In British Columbia there is no practical ability to challenge the demand for the breath sample under our administrative scheme, so we have de facto mandatory random breath testing in British Columbia already, and all it has led to is a reduction in policing skills and a reduction in respect for charter rights from police that invades other areas of criminal law.

If we pass this law in its current iteration and allow police the ability to conduct random breath tests and to engage with drivers for the purposes of random testing, all we are going to be doing is saying that the charter doesn't matter if we worry about the type of offence. That can't be what we are supposed to have in a legal system in a free and democratic society. Living in a free and democratic society means we have to strike a balance between individual liberties and protection of the public. Sometimes that balance is going to lead to cases where people are put at risk, but that's a risk we take to protect the rights and fundamental freedoms we have as Canadians, and we need to keep that in place.

It's also illogical. There's a significantly concerning aspect about this law to me, and that is that there is a reasonable suspicion for saliva testing for the drug-impaired scheme, but there is no reasonable suspicion standard for alcohol-impaired driving. There's no justification for having one standard for drugs and a different standard for alcohol. Do you have more rights because you use drugs than if you drink? It doesn't make sense.

Not only does this law fail to strike a balance, but from my perspective it will almost inevitably lead to convictions. This law is designed to convict people charged with impaired driving, rather than to let them have the right to a fair trial. My colleague has spoken about the limits on disclosure that will impede an individual's ability to get the evidence necessary to prove their innocence. Mr. Spratt has spoken about the limits this law creates on the ability to challenge the breath test results in the absurdities of the law. This law is designed to convict, and that's not what our legal system is supposed to do. It is supposed to create a process by which a person can have a fair trial.

Because we have an introduction of random breath testing, we're going to see the end of things that the Supreme Court of Canada has tried to put to rest earlier this year. The recent case of Alex, talking about how issues related to the presumptions aren't related to the validity of a breath demand, is just going to go back to the court. We're never going to put other issues to rest, because we're going to have less to challenge as defence counsel and less for accused persons to challenge.

I'm particularly concerned about the elimination of a defence of post-driving consumption. I can tell you that I probably run more impaired driving trials in British Columbia than any other lawyer right now, and I have never in all my time practising run a bolus drinking defence, a post-driving consumption defence. Mr. Spratt is quite right that it does not come up. It is not a frequent thing. We also have laws in place that address this problem when it's used to obstruct an officer's ability to investigate. We have seen police officers in British Columbia convicted of obstruction and sentenced to jail time for engaging in post-driving consumption to skew breath test results.

We don't need this law. We don't need this change. We have a system in place, and it creates a “guilty until proven innocent” mechanism. Again, dealing with the roadside prohibition scheme in British Columbia, I have seen the way that “guilty until proven innocent” works. You have triers of fact who end up distrustful of the evidence of the so-called “guilty party”. It's difficult to have a fair hearing. I can only predict that this pervasive attitude will infect the court system as a whole, and it has the danger of creating an unconscious bias against accused drivers.

These proposed changes will not work. Our justice system depends upon safeguards against wrongful conviction, respect for charter values, and an overall desire to create laws that make sense to address real problems and not imagined ones.

● (1655)

Thank you.

The Chair: Thank you very much.

Mr. Cooper.

Mr. Michael Cooper: Thank you to the witnesses.

It's good to see you back, Mr. Spratt. I know you've become a thoroughly frequent witness before our committee.

On the issue of random breath testing, let me just say at the outset that I'm quite skeptical about random breath testing.

To play devil's advocate, Ms. Leamon, you mentioned that police already have all the tools they need to combat impaired drivers. You correctly note that the standard of reasonable suspicion is a low one. It's merely the suspicion that someone has alcohol in their system, and not that they're at .08, and not that they're impaired.

On the other hand, we have heard from multiple witnesses, including from the law enforcement community, who have cited statistics indicating that somewhere in the neighbourhood of 50% of the time that someone is impaired and is stopped at a routine check, or in the course of a traffic stop to check insurance and so on, they pass through.

How would you respond to that assertion, when law enforcement officers say they need this because 50% of the time someone who is impaired is going through and nothing further is done?

● (1700)

Ms. Sarah Leamon: Thank you, Mr. Cooper.

Certainly that could be a concern. However, in my practice, I don't see it.

Police officers have the training, and if they don't have the training and they feel they can't detect impaired drivers with the resources, the tools, and the skills they already have, then we have a problem.

Police officers are able to stop a vehicle for almost any reason in this country, and they're able to engage with the motorist. They can make observations of that motorist about how they look and how they're acting. They can even go so far as to have the motorist blow in their face, or blow into their hands and put breath into their face. That has been ruled by the B.C. Court of Appeal to be a valid measure to be deployed by police officers.

Once they detect an odour of liquor on the breath, no matter what that order is—faint, moderate, strong, stale, or fresh—that, according to the Alberta courts, is enough to make that ASD demand at the roadside. Couple this with the fact that police officers can also ask questions of drivers. They can ask them whether they have been drinking and when their last drink was.

More often than not, drivers are forthcoming. I certainly see that when it comes to my clients. They're more than willing to start talking to a police officer and explain to them, “Oh, but I only had a drink two hours ago.” Well, guess what. Now the officer has a reasonable suspicion and they are able to issue that ASD demand.

Mr. Michael Spratt: If I could add to that, if the argument is that there are so many drivers who are very intoxicated, but such seasoned drinkers perhaps that they can escape even this very low standard, the problem is that randomly stopping people isn't going to catch those drivers. You're fishing in a very big pond, and you're not going to catch those drivers without stopping everyone.

Proponents say, “Well, it can be used at a RIDE checkpoint.” There are a few issues with that. That doesn't cure the constitutional infirmity that's there, because we know, and the courts have told us, that police discretion or crown discretion doesn't cure something that's unconstitutional.

If we just employ these random testings at checkpoints, I think there might be a different section 1 analysis going on under that sort of regime. With the amount of extra time it takes to do these tests, even if it's 30 seconds or a minute per driver, it could lead to detentions at these RIDE checkpoints that might not be saved under section 1.

There are some problems with overbreadth, underbreadth, the reliance on discretion. Ultimately, you're giving police a power that we know from past experience will operate disproportionately and probably unconstitutionally.

Mr. Michael Cooper: Picking up on that, Mr. Spratt, at the end of your testimony, you expressed the opinion that random breath testing would not be saved under section 1. As you pointed out, we heard from Professor Hogg, who made the argument before the committee that it was his opinion that it would survive.

Could you perhaps elaborate on the basis upon which you've concluded that it's unlikely to be saved under section 1?

Mr. Michael Spratt: I think if you look at the rosiest, most positive example you can, Professor Hogg might be right. If we're talking about a very brief interaction with somebody on the roadside that happens infrequently, I think there's an argument that it could be saved under section 1. Arguing from that very rosy example is to argue from a place of privilege that a lot of people in our society don't experience.

I think that the section 1 analysis fails when you actually look at what the reality is going to be. We're fooling ourselves if we say that this is going to be different from carding or from the Ottawa police and their traffic stops.

When you look at how it's actually going to play out, it's not going to be a brief stop to reach in and give a roadside in a car. Again, it's going to be removing someone from the car, searching them, shining a flashlight in the car, not letting them have any access to counsel. It's perhaps having them sit in the back of a police car, running their name and information through the system, perhaps asking other questions that can be used against them later on. That's sort of the intrusion that we're looking at.

When there's evidence, as there will be—there's going to be evidence that that intrusion happens more often, all the time, disproportionately to vulnerable and visible minority members of our communities—I think it will change the analysis quite a bit from a sterile, best-case scenario, academic analysis.

● (1705)

Ms. Kyla Lee: I'd like to pick up on what Mr. Spratt is saying. There's also the comment he made about the right to counsel.

We just went through this in the Supreme Court of Canada in 2005 because of the refusal to comply offence. The Supreme Court of Canada in R. v. Orbanski and R. v. Elias went through the analysis again and the section 1 analysis about roadside testing. They found that even though there is the limitation on the right to counsel, and even though there is a refusal offence, it's still saved by section 1 because of those three requirements: reasonable suspicion, forthwith, and use immunity.

In B.C., and now recently in Ontario, we see the elimination of use immunity through administrative schemes. If we're taking away those other steps, keeping refusal as an offence and not allowing people the opportunity to consult with counsel first.... I can't see how it's going to pass that when you factor in that there is still a refusal offence.

The Chair: Thank you very much.

Mr. Ehsassi.

Mr. Ali Ehsassi (Willowdale, Lib.): Thank you ever so much to the witnesses for being here. It's a great pleasure to have you. We've heard compelling testimony over the course of the past three days, and yours is obviously very helpful, as well.

I have to say that I was somewhat perplexed. I had the benefit of reading your brief. The first sentence of the brief from Acumen Law Corporation reads, “Bill C-46 purports to solve a problem that does not need a solution.”

Do you think we have a problem, or do you think we don't have a problem whatsoever?

Ms. Kyla Lee: I don't mean to say that we don't have a problem with impaired driving. It's that we don't have a problem that needs a solution because we already have a solution that is working. If you look at the Statistics Canada numbers, the rates of impaired driving, and the way that the provinces are also collaborating to address the issue, you will see that it's a problem that doesn't need a solution. There's already a legislative scheme in place that works.

People are convicted of impaired driving all the time. People are acquitted all the time. That's just evidence that what we have is a working system.

Mr. Ali Ehsassi: Just so I understand.... So, we do have a problem?

Ms. Kyla Lee: There's always going to be a problem with impaired driving. If you create a different legislative scheme, it's not going to stop impaired driving.

Statistics and studies into decreasing rates of impaired driving have found that really the only mechanisms that consistently work are consistent, visible enforcement of whatever law is in place, and education of the public about the law and the fact that if you violate it you will get caught. It's that perception that has the most significant effect. It doesn't matter what the law is.

Changing the law is not going to solve impaired driving. Changing the law is not going to, in my view, make a difference. All it's going to do is create a different, unnecessary solution.

Mr. Ali Ehsassi: In summary, you're saying it's unnecessary and unconstitutional.

With regard to it being unnecessary or to trying to identify if we have a problem or not, we've heard testimony from Professor Solomon that we're talking about approximately 1,000 deaths every year. We're talking about almost 60,000 Canadians being injured. We heard heart-wrenching testimony from mothers of young victims. They have explained to us that the victims, the almost 60,000 victims, are disproportionately young Canadians.

To me, that seems like we do have a problem. Does that not indicate to you that we have a problem?

Ms. Kyla Lee: I don't see this law as changing that. Yes, there are people who are being injured and people whose lives are being lost, and that's incredibly tragic, but we can't put that ahead of the charter. I know that's a difficult thing to think about, and I know that's a controversial statement to make, but we have to balance everything. We can't forget we have a charter just because there are tragic stories. We saw that in British Columbia in its first iteration of the immediate roadside prohibition scheme, which was enacted in response to a very tragic death of a two-year-old girl. We saw that law being found unconstitutional because it violated the charter. We need to remember that, even though there are tragic situations taking place every day on our roads, the charter still exists, and whatever we do has to be charter compliant.

Mr. Ali Ehsassi: I completely agree with you. We can all agree that the charter exists. But insofar as charter analysis is concerned, we also heard from the pre-eminent scholar, Professor Hogg. Leaving aside the Oakes test and section 1, he said it doesn't offend section 8, or even section 9.

● (1710)

Ms. Kyla Lee: I don't see how he can come to a conclusion that it doesn't offend section 8 and it doesn't offend section 9 when our Supreme Court of Canada has already ruled that the measures now in place offend section 8 of the charter, that the measures now in place offend section 10(b) of the charter. The proposed bill is stripping away more protections.

Mr. Ali Ehsassi: Okay, so you disagree, but I didn't see any case law in your brief. There was case law in Professor Hogg's brief, so it's easy to try to follow up.

Ms. Kyla Lee: Our brief cited Orbanski and Elias. It cited Thomsen. It cited a number of Supreme Court of Canada decisions finding that approved screening device testing violates.

Mr. Ali Ehsassi: Okay, you're saying that the police actually have sweeping powers, that they can essentially do what they wish, but we also heard testimony that about 40% of impaired drivers get away with not being detected at all. We heard this from Dr. Brubacher, from a hospital in British Columbia. What would your answer to that be?

Ms. Kyla Lee: I'm very curious to know how they determined that number, if they're getting away without being detected.

Mr. Ali Ehsassi: They had done extensive statistical analysis.

Ms. Kyla Lee: Right, but statistics can be easily manipulated to say what you want them say. The fact is that if we have a legal system in place that appropriately balances charter rights and that appropriately deals with the issue of impaired driving while maintaining charter rights, some people are going to escape detection. It's just a fact that we're going to have to live with. I come here with this unpopular opinion, and I know it's unpopular, but it's one of the realities of living in this country: we get to have a charter, which means we sometimes have to have sacrifices to public safety and other things. These sacrifices, though, are all in support of protecting this free and democratic society in which we live.

Mr. Michael Spratt: Can I add something?

Mr. Ali Ehsassi: Yes.

Mr. Michael Spratt: With respect to seasoned drinkers who aren't detectable on the roads, stopping cars at random isn't going to assist in detecting them. Reversing the onus and creating this new impaired after driving provision isn't going to detect those individuals. Removing the three-hour time limit and having an automatic read-up of impaired rates by math isn't going to help detect or catch or prosecute those individuals. What those things certainly will do, however, is attract charter challenges and bog down the courts, and ultimately, there's a good chance especially when we're looking at convicting people who may not have had any alcohol in their system while they were driving it will result in wrongful convictions and charter litigation. That's what it will do.

The Chair: I'm afraid, Mr. Ehsassi, you're well over six minutes now.

Mr. Rankin.

Mr. Murray Rankin: Thank you, all of you. Who knew that constitutional law could be such exciting testimony and very lucid as well?

I want to jump in where my colleague left off. I was there on Monday when Professor Hogg testified. He did a report, a legal opinion, several years ago, but it was about checkpoints, where everybody is treated the same. I said to him that here we have random breath tests, where we can arbitrarily, at whim, choose people whom we want to go after. I asked him, if the evidence were like the evidence in Toronto where 8.3% of the population is black yet 25% of the cards police wrote in a three-year period were against blacks, or if the evidence in the context of Ottawa's data race collection program were as you say it was, if that would change his section 1 analysis. His answer was yes, it might. He also concluded that in his judgment, to be fair, that section 8, which is on unreasonable search and seizure, didn't need to go to section 1. He didn't think there would be a problem; he thought the courts would be sympathetic. But he did say the section 9 and 10(b) analysis would go to section 1. If this evidence, the kind that you've described in Ottawa and I've indicated in Toronto were present, he suggested the courts might conclude there would be a constitutional problem.

I needed to put that on the table. That's what he said, in my memory, anyway.

I want to ask you how you would feel and what your legal advice would be vis-à-vis everybody getting stopped at a checkpoint as opposed to randomized breath tests. Would that be satisfactory to you, or would you treat it exactly the same way?

Mr. Michael Spratt: It certainly would be preferable. That's the ideal solution: treating everyone the same. Then there can be no argument that police are using it as a ruse to pull people over or further other investigations. It would take that distasteful notion right out of things. But we would need to see how it plays out on the ground, because one of the reasons that RIDE checkpoints passed the constitutional test is because of the invasiveness and the brevity and things like that.

The same is true when you're looking at screening devices for drugs. We don't really know how long a saliva test is going to take, or we don't really know exactly the mechanics of it. If everyone is stopped at a RIDE checkpoint on a busy New Year's Eve, and it extends the detention of everyone at that checkpoint by 30 minutes or an hour and now it's not just a brief stop at a checkpoint but a longer stop at a checkpoint, then that might change the constitutional analysis even under that scenario.

● (1715)

Mr. Murray Rankin: Go ahead, Ms. Leamon.

Ms. Sarah Leamon: Thank you, Mr. Rankin.

One of the other issues as well, though, has to do with section 10(b), of course, as you rightly pointed out. When those rights are suspended at the roadside, a motorist doesn't have access to counsel, which is normally afforded to people who are, of course, embroiled in a police investigation and they have the right to that. They have the right to that forthwith.

If officers are collecting breath samples on the roadside without providing section 10(b) rights, I'm very uncomfortable with those samples being used as evidence later on. These are evidentiary samples at this point. For that reason, people should be provided with their section 10(b) rights at the roadside and able to contact counsel prior to deciding what they're going to do. Again, as my colleague Ms. Lee pointed out, if we keep the offence of refusal on the books, so to say, but there's still no access to counsel at the roadside, we're caught in a very difficult catch-22. It does, in my view, raise some very serious constitutional questions.

Ms. Kyla Lee: I think another issue, too, is that we'd have to look at the location where these random checks are being set up. If you're setting them up in communities that are primarily populated by minorities, if you're setting them up at the exit to the reserve every week, that's going to be a problem. You're just moving the problem by putting it in a particular location; you're still doing the same thing.

Mr. Murray Rankin: Thank you, that's helpful. That would be evidence that a court would have under section 1, and that might well, as Professor Hogg said, tilt the balance in favour of a finding of unconstitutionality.

I want to talk to you, Ms. Leamon, about your interesting suggestion from the United States that the maintenance records for the various devices be put online, so that everyone would have the opportunity to see them. I thought that was a very helpful suggestion because it would provide, as I understand it, greater transparency and would not, presumably, violate the Stinchcombe principles that you were talking about. Is that correct?

Ms. Sarah Leamon: Yes. We have seen that being employed in Washington state and, to my understanding, employed very well, to the benefit of really all parties to a criminal proceeding and to the public. We want to make sure our police officers are doing things correctly. We really do. I feel my role, often, as a criminal defence lawyer is to make sure that police officers are conducting themselves properly according to the charter, providing motorists and other people with those charter rights, but also that they're maintaining equipment, such as breath testing equipment, in a proper way. That transparency really helps. I think it helps assure the public, and there's no reason why we can't use the benefit of the Internet to do this.

Mr. Murray Rankin: I was taken by your point that the government obviously wants this to go through because of the delays that have allegedly been taking place. I thought you made an excellent point when you said defence counsel is just going to make applications despite that and it's going to take more time and cost more money, so why wouldn't we just put it online and make it available? It seems to me that needs an answer from the Department of Justice. I hope we'll get that.

Finally, I want to ask you—

The Chair: You're out of time, but you can have a short question.

Mr. Murray Rankin: I have a quick one. Most people think this government is opposed to mandatory minimum sentences, but you point out that there are mandatory sentences in Bill C-46. Is that correct?

Ms. Sarah Leamon: We are seeing that the sentences are being increased substantially. Also something that really struck me when I was reviewing this bill were these new aggravating factors that are now meant to be considered. Some of them, quite frankly, lack definition and clarity. I am a little bit apprehensive about how those are going to be employed by our courts.

They are going to dissuade people from entering an early guilty plea when they might otherwise do so. That is going to create delays. Where an accused person feels they have nothing left to lose, then they are more likely to run that trial, and it does take an immeasurable amount of resources to do that.

● (1720)

Mr. Michael Spratt: I think if you want to really tackle delays, look at the minimum prohibition period.

The Chair: Mr. Spratt, I'm sorry but we're way out of time on Mr. Rankin's questions and we have to move to Mr. Fraser.

In one of your other responses maybe you can throw it in.

Mr. Michael Spratt: I'm sure I can make that work.

The Chair: Okay.

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you all very much for being here. I have very much enjoyed listening to your presentations.

On the last point, though, with regard to saying that the sentences are increased substantially in this bill, I know Mr. Rankin's question was on minimums. There is no introduction of new minimums in this, is there?

Ms. Sarah Leamon: There are no new minimums, but we are seeing a much wider range of sentences.

Mr. Colin Fraser: Yes, but when there is a wider range of sentences, that doesn't necessarily lead to people saying that they're going to roll the dice at trial because what's the point of not going to trial if they're going to be pleading guilty and having a minimum sentence? You agree that raising the maximums just gives the court more discretion in imposing a fit and proper sentence without limiting the ability of the accused to argue on sentencing.

Ms. Sarah Leamon: I'm sorry but I can't agree with that. Just from a practical perspective, as a criminal defence lawyer, I know that where my client is seeing more jeopardy in terms of what kind of sentence would be handed down to them and where the initial crown sentencing position is a much higher, harsher sentence, they aren't motivated to enter an early plea. So, I do see these things, certainly, contributing to delay and, again, I want to point out those aggravating factors, because these are things that are properly considered by our courts already. There is no reason for them to be codified here.

Mr. Colin Fraser: On the issue of delay, just very briefly, on the interlock device and the introduction of getting rid of the mandatory prohibition for at least three months, do you see that having any ability to resolve impaired driving cases more quickly?

Ms. Sarah Leamon: I think that Mr. Spratt has indicated that he is very enthusiastic about this.

Mr. Michael Spratt: Yes. In Ontario we actually have seen that, because if you plead guilty in first 90 days, you can take advantage of the interlock system and get your licence back early. There is a lesser prohibition. There are a few problems with that. It's available only to people who have money. That's a problem. The other problem is that, on the one hand, it can resolve things but it can also act as a bit of a perverse incentive to maybe plead guilty when you're not guilty.

One of the things you could do—which would be really great and which would clear up the courts and be equitable financially and just in terms of fairness—is to look at the mandatory minimum prohibition periods and whether there could be exceptions built into that to allow people to keep on working or to do other valuable things under some conditions that might actually help resolve files, take into account disparate income levels, and make sure that people don't lose their jobs. I had a client who was unable to drive his wife to cancer treatment because of the minimum prohibition. He was the only one who drove and he lived in the country. There could be some fairness introduced in that measure as well, and I think that might help resolve matters, because there might be an incentive there for everyone to resolve.

Mr. Colin Fraser: Okay, thank you.

Mr. Spratt, I'd like to continue with you on the issue of the bolus or intervening drinking defence. I heard your comments on that regarding how rare it is. I think one of the other witnesses said as well that it's used very infrequently. I'm wondering why that would be. Why wouldn't it be used more routinely if the evidence suggested that the person may not have been impaired at the time they were actually driving or if alcohol was consumed after the point when they were driving. The other part I'm wondering about is the fact that maybe these don't apply very often, because perhaps when the police or the crown realize that there is a big problem and that the person had consumed alcohol after and had spoiled the sample or whatever, they don't end up actually being charged.

Mr. Michael Spratt: Not that last one for sure.

Mr. Colin Fraser: All right.

Mr. Michael Spratt: These people are charged. It's crown policy in Ontario that these are proceeded with in all cases.

I think one of the reasons we don't see it that often, and don't see it successfully that often, is that defence relies largely on the credibility of an accused person who has to explain what they did and why they did it. Being found after an accident throwing back 40 ounces of vodka right before the police come is not a very positive way to start out on the credibility front.

I think the limitations of the availability of that defence are practical ones in that if you're drinking to escape liability after some sort of accident or police intervention, it's usually transparent when that is being done for nefarious purposes.

● (1725)

Ms. Kyla Lee: I made the point earlier about the officer in British Columbia who was charged and convicted of obstruction for doing just that, but I find in my interviews with my clients it doesn't come up often because it doesn't occur that often.

Most people who go out and drink aren't engaging in bolus drinking behaviour. They're not slamming back 26 ounces of vodka before getting behind the wheel. Rather, people are engaging in social drinking, and those are the types of people who are getting caught under the law. It doesn't come up because it doesn't occur that often. It's very rare I would even hear of it from my clients much less have to run the defence in court.

Mr. Colin Fraser: Ms. Lee, if I can just stay with you for a moment, I think you said in your exchange with one of the other members that one of the ways to ensure effective enforcement of impaired driving laws into reduced rates of impaired driving incidents was to ensure or to do a better job making the public aware that if you violate it, you will get caught.

Isn't that what a lot of measures being taken in this bill are aimed to do? Don't you think the measures that are in there to ensure people will more likely be able to get caught be a deterrent for people who would otherwise be impaired drivers?

Ms. Kyla Lee: The difference is I agree that the measures in the bill will make it more likely that people will get caught and also more likely that people will be convicted, but I disagree that it will have an effect on the minds of people when they are in the moment, because there's a thing called announcement of fact whenever any new law is brought in. People hear about it. It's discussed in the media. It's televised. For the first six months, it looks as if it's working. It's great. There's a huge reduction in the rates of impaired driving. There's a huge reduction in the number of deaths. Then it slowly ticks back up. It doesn't tick up to where it was before, but it slowly starts to tick back up.

We saw that in British Columbia with the immediate roadside prohibition scheme where our lowest period of time in impaired driving in B.C. was in the six-month period when we had no immediate roadside prohibition scheme because there was so much media attention paid to it that people were staying off the road they were so scared of being caught because there was a constant discussion about being caught.

The other thing about the discussion we have that's taking place often is about the morality of impaired driving, the potential consequences that you might injure or kill somebody, and that doesn't work to deter people. People who are drunk are not getting behind the wheel thinking they might injure or kill somebody. They are getting behind the wheel thinking they can make it home. If you create that perception not that you're going to hurt somebody, but if you try to make it home somebody's going to stop you and you're going to end up before a judge, that's what works. It's the fear of getting caught.

Mr. Colin Fraser: I agree with that.

Do I have time for one more?

The Chair: You're also way over, but don't worry. We're going to do a short and snappy round, if you want to get one in, and everybody who wants to ask one can put up their hand so I see.

Mr. Nicholson.

Hon. Rob Nicholson: Ms. Lee, you have indicated that you have done a huge number of impaired driving cases. You said with respect to the bolus post-driving consumption that you haven't put together any cases. Surely, you have had a number of clients who—I'm surprised. You haven't had any clients who got into an accident, and then when the police came, they needed a drink or two, not a twenty-sixer, you said a twenty-sixer or a forty-ouncer, but they had one or two drinks just to calm their nerves? You haven't heard that defence yet?

Ms. Kyla Lee: I've had a couple of people try to run it in the immediate roadside prohibition context, but never in criminal court. It has never been something that a client who has been criminally charged with impaired driving has told me they have done and that I've had to run.

Hon. Rob Nicholson: That's interesting.

Go ahead.

Ms. Sarah Leamon: I would like to interject. I can indicate that I've had one client in seven years of practice in the criminal context for whom this has been an issue. In the administrative context, there have been quite a few more instances, but it's a different standard.

Hon. Rob Nicholson: Yes. Sometimes the time gap between when the police get there, there is that temptation in a number of cases.

Mr. Spratt, I am going to look forward to getting your memo on this because of your comments in particular with respect to one of the subsections there, 320.31(4), the presumption of alcohol concentration. You said in that case you could have somebody tested two days later who would have no alcohol in their system, but because of the previous sections I hope you have some sort of an analysis in your memo on that. I would be very interested to hear that because it intrigued me when you raised this.

Mr. Michael Spratt: Yes. I hope I missed something. I hope I'm wrong on it, because it doesn't make much sense, but the combination of proposed section 320.28 eliminating three hours, allowing samples to be taken hours or even a day after on reasonable and probable grounds, that seems clear. Those samples would, by definition, be taken outside the two-hour limit from operation of the vehicle. That seems clear. Then you turn to proposed section 320.31, which seems like a clear roll-up of the levels and I couldn't see any section of the code that says that it doesn't apply or it doesn't apply in ridiculous situations. I didn't see it there. It seems on its face that's the plain reading. It can't be right.

● (1730)

Hon. Rob Nicholson: I'm not quite sure myself how it fits in with the previous sections, but it will be one of the ones which, needless to say, we'll have a very close look at. Again, I'm looking forward to your brief.

Mr. Michael Spratt: It's the one time I hope I'm proven wrong on it.

Hon. Rob Nicholson: Yes, fair enough.

Thank you very much, Mr. Chair.

The Chair: Mr. Fraser.

Mr. Colin Fraser: I can't remember whether it was Ms. Lee or Ms. Leamon who was talking about the right to counsel and then talked about how if an ASD is given, you don't have a right to counsel. All of that, I guess, in the context is okay because in order to get to that stage, you need some suspicion. The question would be whether or not the lack of access to counsel before having to provide something without any suspicion would be a different approach and would be problematic.

You mentioned something about it actually being used as evidence. My understanding of the bill is that that information from the mandatory test or screening would not be permitted to be used as evidence in any further part of the proceeding. Is that accurate and, if not, have I misread that?

Ms. Sarah Leamon: Yes and no. The fail reading would be used to inform the officer as to whether or not they were going to then move forward to make a subsequent demand for a breath sample, but it's not just that reading that the officer is getting. The other things that the officer is collecting at the roadside, such as their observations of that person, are important. Those are all being collected without access to counsel. When we're putting that into evidence, it is very problematic for me.

In B.C., as my colleague has pointed out, we do have these administrative schemes in place where officers don't require, really, any kind of suspicion to issue an ASD demand where samples are obtained. There's no viable mechanism to dispute the grounds for these samples.

What we're seeing time and time again is that people are providing samples at the roadside in a context where they otherwise shouldn't be and they're not being provided access to counsel. They're getting very harsh penalties as a result.

Again, it is problematic. In my view, it is contrary to our charter rights.

Mr. Colin Fraser: Thank you.

The Chair: Are there any other questions?

If not, I want to thank this panel. You often don't get accolades or standing ovations for being criminal defence lawyers. Often the positions you express are a little unpopular, but we need people like you in society to protect the rights of Canadians. Thank you very much for being here.

We're going to recess for a short time while we get the next panel up.

● (1730)

_____(Pause)_____

● (1740)

The Chair: We are reconvening with our third and definitely very exciting panel. It is a pleasure to welcome Mr. Marc Paris, executive director of Drug Free Kids Canada. Welcome, Mr. Paris.

From Students Against Drinking and Driving of Alberta, Mr. Arthur Lee, community liaison. Welcome Mr. Lee.

It's a pleasure having both of you here. As we've already discussed, we'll start with your statements. We will start with Mr. Paris.

Mr. Marc Paris (Executive Director, Drug Free Kids Canada): Mr. Chair, honourable members, we welcome the opportunity to address this panel and to comment on the amendments to the Criminal Code, particularly as they relate to drug-impaired driving. Drug Free Kids Canada is a non-profit organization devoted to educating parents about drugs, raising public awareness issues surrounding drug use, and facilitating open conversations between parent and teen, in order to ensure that all young people will be able to live their lives free of substance abuse.

Since we are not legal or policy experts, nor do we have experience in law enforcement, we have chosen to focus our comments on the critical need to change how society in general and young people in particular perceive the risks involved with high driving, that is, cannabis-impaired driving. Although drug-impaired driving can involve more drugs than cannabis, our comments today mainly relate to Bill C-45, the proposed legalization of cannabis.

DFK's position on drug-impaired driving is simple. We need to make the laws and ensure that our enforcement is as strict as possible within the Charter of Rights and Freedoms. A strong deterrent to driving while impaired by drugs must be in place, particularly when we're about to legalize this psychotropic substance.

We have learned many lessons over the years related to alcohol, lessons that we need to consider with cannabis.

The first lesson was that wide distribution and intense marketing and promotion of alcohol created a normalization of this substance. We need to strictly control the sale of cannabis and definitely forbid any form of marketing or promotion, especially to minors.

Second, no matter what laws are in place, if we don't educate and sensitize the public to the risks inherent with drug-impaired driving, we will continue to see carnage on our roads. Education at an early age needs to begin as soon as possible, before we legalize. People who are currently driving while impaired tend to be less impacted by public education messages. What influences their behaviour is when others, particularly their children, intervene.

There's a great example of that from 50 years ago, when seat belts were first introduced. Early public safety messages on buckling up for safety were having poor results. Only when the focus was put on keeping kids safe by buckling them up did we see a change in societal behaviour. A positive change happened as a consequence of the child-centred focus of the new messaging. It's when the kids asked the parents, "Why aren't you buckling up, Dad or Mom?" that society began to see a shift in attitude and, ultimately, driving behaviour.

Last, the great and consistent work that has been done over the past 30 years by organizations like Mothers Against Drunk Driving and Students Against Drinking and Driving Alberta have contributed significantly to making drinking and driving socially unacceptable. We need to do the same with drugs now, especially cannabis. Impaired is impaired. The message has to be clear most importantly to our youth.

Our national tracking studies have consistently shown that teens don't see driving under the influence of pot as being as risky as alcohol. This is particularly worrisome since these are young, inexperienced drivers who believe that smoking a joint and grabbing the car keys is okay.

Studies show that 16-year-olds to 34-year-olds represent only 32% of the Canadian population, but 61% of the cannabis attributable fatalities. This group also disproportionately represents 59% of the cannabis attributable injuries, and 68% of the people involved in cannabis attributable property damage-only collisions. This means that we have serious work to do with today's young drivers and the future generation of drivers.

Another aspect parents need to be concerned about is that kids are getting into the car with a driver who is high. In a recent Ontario study, almost a quarter, 23%, of grade 12 students, admitted to having been a passenger driven by someone who had consumed drugs.

● (1745)

We are here to tell you that public education messaging works. In the past six years of doing national multimedia campaigns, we have seen that more parents are talking to their kids more often about drugs. We are seeing changes not only in attitudes but also in the behaviour of teens.

Drug Free Kids Canada has been creating impaired driving prevention education campaigns on our own for the past four years, but much more work will be required.

I would like to share with you our latest high driving campaign. It's an innovative campaign using new technology to reach parents and kids. *The Call That Comes After* has been internationally recognized in Cannes and New York, as well as in Canada. More importantly, it has been viewed or downloaded over 40,000 times by parents and kids from coast to coast. *The Call That Comes After* was designed to help parents open up the conversation with their kids by using the most common communication tool between parents and kids, the mobile phone.

[*Video presentation*]

This campaign ran from January to June and will be repeated again next year for 17 weeks. If we don't take preventative steps right now to educate the public, by July of next year we could be facing an increase in drug impairment on our roads, creating a significant hazard for the public. We must remind the government of its pledge to allocate a portion of the revenues towards prevention and education. To ensure that our youth and the public in general are protected, we need to provide effective education and prevention awareness strategies well before legislation takes effect.

Consistent messaging has worked for safety belts, anti-smoking, and drinking and driving. We can and must do the same for driving while high. This is the only way to make sure that young people and their parents understand that cannabis does not belong behind the wheel under any circumstance. It's a substance that, like alcohol, causes serious impairment to driving capabilities even though it will soon become legal. Drug-impaired driving is but one aspect to consider when looking at legalizing cannabis, but it is a very critical one.

I would like to thank this committee for allowing us to present our point of view.

The Chair: Thank you very much.

We now go to Mr. Lee for testimony.

● (1750)

Mr. Arthur Lee (Community Liaison, Students Against Drinking and Driving of Alberta): Good evening, honourable members of the committee. My name is Arthur Lee. I am pleased to be here today to speak on behalf of the Students Against Drinking and Driving of Alberta.

SADD Alberta, as we're more commonly known, began almost 30 years ago, with a goal to eliminate impaired driving among the youth of our province. With a focus primarily on high schools, SADD has worked with student-led chapters at hundreds of schools across the province since its inception. Through educational resources, workshops, presentations, and conferences, we strive for prevention and to achieve our goal of uniting and motivating the students of the province to stand up against our country's number one criminal cause of death: impaired driving.

Over the years we've learned that changing perceptions, attitudes, and decision-making about impaired driving can be slow, difficult, and at times very discouraging. Our message has not always been well received and is sometimes, to our dismay, met with ambivalence or even resistance.

Bill C-46 proposes several alcohol-impaired driving laws that we believe are long overdue and will make a significant difference in reducing the number of alcohol-related injuries and fatalities on our provincial roadways. There are too many changes and proposals in this bill for me to go into detail about; however, there are a few that I'd like to speak to specifically.

First and foremost is mandatory roadside screening. While we understand that there may or may not be legal challenges facing this proposal, we want to echo the pleas of other witnesses and MPs who have gone into great detail about the effectiveness and evidence of positive results seen by other jurisdictions that have already implemented this measure.

We are aware that mandatory roadside screening is a very contentious issue and has been widely debated for many years. However, in discussing this idea with licence-holding students from Alberta, we have come to realize that this really is a non-issue for many of today's new drivers. To specifically quote a group of students who we asked about this topic, they said that if you have been pulled over by a police officer, you should follow their instructions, and if you have nothing to hide, why would you refuse a breath sample?

Now, many a lawyer would likely have a rebuttal argument for these students, but we think they have simply highlighted why mandatory roadside screening should be socially acceptable in today's society, Alberta's society, and Canada's society. They do not see how providing a breath sample should be any different from producing a valid licence and registration upon request by law enforcement. It's time to make a change for the better. W e sincerely hope that we see our police officers utilizing mandatory roadside screening in the very near future.

Second, Bill C-46, generally speaking, proposes stricter fines and penalties for individuals convicted of alcohol-impaired driving. Again, we've told our students about these changes, and the responses were unanimous. While some commented that the current fines were already quite substantial from a high school student's perspective, all agreed that increased fines and penalties will aid our mission to discourage all drivers from risking their safety and the safety of others by driving impaired.

These changes are also nothing new. They have been proposed time and time again, yet we are always left with the status quo. It's time to take a strong stand against impaired driving and make the penalties more representative of the crimes that are being committed. I recently spoke with a police officer who shared a brief story with me. He had pulled over a vehicle with two youths in it and asked them if they had been drinking. They emphatically said no, as they knew how bad drinking and driving was. He then asked them if they had been smoking any marijuana, to which one of them replied, “What's wrong with driving high?”

While I was encouraged by their attitude toward drinking and driving, I was shocked at their response to driving under the influence of drugs. This brings me to the second part of Bill C-46 as it relates to drug-impaired driving. With Bill C-46 coinciding with the legalization of marijuana, it is crucial that we recognize the fact that our country is home to a very high number of underage cannabis users. With such high usage rates comes a nonchalant attitude about operating a motor vehicle after doing drugs.

Student feedback we received specifically about drug-impaired driving indicated that students believe the fines and penalties for drug-impaired driving should be similar to those for alcohol-impaired driving. However, they admitted that the general sentiment among their peer groups was that driving under the influence of marijuana was—quote—“better” than being impaired by alcohol.

● (1755)

In just nine short months, Canadians are going to be hit by a tidal wave of new laws, new changes, and most certainly new tragedies as they relate to drugs and drug-impaired driving. As a group that has spent many years working to educate students about the dangers and risks of alcohol-impaired driving, we feel like weary mountain climbers who have almost reached the summit only to peer through the clouds and see another whole range of mountains needing to be scaled just off in the distance.

While we support the penalties and fines proposed in Bill C-46 for drug impairment, we believe they are only a beginning. We anticipate that roadside saliva and drug testing will face contentious legal battles for years to come. We urge the government to invest in technology and research so as to provide enforcement officers with the best tools, training, and resources they need to combat drug-impaired driving and make our roads safer.

Other jurisdictions that have legalized the use of marijuana have seen spikes in drug-impaired driving offences, and we feel that these policies should be given careful consideration in order to provide safeguards for all Canadians. SADD's focus in the future will almost certainly have major drug-impaired driving education and prevention components. The initial education effort surrounding the new laws will be one of the biggest challenges we have ever faced. There is already confusion, misinformation, and a lack of knowledge among students, teachers, and parents about cannabis and drug-impaired driving. How the different levels of government communicate these new laws and changes to Canadians will be crucial to our campaign of keeping our roads safe. We need to draw as many parallels between drug-impaired and alcohol-impaired driving as we can. Otherwise, we will be starting at square one when it comes to changing perceptions and attitudes towards drug-impaired driving.

In closing, I would like to thank the honourable members of this committee and have them ask themselves: is this enough? Is this enough time to properly educate people, train officers, and implement new drug-impaired driving laws? Are these laws tough enough to effectively change driving behaviours? What else can be done? Where is the mandatory education component? Where are the mandatory fines and penalties for passengers in a vehicle when a driver blows over the legal limit? What other safeguards can we put in place? Again, is Bill C-46 enough?

The mothers, fathers, grandmothers, and grandfathers of this country are begging you to help protect their children and make our roads a safer place for all. For decades families, friends, and communities have been devastated by the destruction that impaired driving has caused. A new generation of drivers are pulling onto our roadways, and we have an opportunity and a responsibility to get it right this time.

Thank you.

The Chair: Thank you, gentlemen, for your testimony.

We're now going to questions, beginning with Mr. Cooper for the Conservatives.

Mr. Michael Cooper: Mr. Chair, I'll be splitting my time with Madam Boucher.

Thank you to the witnesses.

Mr. Lee, my first question is for you.

You stated in your testimony that you were encouraged by what you characterized as tougher penalties in Bill C-46, and that is true with regard to the current existing law. However, when we compare Bill C-46 with Bill C-73, which was introduced by the previous Conservative government, we actually see a step back when it comes to penalties for, really, the most serious offences involving impaired driving, the most serious of course being impaired driving causing death.

You may be familiar with Sheri Arsenault from Edmonton, whose son along with two others was killed in a motor vehicle accident by an impaired driver who was driving more than 200 kilometres an hour at the time and who admitted to repeatedly drinking and driving. She implored this committee to amend Bill C-46 to provide for a five-year mandatory minimum, which is actually one year less than in Bill C-73. Do you have any thoughts on that?

Mr. Arthur Lee: That's a great question. As I asked at the end of my presentation, is this enough? Is this bill enough? Does it do enough?

We are definitely in favour of stronger penalties and fines. We think this bill does introduce some stronger fines but, ultimately, we would like to see stronger fines down the road. If that's a possibility, we are definitely in support of those stronger fines and penalties.

● (1800)

Mr. Michael Cooper: Just to clarify, you're not just in favour of stronger fines. You're in favour of stronger minimum sentences.

Mr. Arthur Lee: That's correct.

Mr. Michael Cooper: Okay.

Madam Boucher.

[*Translation*]

Mrs. Sylvie Boucher (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, CPC): Thank you everyone. I am new to the committee, but this debate interests me a lot.

We know that some states, like Colorado, have legalized cannabis, that, since then, deaths on the roads have increased by 22%, and that this increase can be attributed to cannabis. A number of police force officials have confirmed to us that, three or four years ago, they were not correctly equipped to adequately check for young people driving under the influence of the drug.

Do you think that these intoxicated drivers are going to create an increase in traffic accidents, especially if they know that no one is in a position to stop them?

Mr. Marc Paris: I can answer that.

We certainly have serious concerns about drugs behind the wheel, precisely because science is not at that level yet. In one of the previous groups of witnesses, someone pointed out that it is not yet possible to determine intoxication scientifically and to specify from what level impairments can arise. It is more and more likely that people are going to drive under the influence of the drug. In addition, when cannabis and alcohol are mixed, the risk factors are multiplied.

In my opinion, education must play a role, so that the situation is considered socially unacceptable. Today, more and more people consider it unacceptable to drive under the influence of alcohol. That principle has to be applied to drugs in general. We are talking about cannabis here, but many other drugs are also involved.

I cannot wait to see whether it will be possible to implement this legally. We are clearly concerned by the possibility that people at fault, while they may be arrested and charged, get out of it in court because the law contains too many loopholes.

The Chair: Mrs. Boucher, you have the floor.

Mrs. Sylvie Boucher: The timelines are very short. We surely all agree that 2018 is almost tomorrow. We are hearing more and more testimony to that effect. In my constituency of Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, I asked people whether they were in favour of legalizing cannabis. Eighty one per cent of them replied no. The provinces now have to deal with the problems implicit in this bill. There has been no discussion with those representing all the police forces, and medical advice has not been listened to.

In your opinion, is it logically possible, with so little time, to establish legislation that will hold up and that will not go off the rails?

That is actually what we can expect, given that there are no set criteria.

Mr. Marc Paris: Personally, I believe that the provisions must be made as harsh as possible. That can still be done. The time is right.

● (1805)

Mrs. Sylvie Boucher: Yes.

Mr. Marc Paris: First of all, by making these provisions as harsh as possible, it will not be hard to loosen them a little afterwards if they turn out to be too strict. Conversely, if they are too weak and we try to tighten them up, it will not be easy to go backwards.

Secondly, unfortunately, the ship has sailed. The announcement has been made and people are waiting for it to happen. So we are in a gray area now. We have to recognize that there are already more cases of drug-impaired driving than those involving alcohol. It means that we already have a problem. That is why I always go back to education. If we do not educate people, their attitudes towards drugs and cannabis will not change. They think it is a harmless substance, but that is not the case at all.

The Chair: Mr. Boissonnault, you have the floor.

[*English*]

Mr. Randy Boissonnault: Thank you both for your testimony. I have to confess it's been a bit of a break from our constitutional wrangling so I appreciate your focus on public education and the long-standing work of SADD. I did work with SADD 20-some years ago as a student government president. You weren't around then, but thank you for keeping the flame going.

Mr. Paris, I'm going to ask you five quick questions. I'll do something similar with you, Mr. Lee.

I'll give a little preamble. My nephew, Ethan, turns 16 tomorrow. He's going to be driving within weeks. Uncle Randy and him have had this conversation and we're going to continue to have this conversation. His sister is 14 and the littlest one is nine. We have this conversation as a family about staying safe on the road and making sure that friends are safe. I'm trying to play with a little "If you're high, bye-bye. I'm not getting in the car with you." What's the next slogan?

If you're at health committee you know that the legislation is very restrictive. That's the whole point. We're legalizing it because what we've done for 40 years hasn't worked and it's extremely strict legislation. If Bill Blair were here, he might tell you that's what we learned from looking at other jurisdictions.

Mr. Paris, I didn't hear anything about our actual pieces of impaired driving in this legislation. Is it your opinion that mandatory roadside testing will keep people who are offending while behind the wheel off the roads because the police will catch them? Do you think it's an effective tool?

Mr. Marc Paris: I think it is. We've seen the RIDE programs as a very effective tool, and I don't see why because there might be some serious concern by some legal people that it infringes upon the rights.... I think, as Arthur just said, if somebody's asked for their driver's licence, they hand it out. I don't see it as a problem. We have to scare people into thinking that if they get caught, it's going to be a bad scene for them.

Mr. Randy Boissonnault: Okay, I'll get to that.

My second question for you is, in your opinion is it helpful and will it be productive to remove defences that are currently available to people who have offended so that they can't be convicted? Is it helpful for us as government to remove those legal defences?

Mr. Marc Paris: Absolutely.

Mr. Randy Boissonnault: Is it helpful, in your opinion, that interlock devices keep repeat offenders from actually being able to use their vehicles?

Mr. Marc Paris: I think it's a great thing.

Mr. Randy Boissonnault: Are you aware that our government last week committed $274 million to police to pay for the new tools, to make sure they have the training, and to make sure that the capacity building exists in the system?

Mr. Marc Paris: Yes, I am aware.

Mr. Randy Boissonnault: Okay, great.

In your expert opinion, do public awareness campaigns and educational campaigns change behaviours and are they among the most effective tools to change behaviours?

Mr. Marc Paris: They're one of the tools. They're one of the tools in the tool box. I think in-school programs are extremely effective with the younger generations as well.

I think parents have an important role to play with their kids. That's why our current campaign with the cannabis talk kit has been going out the door. We've distributed 100,000 of them already and this campaign started in mid-June. It's probably the most effective tool for parents. It's an excellent tool to open that conversation. Parents need to be involved because even though parents don't think their teenagers listen to them, the number one reason kids tell us that they stay away from drugs is not to disappoint their parents.

Mr. Randy Boissonnault: I like your video as well and I'm going to make sure my brother and sister-in-law have access to it so they can be texting their kids. The best voice I have with the kids...the kids and I chat, but if you want to really get inside their heads, text them. There are no masks anymore.

Mr. Marc Paris: The reason we won all these international awards is that it used breakthrough technology. Five different platforms of technology were used to do this campaign. Unfortunately, I couldn't take you through the longer video, but essentially you're sending a video to your child that's about a minute and a half and you're saying, "I want you to watch this video." The video was designed to target the kids.

● (1810)

Mr. Randy Boissonnault: I think it's brilliant.

I have another question and then I'll move on to Mr. Lee.

We heard earlier from the Canadian Association of Chiefs of Police that with resources they'll be ready. Do you take the police chiefs at their word?

Mr. Marc Paris: They know their business more than I do. I think if they have the proper funds and they know the clock is ticking.... I don't know whether they'll be 100% ready; maybe or maybe not. If you asked them, they probably would want six more months, but, as I said, the train's left the station. I think we have to get going because we're living in a grey zone right now. The quicker we have definite rules and regs, I think we'll be at least in known territory.

Mr. Randy Boissonnault: Thanks, Mr. Paris.

Mr. Lee, in the time that I have remaining I want to ask you something relating to your experience particularly with youth. You've said already that mandatory roadside testing will be effective. Does SADD approve of removing legal defences also?

Mr. Arthur Lee: Yes.

Mr. Randy Boissonnault: What about interlock devices?

Mr. Arthur Lee: We believe they are effective as well.

Mr. Randy Boissonnault: What about paying for testing devices, capacity building, and training for police officers so they can catch more people?

Mr. Arthur Lee: Yes. As I mentioned before, we hope the best devices can be used to prevent some of the defences that the defence lawyers previously were talking about with improperly working devices. We hope those issues can be avoided in the future by making sure the devices they have are working properly and provide accurate results to provide police officers with the enforcement tools they need.

Mr. Randy Boissonnault: Great.

I have two final questions for you.

Some of the $274 million is for public awareness campaigns. What's the most efficient way for organizations such as yours to apply for the grants to be able to do more of this work?

Also could you maybe speak for 30 seconds on the most effective tools for you in working with students in school to keep them from driving impaired?

Mr. Arthur Lee: As for applying for grants, we just need to be made aware. There are a number of organizations out there that would likely be on your list of people to contact to apply for them. I don't know what is the best route to go about it.

One of the best campaigns we have right now in reaching all students across our province is our liquor bag campaign. We provide a templated liquor bag that students write a message on. That liquor bag is then taken to a local liquor store where a person goes in and buys a bottle of wine. Their bottle is put into a bag with a personalized message on it from a student in their local community. Last year we had requests for over 65,000 bags across our province. We have incorporated a contest into it. One of the reasons we think it's the best is that it's the most engaging.

We do different education campaigns. We put up posters. We send out information pamphlets. This campaign has students directly involved in being participatory in learning about the effects of drinking and driving. The teachers are also there, coordinating and providing them with information about drinking and driving and the risks and dangers associated with it.

Mr. Randy Boissonnault: Thank you both for indulging me in a rapid-fire question round.

The Chair: Thank you very much. We got a lot of questions and a lot of answers in that round.

Mr. Rankin, let's see if you can do as well.

Mr. Murray Rankin: I'm not even going to try.

I want to thank you both for coming.

I'm interested in building a little on what Mr. Boissonnault was talking about with the public education campaigns. I, too, give you a real shout-out for the work you've done with the cannabis talk kit, and the video you showed us is really excellent. I'm concerned, though, about the in-school programs.

Mr. Paris, I'm a little skeptical, despite what you have said. My kids never listen to me, so I don't understand why they listen to other parents. I think peer pressure and in-school education is really important, so while I really think this is superb, I wonder if you could talk to us a little more about your in-school programs.

Mr. Lee, could you respond as well, please?

Mr. Marc Paris: Currently we don't have the resources to do in-school programs, but we are in conversation with a group in Quebec that has an excellent in-school program, both at the junior high and senior high levels, which was funded by Health Canada and is available in both English and French. We're looking at working with them to roll this out.

It is a very expensive proposition, because you need trained counsellors to go into the schools to do it. The cost has been estimated at about $10 per head.

Mr. Murray Rankin: With the success you've had with texting, why couldn't you do something generated not by the parents, but rather by the children, the student councils, or whatever, not necessarily having people in the schools but a similar emphasis as on texting?

● (1815)

Mr. Marc Paris: In the research I've seen on in-school programs, the most effective are peer-to-peer. With some of the stuff these folks are doing, peer-to-peer is the most effective, because the students are being spoken to by people their own age. The most effective would be somebody their age who has been charged or has had an accident and can share that. That is the most powerful, effective tool to change kids' attitudes and behaviours.

Mr. Murray Rankin: Mr. Lee, can you add anything about the peer-to-peer programming or the work you've done in the schools?

Mr. Arthur Lee: Sure.

I talked about the liquor bag campaign. We also hold regional conferences. We'll go to specific regions. We do find that a number of our chapters come primarily from rural areas. They face greater challenges with limited resources for transportation and driving greater distances, so there is a greater need for us to go to rural areas, have regional conferences, and provide speakers and resources to these different schools on impaired driving.

We also do speaker tours. As Mr. Paris mentioned, it has a great impact on these students to have someone come in who has been affected by it. One of the most recent ones we had was Hayden Bell. He was a college football prospect, and all those prospects, hopes, and dreams have been wiped away because of an impaired driving accident where he was a passenger in a vehicle. He has gone with us to schools and shared his message about the dangers of impaired driving as well.

Mr. Murray Rankin: I'm thinking of cannabis in particular. Is the emphasis in the school programming that you would recommend on “Just say no”, or is it focused on “If you consume, don't drive” ? There's a difference.

Mr. Marc Paris: In our case, we're there to educate kids about the dangers of cannabis in terms of the development of the teenage brain. It's from a health perspective that it's not a good thing for a teenager to consume cannabis.

Regarding drug-impaired driving, yes, the idea is that if you're going to be consuming, don't get behind the wheel.

Mr. Murray Rankin: I sympathize entirely, but I come from a province which probably has the highest cannabis use among young people in the world. I think Canada, if not the highest, is one of the highest users of cannabis and I come from the province where the numbers are the highest.

When I have talked with students in my riding about D.A.R.E. and other such programs, they just roll their eyes and say, “Are you kidding me?” I guess I'm anxious to know whether this is going to be a different program than “Just say no”, when it has obviously not been successful. I'm looking for advice.

Before you answer that, and because of the time constraints, on the money part, I'm delighted that you've received money from Health Canada in the case of Mr. Paris' organization, and from the Canadian Centre on Substance Use and Addiction you have some foundation money. That is terrific.

Mr. Boissonnault has talked about money that will be available from the federal government for programs, which is terrific. This is going to be a gigantic change. Is there enough money, even if you had the time to get the programs ready, to do what's required to achieve the education that's necessary? I'm very anxious about that and I wonder what your thoughts are.

Mr. Marc Paris: In terms of money, in all the campaigns we've done, we haven't had one single dime of public money. The only money we got was for the printing, translation and distribution of this brochure. That's it. We've never had any public funds for any of our campaigns. We have to survive on donations.

Mr. Murray Rankin: Will you be applying for the funding if it's put out?

Mr. Marc Paris: For sure, we definitely would, because we can do things more efficiently than the government. What we do is use public service announcements that we get our 60-plus media partners to provide us for free.

Mr. Murray Rankin: Right.

Mr. Marc Paris: If the government does the campaign, they have to buy the media time.

The effectiveness of campaigns are when they're ongoing 24-7, 365 days a year. If you're only going to do a six-week campaign once a year, it's not going to be very effective. It will fall off very quickly.

Mr. Murray Rankin: Mr. Lee, do you have anything to add?

Mr. Arthur Lee: Sure. I have only a couple of points.

Going back to your previous point about “Just say no” or what the dangers are, in the past we kind of walked the same grey line. Do we talk about underage drinking or do we really focus on what the dangers of drinking and driving are? That's where we've chosen to focus our attention.

We found that students will simply tune out. They will not listen to it. As you said, if you start talking about “Don't drink” or “Don't do cannabis”, you really have to change the conversation to what the risks are and what the dangers are in that context.

As for funding and timing, we work on a shoestring budget as well with whatever resources we have. If there is more money available, we'll definitely be looking to use some of it and provide resources to our teachers and advisers, but the main thing is really to get buy-in at the schools as much as possible.

We work with many different groups, whether it's principals, counsellors, teachers, advisers, even community members. We look for champions who want to really help out on these subjects, and we try to find those people who are willing to dedicate their time and we provide them with the resources they need in the schools and the communities.

● (1820)

Mr. Murray Rankin: Thank you very much.

The Chair: Last but not least in this round, Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thank you, Chair.

I'm going to start by bringing in some information from another jurisdiction, Colorado. This comes from a letter that was shared with us on the health committee in our study of C-45. This was a letter from the Governor of Colorado and the Attorney General of Colorado to the Attorney General of the United States. It says:

> Following legalization, the state trained approximately 5,000 peace officers on marijuana-related laws, including driving under the influence of drugs; increased by 68 per cent the number of trained Drug Recognition Experts in the state—there are now 227 active DREs in Colorado—; and trained 1,155 peace officers in Advanced Roadside Impaired Driving Enforcement. The state has also appropriated $2.3 million to the Colorado Department of Transportation's, CDOT, impaired driving education campaigns, which convey the criminal penalties and dangers associated with driving under the influence of marijuana.

It goes on to say:

> In the first six months of 2017, the number of drivers the Colorado State Patrol considered impaired by marijuana dropped 21 per cent compared to the first six months of 2016.

That tells me two things. First, it shows that the police officers were better trained. They were able to recognize impairment presumably much better, yet the rate of impairment dropped. Second, it suggests the power of education, because I think that was probably a significant aspect of this undertaking. I have heard on the health committee, and on this committee as well as we studied both these bills, many witnesses speak to the effectiveness and the critical importance of education.

That brings me to you, Mr. Paris. I certainly appreciate what you're doing with your education program, and I really like your ad.

That brings me to my question. Mr. Lee, you are presumably part of the demographic targeted by this ad. Do you find it compelling, persuasive?

Mr. Arthur Lee: It has been around for a while, hasn't it? I think it's been two years or so.

Mr. Marc Paris: This campaign ran in January. But to correct you, the campaigns that we do are all directed to the parents, not the kids. The strategy to target the kids is much different from what we do. The media mix would be different, and so would the messages. The only part of that campaign directed to the kids was the video we produced, and that made a strong impact. The ad campaign to promote parents making the call that comes after is targeted only to the parents.

Mr. Arthur Lee: I saw this ad and some of the people at our office played around with it and got the text message during the videos. We thought it was very effective in that it used these new technologies the students are looking for, because that's how they interact. I would say that this is going to be an effective measure going forward. Whether you're getting your message on Facebook or Instagram, that's where the students are today. They're not reading books like they used to. To get to them, you have to be aware of these new methods of communication.

Mr. Ron McKinnon: In my day job, I was a computer programmer, so I really love the innovation here.

Last night on the health committee, the Minister of Health spoke and she advised that the education campaign is now getting started. They are focusing on social media in particular. She brought this front and centre as something good that's happening. The $9.6 million mentioned in budget 2017 is an initial amount, but it's under way right now and it's going to be unrolling in a much more robust way as we go forward.

She was talking about social media being the place of choice to reach young people. Would you agree with that, Mr. Lee? What sort of messaging do you think is going to be most effective in getting the word out?

● (1825)

Mr. Arthur Lee: I think it's going to be very effective in reaching the students. But we have to look at the call to action, at what students can do. One of the things we're looking at is geo-targeted campaigns. If someone's at a bar between 11:00 p.m. and 2:00 a.m., we target an ad for that geo-location and distribute it between 11:00 p.m. and 2:00 a.m. At the bar, they pull up their Instagram account and it says, “What's your safe ride home?” There could be a button, “Call Uber”. That's the call to action. That's the right choice they can make at that time.

Those are the kinds of things you're going to have to look at, not just sending out a message telling them not to drink and drive. We need to tell them their options and help them make the right decisions.

Mr. Ron McKinnon: Thank you.

The Chair: Is there anybody else who wants to ask a question? If not, let me thank this panel.

It was wonderful to have you both here. We really appreciate your testimony. We will take it all under advisement.

The meeting is adjourned.