Submission on Bill C-16 — Drug Impaired Driving

CANADIAN BAR ASSOCIATION

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Drug Impaired Driving

PREFACE

The Canadian Bar Association is a national association representing 34,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the National Criminal Justice Section of the Canadian Bar Association, with assistance from the Legislation and Law Reform Directorate at the National Office. The submission has been reviewed by the Legislation and Law Reform Committee and approved as a public statement of the National Criminal Justice Section of the Canadian Bar Association.

Submission on
Bill C-16 – Drug Impaired Driving

I. INTRODUCTION

The National Criminal Justice Section of the Canadian Bar Association (the CBA Section) is pleased to contribute to the House of Commons Justice Committee's review of Bill C-16, *Criminal Code* amendments (drug impaired driving). The CBA Section represents both Crown and defence counsel from across Canada. As experts in criminal law, we know that the impaired driving sections of the *Criminal Code* represent a very technical and highly litigated area, already claiming considerable court time and administration costs. We recommend that any amendments to the area must be considered very carefully to avoid exacerbating this situation.

The CBA Section previously considered this issue in a December 2003 submission responding to a consultation paper by Justice Canada.[1] We continue to rely upon that submission, and have attached it to this document for ease of reference.

II. GENERAL COMMENTS

The CBA Section recognizes that road safety is a matter of national concern. The dangers posed by drug impaired driving and the current difficulties in fairly and effectively enforcing sanctions against drug impaired driving have been widely

1 *Drug-Impaired Driving: Consultation Document* (Ottawa: Justice Canada, October, 2003).

discussed.[2] The CBA Section believes that Canadian law must provide for effective enforcement mechanisms to address proven hazards associated with impaired driving, while simultaneously maintaining and upholding applicable constitutional standards.

A new law that goes beyond what can be accurately supported by technology and relies heavily on the subjective interpretation of police officers is unlikely to provide an improved enforcement regime or enhanced road safety. It will certainly further clog our court system with legal challenges.

Effective laws must have clearly defined objectives and workable mechanisms for attaining those objectives. Criminal law objectives can only be realized if investigators are able to gather reliable evidence that will be admissible in subsequent criminal proceedings. This requires that laws comport with the rights and freedoms as guaranteed by the *Charter*.

As practicing lawyers from across the country, we know that trials associated with alcohol impaired driving are among the most exhaustively litigated of any criminal matters and consume a disproportionate amount of court time. This means that there is significant expense associated with the prosecution of impaired driving offences. While several explanations are possible, one is certainly that these charges are often vigorously contested, and the associated laws and actions of the police are subject to very close constitutional scrutiny. To emphasize again,

> Every aspect of the legislative scheme for alcohol impaired driving has been subjected to detailed constitutional scrutiny. *Charter* challenges for the exclusion of evidence obtained under these provisions, as well as other remedies, represent a significant proportion of the caseload undertaken in trial and appeal courts across the country. There is no reason to believe that additions regarding the investigation of drug impaired driving will be subject to less scrutiny than that given to alcohol impairment. Given the existing backlogs in many courts across the country, it is incumbent upon legislators to ensure that each stage of

2 Report of the Senate Special Committee on Illegal Drugs, Volume 1, pages 184-190; Report of the Standing Committee on Justice and Human Rights, May 1999, Chapter 6. See also, *Drinking, cannabis use and driving among Ontario students*, Edward M. Adlaf, Robert E. Mann, Angela Pagnlia, CMAJ – Mar.4, 2003; 168(5) at 565.

> the proposed response to drug impaired driving is capable of surviving such detailed examination. Anything less will compromise not only the effectiveness of the proposed provisions, but also the effective and timely function of criminal courts generally under the wave of *Charter* litigation that would surely follow.[3]

We have every reason to expect that Bill C-16 and the powers deriving from it would be subject to that same level of scrutiny as currently results from alcohol related impaired driving charges. It is incumbent upon the government to act in the public interest by ensuring that the Bill is carefully measured against constitutional standards now, *at this stage*, to ensure that any law that comes into force will be an effective law.

III. EXAMINING FOR IMPAIRMENT

Bill C-16 would leave some of the most significant features of the proposed amendments to the accompanying regulations. For example, the qualifications of an "evaluating officer", the physical coordination tests that such officers would conduct and evaluation tests and procedures would all be defined by regulation. It is precisely these aspects of a new law that would be most closely scrutinized in any legal challenge. Any support the CBA Section might offer for the law will ultimately be dependent on the constitutional validity and effectiveness of its regulations. Because these regulations will be central to the operation of the law, we look forward to providing detailed comments on any regulations, once they are released for public scrutiny.

Until draft regulations are available, we can emphasize only general considerations for reviewing Bill C-16. For example, subjecting a driver to physical coordination tests and the taking of bodily samples would clearly engage the constitutional interests of liberty, security of the person (section 7), the right to be secure against unreasonable search or seizure (section 8), and the right not to be arbitrarily detained (section 9). Any proposed law must operate so that

3 National Criminal Justice Section, *Submission on Impaired Driving: Consultation Paper* (Ottawa: CBA, December 2003) at 3-4.

detention is as brief as practical, dignity of a detained individual is preserved to the fullest extent possible, the requisite constitutional standards are in place if an individual is compelled to participate in an investigation through physical co-ordination testing or providing bodily samples and that privacy interests associated with information compelled from an individual are protected.

Unlike scientifically measurable test results produced by proven technology, a police officer's observations will necessarily be highly subjective, not capable of independent review or reproduction and prosecution may therefore depend upon the frailties of that officer's subjective analysis. The CBA Section also believes that the threshold of "reasonable suspicion" for an officer to begin physical testing is too low, and disproportional to the intrusive nature of the testing proposed.

These proposals go beyond the current use of drivers' conduct or remarks as evidence, and would instead actually conscript drivers to generate potentially self-incriminating evidence. In contrast, a driver under suspicion of alcohol impairment is not compelled to provide *ultimately incriminating evidence* without proper consultation with counsel or an informed waiver of that right.

We have previously suggested that the intrusive testing contemplated by this legislation would change the nature of a roadside stop so that the right to counsel would be engaged. For example, an officer would presumably have some basis for selecting either a sweat or a saliva swab. If so, a driver would have to understand that basis for any consent to be considered truly "informed". If the expectation is that this Bill would require counsel at the roadside, that should be stated explicitly. However, the courts have recognized that such consultation and observation at the roadside is impractical.[4]

4 See for example, *R. v. Therens*, [1985] 1 S.C.R. 613; *R. v. Thomsen*, [1988] 1 S.C.R. 640.

IV. TESTING PROCEDURES

Based first on "reasonable grounds to suspect", a police officer would ask a person to perform physical coordination tests. Those tests would be used to develop "reasonable grounds to believe" that the person was committing an offence under section 253(1)(a) because of consumption of a drug or drug/alcohol combination. If so, a demand would be made and the person would have to accompany the police officer to fulfill that demand. The person could then be required to submit to an evaluation at the police station to determine impairment. If the evaluating officer then had reasonable grounds to suspect that the person had alcohol in their body and the normal demand was not made at the earlier stage, a breath sample could also be required.

If this combination of tests lead the officer to reasonably believe that the person is impaired, then saliva or urine samples could be required to accurately determine whether drugs are present. A doctor could also take a blood sample, if taking such a sample would not endanger life or health.

In our previous submission on drug impaired driving, we stressed that any proposed solutions must be consistent with available technology. To produce reliable evidence in any subsequent proceedings, technological tools and other means of testing must exist to permit scientifically verifiable results in terms of:

- identification of substance,
- concentration of the substance within the body, and
- the degree of impairment, if any, caused by the particular substance, in the concentration as discovered.[5]

5 See for example, *Entrop v Imperial Oil* (2000), 50 O.R. (3d) 18, where concerns of this sort were expressed.

Further, because physical coordination tests are intrusive and occur after an individual is detained, even if briefly, the testing procedures and results must be carefully evaluated in terms of the time they involve and the degree of subjectivity in interpreting the results. We are concerned that by being overly ambitious in attempting to capture impairment by *any and all* drugs, Bill C-16 would stretch the law beyond the abilities of current science, placing undue emphasis instead on the subjective interpretation of individual police officers. It would be akin to returning alcohol impaired driving prosecutions to the days before the breathalyzer was introduced. "If technology now permits a fair and objective scheme for one or two drugs, we should focus any new legislation on only those drugs until technological developments permit greater scope, with the requisite fairness and objectivity." [6]

V. CHANGES IN TERMINOLOGY

Bill C-16 proposes amending certain existing words and phrases that govern the time period within which certain investigative procedures must be carried out. For example, "forthwith" as now used in *Criminal Code* section 254(2) would be amended to "as soon as is reasonable in the circumstances". A similar amendment is proposed with respect to section 245(3).

The investigative steps associated with the current words and phrases have been the subject of extensive litigation in many impaired driving prosecutions. Through that litigation, a history of judges' interpretations of the relevant provisions has resulted in generally accepted meanings for the existing terminology. Constitutional standards are in place to guide police in the course of their investigations.

6 *Supra*, note 3 at 3.

While invaluable in clarifying the appropriate constitutional interpretation of the law, litigation is time consuming and expensive. It may well be that the government's intent in proposing the amendments in Bill C-16 is to reduce, rather than contribute to more litigation. However, the CBA Section is convinced that new words and phrases are likely to further complicate this important area of law, and result in renewed litigation. We question whether the proposed changes in terminology will make the laws associated with impaired driving more effective, or whether they will fail to achieve this goal and make matters worse.

VI. CONCLUSION

To members of the public, roadside stops by police can be only a minor inconvenience well worth any public protection that results. However, roadside stops can also occur late at night, in isolation and be subject to misuse. Such stops can, either intentionally or not, be based on considerations outside of the law, such as racial profiling, while being superficially defensible for a legitimate purpose, like preventing impaired driving. Where police powers are to be significantly expanded to allow roadside stops, and to permit detention and compulsion of selected drivers, the rule of law, the *Constitution* and the public interest require that such powers be clearly defined, properly curtailed and diligently monitored.

Certainly being stopped on occasion at the roadside can be a small price to pay for enhanced road safety. However, if a stop begins a long and difficult process on the basis of an analysis that is inherently subjective, we must be wary that the delicate balance between facilitating police investigation in furtherance of the public good and protection of individual rights and freedom is not unjustly skewed. We suggest that Bill C-16 be amended so that it only attempts to capture drug impaired driving that would be objectively, efficiently and scientifically provable.

Submission on Drug Impaired Driving: Consultation Document

NATIONAL CRIMINAL JUSTICE SECTION
CANADIAN BAR ASSOCIATION

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PREFACE

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Submission on
Drug Impaired Driving:
Consultation Document

I. INTRODUCTION

The National Criminal Justice Section of the Canadian Bar Association is pleased to contribute to the consultation process about amending the *Criminal Code* to address drug impaired driving. We represent both Crown and defence counsel from across Canada. As experts in criminal law, we know that the impaired driving sections represent an extremely technical area of the *Code*, and caution that any amendments must be given very careful consideration.

II. PROCESS CONCERNS

Our response to the Department of Justice consultation paper, *Drug-Impaired Driving: Consultation Document*[1] (Consultation Document) should be read with two caveats regarding process. First, the time originally allotted for the process was inadequate. We received the Consultation Document on October 24th, with an official deadline for response only 25 working days later. While we learned that the deadline had become more flexible after gathering our members' input, we stress that such an abbreviated time frame causes significant problems for our national association to develop the representative, detailed and comprehensive reply to the consultation document that we believe it warrants. Given the significant public interest in the issues raised, and the scientific, evidentiary and

1 October, 2003.

constitutional complexities inherent in any potential solution to the problem of drug impaired driving, we find this troubling.

The second general point is that the Consultation Document focuses too narrowly on just one approach to the investigative problems that arise in the context of drug impaired driving. The scientific, legal, and constitutional issues at stake cannot be properly addressed in such a limited way. Any results are likely to provide an inadequate foundation upon which to secure a legislative scheme. This is particularly worrisome given the necessity of finding the right balance between important public safety and constitutional concerns involved in this process.

III. DRUG IMPAIRED DRIVING

A. General Comments

There is little controversy regarding either the dangers posed by drug impaired driving, or the difficulties in fairly and effectively enforcing sanctions against this practice.[2] Such consensus is partially reflected in the present provisions of the *Criminal Code*, and more completely in the legislative schemes enacted in other jurisdictions, including most states within the United States and most countries within the European Union.[3] Different legal, constitutional, and cultural conditions within these jurisdictions have produced a broad tapestry of legislative and regulatory solutions. Simply copying the approach of another jurisdiction would ignore the impact of these various conditions. We must instead seek a solution that accurately reflects the appropriate balance within the Canadian context.

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2 Report of the Senate Special Committee on Illegal Drugs, Volume 1, pages 185-190; Report of the Standing Committee on Justice and Human Rights, May 1999, Chapter 6. See also, *Drinking, cannabis use and driving among Ontario students*, Edward M. Adlaf, Robert E. Mann, Angela Paglia, CMAJ, Mar. 4, 2003, 168 (5) at 565.

3 See Governors Highway Safety Association table on State Drug Impaired Driving Laws reproduced at www.statehighwaysafety.org/html/state_info/dre_perse_laws.html, and European Legal Database on Drugs, *Drugs and Driving, Comparative Study*, June 2003.

The application and enforcement of the proposed legislation would rely upon - and be limited by - the available technology for identification, evaluation and quantification. By ambitiously attempting to address impairment by any drug, these proposals extend beyond what is currently scientifically and objectively justifiable. Instead, the proposals would rely far too heavily on subjective interpretation by individual police officers. If technology now permits a fair and objective scheme for one or two drugs, we should focus any new legislation on only those drugs until technological developments permit greater scope, with the requisite fairness and objectivity.

The operation of a motor vehicle by a drug impaired person is already prohibited by section 253 of our *Criminal Code*. The amendments propose an overly formulaic, checklist type solution to address the widely accepted difficulty of establishing impairment by drugs. Certainly, there is a gap in the *Criminal Code* with respect to police powers to investigate drug impaired driving. The detailed and comprehensive provisions regarding the detection, investigation and prosecution of alcohol impaired driving highlights the extent of that gap. In contrast to the proposals in the Consultation Document, provisions for alcohol impairment carefully set out precise thresholds for demands at the roadside screening and breathalyzer stages of the investigation. They specify exactly the instruments authorized for these tests, and the presumptions that may attach to test results.

Even with such precision, the alcohol impaired driving provisions of the *Code* are among the most exhaustively litigated in the criminal law. Further, that volume of litigation has increased exponentially with the advent of the *Charter*. Every aspect of the legislative scheme for alcohol impaired driving has been subjected to detailed constitutional scrutiny. *Charter* challenges for the exclusion of evidence obtained under these provisions, as well as other remedies, represent a significant proportion of the caseload undertaken in trial and appeal courts across the country.

There is no reason to believe that additions regarding the investigation of drug impaired driving will be subject to less scrutiny than that given to alcohol impairment. Given the existing backlogs in many courts across the country, it is incumbent upon legislators to ensure that each stage of the proposed response to drug impaired driving is capable of surviving such detailed examination. Anything less will compromise not only the effectiveness of the proposed provisions, but also the effective and timely function of criminal courts generally under the wave of *Charter* litigation that would surely follow.

B. Roadside Screening

The consultation paper proposes the use of Standardized Field Sobriety Tests (SFST) at the roadside to determine whether a driver would be compelled to undergo further investigation for drug impairment at the police station. This testing would rely on the Drug Recognition Expert (DRE) protocol, requiring significant driver interaction at the roadside to allow police to make the necessary physical observations. In addition, police would be authorized to collect saliva and sweat swabs at the roadside.

Unlike the current alcohol roadside screening procedures, which use approved, increasingly objective scientific instruments for measuring impairment, many physical or performance based SFST for drug impairment would have a significant subjective or interpretive component, making it difficult to ensure their reliability. As stated in the Consultation Document, "drugs, unlike alcohol, are often extremely difficult to link to a particular concentration level that will cause impairment in the general population of drivers."[4] Officers may fail to take into account the effect of certain medications taken by individuals. An officer's determination of a driver's ability to follow an object with his or her eyes will be subjective. Given this lack of certainty in available testing procedures both at the roadside, and later at the police station, we recommend some objective record of these tests, such as a videotape procedure throughout the interaction between the driver and authorities.

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4 *Supra*, note 1, at 3.

In addition to excessive reliance on subjective assessments by police officers, there are ongoing debates about the overall reliability of SFST. After several studies highlighted the unreliability of field sobriety testing, courts no longer allow this testing to be used as evidence of intoxication at trial. In fact, roadside testing is used only to show that police had reasonable and probable grounds to investigate further.

The elements of the proposed SFST would require far greater time and participation by the individual than the current roadside screening tests for alcohol impairment. This has obvious *Charter* implications, not only in relation to rights against unreasonable search and arbitrary detention, but also the right to counsel. In our view, stopping a driver at the roadside for intrusive physical testing, potentially followed by a breath sample and then saliva or sweat swabs, would change the nature of the stop so that the right to counsel would be engaged. If the proposal assumes that drivers will voluntarily consent to participation in the testing, police officers should be required to specifically advise drivers that participation is optional. Officers would presumably have some basis for selecting either the saliva or the sweat swab. If so, drivers would have to be aware of that basis for any consent to be considered genuinely "informed". If the expectation is that drivers stopped for testing for drug impairment have the right to counsel, it should be explicitly stated in the proposed legislation. We note however that courts have already recognized that such consultation and observation is impractical at the roadside.

In general, we believe that the threshold for an officer to begin such testing is too low, and disproportionate to the intrusive nature of what is being contemplated. These proposals go beyond the current use of drivers' conduct or statements as evidence, to actually conscripting drivers to generate potentially self-incriminating evidence. A driver under suspicion of alcohol impairment is not compelled to provide ultimately incriminating evidence without proper consultation with counsel or an informed waiver of that right. The "implied consent law" used in the U.S. would not pass constitutional

scrutiny in Canada, given our right against arbitrary detention. If there is to be any waiver of rights, such as the right under section 8 of the *Charter* pertaining to search and seizure, again, it must be an informed waiver requiring consultation with counsel. The nature of the initial suspicion, and the subsequent reasonable and probable grounds to believe drug impairment exists, are also likely areas ripe for *Charter* scrutiny.

The potential for state use of collected samples beyond the expressed purpose of screening drivers for drug impairment is another important concern. If it is demonstrated to be a necessary component of impairment testing that saliva or sweat samples be taken at the roadside, provisions should be added to limit the use and retention of any samples taken. At present, judicial authorization is required for authorities to collect anything beyond a breath sample. In our view, there should be an explicit prohibition and penalty for use of such a sample beyond the intended purpose, for example, by inclusion in the government's DNA data bank.

A European consortium of universities, government and national road safety organizations is extensively studying the effects of various drugs on driving performance, as well as attempting to devise appropriate roadside screening and testing mechanisms to detect levels of drugs at which impairment occurs.[5] The research results and conclusions of this group are obviously significant in regard to the scientific and technical issues essential to developing quick, objective, and accurate roadside screening tests for drug impairment.

The composition of the group also illustrates the broad based scientific and technical consultation and research necessary to provide an adequate empirical foundation for any legislative scheme. While we recognize the extensive testing and use of SFST tests

5 The group is "Impaired Motorists, Methods of Roadside Testing and Assessment for Licensing". A website identifying the objectives, methodology, and work plan of the group is available at www.immortal.or.at/index.php.

in many jurisdictions in the U.S.,[6] we believe that the efficacy of a legislative scheme to assist in the detection, investigation, and prosecution of drug impaired driving can only be improved by broad scientific and technical consultation. When that consultation is complete, a detailed analysis of the *Charter* implications of the recommended devices and procedures should follow.

C. Testing at the Police Detachment

After roadside screening, a driver suspected of drug impairment would be brought to the police station for subsequent phases of the DRE evaluation. Phase 2 is designed to confirm the officer's suspicion by first ruling out alcohol impairment, and then through a series of further tests for drug impairment. In Phase 3, the driver would be forced to supply more bodily fluids, either blood or urine, to confirm what would then be the officer's reasonable belief that the impairment was caused by drugs. As with Phase 1 tests at the roadside, we see the testing at the police station as considerably more intrusive, and requiring far greater subject participation than the corresponding tests in the context of alcohol impaired driving.

At the police station, the officer would first demand that the driver blow into the breathalyzer. This differs from the current use of that device in that a reasonable belief of alcohol impairment would not be required. Instead, the function of the breathalyzer would be to confirm the officer's belief that drug impairment, rather than alcohol impairment, was at issue. In our view, if the officer does not believe the driver to be impaired by alcohol, the driver might appropriately go directly to DRE testing.

Again in Phases 2 and 3, there are significant *Charter* implications, in the grounds for demands, the extent of the search undertaken and the degree of conscription

6 See, for example, the research history summarized by the National Highway Traffic Safety Administration at www.nhtsa.dot.gov/people/injury/alcohol/SFST/introduction.htm.

involved. Some courts may determine that an officer must specifically suspect the use of drugs, rather than relying upon a negative result on a test for alcohol. Drug impaired driving would not be the same offence as driving while impaired by alcohol and the grounds for pursuing an investigation should perhaps be geared to the respective offences. We expect the process would take far longer than the forty-five minutes suggested in the Consultation Document. Throughout such time, the driver would be detained. The significant subjective or interpretive elements of many phases of the evaluation process are worrisome. The "interviews" proposed in Step 5 of the Consultation Document involve taking a statement from a suspect. Surely, the right to counsel must be engaged. As at the roadside, those suspected will be asked to hop on one leg and to provide saliva or sweat samples. They would be put in a dark room, and then have a flashlight shone in their eyes. Police officers would be authorized to examine the interior of the driver's mouth and nose, take blood pressure and pulse rates, and check for muscle tone. If this battery of tests supported the officer's belief of drug impairment, a blood or urine sample could be demanded of the driver during Phase 3 of the DRE.

If the DRE is as refined and the training of officers as thorough as suggested in the Consultation Document, we question the necessity of Phase 3. A driver is not now required to go through urine or blood analysis just to make sure the breathalyzer is correct. However, if such samples are taken, they must be subject to legislative controls. If blood is taken, it should be taken under a protocol similar to that for taking blood samples where alcohol is suspected. State use of bodily samples should not be expanded through, for example, adding them to the DNA data bank. We have similar concerns over bodily integrity and maintaining continuity over saliva, sweat and urine samples.

Drug impairment is frequently difficult to identify and to quantify. The basis for suspicion will have subjective components, bringing in an officer's predilections for or against

certain types of people. Testable traces of drugs will often linger long after use and long after any impairment. As currently proposed, it appears that police would look to confirm the mere presence of a drug, not the type or measurable quantum. There is a danger that a "bodily fluid test" will reveal traces of past drug use that will no longer affect driving ability, yet its detection would raise a presumption of impairment. This could ultimately result in eliminating both the *mens rea* and *actus reus* component to a driving offence.

Given all of these considerations, any ability to tender results by certificate should ensure that the results have only a limited presumptive evidentiary value. Broader scientific and technical consultation before embarking on this proposal would assist in ensuring that the procedures and protocols recommended maximize the accuracy and efficiency of the tests used, while minimizing the potential scope of *Charter* infringement. Again, by videotaping all stages of the DRE evaluation and subjecting it to a legislative protocol, we would ensure greater legal accountability for the testing, use and retention of these seizures.

D. Concerns about "Refusal" Offences

The provisions of section 254 of the *Code* make it an offense to refuse alcohol testing. This refusal should not also form the basis for requesting participation in a legislated demand for drug testing, and so open the door to a second "refusal" charge. This highlights the need to form separate grounds for drug or alcohol requests.

E. *Charter* Sensitivity

Throughout our outline of concerns, we have stressed the potential of these proposals to infringe *Charter* rights. This potential is, in our view, extensive.

Amendments to the law should not occur in the absence of full consideration of all *Charter* implications. For example, any "legal limits" must be considered in the perspective of legislative and judicial positions on cannabis use for medical purposes.

Further, proposals should allow for differentiation between prescribed and illicit substances. Certainly, there is a different element of blameworthiness for inadvertent effects of a prescribed legal drug than from abuse of an illegal one.
In our view, these seizures are easily distinguished from the DNA seizures that have survived *Charter* scrutiny. In this proposal, the evidence is being taken from a driver who is presumed innocent and who is being required to give potentially self-incriminating evidence based on suspicion alone, possibly without legal advice.

This should not be a rushed proposal, and instead requires appropriate study and consideration of all available options and risks. We should not put the burden of launching *Charter* challenges on those wrongly implicated through this scheme.

IV. CONCLUSION

We recognize the dangers posed by drug impaired driving, and the need for a legislative scheme to assist in the detection, apprehension and prosecution of offenders. However, greater scientific and technical consultation is needed before establishing the factual and empirical foundation for a legislative scheme. Only after this foundation has been established, and the appropriate technical mechanisms and procedures have been identified, can the real *Charter* implications of these measures be adequately considered. We would be pleased to be involved in ongoing dialogue concerning the *Charter* compliance of any further proposals. Until then, we believe that it is not in the public interest to implement measures that will surely generate significant court challenges.