Presentation to the Standing Committee on Justice and Human Rights on Bill C-32 [an Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts]

Doug Beirness, Manager, Research and Policy

The Canadian Centre on Substance Abuse

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Mr. Chairman and committee members, the Canadian Centre on Substance Abuse appreciates the opportunity to meet with you today to share our views on the issue of drugs and driving in Canada as you consider Bill C-32.

With me is M. Jacques LeCavalier, former CEO of CCSA, and a current Associate and Senior Advisor.

As you may know, CCSA is Canada's national non-governmental organization, formed in 1988 by an act of Parliament, to provide national leadership and evidence-informed analysis and advice on substance use and abuse in Canada. Accordingly, the issue of drugs and driving is of great interest to our organization, and we believe we are well positioned to contribute meaningfully to the discussion.

In general, CCSA supports the proposed legislation, particularly with respect to the requirement for drivers who are suspected of driving while impaired by drugs and/or alcohol to submit to physical coordination tests such as the Standardized Field Sobriety Test (SFST), to submit to an evaluation conducted by a officer trained in these techniques (such as the Drug Evaluation and Classification program), and to provide a bodily fluid sample for analysis. These provisions help to create a process comparable to that currently used for alcohol and driving. However, there are a number of important considerations regarding Bill C-32 that we would like to bring to the committee's attention.

My colleagues and I at CCSA believe impaired driving is an area of serious concern in Canada. The issue is addressed in the *National Framework for Action to Reduce the Harms Associated with Alcohol and Other Drugs and Substances in Canada* and

is the focus of recommendations 37 through 41 in the *National Alcohol Strategy*. CCSA has also agreed to work with the Canadian Council of Motor Transport Administrators (CCMTA) to facilitate the goals and objectives of the Strategy to Reduce Impaired Driving (STRID). In our recent publication, entitled *Substance Abuse in Canada: Current Challenges and Choices*, the chapter on drugs and driving provides a high-level overview of this topic and identifies key points for consideration in the development of public policy around drugs and driving. A more detailed paper on the issue is also available. Recently, we published a report on cannabis and driving using data from the Canadian Addiction Survey. I've left copies of these reports with the clerk. In addition, we are currently working closely with the RCMP on an evaluation of the implementation of the Drug Evaluation and Classification (DEC) program in Canada. Collectively, this work illustrates our level of interest and expertise in the area of drugs and driving.

Our work on this issue illustrates the risks posed by the impairing effects of drugs in traffic. At the same time, it serves to illustrate that relative to the extent of knowledge about alcohol and driving, the knowledge base about drugs and driving is limited. To a large extent this is because drugs and driving is a far more complex issue than alcohol and driving. These complexities have hindered progress in the field, rendering unequivocal statements about the magnitude of the problem of drugs and driving tenuous. As such, there is a dire need for credible scientific research to shed light on the true nature and magnitude of the problem of drugs and driving in Canada.

A persistent difficulty that has plagued research in this field is the detection and measurement of impairing substances in drivers. Whereas the presence and quantity of alcohol can be easily determined through breath analysis, no valid and consistently reliable device currently exists to test drivers for other substances. Technological innovations using oral fluid samples hold promise for a device that will reliably detect the presence of certain substances but practical devices may be several years away. Moreover, unlike alcohol where agreed-upon levels of blood alcohol content consistent with impairment exist, such levels have never been established for other psychoactive substances. The alcohol-crash relative risk curve

presented in the classic study by Borkenstein and colleagues[1], which was influential in the setting of the .08 alcohol limit in 1969, has yet to be established for other drugs. Hence, it is critical that tests to determine the extent of driver impairment accompany the collection and testing of bodily fluids for the presence of psychoactive substances.

As mentioned previously, my colleagues and I at CCSA have been working with the RCMP on an evaluation of the implementation of the Drug Evaluation and Classification (DEC) program in Canada. Both M. LeCavalier and I have attended the Standardized Field Sobriety Test and Drug Recognition Expert training course; hence, we are very familiar with how this program operates. As you may have already heard, the DEC program is a systematic and standardized protocol to assess suspected impaired drivers for signs and symptoms associated with impairment by psychoactive substances. As part of our project, we have reviewed the scientific evidence on the accuracy of the DEC program and concluded that the ability of trained officers to identify the drug category responsible for the observed signs and symptoms in suspected impaired drivers was very good, with measures of accuracy typically exceeding 85%. False negatives (i.e., officer of the opinion that a substance was not present but toxicological analysis revealed its presence) were not uncommon but false positives (i.e., officer of the opinion that a substance was present but toxicological analysis showed otherwise) were relatively rare. This review paper has recently been accepted for publication in the peer-reviewed journal *Traffic Injury Prevention*.

We have also examined drug evaluations of suspected drug-impaired drivers conducted by Canadian officers trained in the DEC protocol. A copy of the draft report on this study has been provided to the clerk. The findings demonstrated that the judgement of the evaluating officer concerning the category of drug responsible for the observed impairment matched the drug category found through toxicological analysis in 98% of cases.

[1] Borkenstein, R.F., Crowther, R.F., Shumate, R.P., Ziel, W.B. & Zylman, R. (1964) *The role of the drinking driver in traffic accidents.* Bloomington, Indiana: Department of Police Administration, Indiana University.

In an ongoing study, we are investigating the reliability of the DEC protocol – i.e., the degree to which different officers are able to agree on the drug category involved in a given individual. To do this study, we provided a randomly selected group of Drug Recognition Experts with evaluation test results from 23 separate cases. The information provided included only the results of tests performed during the original DEC evaluation. The report of the arresting officer, the evaluating officer's narrative, and any admissions of drug use by the suspect were specifically excluded. Using this limited set of information, our preliminary analysis shows that officers were able to agree on the drug category involved approximately 75% of the time. Given that our experts were not able to observe the suspect first hand and that only limited information was provided, we consider the results to be very good. In addition to demonstrating the reliability of the evaluations, the findings attest to the overall validity of the objective data collected as part of a DEC evaluation.

As positive as our research results are, it is also evident the DEC protocol is not perfect. The data indicate that the accuracy of the DEC procedure varies according to drug class – i.e., some drug types are more difficult to detect than others. The use of more than one drug and the use of alcohol in combination with another substance can mask some symptoms and exacerbate others, leading to a mis-specification of drug category. Nevertheless, we are convinced that the DEC protocol is the best procedure available to assess drug-induced impairment.

Further research and evaluation is necessary to better understand the role of drugs in road safety and how best to identify and deal effectively with those who engage in the behaviour. For example, in evaluating the accuracy of DEC assessments, it would be beneficial to know the quantity of the substance(s) found in the fluid sample rather than simply an indication of its presence or absence. Very low drug level(s) might help to explain some of the cases that are missed. The drug levels could also be used to identify thresholds for the detection of the various drugs by the DEC procedure. Further research and development of the DEC protocol will ultimately lead to improvements in the extent to which the procedures can be used detect some drug classes. Our own research continues and we are currently using existing evaluations to identify sets of key variables in the assessment that can be used to help identify specific drug categories.

We believe the necessity to focus on the issue of *impairment* is fundamental to the overall intent and purpose of the proposed legislation. The mere presence of a drug (or drug metabolite) is not sufficient to demonstrate that the driver's ability was impaired. The legislation outlines a process whereby the investigating officer must establish reasonable and probable grounds of impairment of the ability to operate a vehicle safely before a demand for a bodily fluid sample is made. This process eliminates fears raised through the media about the possibility of criminal impaired charges being laid as a result of a positive drug test that may not be linked to actual or recent drug use. The process also eliminates the possibility that drivers using over-the-counter medications or drugs as prescribed by a physician will necessarily be subject to criminal charges. The police must first establish that the driver's ability was impaired.

It is our belief that the legislation should maintain a focus on public safety by controlling drug-impaired driving and should not be viewed as a means of drug control. In this context, we believe that section 253.1(1), which creates an offence for a driver to have a controlled substance in the vehicle is inconsistent with the concept of impaired driving. Simply being in possession of a drug in a vehicle does not equate with driver impairment. In addition, this particular subsection specifies controlled substances as defined in subsection 2(1) of the *Controlled Drugs and Substances Act (CDSA)*, some of which have never been shown to cause impairment – e.g., anabolic steroids. We recommend that offences related to the possession of illegal substances be tackled through the CDSA.

In addition, to further ensure that the focus of the legislation is on impairment, there is a need to define a “drug”. To this end, we propose the definition of a “drug” used by the Drug Evaluation and Classification (DEC) Program:

> *A “Drug” is any substance which, when taken into the human body, can impair the ability of the person to operate a vehicle safely.*

CCSA is an evidence-driven organization. Not surprisingly, then, we would argue strongly that legislation and the development of public policy must be driven by convincing, high-quality scientific evidence. From our perspective, although there is

sufficient evidence on the dangers of drug-impaired driving to warrant the measures introduced by this legislation, the evidence is very clear that the combination of alcohol *and* drugs, even in small amounts, creates a level of impairment and risk greater than that associated with either substance alone. In recognition of this, we propose that impairment due to the combination of alcohol and drugs, or a combination of two or more drugs, be treated as exacerbating circumstances in sentencing, similar to Section 255.1 which considers blood alcohol concentrations in excess of 160 mg per 100 ml blood to be aggravating circumstances in alcohol-impaired driving offences.

Undoubtedly, you have already recognized that Bill C-32 will require officers trained in both field impairment testing and drug evaluation and classification techniques. There are currently 2,427 officers trained in Standardized Field Sobriety Tests and 153 certified Drug Recognition Experts with 97 police officers in the process of certification across Canada. From personal experience, we can attest to the fact that the DEC training is intensive and demanding. It requires commitment, ongoing study, and practice. If this legislation is to have a beneficial impact on drug-impaired driving, there needs to be an ongoing commitment to the training of police officers in these techniques as well as to the continued development and evaluation of these techniques.

The introduction of this legislation and the training programs necessary to support it are bold steps needed to address a persistent and growing problem. But as you consider this legislation, it is important to recognize that enforcement is only one component in an overall strategy to deal with drug-impaired driving. In this context, it is instructive to look back to 1969 and the introduction of the so-called “breathalyser” legislation. The law and the technology to support it were only part of the comprehensive package of measures that were required to have a significant impact on the alcohol-crash problem. In the same way, there is a need to include prevention, adjudication, and rehabilitation as integral components of a broader strategy to deal effectively with drug-impaired driving. Education and awareness programs specifically targeted to various subgroups of drug users (e.g., youth, middle aged, seniors) are also required. Prosecutors and the judiciary must be well-informed and knowledgeable of the types of evidence that will be presented in drug-

impaired driving cases. And, convicted offenders must be dealt with appropriately, not only through sanctions, but with effective rehabilitation options.

An effective overall strategy will also require coordination and cooperation with the provinces and territories, who share responsibility for dealing with impaired drivers. Provincial and territorial agencies should be encouraged to examine their programs for alcohol-impaired drivers (e.g., administrative licence suspension, short-term suspensions, interlock programs, rehabilitation programs) and ensure that appropriate options are available for drug-impaired drivers as well. In the absence of such changes at the provincial/territorial level, drivers will quickly begin to perceive drug-impaired driving as a lesser offence than alcohol-impaired driving.

As a final note, we would like to recommend that due consideration be afforded the need for a comprehensive evaluation of the legislation and the introduction of the DEC program. Evaluation is more than simply a process to determine success or failure of a program. Evaluation serves to inform policy-makers of the areas where improvements may be needed to maximize the effectiveness of a program and where efficiencies can be introduced. In the area of drug-impaired driving, a commitment to ongoing monitoring and evaluation is critical.

In closing we have appreciated the opportunity to present our views on drugs and driving in Canada to the committee. Thank you for your interest and we look forward to your questions.