

After a decade of legislative reform, enhanced enforcement and ongoing public education, Ontario has earned its place as the jurisdiction with the safest roads in North America. So how would lowering the Criminal Code affect our road safety record?

Ontario Community Council
on Impaired Driving

***Lowering the Criminal Code Blood Alcohol
Concentration Level in Canada:
It's a Matter of Priority***

This document was prepared with input from OCCID's members and board of directors. It is intended to be an OCCID *priority statement* as of September 2003, in context with all that is relevant to this issue and the legislation in Ontario at this time. Anyone wishing to use or reproduce the content herein should contact the OCCID office at 416-485-4411 before doing so.

BACKGROUND

In Canada, any person with a blood alcohol concentration (BAC) of 80 mg% (80 milligrams of alcohol in 100 milliliters of blood, or 0.08) or over, who is operating a motor vehicle can be charged with a Criminal Code offence. Internationally, the medical profession advises that impairment exists at 0.05. Several investigations and research documents including *Reducing the Harms of Alcohol Related Collisions* (Best Advice Paper, Centre for Addiction and Mental Health, July 2002), *CCMTA's Position on the Criminal Code Blood Alcohol Concentration* (Canadian Council of Motor Transport Operators, February 2003), *MAXIMUM BAC: The Safety Impact of Lowering the BAC Limit for Drivers in Canada* (Traffic Injury Research Foundation, June 2002) and *The Effectiveness of Reducing Illegal Blood Alcohol Concentration Limits for Driving* (Pacific Institute for Research and Evaluation, September 2003) have all provided a variety of perspectives on the issue.

OCCID has supported legislative change, especially at the provincial level, for more than a decade but not all member groups/stakeholders are convinced that lowering the Criminal Code BAC from .08 to .05 would achieve significant results in Ontario at this time.

CURRENT ATTITUDES

At a General Meeting of OCCID members in May 2003, the issue of lowering the Criminal Code BAC was discussed at length. Members agreed that drivers should have zero alcohol in their system when driving; however, there was general consensus that in light of all the changes to licensing reinstatement conditions in Ontario since 1995, lowering the Criminal Code level to .05 is not currently a priority for our members. The following concerns and issues were cited:

- Existing legislation allows officers to immediately remove from the road those drivers who pose a risk at .05; officers can still continue to run RIDE to apprehend drivers who statistically pose an even greater risk, *at levels of .08 and above*
- Impaired driving charges are the most often contested and the most complex to execute; therefore Ontario courts face challenges in convicting drinking driving offenders. As well, more significant penalties and longer licence suspensions have led to even more pleas of “not guilty”.
- If such changed legislation were to result in more charges¹, our courts would face an increased caseload, and new reinstatement measures for convicted impaired drivers may become unmanageable
- Most federal and provincial legislative changes (assessment of offenders, Back on Track, vehicle impoundment, longer licence suspensions and ignition interlock) from 1996 on, are still in the early stages of implementation and have not yet been adequately evaluated in terms of their impact on Ontario drivers (eg. the Back on Track program has notified 57,000 drivers of their need to complete the program to be legally licensed again in Ontario – 25,600 have replied, but only about 1/3 - 19,107 have completed the course)
- Ontario still has legislative changes from 1998 that have not been completely implemented, i.e. the legislation that defines a repeat offender
- Recommendations made by the Standing Committee on Justice and Human Rights in 1999, of note recommendations 13 and 15², are still being pursued

¹ OPP data show that currently for every charge laid, there are about 3 roadside suspensions issued.

² Recommendations are listed in full and appended to this document

- The issue of drivers impaired by marijuana/other illicit drugs is also being consistently raised in terms of impact, detection methods and requirements for conviction.
- Other forms of risky driving issues such as driver fatigue and driver distraction are evolving; factors such as hours of service for commercial drivers, shift work, distances traveled, age of driver (there are currently half a million teenage drivers in Ontario) potentially combine to create more safety risks on our roads.

CONCLUSION

OCCID acknowledges that many Canadians, if asked, will agree that penalties for impaired drivers should be increased, but current penalties/reinstatement conditions are not well known to the public. A survey with five questions relating solely to federal penalties was completed at many events sponsored by OCCID in 2002 and marks of all participants of all ages averaged 34%. Other studies have shown similar response rates.

Canada's laws are among the strictest in the developed world for BAC offences and we have seen a strong downward trend in deaths related to impaired driving, including a 30% drop between 1995 and 1999. The nature of the problem is now quite different from 20 years ago. Today, the majority of drivers involved in alcohol-related fatal crashes typically are repeat offenders and have BACs over 0.15 - about twice the legal limit.

In Ontario, OCCID will continue its efforts to reduce and eliminate impaired driving by providing leadership and programs, and enabling people and communities to share resources and information to prevent injuries and save lives.

APPENDICES

Changes to provincial legislation in Ontario SINCE 1995 have included:

- Administrative Driver Licence Suspension (ADLS);
- Remedial Measures (Back on Track Program, offender pay);
- assessment of all offenders;
- longer search lengths (takes full effect in September 2003);
- longer licence suspensions for repeat offenders;
- Vehicle Impoundment for those caught driving while suspended for a Criminal Code offence (offender pay); and most recently
- Ignition Interlock as a condition of reinstatement for all convicted impaired drivers.

Federal legislative changes include:

- higher fines;
- longer driving prohibitions;
- a new maximum sentence of life in prison for impaired driving causing death
- improved grounds for police for testing; and
- consideration of a BAC level when sentencing with .16 as a threshold for higher fines/other sanctions.

Recommendations from the Standing Committee on Justice and Human Rights 1999 as referenced:

#13

The committee recommends that the Minister of Justice consult with the provinces and territories to develop legislative proposals for obtaining better evidence against suspected drug impaired drivers.

#15

The committee recommends that a federal, provincial, territorial working group of Justice experts be convened to consider the enforcement and prosecution aspects of impaired driving, and to determine whether criminal code amendments, additional to those contained in the report, are necessary or advisable.