



NATIONAL SURVEY OF CROWN PROSECUTORS AND DEFENCE COUNSEL ON IMPAIRED DRIVING

**TIRF**

The knowledge source for safe driving

National Survey of Crown Prosecutors and Defence Counsel on Impaired Driving

Robyn Robertson
Ward Vanlaar
Herb Simpson

June 2009

This document is a third-party report commissioned by CCMTA and TC to be an impartial and unbiased survey of prosecutors and defence counsel on impaired driving.



The Traffic Injury Research Foundation

The mission of the Traffic Injury Research Foundation (TIRF) is to reduce traffic-related deaths and injuries.

TIRF is a national, independent, charitable road safety institute. Since its inception in 1964, TIRF has become internationally recognized for its accomplishments in a wide range of subject areas related to identifying the causes of road crashes and developing programs and policies to address them effectively.

Traffic Injury Research Foundation

171 Nepean Street, Suite 200

Ottawa, Ontario K2P 0B4

Ph: (613) 238-5235

Fax: (613) 238-5292

Email: tirf@tirf.ca

Website: www.tirf.ca

June 2009



Acknowledgements

The authors gratefully acknowledge Brian Jonah and Paul Boase of Transport Canada, and Kwei Quaye and Valerie Todd of the Canadian Council of Motor Transport Administrators for their guidance and support throughout this project.

The authors also acknowledge the cooperation and assistance of Members of the Oversight Committee for their assistance and expertise throughout the completion of this study. Members of the Committee include Brian Jonah and Paul Boase, Transport Canada, Hal Pruden, Department of Justice, Kwei Quaye, Saskatchewan Government Insurance (SGI), Sheilagh Stewart, Ontario Ministry of the Attorney General, and Heather Perkins-Mcvey, an Ottawa defence attorney.

The authors also would like to recognize and extend appreciation to the many Crown prosecutors and defence counsel from Ottawa who participated in the focus groups and provided us with their thoughts and suggestions regarding the development of the survey.

The authors acknowledge with gratitude the Attorneys General, and both national and provincial/territorial Crown and defence associations that facilitated various aspects of the distribution of the survey. Their cooperation and support enabled us to gather responses from more than 1,000 experienced professionals.

A draft of this report was circulated for critical review to practicing Crown and defence counsel and government representatives in several jurisdictions. The authors extend their appreciation to each of them for their insightful comments, perspectives and suggestions. Their passion, expertise and experience provided valuable insights into prosecution problems and how to solve them.

The authors also extend their appreciation to the 1,035 Crown prosecutors and defence counsel who shared their perceptions, experiences and opinions with us by completing the survey. Their substantial participation allowed us to clearly illustrate the problems that currently exist in the justice system and ways that they can be overcome.

Additional project support was provided by staff at the Traffic Injury Research Foundation, Dan Mayhew, Peter Parsons, Gisele Perron, and Amanda Johnson. Their contribution to the completion of this work is greatly appreciated.

The opinions, findings, and conclusions expressed in this report are those of the authors and do not necessarily reflect the views of the Canadian Council of Motor Transport Administrators, Transport Canada or any other agencies or reviewers involved in the completion of this report.

Funding for this project was graciously provided by the Canadian Council of Motor Transport Administrators and Transport Canada.



List of Abbreviations Used in the Report

ASD	Approved screening device
BAC	Blood/breath alcohol concentration
CCC	Criminal Code of Canada
CCMTA	Canadian Council of Motor Transport Administrators
CLE	Continuing legal education
DWI	Driving while impaired or intoxicated
PSR	Pre-sentence report
RPG	Reasonable and probable grounds
STRID	Strategy to reduce impaired driving
STS	Short-term licence suspension
TIRF	Traffic Injury Research Foundation



Table of Contents

	<u>Page</u>
Acknowledgements	i
List of Abbreviations Used in the Report	iii
Executive Summary.....	vii
1.0 Introduction	1
1.1 Background	1
1.2 Research Objectives	4
2.0 Methodology	7
2.1 Study Design: Overview	7
2.2 Survey Sample	7
2.2.1 Survey of Crown Prosecutors	8
2.2.2 Survey of Defence Counsel	10
2.3 Survey Questionnaire	10
2.4 Data Analysis	12
2.5 Response Rate	13
2.6 Characteristics of the Sample	15
3.0 Prosecution Process	17
3.1 The Roles and Responsibilities of Lawyers	17
3.2 The Prosecution Process	19
3.2.1 Laying the Charge(s)	21
3.2.2 Pre-trial Process	26
3.2.3 Trial Process	37
3.2.4 Verdict	39
3.2.5 Sentencing	40
3.2.6 Appeal	41
3.3 Conclusions	42
4.0 Results.....	43
4.1 Overview	43
4.2 Presentation of Findings	44
4.3 Police Charges	45
4.4 Blood Alcohol Concentration (BAC)	47
4.5 Caseload	49
4.6 Evidence	52
4.7 Trials	55



4.7.1	Pre-trial or Resolution Discussions	55
4.7.2	Case Processing	59
4.7.3	Trial	61
4.7.4	Case Outcomes	65
4.8	Sentencing	76
4.9	General Perceptions and Attitudes	82
5.0	Regional Profiles.....	89
5.1	British Columbia.....	91
5.2	Alberta, Yukon, and Nunavut.....	94
5.3	Saskatchewan, Manitoba, and the Northwest Territories.....	96
5.4	Ontario.....	99
5.5	Quebec.....	102
5.6	Atlantic.....	105
6.0	Conclusions	107
	Appendix I – Crown Survey	113
	Appendix II – Defence Survey.....	139
	References	165

Executive Summary

Background

From the mid-1980s through to the late 1990s Canada achieved significant declines in alcohol-impaired driving fatalities and injuries. This progress was paralleled by a dramatic shift in public attitudes from complacency and apathy to a situation where drinking and driving was considered by many to be socially unacceptable and reprehensible. This evolution in perspective has been both encouraged and reinforced through the development of national initiatives to address impaired driving (e.g., Strategy to Reduce Impaired Driving – STRID 2010) by the Canadian Council of Motor Transport Administrators (CCMTA) which reports to The Council of Ministers Responsible for Transportation and Highway Safety, along with the implementation of proven prevention measures, such as alcohol ignition interlocks, administrative licence suspension and vehicle impoundment.

However, the progress observed in the 1980s and 1990s stalled by the end of the latter decade and little progress has been made since then. The problem remains a significant one – for example, in 2005, 851 people were killed in alcohol-related motor vehicle crashes on public highways and approximately one-third of all fatal road crashes were alcohol-related (Mayhew et al. 2008). Not surprisingly, impaired driving remains a priority concern among Canadians -- more than 80% believe it is a serious problem and one of greater importance than almost all other road safety issues (Vanlaar et al. 2006; Vanlaar et al. 2007).

In Canada, concern about the effectiveness of the legal system for dealing with alcohol-impaired driving cases has also been an issue of historical concern, and research to determine the validity of this concern and identify where problems exist has been undertaken several times since the 1980s. Prior research includes: a 1987 survey of Ontario prosecutors designed to understand the strengths and limitations of the adjudication process for dealing with drinking-drivers to identify feasible improvements (Vingilis et al. 1988), a 1992 evaluation of the 1985 amendments to alcohol-impaired driving legislation based on interviews with front-line police officers and lawyers from several different jurisdictions (Moyer 1992), and also a 1997 nationally representative survey of front-line police officers in Canada (Jonah et al. 1997) to determine their attitudes and perceptions regarding the detection of impaired drivers, the handling of charges, court proceedings, and sanctions.

Methodology

This study was designed to examine the legal process as it applies to alcohol-impaired driving from the point of view of Crown prosecutors and defence counsel, and to identify evidentiary or procedural factors which may impact the legal process, the rights of the accused, and interactions of all parts in the legal process. It was conducted by the Traffic



Injury Research Foundation (TIRF) under funding from Transport Canada and the Canadian Council of Motor Transport Administrators (CCMTA) and was based on a previous survey of law enforcement in Canada (Jonah et al. 1997) that was also funded by Transport Canada.

The purpose of this study was to survey a sample of Crown prosecutors and defence counsel to obtain contemporary information pertaining to the prosecution of impaired driving cases; more specifically, to identify problems that impede effective and efficient prosecution and to determine how these problems can be overcome. Accordingly, the survey was designed to gauge the attitudes, experiences, and perceptions of lawyers with regard to the legal system vis-a-vis alcohol-impaired driving in Canada. For various reasons, it was not possible to identify or access the entire population of lawyers who handle such cases, or even a truly representative sample.

A total of 1,035 completed surveys were received, including 765 from Crown prosecutors and 270 from defence counsel. Responses were received from all jurisdictions, but the majority of Crown surveys were from Ontario, Quebec and British Columbia, Canada's most populous provinces, and almost all of the defence surveys were received from Ontario, Quebec and Alberta. As response rates in some jurisdictions were low, generalizations must be made cautiously in some instances.

Slightly more responses were received from men than women; the average age of respondents was early-40s. Three-quarters of Crown respondents and two-thirds of defence respondents were English-speaking. On average, defence counsel had more experience in the criminal law field at 16.5 years, compared to 12.5 years for Crown prosecutors.

National Results

The results from this survey of more than 1,000 Crown prosecutors and defence counsel provide insight into how well the justice system is currently coping with impaired driving cases. Substantial agreement among prosecutors and defence counsel regarding the magnitude and effects of various problems was evident and speaks to the veracity of the findings.

This survey examined priority problems that were believed to impede the efficient and effective processing of impaired driving cases. Key issues that were explored as part of the survey include: 1) the BAC (blood alcohol concentration) level of impaired driving cases; 2) caseload volume among lawyers; 3) the volume of cases resolved with plea agreements, guilty pleas, and trials respectively; 4) the amount of time required to prepare and prosecute in court impaired driving cases; 5) conviction rates for cases going to trial and overall conviction rates; and, 6) the total amount of time required to resolve impaired driving cases (from arrest to sentencing).

Results from the survey can be used to guide the strategic development of impaired driving initiatives designed to improve the efficiency and effectiveness of the justice system for dealing with impaired driving. Of interest, the results from this initiative, and the earlier survey of law enforcement echo the findings from a series of studies in the United States that surveyed several thousand police officers, prosecutors, judges and

probation officers as part of a comprehensive review of the criminal justice system for dealing with hard core drinking drivers (Robertson and Simpson, 2002a, 2002b, 2003a; Simpson and Robertson 2001).

BACs in impaired driving cases. Survey results from Crown prosecutors and defence counsel revealed that the majority of impaired driving cases processed through the justice system involve a BAC ranging from 100-160 mg%. In fact, more than 70% of Crown prosecutors representing most regions in Canada report that almost all or most of the impaired driving cases they handle involve a BAC in excess of 120 mg%. It should be noted that the volume of cases in the higher BAC range in many respects is not unusual. A 1992 study also reported that the mean BAC of cases ranged between 160 and 180mg% (Moyer 1992).

Somewhat smaller percentages of both prosecutors and defence counsel acknowledge that they always or often handle cases involving a BAC between 80-100 mg%, suggesting that impaired driving cases involving this lower BAC range are less common.

Caseload of lawyers. Findings from the survey revealed immense differences between the average criminal caseload size estimated by Crown prosecutors and those reported by defence counsel. Prosecutors report handling an average of 456 criminal cases annually, compared to some 114 criminal cases handled by defence counsel – the typical criminal caseload for prosecutors is some 4 times greater than that of defence counsel. Given these caseloads, it is not surprising that 53% of Crown prosecutors agree or strongly agree that caseload makes it difficult to prepare adequately for impaired driving cases, whereas only 15% of defence counsel agree or strongly agree that this is true.

With regard to impaired driving cases, nationally, prosecutors and defence counsel also agree that approximately 24% of their criminal caseload involves impaired driving cases. Across jurisdictions, the percentage of impaired driving cases ranges among Crown from 17% to 30% of their total caseload. These figures are highly comparable to those found in a 1988 study in Ontario that reported “Almost one-third of the Crown counsel’s caseload is criminal alcohol-related driving offences” (Vingilis et al. 1988; p. 6).

Long-recognized as a significant part of the alcohol-crash problem, repeat offenders account for approximately 1/3 of impaired driving cases each year -- Crown prosecutors estimate that 35% of the impaired driving cases they handle involve repeat offenders, compared to 30% reported by defence counsel. These findings also vary according to region and range from 29% to 40%.

Case resolution. There are four typical ways that impaired driving cases can be resolved: a) charges are withdrawn or stayed before or at trial; b) a plea agreement is reached; c) the accused pleads guilty as charged; or, d) the accused pleads not guilty and goes to trial. The three former methods allow for cases to be resolved more quickly and with fewer resources, whereas the latter does not. Clearly the extent to which such methods are available and relied upon can impact the ability of the system to cope with case volume.



a) Withdrawn/stayed. According to survey results, impaired driving charges are rarely withdrawn or stayed in impaired driving cases, occurring in only 5-10% of cases nationally.

b) Plea agreements. Nationally, pre-trial or resolution discussions are common. This is not surprising given that the practice of negotiating plea agreements enables lawyers to resolve cases more quickly and with fewer resources, thereby reducing the burden on the justice system. However, the prevalence of pre-trial discussions that result in a resolution is less substantial than expected. Crown prosecutors and defence counsel generally agree that, *of those cases involving pre-trial discussions*, a resolution is reached in only 35% of cases. In fact, nationally, Crown prosecutors report that overall a plea agreement is actually reached in only 16% (range of 2-27%) of impaired driving cases; defence counsel report a slightly higher figure of 20%. Of concern, plea agreements can include pleas to non-alcohol *Criminal Code* charges and non-*Criminal Code* charges, although these are relatively rare in most jurisdictions.

The availability of plea agreements may be a function of the volume of cases being managed in each jurisdiction or a function of policies and practices that have been established regarding what cases will/will not be negotiated. However, it is important to note that, regardless of the reason why plea agreements are/are not occurring, the level of plea negotiations and agreements can have a substantial impact on the volume of cases going to trial, and have the potential to increase the workload associated with these cases. Survey findings suggest that a significant volume of cases are proceeding to trial (more than 40% of them) and fewer cases are being resolved with plea agreements. The impact of this reduced reliance on plea agreements as a method of resolving cases ultimately means a greater drain on the finite resources that are available for such cases.

c) Guilty pleas. Nationally, Crown prosecutors report that almost 40% of accused plead guilty as charged; defence counsel believes it is lower at 29%. However, it appears that many of these accused are encouraged to plead guilty as charged as Crown will offer either an agreement on statement of facts or a joint submission on sentence as part of the plea.

d) Not guilty pleas. In aggregate, lawyers on both sides of the aisle agree that in a rather substantial proportion of cases (more than 40% of them), the accused pleads not guilty and goes to trial. One respondent to the survey noted that “Often people proceed to trial because of the consequences associated with a criminal conviction”; another reports that “Driving suspensions are increasing our caseloads significantly. Very rarely are there pleas of guilty.” Of importance, it is not only the consequences of conviction but the criminal conviction itself that leads people to proceed to trial.

Again, the percentage of cases in which the accused pleads not guilty can have a substantial impact on caseload as these cases often proceed to trial and remain on the Court calendar for longer periods, resulting in increased workload, time demands and use of resources.

Of interest, based on comments from both Crown and defence counsel, it appears that at least almost half of accused are prepared to go to trial to avoid the consequences associated with a criminal conviction, including the Federal penalties, the insurance

consequences, and the provincial requirements including costs, as well as the conviction itself which results in a criminal record.

Case Preparation Time. Not surprisingly, the amount of time spent preparing an impaired driving case varies substantially between prosecutors and defence counsel. Results are summarized in Table 1. On average, Crown spend 2.5 hours preparing for simple impaired driving cases involving no bodily harm or special circumstances. This is in sharp contrast to the 11.5 hours reported by defence lawyers -- more than 4 times the number of hours spent by Crown. However, lawyers generally agree that the amount of time needed in Court to resolve this type of case is between 4-5 hours.

Cases that proceed by indictment but that do not involve bodily harm or death require almost twice as much time for Crown prosecutors to prepare (4.5 hours) as these cases may involve preliminary hearings and have jury implications. Defence counsel report that they take an average of 15.5 hours to prepare such case -- more than 3 times the number of hours spent by Crown. Again, lawyers generally agree regarding the time it takes to resolve these cases in Court -- an average of 5.6-7 hours.

Cases that involve bodily harm and/or death require even more time to resolve. Crown prosecutors report spending an average of 17.6 hours to prepare for such cases and defence counsel spend an average of 32 hours in preparation -- almost twice as much time. In addition, a considerable amount of time is required in Court to resolve these cases -- on average, lawyers report that 16-17 hours of Court time is common.

Table 1: Estimated Average Case Preparation and Court Time*

Case type	Crown prep time	Defence prep time	Crown Court time	Defence Court time
Summary conviction	2.5	11.5	4	5
Indictment without bodily harm	4.5	15.5	5.6	7
253(a) with bodily harm/death	17.6	32	17	16

*Figures represent number of hours per case.

As noted above, the survey revealed that defence counsel spend at least twice as many hours, and in some instances, four times as many hours preparing for impaired driving cases as do Crown; assuming that Crown and defence require about the same time to handle each case. On the one hand, this is not surprising, given the relatively smaller size of their caseloads -- on the other hand, it raises some concern about just how level the playing field is in terms of case preparation. Such potential inequities in the system can have a significant impact on outcomes.

Conviction rate at trial. When asked what percentage of impaired driving cases actually results in a trial, Crown prosecutors estimated an average of 45%; defence counsel estimated a similar figure at 42%. Repeat offenders are somewhat more likely to go to trial than first offenders. Nationally, approximately 41% of Crown prosecutors



estimate that repeat offenders are more likely to go to trial, as compared to 34% of defence counsel.

As expected, Crown prosecutors and defence counsel have slightly different perspectives on convictions and acquittals. Nationally, prosecutors estimate that accused are convicted in 52% of cases going to trial. Conviction rates vary according to jurisdiction and range from a low of 41% to a high of 75%. On the other hand, defence counsel estimate a lower conviction rate of only 33% in cases going to trial.

Such low conviction rates at trial in many jurisdictions suggest that challenges associated with impaired driving cases have increased over time. As an example, defence and legal arguments have become much more complex as case law has evolved. Similarly, low conviction rates at trial may be more evident in some jurisdictions due to the quality of cases that are brought to the Crown and the available evidence that has been gathered as part of the investigation, as well as the volume of cases being processed and the amount of preparation time, the experience of prosecutors, and the variable ability of prosecutors to negotiate pleas. In essence, these significant differences in outcomes clearly illustrate that in some jurisdictions the justice system is not coping as effectively with current impaired driving cases.

Overall conviction rate. The average overall conviction rate (including plea agreements, guilty pleas and convictions at trial) for impaired driving cases is 78%. These findings are in contrast to overall conviction rates reported in surveys of police and lawyers in the past two decades (Moyer 1992; Jonah et al. 1997) in excess of 90%. Based on the findings from this survey, a majority of jurisdictions report an overall estimated conviction rate of 72%-73%. Higher overall conviction rates are reported in the Saskatchewan, Manitoba and Northwest Territories region (86%) and the Atlantic region (90%).

Time to resolve impaired driving cases. As discussed previously, there are several different methods by which impaired driving cases can be resolved. Some of these methods, (e.g., plea agreement) require less time to reach a resolution, whereas other methods (e.g., trial) require considerably more time. Crown prosecutors and defence counsel agree that it takes 5.5 to 6 months to resolve a case (from arrest to sentencing) involving a negotiated plea agreement. It takes considerably more time (10.5-11 months) to resolve a case that goes to trial and proceeds by summary conviction. Cases going to trial that proceed by indictment require even more time with estimates ranging between 13.7-14.5 months to resolve.

Respondents were also asked if they believe that the time it takes to resolve cases has increased since they began practicing law. Of concern, approximately 70% of both Crown prosecutors and defence counsel similarly agree that the length of time it takes to resolve an impaired driving case has increased since they began practicing law. To illustrate, the time it takes to resolve cases as reported in this survey is much longer than the estimated 3-5 months reported by some jurisdictions in the earlier 1992 study, with some Courts requiring fewer hearings than others (Moyer 1992).

Conclusions

The findings from this national survey of Crown prosecutors and defence counsel in Canada suggest that there are important challenges within the criminal justice system that impede the effective and efficient processing of impaired driving cases. Some of these challenges occur as a function of practices and policies (e.g., variations in investigative/arrest procedures by police, variations in charging practices, frequency of plea agreements and trials) while others occur as a function of legislation (e.g., the increasing use of “evidence to the contrary” defences and *Charter* challenges). (Note: The recent passage of Bill C-2 designed to address “evidence to the contrary” should address this particular legislative challenge).

Today, caseloads are substantial, cases require considerable preparation time as well as time in Court due to the complexity of issues, plea agreements are less common as more accused are willing to proceed to trial, and outcomes are less satisfactory. Collectively, these issues significantly impact case processing and case outcomes. It appears that fewer cases are resolved through plea agreements and case backlogs are growing as it takes longer to resolve these cases than it did a decade ago. Although jurisdictions report overall conviction rates in excess of 70%, a substantial proportion of cases going to trial result in an acquittal. This poses considerable concern (given the availability of a valid and reliable method of measuring breath and blood alcohol) and suggests that there are a number of hurdles that the prosecution must overcome.

Many of the challenges identified in the survey have been recognized in earlier research and, as such, are not new. However, this current survey suggests that the magnitude and extent of these problems is increasing. Not only have conviction rates declined in recent years, but it takes longer to resolve cases today than it did a decade ago. Collectively, this suggests that action is needed to address the impediments in the criminal justice system that impact the processing of impaired driving cases, and, more importantly, that such changes are needed to re-enforce the deterrent effect of laws to ensure that persons convicted of impaired driving do not continue to offend.

In part, the problems within the system are inherent in its complexity. Impaired driving cases are complex due to the nature of intersecting scientific, legal and constitutional issues. Case law in this area has grown exponentially, making it difficult for police and lawyers to keep abreast of current decisions. It also cannot be overlooked that, while *Charter* issues pose a considerable challenge in the processing of impaired driving cases, this is not unusual. In fact, these issues impact a broad cross-section of cases and will likely continue to do so in the future. However, efforts can be taken to minimize their impact by ensuring that police are aware of relevant cases as the law evolves, and understand what impact these decisions will have on their investigative procedures. Crown and defence counsel can play a significant role in ensuring that officers are well-equipped to navigate constitutional issues in the future.

The findings also suggest that the processing of cases can be improved with some practical measures. To begin, Crown and police can benefit from more consistent and sustained institutional efforts regarding education and training in this area, particularly in light of the rapidly evolving jurisprudence. To this end, better and more consistent education and training initiatives for practitioners on impaired driving issues can help agencies move collectively towards reducing or eliminating cases in which evidentiary

issues lead to an acquittal. It has been suggested previously that initiatives that encourage cross-professional training for police and prosecutors can have significant benefits and such an approach is actively adopted in some U.S. jurisdictions (Robertson and Simpson 2004).

Although some Crown may be slightly concerned about the nature and content of communication with police, the findings from this survey suggest there is also a need to improve communication among Crown and police. To some extent, there is a tendency among agencies to work in silos, resulting in poor communication among professionals in some areas. This can build barriers and detract from effective case management. Communication among practitioners is not always reciprocal and feedback is rare, both internally and externally, which creates challenges for practitioners in effectively and efficiently managing cases to reach suitable and appropriate outcomes. In some instances, police and lawyers may have a good sense of procedures and practices, however, they lack insight into how, where, and why things can go wrong, and, more importantly, what is needed to address these issues. In other cases, they may be well aware of the reasons things may go wrong (e.g., “evidence to the contrary” defences) but can do little to avoid it. However, informed discussion that shares differing perspectives can provide a better sense of understanding and ways that practices can be improved. Again, this approach is already being promoted and encouraged in some U.S. jurisdictions with beneficial results.

There are lessons to be learned by examining more closely the jurisdictions in which effective working relationships between Crown and police have been established. Perhaps there are practices that can be shared with other jurisdictions to improve the quality of impaired driving cases that are brought to Court and to minimize constitutional challenges. In jurisdictions where there is a high level of satisfaction with police investigations and procedures, cases appear to be resolved more quickly and convictions are more common. Indeed, such increased interaction between Crown and police was recommended almost two decades ago (Vingilis et al. 1988).

In addition, Crown offices should be encouraged to internally review their policies and practices (e.g., regarding plea negotiations, laying of charges, case preparation) to determine what effect they are having on case outcomes. Clearly, while jurisdictions desire to reinforce the seriousness of an impaired driving offence by taking a strong approach to dealing with offenders, the impact of this approach on the processing of cases must be recognized. In jurisdictions where pleas are limited and cases proceed by indictment, particularly lower BAC (e.g., 80-100mg%) cases, there is little incentive for offenders to resolve cases. Not only does this result in a substantial drain on resources as more cases go to trial, but it also opens the door for less satisfactory outcomes due to such things as “evidence to the contrary” defences. As such, a clear understanding of the outcomes of certain practices is the first step towards the identification of optimal and acceptable policies to improve case processing.

Some aspects of existing legislation also require closer scrutiny. For example, over a decade ago, it was reported that the 1985 amendments to impaired driving legislation, which included a driving prohibition, resulted in more offenders going to trial (Moyer 1992) in an effort to retain their driving privileges. This is certainly even more true today. Lawyers have clearly recognized the impact that the mandatory driving prohibition has had on case processing. As such, the consequences of such a policy must be closely examined in view of any benefits that are accrued -- i.e., it may be more beneficial to

permit impaired drivers to regain their licence earlier with the condition of an ignition interlock. The optimal length of a 'hard suspension' during which the driver is prohibited from driving should be examined to promote more use of interlocks.

Finally, it is clear that more work is needed to increase the availability of alternative sanctions across jurisdictions and improve awareness among lawyers regarding the effectiveness of such sanctions. To date, the effectiveness of incarceration and/or fines in reducing drunk driving has been limited, suggesting alternative approaches are needed.

As an example, ignition interlocks are effective in reducing recidivism by 50-90% while installed on the vehicle, yet only a small proportion of Crown believe interlocks are effective. Conversely, defence counsel seems to have greater knowledge in this area and is generally supportive of the use of interlocks.

In conclusion, the challenges that currently exist in prosecuting impaired driving offences appear to be, in part, a function of policies and practices and, to a lesser extent, the laws that are in place. This is evidenced by the fact that some jurisdictions appear to be coping reasonably well with these issues while others are not. At the same time, "evidence to the contrary" defences clearly pose a substantial problem in almost all jurisdictions, indicating a need for legislative change. It is hoped that the recently passed Bill C-2 will bring about the desired improvement in this regard.

Today, those accused of impaired driving are willing to go to trial because the potential payoff is significant. One commonality that cannot be overlooked is the distinct willingness of people to fight to avoid a criminal conviction as well as the one year driving prohibition. These findings clearly demonstrate that, in the face of such severe penalties, many of those accused of impaired driving see the penalties as an incentive to go to great lengths to avoid a conviction, which has substantial implications for the ability of the justice system to manage such cases in its current form.

1.0 Introduction

1.1 Background

From the mid-1980s through to the late 1990s Canada achieved significant declines in alcohol-impaired driving fatalities and injuries. This progress was paralleled by a dramatic shift in public attitudes from complacency and apathy to a situation where drinking and driving was considered by many to be socially unacceptable and reprehensible. This evolution in perspective has been both encouraged and reinforced through the development of national initiatives to address impaired driving (e.g., Strategy to Reduce Impaired Driving – STRID 2010) by the Canadian Council of Motor Transport Administrators (CCMTA) which reports to The Council of Ministers Responsible for Transportation and Highway Safety, along with the implementation of proven prevention measures, such as alcohol ignition interlocks, administrative licence suspension and vehicle impoundment.

However, the progress observed in the 1980s and 1990s stalled by the end of the latter decade and little progress has been made since then. The problem remains a significant one -- for example, in 2005, 851 people were killed in alcohol-related motor vehicle crashes on public highways and approximately one-third of all fatal road crashes were alcohol-related (Mayhew et al. 2008). Not surprisingly, impaired driving remains a priority concern among Canadians -- more than 80% believe it is a serious problem and one of greater importance than almost all other road safety issues (Vanlaar et al. 2006; Vanlaar et al. 2007).

The lack of recent progress has been considered somewhat paradoxical since it was during this time that many new laws and regulations were introduced that enabled the use of countermeasures (e.g., alcohol ignition interlocks, administrative license suspension, vehicle impoundment), which independent evaluations have demonstrated to be effective in dealing with impaired drivers (e.g., Beck et al. 1999; Beirness 2001; Beirness et al. 1997; Voas and Tippetts 1994; Voas et al. 1996, 1999). In the presence of such measures, it was expected that continued declines in alcohol-related crashes would be evident. As described above, however, this was not the case. Since the year



2000, increases in the number of alcohol-related crashes have been recorded in both Canada and the United States.

This somewhat perplexing situation has led a number of investigators to speculate that a primary problem is not with the countermeasures, laws, and regulations, per se, but rather with how they are applied, or more generally, with the system in which they operate. To some extent, this is not surprising, given that the volume of new laws and regulations pertaining to impaired driving have served to increase the complexity of the system considerably. As noted by a prosecutor in this current lawyer survey “This is the most complicated area of law. It must be simplified”. And, that complexity has opened the door for inconsistencies, weaknesses and loopholes in the system. Technical evidentiary issues are becoming more common, trial delays are increasing, and “evidence to the contrary” defences allow offenders to avoid conviction. This suggests that there may be impediments in the Canadian criminal justice system that can result in impaired drivers avoiding arrest, prosecution, conviction, sanctioning, and suggests as well that these problems need to be overcome if further gains are to be made in dealing with the problem of alcohol-impaired driving.

Such a possibility is certainly consistent with findings from recent studies in the United States (U.S.), which revealed that the legal system for dealing with impaired driving is replete with inconsistencies and “loopholes” that compromise its efficiency and effectiveness (e.g., Goldsmith 1992; Hedlund and McCartt 2001; Jones et al. 1998; Krause et al. 1998; Meyer and Gray 1997; Rehm et al. 1993). Once again, many jurisdictions in the U.S. implemented programs and policies that research has shown to be effective but the expected results were not actualized – in part this was because participation in these programs was frequently low owing to loopholes that essentially permitted offenders to “opt out” and avoid sanctions. Moreover, highly technical evidence, complex and inconsistent laws, and a lack of training for practitioners often compromised the potential effectiveness of the countermeasures.

The scope of system problems in the U.S. criminal justice system has been extensively documented in a comprehensive series of studies conducted by the Traffic Injury Research Foundation (Robertson and Simpson 2002a; 2002b; 2003a; Simpson and Robertson 2001). This work examined problems in the criminal justice system that



impedes the effective detection and apprehension of impaired drivers, their prosecution, sanctioning, and monitoring. The findings from that work are anchored in the experiences and perceptions of criminal justice professionals across the U.S. -- 2,763 police officers, 390 prosecutors, 900 judges and 890 probation and parole officers -- gathered by means of focus groups and national mail surveys. These front-line professionals provided their perceptions and opinions about key problems in dealing with drunk drivers and practical cost-effective ways to solve them.

Of some interest and relevance to the current study, the problems and solutions identified in the U.S. research were highly comparable across states, despite the rather substantial differences in their justice systems and laws. Accordingly, it would not be surprising if similar problems were identified in Canada despite the recognized differences between the Canadian and U.S. justice systems and laws. At the very least, the parallel between the work conducted in the U.S. and the present study in Canada are obvious.

In Canada, concern about the effectiveness of the legal system for dealing with alcohol-impaired driving cases has also been an issue of historical concern, and research to determine the validity of this concern and identify where problems exist was first undertaken in the 1980s. A survey of Ontario prosecutors was conducted in 1987 (Vingilis et al. 1988) primarily to understand the strengths and limitations of the adjudication process for dealing with drinking-drivers to determine whether any changes were feasible that would improve the process and maximize its deterrent effects. Noted problems included evidentiary issues, the complexity of laws, and prosecutor inexperience (Vingilis et al. 1988).

In 1992, an evaluation of the 1985 amendments to alcohol-impaired driving legislation included interviews with front-line police officers and lawyers from several different jurisdictions. Similarly, this study noted problems with regard to police evidence and testimony in Court, the use of plea agreements, and the election to proceed by indictment (Moyer 1992).

These two Canadian studies were followed in 1997 by a nationally representative survey of front-line police officers in Canada (Jonah et al. 1997) to determine their attitudes and

perceptions regarding the detection of impaired drivers, the handling of charges, court proceedings, and sanctions. The study revealed that police officers encounter a number of problems that contribute to difficulties in enforcing the law. For example, excessive paperwork associated with the documentation of an impaired driving charge, along with the evidentiary breath test, is time consuming -- taking an average of 2 hours and 48 minutes per investigation – and adversely impacts the number of arrests an officer can make during a shift (again, of some interest, this parallels the findings from the TIRF study in the United States, where paperwork was cited as the most significant enforcement impediment).

In addition to their perceptions about the problems confronting them directly in the detection and arrest of alcohol-impaired drivers, police officers in the survey were asked about their views regarding other levels in the system (e.g., prosecution/adjudication and sanctioning). The majority of police officers believed that Crown prosecutors were not adequately prepared to argue impaired driving cases in Court due to significant caseloads and, as a consequence, were “losing cases when they should have been won” (Jonah et al. 1997; p.23). They were also concerned about acquittals arising from legal technicalities related to evidence, echoing the findings from earlier research.

The survey of police officers provided valuable insights into the problems associated with the detection and arrest of impaired drivers and offered guidance regarding how to fix the problems to make the system more effective and efficient. Today, officers have greater access to videotaping equipment and roadside screening devices as well as some access to automated paperwork systems to reduce processing times. At the same time, officers believe that the problems in the justice system extend beyond the enforcement level into the prosecution and sanctioning of alcohol-impaired drivers. As such, more research is needed into the concerns and challenges facing Crown and defence lawyers before further adjustments can be made. This was the focus of the current study.

1.2 Research Objectives

The overall objective of the present study is to examine, from the point of view of lawyers, the legal process in Canada as it relates to alcohol-impaired driving. More specifically, the study was designed to:



- examine the legal process as it applies to alcohol-impaired driving from the point of view of Crown prosecutors and defence counsel;
- identify evidentiary or procedural factors which may impact the legal process, the rights of the accused, and interactions of all parts in the legal process; and,
- compare the results of the lawyers' survey with the results of the 1997 survey of front-line police officers, and complement and interpret further these findings to the extent possible.

2.0 Methodology

2.1 Study Design: Overview

The present study is a natural extension of a national survey of police agencies on impaired driving conducted in 1997 (Jonah et al. 1997). Its purpose is to survey a sample of Crown prosecutors and defence counsel to obtain contemporary information pertaining to the prosecution of impaired driving cases; more specifically, to identify problems that impede effective and efficient prosecution and to determine how these problems can be overcome. Accordingly, the survey was designed to gauge the attitudes, experiences, and perceptions of lawyers with regard to the legal system vis-a-vis alcohol-impaired driving in Canada. For various reasons, it was not possible to identify or access the entire population of lawyers who handle such cases, or even a truly representative sample. Moreover, response rates in some jurisdictions were low. Consequently, generalizations must be made cautiously in some instances.

2.2 Survey Sample

Sampling Crown prosecutors and defence lawyers presented a significant challenge for two reasons. First, although there was a desire to replicate the sampling procedure used in the previous police survey (Jonah et al. 1997) to facilitate comparisons across professions/prior surveys, this approach was deemed impractical due to differences in organization and structure. Police agencies generally have a hierarchical or “paramilitary” line and staff structure that facilitates the surveying of officers and increases the level of cooperation. However, the structure of lawyer organizations is inherently different from that of police agencies, which affects access and the level of cooperation. Moreover, the cases handled by police agencies and Crown/defence offices are not always identical or comparable (e.g., a lawyer’s office may serve a much larger geographic jurisdiction than a police agency).

Secondly, the structure of Crown and defence organizations is somewhat unique and diffuse, so a uniform sampling procedure was not possible for surveying both groups. For example, Crown prosecutors are organized according to offices within jurisdictions that are supervised by the Attorney General in each province. Crown prosecutors are also organized according to membership in a provincial or national Crown association or

Bar Association, although not every Crown may be a member of these associations. Moreover, not all Crown prosecutors handle impaired driving cases. Similarly, private defence lawyers operate largely independently, while legal aid lawyers may be organized by provincial government. Defence lawyers may also be members of a provincial or national defence association or Bar Association, and not all defence lawyers may handle impaired driving cases.

Such factors obviated the possibility of replicating the sampling procedure used in the police survey. Furthermore, it was not possible to use a similar sampling procedure across Crown prosecutors and defence lawyers. Nonetheless, as described in more detail below, the overall level of participation in the present survey was quite substantial (765 prosecutors and 270 defence lawyers or an estimated 33% of all Canadian prosecutors and 15% of defence lawyers), so meaningful comparisons, also at a regional level, were still feasible.

Moreover, it is recognized that a precise replication of the sampling process might not be entirely desirable since it could provide a spurious appearance of comparability, when in fact other variables mitigate this possibility. In particular, regardless of the sampling similarity, comparisons between the results of the police and lawyer surveys will be based on snapshots of perceptions taken some eight years apart. Intervening changes in the operation of the system itself as well as in the perceptions of police should be considered when making the comparisons.

In the final analysis, it was neither possible nor necessary to sample lawyers in a manner that replicated the representative sampling of police. Moreover, practical barriers rendered truly representative sampling impossible. As a consequence, the final sample is largely one of convenience, but as described in later sections of the report, sufficiently extensive for providing reliable findings and drawing reasonable conclusions.

2.2.1 Survey of Crown Prosecutors

Study population. The study population was defined as all currently practicing Crown prosecutors who have had experience in prosecuting impaired driving cases within the past 24 months.

According to estimates previously provided by a Past President of the Ontario Crown Attorneys Association (OCAA) there are *approximately* 2,069 provincial Crown prosecutors in Canada, as follows:

British Columbia	420
Alberta	250
Saskatchewan	45
Manitoba	80
Ontario	750
Quebec	350
New Brunswick	45
Nova Scotia	78
Prince Edward Island	6
Newfoundland	35
Territories	10

While membership in the various Associations of Crown Prosecutors is not mandatory, it is understood that a majority of prosecutors join their provincial association. It can be concluded with some degree of certainty that these organizations represent the majority of the population of Crown prosecutors in Canada.

What was not known was how many of these provincial Crown prosecutors had experience with impaired driving cases in the past 24 months. Nevertheless, considering that impaired driving offences account for the largest single category (12%) of criminal cases going to Court (StatsCan 2003), it was estimated by key professionals in some jurisdictions that some 90% of the Crown prosecutors would have experience with impaired driving cases. If this can be reasonably extrapolated nationally, it can be assumed that the population of Crown prosecutors in Canada with the requisite experience is approximately 1,900.

The sample. Given the relatively small number of Crown prosecutors in Canada, it was decided that efforts should be made to survey the entire population rather than drawing a sample. As there was no convenient or simple method of identifying in advance those Crown prosecutors meeting the survey requirements, surveying the entire population of Crown prosecutors to the extent possible was pursued as the most viable option.

2.2.2 Survey of Defence Counsel

Study population. The study population was defined as all currently practicing defence counsel who had experience in handling impaired driving cases within the past 24 months.

To our knowledge, there is no reliable count of the number of practicing criminal defence lawyers in Canada. Not all of them belong to one or more of the various legal associations, and the memberships of many of the associations are not differentiated according to specialty. This parallels the TIRF experience in the U.S. study on the criminal DWI system. For example, successfully identifying and procuring cooperation from experienced DWI prosecutors was achieved in the U.S. study through the Office of the District Attorney in each State, but there was no comparable organization to facilitate contact with defence prosecutors experienced in DWI.

According to William Trudell, Chairman of the Canadian Council of Criminal Defence Lawyers (CCCDL), their membership consists of approximately 2,000 criminal defence lawyers across Canada. This number includes both those in private practice as well as those who participate in various legal aid programs across the country. It is recognized that this does not represent the entire population of defence lawyers in Canada but is reasonably encompassing. Given the difficulties associated with obtaining a sample of defence lawyers, and in the absence of other, more reliable sources, it was believed that the greatest opportunity for success in surveying this group was through CCCDL.

The sample. It was not possible to estimate how many of the members of CCCDL have experience in handling impaired driving cases, but it seemed reasonable to assume, based on the estimate provided by the head of the national association (CCCDL) that at a minimum, 75% (approximately 1,500) had the needed experience.

2.3 Survey Questionnaire

An initial draft of the survey instrument was developed by Millward Brown Goldfarb using a number of prior investigations as a guide to identifying potential problem areas. These issues were modified and extended on the basis of input from the experiences of researchers and members of the original Steering Committee that provided guidance for

this project – this included representatives from Transport Canada, the Department of Justice, the Attorney General of Ontario, the Strategy to Reduce Impaired Driving (STRID) Taskforce, and the Canadian Bar Association. Specific questions from a previous survey of police officers conducted in 1997 were also included, where appropriate, to facilitate comparisons between the attitudes and experiences of police and legal counsel.

A number of issues were suggested for inclusion in the survey, such as evidence, repeat offenders, sentencing, caseload, length of time to complete a case, and blood alcohol concentration (BAC) limits. These issues were also considered timely and highly relevant based on Canadian media coverage of impaired driving cases in the past few years. The previous survey of prosecutors conducted in the United States in 2001 (Robertson and Simpson 2002a) indicated that some of these issues were also of considerable concern to prosecutors. Both Crown prosecutors and defence counsel were asked to provide percentage estimates when answering the survey questions because outcomes from the focus groups suggested that requesting specific numbers and case details would limit response rates.

The survey itself was organized into a number of sections, including: experience, opinion, case specifics, evidence, pleas, trials, sentencing, and repeat offenders. A section designed to gather demographic information from the respondents was also included. The format of the questions varied according to the type of information sought, and included open-ended, close-ended, and rank-ordered questions relying on a variety of scales.

In total, 66 questions were included in the original draft of the survey prepared by Millward Brown Goldfarb. It was recognized that this was too lengthy and would likely discourage lawyers from participating, as it required well in excess of half an hour to complete. With this in mind, it was decided to query focus group participants regarding the length of the survey as well as its content and structure, to determine how to optimize response rate.

In addition to the development of the questionnaire, a brief explanatory description of the research project and accompanying survey was developed in an effort to further

encourage participation. It was also suggested that the focus group review this description to better inform researchers regarding how to best encourage lawyers to respond to the survey. There was also some discussion regarding who/what agency should be the source of the explanation.

The final version of the surveys completed by Millward Brown Goldfarb included a total of 41 questions and required an average of 25 to 30 minutes to complete. A copy of both the Crown and Defence surveys is provided in Appendix A of this report.

A package was prepared for each potential respondent. It included:

- a cover memo explaining the objective of the survey, its sponsor, the way in which the results will be used, and direction on how to obtain a copy of the final report. The memo also included the deadline date by which the survey should be returned (See appendix A);
- an English or French version of the survey itself; and,
- a pre-addressed, pre-stamped return envelope that allowed the respondent to easily return the completed questionnaire.

The distribution of the Crown survey was facilitated by the Attorney General in each province/territory and senior staff of provincial/territorial defence associations.

2.4 Data Analysis

The data were analyzed using univariate and bivariate analyses of responses to each of the questions posed in the Crown and defence lawyer surveys. Both univariate and bivariate frequency or percentage distributions are reported when applicable, and comparisons are made between results from Crown prosecutors and defence lawyers.

Given the nature of the sample of lawyers that was drawn – i.e., largely a convenience sample, rather than a random sample – no significance tests have been conducted. This means the data analyses in this report are descriptive and, strictly speaking, do not allow generalizing the results to the entire population of lawyers. In addition, response rates were low in some jurisdictions so findings should be interpreted with caution.

Incidentally, while the external validity of this survey – i.e., the generality of the results – may be limited, it warrants mentioning that its internal validity – i.e., the extent to which

the survey measures what it was intended to – was not compromised, for the following reasons. First, the focus groups (see previously) allowed gauging respondents' understanding of the questions before the surveys were finalized and fielded, which guaranteed the questions were understood as intended. Furthermore, it was also found that there was a high level of concordance between results from Crown prosecutors and defence lawyers on certain topics such as time spent in Court to either prosecute or defend cases. Major differences in responses to such topics would have been indicative of a lack of internal validity. No such differences were found; on the contrary, the results were remarkably similar.

2.5 Response Rate

A total of 1,035 completed surveys were received, including 765 from Crown prosecutors and 270 from defence counsel. The breakdown of responses by jurisdiction to the Crown survey is shown Table 1; responses to the defence survey are shown in Table 2.

Table 1 provides for each jurisdiction, the number of completed questionnaires, the percent of all questionnaires represented by this number, and the percent of Crown prosecutors that completed a questionnaire out of the estimated number of Crown prosecutors in that jurisdiction. For example, 140 completed surveys were returned by Crown prosecutors in the province of British Columbia; this represents 18% of all the Crown surveys obtained in the study, and a response rate of 33% for that jurisdiction (i.e., it is estimated that 33% of Crown prosecutors in B.C. completed the survey).

Table 1: Responses to Crown Survey

	<u>Number</u>	<u>Percent of all responses</u>	<u>% of estimated number of Crown prosecutors in the jurisdictions</u>
British Columbia	140	(18%)	(33%)
Alberta	34	(4%)	(14%)
Saskatchewan	39	(5%)	(87%)
Manitoba	13	(2%)	(16%)
Ontario	235	(31%)	(31%)
Quebec	180	(24%)	(51%)
Nova Scotia	28	(4%)	(36%)
New Brunswick	36	(5%)	(80%)
Newfoundland/Labrador	16	(2%)	(46%)
Prince Edward Island	4	(0.5%)	(67%)
Yukon	6	(1%)	N/A
Northwest Territories	4	(0.5%)	N/A
Nunavut	5	(1%)	N/A
Missing values	25		(3%)

*In the Yukon, Northwest Territories and Nunavut, Federal prosecutors handle impaired driving cases.

Table 2 presents information on the responses to the defence survey, by jurisdiction. It provides the number of responses from each jurisdiction and the percent of the total number of responses represented by this number. No estimate is provided as to what percent of defence counsel this represents, since no data is available on the total number of defence counsel in each jurisdiction.

Table 2: Responses to Defence Survey

	<u>Number</u>	<u>Percent of responses</u>
British Columbia	4	(1.5%)
Alberta	24	(9%)
Saskatchewan	1	(0.5%)
Manitoba	4	(1.5%)
Ontario	114	(42%)
Quebec	93	(34%)
Nova Scotia	0	(0%)
New Brunswick	2	(1%)
Newfoundland/Labrador	12	(4%)
Prince Edward Island	0	(0%)
Yukon	0	(0%)
North West Territories	0	(0%)
Nunavut	1	(0.5%)
Missing values	15	(6%)

2.6 Characteristics of the Sample

As can be seen in the Tables 1 and 2, responses were received from all jurisdictions, but the majority of Crown surveys were from Ontario, Quebec and British Columbia, Canada's most populous provinces, and almost all of the defence surveys were received from Ontario, Quebec and Alberta.

Slightly more responses were received from men than women; the average age of respondents was early-40s. Three-quarters of Crown respondents and two-thirds of defence respondents were English-speaking. On average, defence counsel had more experience in the criminal law field at 16.5 years, compared to 12.5 years for Crown prosecutors. Both Crown prosecutors and defence counsel estimated that approximately 25% of their respective caseloads involved alcohol-impaired driving cases.

3.0 Prosecution Process

3.1 The Roles and Responsibilities of Lawyers

Before describing the prosecution of a typical impaired driving case, it is important to recognize that there are both similarities and differences between Crown prosecutors and defence counsel. In terms of similarities, prosecutors and defence counsel are both deemed officers of the Court and have surprisingly similar roles despite the adversarial nature of the trial process -- they represent a client (i.e., the Crown represent the Government and defence counsel represent the accused), they are able to engage in plea negotiations, they have an opportunity to present a case to the Court that includes evidence and witnesses, and they are able to make submissions to the Court. These professionals are both bound to uphold the law in all cases and must adhere to procedures set out in the *Criminal Code of Canada (CCC)*. In addition, both Crown prosecutors and defence counsel attempt to identify weaknesses and inconsistencies in the case presented by opposing counsel.

However, prosecutors and defence counsel play a slightly different role in Court. Contrary to popular belief, the role of a prosecutor is not to convict the accused but to uphold the administration of justice and the public interest -- hence their role is dispassionate such that “the Crown never wins or loses”. The role of prosecutors was clearly defined by the Supreme Court of Canada in *R. v. Boucher 1957* and reaffirmed by the Court in the *Sophonow Inquiry (2001)*. In contrast, the role of defence counsel is to be a diligent advocate on behalf of their client (the accused) and to represent their client’s best interests. In this role, defence counsel is to raise every available defence, effectively cross-examine the Crown’s witnesses and secure the acquittal of the accused or the dismissal of the charges due to reasonable doubt and/or problems with the evidence collected by the police.

There are other important differences between Crown and defence counsel as well. Prosecutors are subject to specific policies and practices of the Crown office in which they work. While policies are necessary to bring consistency to the management and processing of cases, they may have the effect of limiting discretion to varying extents.

For example, Crown may be limited in terms of determining what cases will proceed to trial, plea resolutions that can be offered, and the level of resources that should be allocated to a particular case. Conversely, defence counsel (particularly those in private practice) generally have greater flexibility and discretion in terms of the strategy to take regarding the selection of cases, how best to manage them, and what level of resources will be allocated to them. Additionally, Crown are also required to provide disclosure to the defence (see section 3.2.2 on Pre-trial Process) whereas the defence has no corresponding obligation.

Anecdotal evidence suggests that lawyers from both sides also share two different perspectives on policies and law -- some prosecutors and defence counsel are more flexible and apply the spirit of policies and law with consideration of individuals and circumstances, whereas other lawyers are more conservative with regard to policies and law and view them as “black and white” regardless of circumstances. For example, some lawyers work within the law or policy to achieve the best possible resolution to the case in which justice is served while fully representing their client, whereas others view the process as adversarial and believe the “letter of the law” should be strictly applied in all cases. These differences are often a function of different opinions based on different experiences.

To further illustrate this difference in perspective, policy and law dictate that there is a distinct separation between the activities of police and prosecutors, as there should be. Some prosecutors interpret this separation as important but do not believe it should interfere with effective communication with police. As such, these prosecutors may develop a good rapport with police and be able to effectively communicate with them on various issues and cases as *appropriate and necessary* to improve case processing. However, other prosecutors, who interpret such policies more strictly may rarely have contact with police and may even discourage communication with them because such dialogue may be perceived as “tainting” prosecution.

Neither of these perspectives is effective in all cases and each can be associated with unintended negative consequences. For this reason, discretion is an important tool that enables lawyers to appropriately manage and respond to the individual circumstances and facts in specific cases. Some cases require and benefit from a strict interpretation of

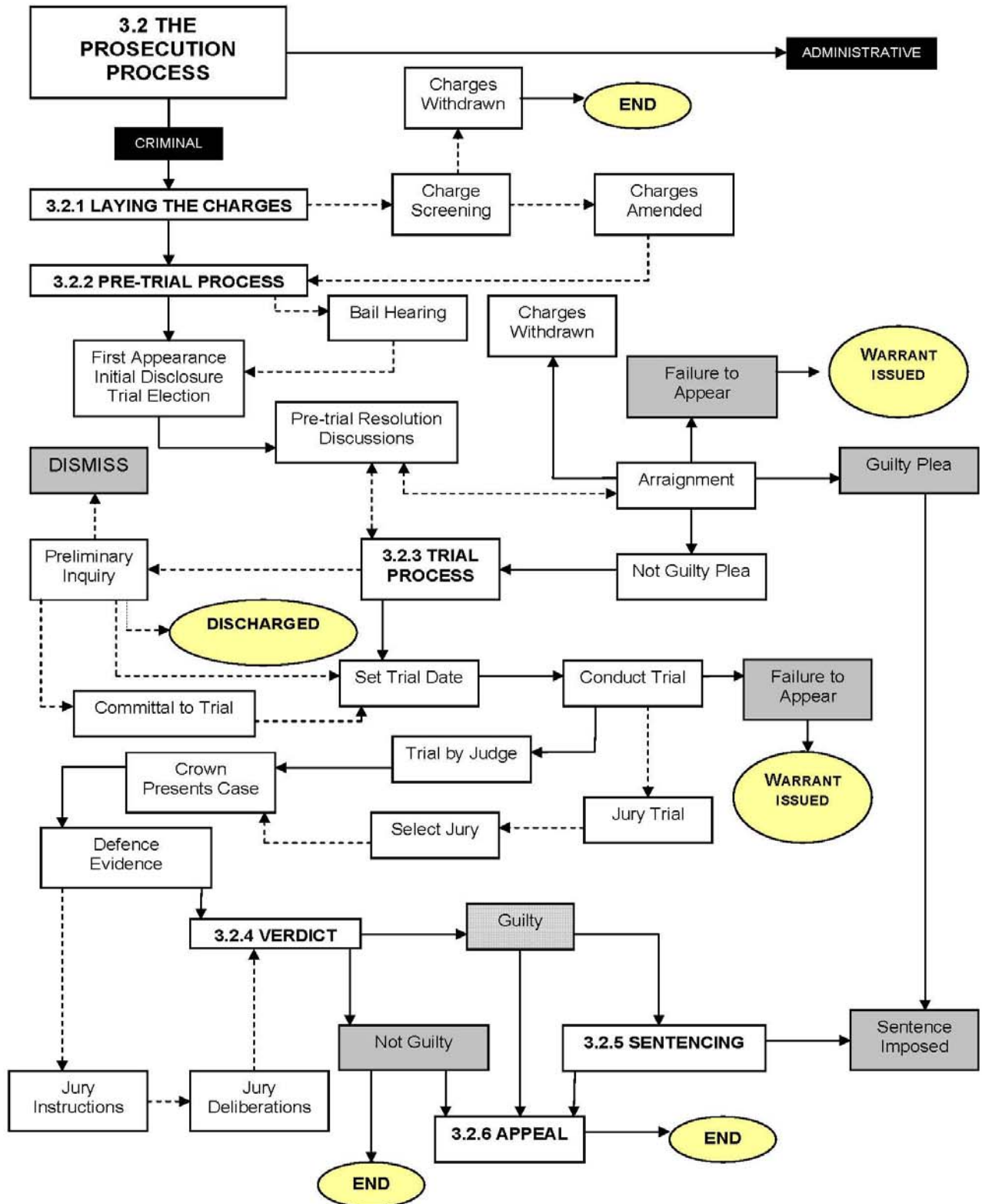
policies and law, however, in other unique cases, lawyers are better able to serve the administration of justice with flexibility and thoughtful consideration.

3.2 The Prosecution Process

Prosecuting an impaired driver typically elicits an image of an accused being cross-examined by a prosecutor in Court as a defence attorney raises objections. However, the prosecution of an impaired driving case, colloquially referred to as an “impaired”, “over 80”, or “DWI” (driving while impaired), depending on the jurisdiction, is in fact a very complex and detailed process that begins long before a case gets to trial. As a result, the typical time frame to process an alcohol-impaired driving case in Canada is from 3 to 9 months, when the case is resolved with a plea agreement. When a case goes to trial, it may take 7 to 15 months to conclude, depending on a variety of factors including the case inventory, availability of trial time, disclosure, pre-trial hearings, pre-trial motions, and so forth.

The explanation of the prosecution process provided here is meant to give the reader a general idea of the procedures used to prosecute and defend alleged alcohol-impaired drivers in Canada and is not intended to elaborate on the detailed and complex procedures associated with specific practices in individual jurisdictions. It is meant to provide a contextual basis for the report and assist the reader in locating the identified problems within the prosecution process in a chronological manner. The detailed information found in this section benefited substantially from the technical advice of several experienced lawyers representing many of the jurisdictions that were surveyed as part of this project.

There are six distinct but interrelated stages associated with an impaired driving prosecution: 1) laying the charge; 2) pre-trial process; 3) trial process; 4) verdict; 5) sentencing; and 6) appeal process. At each of these stages certain requirements or conditions must be met before the prosecutor and defence counsel can proceed to the next stage. Additionally, decisions made at each stage will impact the stages that follow.



3.2.1 Laying the Charge(s)

Criminal charges that are laid by police for all impaired driving offences in Canada are or should be the same in all provinces and territories. The passing of criminal legislation is within the constitutional legislative authority of the Federal Parliament and impaired driving offences and the regime to be followed in handling these cases are found in the *Criminal Code of Canada* (CCC). For a “simple” impaired driving case not involving other circumstances or serious harm, the charge is typically “over 80” (CCC s.253(b)) and/or a charge of impaired driving (CCC s. 253(a)). The former is a per se offence that makes driving with a blood alcohol concentration (BAC) in excess of 80mg of alcohol per 100ml of blood a criminal offence while the latter is related to recognized behaviour and physical indicia of impairment. These charges may often be used in combination and are most often applied to incidents in which there were no victims that suffered bodily harm or death.

A charge of refusal to provide a breath or blood sample (CCC s.254(5)) may be laid in the event that the suspect fails to or refuses to take an approved screening device test (ASD) at roadside, the evidential breath test or blood test when a demand has been made, or refuses to accompany the officer back to the detachment/station to give samples. This conviction carries penalties equal to an impaired driving offence, essentially removing any benefit associated with refusing to provide a sample. Of interest, the availability of a BAC reading that is gathered during the test is important to sentencing such that the CCC provides that when the BAC is greater than 160mg% it can be an aggravating factor on sentencing.

Finally, in cases involving a victim(s) that suffers bodily harm (as defined by the CCC in s.2) or is killed, police (or the Crown prosecutor, depending on the jurisdiction) may lay a charge, in addition to “over 80” of either “impaired driving causing bodily harm” pursuant to CCC s. 255(2) or “impaired driving causing death” pursuant to CCC s. 255(3), as befits the facts. There are also other criminal charges that may be applicable and can be laid in relation to impaired driving incidents, however, these other charges are beyond the scope of this report.

The initiation of an impaired driving prosecution begins with the arrest of a suspect at the roadside or police station/detachment by a police officer. Generally speaking, the officer

is responsible for conducting the impaired driving investigation depending upon the complexities of the individual case. For a “simple” case of “drive over 80”, there might be three officers involved: the investigating or “lead” officer, the officer’s partner at the time, and the qualified breathalyser technician (also a police officer). In the event of complex or exceptional circumstances, and depending on the jurisdiction, during the investigation an officer may be able to contact the Criminal Operations Unit of a police agency (who may in turn contact a Crown prosecutor) for answers regarding the best method for proceeding with an investigation (e.g., whether a warrant is needed in a particular case or not). “Effective consultation between police and prosecutors during the investigative stage is of vital importance to the administration of justice” (Pearson 2000; p.18).

Although it happens *rarely*, Crown prosecutors may assist officers during an investigation by providing *advice* regarding the collection of evidence including the use of search warrants. They can ensure that investigation techniques are applied in a way that is in compliance with the law so that constitutional rights are protected and the use of these investigative techniques will be upheld in the event of a challenge by the defence. This process allows officers to properly gather evidence to support the charge(s) that will be laid by the police (in some jurisdictions charges must be approved by the Director of Public Prosecutions before charges are laid by police) or presented to the Crown’s office which will subsequently lay the appropriate charges. This use of Crown prosecutors during the investigation phase is more common in urban areas than rural jurisdictions and is often a function of available resources. Alternatively, some police services have their own legal counsel that they may choose to consult in these instances.

It should be noted that the relationship between the police and Crown prosecutors is one of “mutual independence” (Pearson 2000; p.2). “Separating the investigative and prosecutorial powers of the state is an important safeguard against the misuse of both” (Pearson 2000; p.9). Law enforcement can choose to consult with prosecutors as necessary, but this role is strictly advisory and officers are not bound to follow advice given by Crown. Prosecutors have no authority to direct police during an investigation or the laying of charges (in jurisdictions in which police are solely responsible for laying charges). As such, a prosecutor does not become involved in the investigation in any



way -- they are not present at the crime scene nor involved in the gathering of evidence or taking of statements.

Upon detention and/or arrest, a suspected impaired driver is protected by several rights enshrined in the *Charter of Rights and Freedoms*. In Canada, pursuant to section 10(b) of the *Charter*, there exists the right to counsel and drivers have the right to legal advice. This right is continuous throughout the entire legal process. Defence counsel may be either a duty counsel (sometimes referred to as Brydges counsel) or a lawyer in private practice. It is not uncommon for the accused to initially consult with duty counsel following an arrest, and subsequently hire a lawyer in private practice to handle the case. It should be noted that since the 1980s, there is evidence that more defendants are retaining private defence counsel to handle impaired driving cases as opposed to relying on duty counsel (Moyer 1992). It has been suggested that this is due to the profound consequences associated with an impaired driving conviction, and the trend towards increasing penalties such that the accused has nothing to lose and much to gain by going to trial (Moyer 1992).

Defence counsel in the form of legal aid, while available in all jurisdictions, is often not available to many people accused of impaired driving unless they are facing a period of incarceration upon conviction, i.e., usually repeat offenders.

When initially consulted, defence counsel will obtain some basic information about the case, provide the accused with some information regarding the nature of the charges and what will happen and advise them how to proceed. This typically includes encouraging the accused to refrain from making any statements to police, as is their constitutional right. Defence counsel will explain frequently to the accused the potential consequences that could follow should a person comply with a breath demand versus those consequences associated with a refusal to comply with the breath demand. The accused is also often encouraged to make their own decision regarding compliance.

As discussed above, following an investigation, either the arresting officer or the Crown prosecutor (depending on the jurisdiction) will lay the appropriate charge(s) according to the evidence. For example, in most jurisdictions police officers select the most appropriate charge(s) to lay against an accused following an investigation. In British

Columbia, Quebec and New Brunswick criminal charges are often laid by a Crown prosecutor. In these jurisdictions, prosecutors have responsibility for laying charges because “mandatory screening of police charges by Crown prosecutors before they are laid also detects and corrects technical errors in the form of charges and reduces the time spent in Court dealing with formal defects in informations” (Pearson 2000; p.13). At the same time, the police will also prepare a Crown brief or Report to Crown Counsel. This is a narrative report that summarizes the offence and relevant details and is subsequently submitted to the Crown prosecutor.

Before proceeding with the case, the prosecutor reviews the Crown brief or Report to Crown Counsel. This report should contain accurate and detailed information about the offence, the criminal history of the accused, if any, witness statements, and proof of service of appropriate Notices. For example, there should be proof that a Notice of Intention to Seek an Increased Penalty (CCC s.727) has been served by police if the accused has prior impaired driving convictions that they know about. If the police have not served this Notice, the onus is on the Crown to make certain that the Notice is served, that proof of service is included in the Crown brief, and that this information is disclosed to the accused. It may also be necessary for the Crown to include a Notice of Intention to call Expert Evidence or a Notice of Intention to Produce the certificate of the breath test depending on the circumstances of the case.

In some jurisdictions where the police lay the initial charges, and particularly in larger areas, there may be a Director of Prosecution Services or a Case Manager in the Crown office. Their role is to review the charges laid by police and the Crown brief or Report to Crown Counsel to assess the available evidence in each case. This process allows the Crown office to “screen” cases post-charge to determine if there exists a reasonable prospect or sustainable likelihood of conviction and whether there is a public interest in commencing and maintaining a prosecution. This screening process allows resources to be allocated to cases in a strategic manner. If there is a reasonable prospect of conviction based on the evidence, the case will then be assigned to either a prosecutor or to a docket of cases for a particular Court on a given day. As such, this does create some disparity across jurisdictions where in some instances cases are screened and assigned if there is a reasonable prospect of conviction while in other jurisdictions cases are simply assigned to prosecutors or to a docket of cases for a particular Court on a



given day without any charge screening. As a result, the Crown may be unable to assess the case until just prior to first appearance.

At any time after charges are laid until the time the trier of fact (either the judge or the jury depending on the proceedings) renders a verdict, impaired driving charges may be stayed or withdrawn by the Crown if it is determined that there is not a reasonable prospect of conviction; however, this occurs rarely (less than 10% of cases). If the charges are withdrawn the accused is released on those charges without further obligation to the Court. The Crown may have the option of re-instating charges at a later time if further evidence is discovered that would support the charges.

In summary conviction matters any re-commencement of the prosecution must occur within the summary conviction limitation period prescribed relative to the date of the offence (6 months in impaired driving cases). Thus, a case that is stayed by the prosecution later than six months from the date of the offence cannot be re-commenced (see CCC s. 579.2). For indictable matters, there is a 1 year limitation and the consent of the Attorney General of the Province is also required. In lieu of staying or withdrawing charges, the Crown also has the option of offering no evidence following a not guilty plea and allowing the case to be dismissed for want of prosecution.

With regard to defence counsel, those in private practice more often have the opportunity to either accept or reject cases at their discretion. This does have the advantage of providing defence counsel with greater opportunities to specialize in a particular area of law, for example, impaired driving, and to ensure that the cases they accept have a reasonable prospect of an acceptable resolution. Defence counsel also generally tends to handle a case from start to finish which ensures consistency in case management. Not only does this reduce opportunities for information to be misplaced, but it also minimizes the impact of information not being included in a particular case file to the detriment of the person working on the case. Although, those working as a legal aid lawyer may have less opportunity to select their cases, as noted previously, legal aid is not often available in impaired driving cases unless the accused faces a period of incarceration upon conviction.

It must be noted that case management in Crown offices is handled differently across jurisdictions. In some instances, a single prosecutor will manage the case from the initial laying of charges through to sentencing -- this is referred to as vertical prosecution and it is more typical in cases proceeding by indictment. The advantage of this process is that prosecutors have greater familiarity with each case being managed. More frequently, less serious impaired driving cases may be handled by a number of different Crown prosecutors, so while one prosecutor may handle the initial appearance, another may handle the actual trial. This often occurs as a function of how Crown prosecutors are assigned to cases and Courtrooms to make the best use of resources, as well as a function of the size of the Courthouse and the volume of the files. It does, however, present some challenges in prosecution depending on the completeness and accuracy of the Crown file and associated notes as it moves between or among prosecutors.

Crown prosecutors may be subject to specific policies that influence decisions regarding the handling of cases. Generally, policies are designed to assist prosecutors in exercising discretion in a consistent and strategic manner. Currently, in some jurisdictions, the conduct of Crown prosecutors is governed heavily by policy, leaving them little discretion regarding case selection and processing. So while prosecutors may have discretion to make decisions in some instances, in others they must seek direction and guidance from senior staff in accordance with policy. As such, some offices may have more flexibility in how cases are processed than others. Conversely, defence counsel are much less influenced by such policies and may have much greater independence and discretion in determining how cases are managed, what may be offered during resolution discussions, and the allocation of resources towards a particular case.

3.2.2 Pre-trial Process

There are several steps that are completed after an accused is charged as part of proceedings. These include disclosure, first appearance and trial election, arraignment, bail hearing (if any), resolution discussions, case preparation and preliminary inquiries (as necessary). Each of these is described briefly below. Some of these steps may be completed in tandem (e.g., first appearance and disclosure) depending on the ability of the defendant to promptly retain counsel, the completion of the investigation, and other factors. For example, in most “simple” impaired driving cases, the investigation is

complete at the time of release, however in more complex collision cases involving bodily harm or death or multiple criminal driving charges, the investigation may continue even after the release of the accused. As a consequence, additional charges may be laid after the release of the accused. The actual number of appearances an accused makes in Court prior to trial may vary based on the specific case as well as the practices in a jurisdiction. For the purposes of simplicity, each of these steps is discussed independently.

Disclosure. Disclosure means that the Crown has a legal obligation to provide the defence with any and all relevant evidence – exculpatory or otherwise – in a timely manner and on an ongoing basis. Exculpatory evidence is any evidence that tends to exonerate an accused from guilt. Disclosure permits the accused the opportunity for a full answer and defence to the charges, as is his/her constitutional right and allows the accused to know the case he/she has to meet at trial. It is an important part of the trial process and occurs throughout Canada as per the decision of the Supreme Court of Canada in *R. v. Stinchcombe* 1991.

Generally, disclosure occurs at the first appearance and is provided to either the accused or to defence counsel. Crown prosecutors are obliged to provide disclosure equally across all jurisdictions. This obligation on the Crown is continuous throughout the trial process and disclosure includes but is not limited to the following items: charges, case synopsis, video and/or audio tapes as well as transcripts, statements of the accused and any witnesses, information pertaining to credibility of individuals involved in the case, any scientific reports or expert evidence, police notes and reports, any search warrants, and access to blood samples and instrument records. Disclosure can be time consuming for Crown due to the amount of documentation that must be prepared and submitted.

However, the actual information that is disclosed to defence counsel in impaired driving cases may vary across jurisdictions. In specific cases, Crown prosecutors and defence counsel may disagree regarding whether certain information is subject to disclosure. When this occurs, defence counsel can make an application to the Court requesting that further disclosure be ordered and a judge will rule on this request.

Local processes are often put in place to track disclosure and respond to disclosure requests by defence in a timely manner. In most jurisdictions in Canada, disclosure is typically completed not less than 30 days before the commencement of trial.

The defence, however, has no obligation to disclose any evidence or information to the prosecution. As such, disclosure is a “one-sided” process. The accused has a constitutional right to silence and is presumed to be innocent until the Crown proves the case against him/her beyond a reasonable doubt. The only information the defence must provide in advance is the filing of a Notice of Intention to Call Expert Opinion Evidence, or a Notice of a *Charter* application that asserts that the accused’s rights were violated.

Disclosure provides an advantage to the defence in that defence counsel is aware of the prosecution’s case prior to defending the case in Court. Non-disclosure by the defence can be a disadvantage to the Crown in that it may limit the ability of the prosecution to adequately prepare for cross-examination of defence witnesses to explore relevant issues. At trial, the prosecution may request an adjournment during the trial to fully review any new or unexpected evidence and prepare any necessary cross-examination, however, adjournments are unlikely to be granted in simple impaired driving cases.

Of interest, this policy regarding disclosure is different from some other countries, such as some states in the U.S., that have moved towards a policy of reciprocal discovery, meaning that both the prosecution and the defence are obliged to turn over any and all evidence to the other side. This, of course, excludes any statements made by the accused that would violate attorney-client privilege or the accused’s right not to give evidence against him/herself. The purpose of this policy is to ensure that the truth is brought to Court and that the trial process is open and fair for both parties.

First appearance. The first appearance or first few appearances of the accused in Court on impaired driving charges are typically organizational in nature. The purpose of the first appearance is to ensure the accused has retained or is in the process of retaining legal counsel and is aware of the nature of the charges against him/her. The accused may or may not have retained counsel at this time, depending on when first appearance takes place, so defence counsel may or may not be present.



At first appearance, the accused/defence is presented with the disclosure that has been prepared by the police if they have not received it previously. This paperwork outlines the offence and the charges as part of disclosure, although not all materials may be disclosed at this time. For example, scientific reports from a toxicologist or medical reports may not yet be available. Of some importance, the police and/or Crown will vet the defence copy of disclosure to ensure that personal information pertaining to victims or witnesses or other sensitive information is excluded.

In the event of dual procedure (hybrid) charges, the Crown may also select or choose the mode of procedure (by way of summary conviction or indictment) at first appearance. Simple impaired driving charges are classified as a hybrid offence in the CCC. This means that prosecutors must decide to proceed by summary conviction or by indictment. The former category is for lesser or “simple” instances and is associated with lower penalties; the latter is for more serious situations (e.g., many prior convictions, bodily harm or death) and carries with it more significant penalties (including a significant period of incarceration). Cases proceeding by indictment also include the option for the accused to have a preliminary inquiry and a jury trial (of 12 citizens) in Superior Court. Since the vast majority of impaired driving cases do not involve bodily harm or death and are first offences, in almost all jurisdictions most impaired driving cases proceed by way of summary conviction. Crown prosecutors only proceed by way of indictment if serious bodily harm or death was involved or if the accused’s driving record would support a submission for a lengthier jail term than allowed by proceeding summarily.

Typically, the first appearance of the accused is to occur as soon after an arrest as is practicable. However, the length of time between arrest and first appearance varies by jurisdiction. At times, the first appearance may take place relatively soon following the arrest, or it may be 6-8 weeks before it takes place. Frequently, during the period between the release of the accused and first appearance, the accused will retain a private defence lawyer to discuss the charges and options for handling the criminal charges. The 6-8 weeks, for example, facilitates this. Conversely, the accused who appears for a bail hearing appears on the heels of the incident.

Following first appearance, an accused may appear additional times in Court for the purpose of determining whether the accused has retained counsel and is ready to



proceed to trial or to keep moving towards the setting of a trial date. Depending on whether the accused has a lawyer, the level of Court where the trial will be held, issues to be resolved, and local practices with regard to appearances and scheduling, an accused, or his or her counsel, may appear in Court an additional two or more times prior to a trial date being set.

Arraignment. The purpose of an arraignment is to allow the accused to have the charges against him or her confirmed on the record and to afford him/her the opportunity to answer to those charges. In summary conviction proceedings, the accused is asked to enter a plea of guilty or not guilty. The accused will enter a plea when they have retained counsel and then a date will be set for trial. However, in indictable matters, the accused first elects the mode of trial. The plea is received in Provincial Court only if the accused elects to be tried there. Should the accused elect the Supreme Court, the plea will be received by the trial court – a judge if the accused elects a trial without jury, and a judge and jury if the accused elects a jury trial. No plea is taken at the time a preliminary inquiry is set. If the accused decides to have a preliminary inquiry, then the inquiry would be scheduled on the appropriate Court docket. If the outcome of the inquiry is a committal to stand trial then a date would be set to appear in Superior Court for the setting of that trial date.

Bail or judicial interim release. Bail or judicial interim release refers to the process and conditions that must be met to secure the release of the accused. Most often, the accused is released after processing at the police station by the officer in charge of the station or detachment on a promise to appear in Court. It is not unusual following an arrest for an accused to be detained at the station or detachment following the breath test until their BAC drops to an acceptable level. This is for their own protection given their BAC or degree of impairment. In the case of refusal at the roadside, the accused may be charged and released at roadside if there is a person present who is willing and legally able to transport the accused home after the vehicle has been secured, towed, or impounded as necessary.

In the event that the accused is held in custody following arrest, in all jurisdictions the police have 24 hours to arrange the appearance of the accused before a judge or a justice of the peace and this appearance takes place in Provincial Court or Magistrates Court. An accused may be held for a bail hearing for a variety of reasons, including the

record of the accused, a history of failure to appear, previous criminal driving convictions, whether the accused was already facing outstanding charges at the time, and so forth. At this time, conditions may be imposed (e.g., the accused may not drive) as a means of protecting the public and/or the Crown may request some form of assurance (e.g., money or surety) that the accused will appear for trial.

While not common, the accused may be held for a judicial interim release (bail) hearing and, in these situations, the police also prepare a bail brief. The Crown may show cause for the detention of the accused or may agree to bail conditions to satisfy either the primary, secondary, or tertiary grounds in s.515(10)(a-c) pursuant to the CCC. Depending on the circumstances, the Crown may or may not ask for a “no drive” condition of bail. The accused would subsequently be released from custody following the posting of any bail that was imposed by the Court. In these cases, the purpose of bail would be to ensure the appearance of the accused at trial and to protect the community from further criminal activity by the accused.

The decision to release or detain an accused is made by the judiciary based on submissions made at the hearing by both the Crown prosecutor and defence counsel. If the accused is to be retained in custody then trial should be expedited. However, the accused is almost always released from custody and would typically only remain in custody if they were deemed a substantial risk to public safety or a flight risk.

Resolution discussions. Resolution discussions are an important element of the pre-trial process and may be initiated at any point following the laying of the charges with the Court, including at the time of the bail hearing, if any. The purpose of these discussions is to achieve an appropriate disposition (plea outcome or sentence or both) based on an examination of the evidence. These discussions are an important element of the pre-trial process as “Prosecutorial offices often operate with limited resources and burdensome caseloads. Resolution discussions, therefore, can provide prosecutors greater flexibility in the disposition of caseloads (Piccinato 2003; p.7). At the same time, prosecutors may have limits on what they may offer the defence in resolution discussions. Crown offices typically have policies that govern the content of resolution discussions. Many have office directives to follow regarding pleas and require

permission from superiors to deviate from established protocols, especially in regard to drinking and driving cases.

Anecdotal evidence suggests that resolution discussions are common in impaired driving cases and a not insignificant portion of these cases are resolved through resolution discussions. Crown prosecutors and defence counsel in this survey estimated that more than 1/3 of cases *involving pre-trial discussions* result in some agreement. However, when there is no plea resolution, the matter will be set down for trial.

The most common outcomes of resolution discussions are:

- agreement as to charges for the accused to enter guilty pleas to;
- agreement as to the sentence that will be sought;
- agreement on procedural issues (e.g., to proceed by way of summary conviction as opposed to indictment);
- admission of any agreed, non-contentious facts of the offence, and the limiting of issues in an effort to expedite the trial (e.g., agree a statement by the accused was made voluntarily, agree regarding witnesses who do not need to appear at trial, or agreement as to the validity of any warrant (i.e., warrant to seize a blood sample)).

There is no statutory preclusion as to when these discussions may be commenced or halted, however it is obviously helpful if they occur as near the beginning of the trial process as possible. The point at which discussions most often occur is usually a function of local practice. In some jurisdictions, resolution discussions take place prior to the setting of a trial date and an agreement may be reached at any point prior to the reading of the verdict.

Practices surrounding these agreements may vary according to the circumstances of the offence and/or are governed by the particular policy of the Crown office or Attorney General of the province/territory. Some Crown prosecutors prefer to negotiate a plea agreement, believing that the resulting entry on the criminal or driving record and ensuing penalty is better than the risk of no entry at all. Some also believe that such pleas allow for better overall management of workload, including time to trial issues within the jurisdiction. However, in jurisdictions not subject to jurisdictional trial capacity issues, for example, prosecutors may prefer to proceed to trial rather than enter into a plea agreement that may minimize the seriousness of the conduct in question.

An agreement on charges may involve a reduction of the charge(s) in return for a guilty plea, or a guilty plea to initial charges with an agreed statement of facts that will be submitted to the Court by the Crown and defence counsel. While in some jurisdictions an accused may be able to plead to a non-alcohol *Criminal Code* offence, or even a non-*Criminal Code* offence (e.g., *Motor Vehicle Act* or *Highway Traffic Act* offences), in other jurisdictions this is not possible according to policy.

A joint submission on sentence is also not uncommon in impaired driving cases. The prosecution and defence may agree to an appropriate sentence and present it to the Court as joint submission on sentence. Joint submissions are to be accorded deference by the trier of fact. The *CCC* sets forth a plea comprehension inquiry that the judge must engage in prior to the acceptance or entering of the plea. At this time, the judge is made aware of the facts of the plea and joint submission on sentence and may inquire about the facts and circumstances before proceeding. Judges also inquire whether the accused understands what will happen upon conviction. Ultimately, the judge is bound by law to impose a fit and proper sentence having regard to all of the circumstances, both aggravating and mitigating, of the offence and the offender.

When a resolution is reached prior to trial, the plea is entered in Court. The accused may be sentenced immediately following the entering of the plea, or a date may be set for sentencing. At sentencing, the accused is sentenced in accordance with the agreement, if one has been stipulated. If a particular sentence was not part of the agreement, the judge will sentence the offender according to submission of counsel and the generally accepted sentencing principles set out in s.718 of the *CCC*. The statement of purpose and principles of sentencing found in this section are designed to provide direction to the Courts in making sentencing decisions. It states that the “fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society”. This can be achieved by imposing just sanctions that meet one or more objectives that are specified in the *Code*.

Regarding resolution discussions that do not specifically include an agreement with relation to sentencing, both lawyers can still make a submission to the Court following any plea agreement or trial with regard to the sentence to be imposed. Once an accused is sentenced, he/she is always bound by the sentence imposed. In some cases, there

may be a sentencing hearing, a pre-sentence report may be ordered, and/or witnesses may be called to give testimony at the sentencing hearing.

Trial election. With cases involving a summary conviction procedure, the accused cannot elect the mode of trial. These cases are heard by a judge in Provincial Court. However, in cases where the Crown has proceeded by indictment, trials are typically heard in higher Courts within each province/territory and the accused may elect the mode of trial and select from the following five options:

- i) trial in Provincial Court;
- ii) trial in Superior Court with a Judge and a preliminary inquiry in Provincial Court;
- iii) trial in Superior Court with a Judge and no preliminary inquiry;
- iv) trial by Judge and Jury in Superior Court and a preliminary inquiry in Provincial Court; or,
- v) trial by Judge and Jury in Superior Court and no preliminary inquiry.

Case preparation. There is a clear disparity regarding case preparation among Crown prosecutors and defence counsel regarding case preparation in terms of experience, the availability of educational opportunities, and the availability of time to handle particular cases.

In general, most Crown prosecutors handle impaired driving cases. Some prosecutors assigned to these cases or Courts that handle these cases tend to be new and lack experience with both impaired driving cases or overall. As such, they generally may not have enough experience to manage the complex scientific, technical, evidentiary, and legal issues associated with these cases. Some prosecutors continue to handle impaired driving cases for many years and gain considerable experience and familiarity with cases and relevant issues. However, as prosecutors gain more trial experience, they may be encouraged to advance to other higher-profile cases. Consequently, the turnover among prosecutors responsible for handling of impaired driving cases is not insignificant.

In contrast, impaired driving is a strong and lucrative business for private defence lawyers and some devote a considerable part of their practice to such cases and are well-prepared to manage them and enjoy some success in this regard. Some defence

counsel tend to specialize in impaired driving cases and develop substantial experience as they continue to handle such cases for much longer periods.

Additionally, case preparation is also impacted by the availability of educational opportunities among and between Crown prosecutors and defence counsel. Some jurisdictions, such as Ontario, offer a drinking and driving course annually for Crown as part of the summer school curriculum, and also accept Crown from elsewhere into the course. However, not all prosecutors have an opportunity to attend. Moreover, there are often competing priorities and prosecutors can only select a given number of courses. The same holds true for some legal aid lawyers, but not so for private defence counsel who better are able to specialize in the types of cases they handle, and thereby the variety of education they acquire.

The Law Society of Upper Canada (Ontario) offers continuing legal education (CLE) to lawyers on impaired driving. This is usually a one-day course and only a limited number of lawyers may attend in any given year due to budgetary or time restrictions. Lawyers are also able to access a wide variety of educational texts written about impaired driving and conduct online searches for information using a number of electronic legal search engines. Many lawyers have regular access to a wealth of online resources such as Quicklaw, extensive intranet applications, appeal decisions and papers on drinking and driving. The availability of educational materials and resources on impaired driving has greatly increased since the mid-1990s. However, what prosecutors frequently lack is the time or resources to access and review such materials largely due to excessive caseloads and other competing demands. Defence counsel that specialize in impaired driving cases may not be subject to such constraints and are better able to afford legal research or attend courses.

Further compounding this problem, impaired driving case law is fluid and changes frequently, making it challenging for lawyers to stay abreast of relevant issues. In fact, with the advent of the internet and online case law digests, there is now a wealth of accessible case precedents from all levels of Courts all over the country. Unfortunately, few of the decisions or issues are consistent or regular, making it challenging for lawyers to substantiate compelling arguments on some issues.

With regard to the time spent actually preparing an impaired driving case, this survey revealed that Crown prosecutors spend as little as 1/4 of the time preparing for a case as defence counsel; this clearly impacts the outcome of cases. This is not surprising given that the caseloads of prosecutors are three or four times greater than those of defence counsel. It may be due, in part, to the fact that some Crown office managers allocate case preparation time to prosecutors whereas others do not. Similarly, some prosecutors will use the preparation time they are given for impaired driving cases and others not. Hence, it is not unheard of that the extent of Crown preparation in some cases involves a quick review of a case immediately prior to entering the courtroom.

Even if time were not an issue, prosecutors still must cope with limited resources (e.g., articling student availability, research resources) in many jurisdictions, and often do not get to choose what level of resources will be allocated to prepare a particular case. Conversely, although defence counsel may also encounter limited resources, they have flexibility to determine how to best apply those resources.

Of greater concern, regarding some cases, all the resources and preparation time would have limited beneficial effects because Crown prosecutors are at a distinct disadvantage -- they have much larger caseloads to manage and it takes time to disclose for each one, and they must prove each fact of the case. However defence counsel has much smaller caseloads, they do not have ongoing obligations to deal with such as disclosure -- they must only raise reasonable doubt. As a result, when cases go to Court, prosecutors have less time to devote to each case, meaning less time to prepare. In this context, they must also anticipate what direction each case may take based on the investigation and nature of the case and try to adequately respond to issues raised by the defence. Their ability to accurately anticipate the direction a case may take may also be a function of experience.

Pre-trial hearings. In some jurisdictions, it is expected that prior to a pre-trial hearing in Court for an indictable procedure case, the Crown and defence would have conducted a pre-hearing conference to discuss relevant issues to determine whether they can be resolved without the Court's assistance. During this meeting the Crown has authority to deal with the issue of resolution and guilty pleas as would the defence. Following this pre-hearing conference, if issues cannot be resolved, a judicial pre-trial

hearing is set and Crown and defence counsel should be prepared to provide an accurate estimate of how much Court time will be required for the pre-trial hearing so it can be properly scheduled. In some jurisdictions, while this may be ideal, it is not always done.

Due to the potential for trials to collapse (e.g., lawyers or witnesses not available, successful *Charter* notices) immediately prior to trial, some Courts will double- and even triple-book Court time to ensure the best use of the Court's time. However, this practice has disadvantages and can result in delays in processing cases.

Following any pre-trial hearing, there may also be a confirmation hearing, known as a Trial Confirmation Hearing, scheduled for approximately 30 days before the trial date. The accused may or may not be required to attend this hearing depending on whether a Certificate of Readiness has been filed by the defence and according to jurisdictional practices. The purpose of the confirmation hearing is to ensure that both parties are prepared to proceed as scheduled to make the best use of the Court's time. Police must have served subpoenas to civilian witnesses and prepared affidavits of service that are delivered to the Crown office in advance of the hearing. This hearing is typically held four to six weeks prior to the scheduled trial date.

3.2.3 Trial Process

Prosecutors and defence counsel each have a different burden of proof to meet in Court. The prosecutor must present evidence to establish all the elements of the offence, and prove the offence beyond a reasonable doubt. The defence must only cast doubt on the credibility and reliability of evidence and witnesses thereby creating reasonable doubt in the mind of the trier of fact. In fact, the defence legally does not have to do anything but put the Crown to the proof of the prosecution's case. If the Crown cannot prove its case beyond a reasonable doubt, there may be a defence motion for a directed verdict of acquittal.

The trial process for summary conviction cases is highly similar to the process used for cases proceeding by indictment with some minor differences. To begin, summary conviction cases that go to trial are heard by a judge in Provincial Court, whereas indictable cases may be heard by a judge alone or a judge and jury (of 12 citizens) in

Superior Court. In the latter instance, it may be necessary to select a jury prior to the commencement of the trial. After the jury is selected and sworn in, the trial will begin.

Generally speaking, trials start with the prosecution presenting its relevant evidence (e.g., police testimony, BAC test results, videotape of the arrest or booking), including calling any witnesses (e.g., expert witness testimony substantiating blood or breath evidence, and civilian eye-witness testimony). The type of evidence presented may be a function of the nature of the charges laid. In impaired driving cases, police may lay charges of impaired driving, drive over 80, or both depending on what type of evidence has been gathered. For example, officers may only charge “drive over 80” if that was the only offence observed (i.e., there were no physical indicia of impairment or other driving indicators). Similarly, they may also only charge “impaired driving” if there is no breath result. Prosecutors generally agree that the “over 80” charge is more technical and difficult to prove which can make cases more difficult to prosecute when that is the only offence documented.

The Crown may also choose to present civilian or expert testimony as part of their case. In these instances, the defence will have an opportunity during this time to cross-examine any witnesses presented by the prosecution in an effort to raise reasonable doubt.

After the Crown closes its case (is finished presenting its case), the defence will determine if it is strategically appropriate to present a defence. This may depend on how strong a case was presented by the prosecution. If the defence feels that the prosecution has not met the burden of proof to obtain a guilty verdict, it may decide not to present any evidence. At this time the defence may make a motion for a directed verdict of acquittal, meaning a request to the judge to acquit the accused based on the prosecution’s failure to establish a *prima facie* case.

Of interest, the defence has no obligation to present any evidence. The judge cannot draw any inference from the fact that the defence elected not to present any evidence at trial as this is part of their constitutional right to silence. And in indictable cases, the jury is instructed by the judge at the end of the case not to draw any inference from the fact that the accused elected not to present any evidence.



If the defence decides it is necessary to present a case, they have the opportunity to enter evidence and call witnesses after the Crown has closed its case. In the event that the defence presents any new evidence or reports that the prosecution is not familiar with, the prosecution may select to request a brief adjournment (which may or may not be granted) to properly review the new evidence and prepare for cross-examination of any witnesses.

As part of the defence, the defence lawyer may raise an “evidence to the contrary” defence (see section 4.7.4 on Case Outcomes) in which the defence challenges the BAC reading in some manner.

Of concern, prosecutors can encounter substantial difficulty in refuting an “evidence to the contrary” defence as often there is insufficient evidence to disprove such a defence. (Note: The use of this defence has been recently addressed with the passage of Bill C-2). For example, the Crown may be unable to refute the defendant’s drinking pattern if officers have not taken steps to interview witnesses, other bar patrons, or any passengers who witnessed how much alcohol the defendant consumed on the night in question. Sometimes the other patron is the spouse of the accused and they are not a compellable witness. Frequently, resources are not allocated to allow police to conduct a more extensive investigation in these cases or officers may not note information about the offence and the location of drinking which can help establish the defendant’s drinking pattern. The extent of the investigation is often in direct proportion to either the specific offence or the seriousness of the consequences of that offence (e.g., multiple fatalities versus “simple” drive over). So, although prosecutors have an opportunity to cross-examine any defence expert witness, it can be difficult for the prosecution to weaken evidence of the defence drinking pattern when “evidence to the contrary” defence is raised.

3.2.4 Verdict

The prosecution must prove beyond a reasonable doubt that the accused is guilty as charged in order to obtain a guilty verdict. In the case of a trial by judge, the judge will consider all the evidence presented and make a decision to dismiss the charge or convict. In the case of a trial by judge and jury (of 12 citizens), the judge is the trier of legal issues and the jury is the trier of fact, so the judge will review or summarize the

evidence and instruct the jury about the law that applies in the case, including the elements of the offence. The jury will then weigh the evidence and return a verdict of guilty or not guilty. If the jury is unable to agree on a verdict, the jury is said to be “hung” and a mistrial is declared by the judge. In this situation, the Court may order the case to be tried again before a different jury. If there is a finding of guilt, a conviction will be entered and the judge will sentence the accused.

3.2.5 Sentencing

Upon conviction, sentencing of the offender may occur immediately following a finding of guilt or at a future date at a sentencing hearing. In the vast majority of cases, the sentencing hearing follows immediately after the finding of guilt. Cases involving complex circumstances may require a sentencing hearing at a future date to allow both the prosecution and defence to make submissions, to obtain a pre-sentence report (PSR), or for the accused to prepare for a custodial sentence. Following the hearing there may be an adjournment to allow the judge to consider the case and any statements made to the Court and sentence is imposed at a later time.

While the sentencing judge is able to order a PSR in any case, a PSR is more commonly used in cases that proceed by indictment or cases involving multiple repeat offences rather than cases proceeding by summary conviction. This report is prepared by an independent probation officer and specifies the circumstances of the offender and outlines programs and resources that are available to the Court, and may even contain a sentencing recommendation. In preparing the report, the probation officer will contact the prosecutor and others for information about the case, including the prior criminal history of the offender. Prior convictions, although not typically permitted as evidence at trial due to their prejudicial nature, are considered an aggravating factor for the purposes of sentencing. After reviewing the PSR, and hearing submissions from both lawyers, the judge will then sentence the offender.

The judge usually has limited discretion at the sentencing stage. A judge must impose at least the minimum sentence for a first offender and there are often increased mandatory minimum sentences for repeat offenders. At sentencing, a judge has a range of sentencing options to choose from that have been set out in the *Criminal Code of Canada*. Most often, the accused is sentenced to a fine and the minimum mandatory

driving prohibition. In some cases, probation or a conditional sentence may be ordered or an ignition interlock (where available) may be allowed or even a period of incarceration may be imposed. Some jurisdictions may also permit a judge to grant a curative discharge instead of convicting. Such a discharge is available regardless of the prior record of the accused.

3.2.6 Appeal

Following a conviction, either the prosecution (in limited circumstances where there has been an error in law) or the defence may appeal the verdict. Either Crown or the defence may also appeal the sentence. Notices of appeal are filed in appeal Court and subsequently heard in an appellate court.

Many criminal impaired driving cases go to appeal (either a first level appeal up to the highest level of appeal) and this speaks to the diversity and complexity of the issues surrounding such cases. In some instances, cases that involve a conviction and a fine can go to the Superior Court of the jurisdiction or all the way to the Supreme Court of Canada, and these appeals require significant resources and time to process. Perhaps the volume of appeals is reflective of the fact that the consequences for this group of convicted persons (a criminal record, loss of driving privileges, immense costs associated with insurance, etc.) are significant in a very real and tangible way. Hence they are often willing to exhaust all appeals either because of the consequences or the fact that it is a criminal conviction, and will result in a criminal record.

Crown prosecutors appeal dismissals or acquittals far less frequently than the defence appeal convictions, with some estimating that Crown appeals represent as little as 10% of all first level appeals. This is because, generally speaking, the considerations for a Crown appeal are different to a defence appeal. For example, Crown prosecutors may be concerned with resources, caseload and other issues whereas defence counsel may appeal because it can extend the time that the person may continue to drive and it delays the prohibition. Not infrequently, this level of appeal results in a new trial, giving these drivers a second chance at an acquittal.

Most commonly, a point of law is argued that affects the admissibility of evidence. Appellate Courts will usually give deference to the decision of the trial Court judge

regarding the admissibility of evidence and may choose to uphold the ruling of the trial judge. However, if the evidence is insufficient to support the conviction as a matter of law, or the trial judge's interpretation of the applicable law was clearly erroneous, the appeal Court can set aside the verdict. At this time, the appellate Court might dismiss the charge(s) or the case may be remanded back to the trial Court for a new trial. When this happens, both parties may decide to reach a resolution as neither may want to undertake a new trial for various reasons, including the cost of defence expert witness, availability of civilian witnesses and so forth.

3.3 Conclusions

Clearly the prosecution of an impaired driving case is a complex and detailed process that is heavily governed by statute, precedent, and policy. Although the process is very comparable for Crown prosecutors and defence counsel, there are distinct differences that create a certain advantage for the accused. Moreover, the ability of Crown to effectively process these cases can be not insignificantly impacted by policies designed to bring consistency to case management. And, as the findings from the survey reveal, such policies can have important implications for case outcomes.

4.0 Results

4.1 Overview

Many survey questions were structured such that responses occurred along a 5-point scale. Responses indicated either a level of agreement or frequency of occurrence. For the purposes of this report, the 5-point scale was recoded into three different groups (e.g., agreement/neutral response/disagreement; always or often/sometimes/rarely or never; and, all or most/some/a few or none). Put another way, codes one and two on the 5-point scale formed the first group; code 3 – i.e., the neutral point on the scale – formed the second group; and, codes four and five were recoded and used as the third group. For purposes of length, consistency, and simplicity, the first response category indicating agreement or a high level of frequency is most often reported.

Consistent with the results from the 1997 police survey on impaired driving (Jonah et al. 1997), findings from this current survey of Crown prosecutors and defence counsel underscore the challenges associated with the prosecution of impaired driving cases in Canada. This is clearly evidenced by the high level of consensus among, and similarities between, Crown and defence counsel in their perceptions, experiences, and concerns regarding priority issues. Perhaps, surprisingly, the findings from the Crown and defence surveys were very consistent with regard to the magnitude and nature of the problems identified.

Crown and defence reported consistent results regarding the magnitude and nature of the problems identified.

Survey responses were also analyzed according to a variety of factors including: respondent's age, gender, language, experience and jurisdiction. Nominal differences were found relative to age, gender, language and even experience. Although it is often assumed that the processing of cases changes as a function of maturity and experience, this did not appear to be supported by the findings.

The most profound variations in the handling of impaired driving cases were identified across jurisdictions.

The most profound variations in the handling of impaired driving cases were identified across jurisdictions. These variations provide insight into how resources, policies and practices relating to case management can impact case outcomes, and, more importantly, provide direction regarding how the prosecution of

cases can be improved. Collectively, these results strongly suggest that some problems are more systemic in nature and occur as a function of policies and practice.

The one consistent finding across almost all jurisdictions is the significant challenges associated with the law (specifically “evidence to the contrary” defences) that are having a profound impact on case outcomes. According to prosecutors across the country, this type of defence is a pressing concern that detracts from the effective processing of cases and leads to inappropriate outcomes in a substantial number of cases.

4.2 Presentation of Findings

Due to low response rates in some jurisdictions, it was necessary to group the findings into six regions. Conclusions can be drawn regarding Crown prosecutors in all of these regions, although those jurisdictions with lower Crown response rates should be interpreted with greater caution. Additionally, conclusions can only be drawn about the perceptions and experiences of defence counsel in Ontario, Quebec, and Alberta because in all other jurisdictions responses from defence counsel were extremely low. The grouping of responses into regions was guided by the categories used in the previous police survey to facilitate comparisons where possible. The following six regions were created:

- British Columbia
- Alberta, Yukon, Nunavut (note that defence responses from this region represent Alberta only)
- Saskatchewan, Manitoba, Northwest Territories
- Ontario
- Quebec
- Atlantic (Newfoundland and Labrador, New Brunswick, Nova Scotia and Prince Edward Island)

The results of the survey are presented in the following sections:

- police charges
- blood alcohol concentration
- caseload
- evidence
- trials

- sentencing
- general perceptions and attitudes

4.3 Police Charges

The Criminal Code of Canada (CCC) contains five separate charges for impaired driving. Police and/or Crown prosecutors (depending on the jurisdiction) select the most appropriate charge(s) to lay based on the nature and severity of the incident. The two charges that are most commonly filed are “over 80” (CCC s.253(b)) and “impaired driving” (CCC s.253(a)). The former is a per se offence that makes driving with a blood alcohol concentration (BAC) in excess of 80mg of alcohol per 100ml of blood a criminal offence while the latter is an offence related to recognized behaviour and physical indicia of impairment. These charges are often used in combination and are most often applied to incidents in which there is no serious harm involved.

In the event that the suspect fails to cooperate with the police investigation by refusing to take the approved screening device (ASD) at roadside and/or the evidential breath test when a demand has been made, police and/or the Crown prosecutor may elect to file a charge of “refusing to provide a breath or blood sample” under CCC s.254(5). Refusal also applies to the approved screening device administered at the roadside and refusing to accompany the officer back to the detachment for testing. This charge carries penalties equal to a first offence impaired driving conviction, essentially removing any benefit associated with refusing to provide a breath sample. Finally, in cases involving a victim(s) that suffers bodily harm or is killed, police and/or the Crown may file a charge of either “impaired driving causing bodily harm” under CCC s. 255(2) or “impaired driving causing death” under CCC s.255(3) in addition to the “over 80” charge.

More than 80% of impaired driving cases involved charges of simple “impaired driving” and/or “over 80”.

As shown in Table 3, according to prosecutors and defence counsel in Canada, the vast majority (81%) of impaired driving cases involve charges of simple “impaired driving” and/or “over 80”. A relatively small percentage (14%) of cases involve refusal to provide a breath sample (CCC. 254(5)). This is highly similar to the 13-14% of refusal cases that was reported in an earlier Canadian study (Moyer 1992). Refusal was reported slightly more often in the Atlantic region and the Saskatchewan, Manitoba and the Northwest Territories region, where approximately 20% and 17% of cases, respectively, involved refusal. Anecdotal information from police officers suggests that

this may be a result of a disinclination among suspects to travel back to the police station for testing purposes due to the time required.

It is noteworthy that the low number of charges associated with refusal stands in marked contrast to the situation in the United States, where refusal is common because penalties are often administrative or much less than those associated with a drunk-driving conviction. In the U.S., refusal rates can be as high as 80% (Hedlund et al. 2007) in some jurisdictions.

Relatively few cases (5%) involve impaired driving causing bodily harm and/or death. It appears there has been a slight increase in the charging rate for this offence; an earlier report noted that only 1-2% of cases involved this type of charge (Moyer 1992).¹ The fewest cases (3%) involving impaired driving causing bodily harm and death were reported by prosecutors and defence counsel in the Alberta, Yukon and Nunavut region and by Crown in the Atlantic region (3.5%).

Only 5% of cases involved impaired driving causing bodily harm and/or death.

Table 3: Estimated Percent of Impaired Driving Charges by CCC section According to Crown and Defence

<i>Type of charges</i>	<i>Crown</i>	<i>Defence</i>
Simple impaired/ over 80 mg% – s. 253(a,b)	81%	81%
Refusal to provide a sample s. 245(5)	14%	14%
Impaired causing death/bodily harm – s. 255 (2,3)	5%	5%

A simple impaired driving offence is classified as a hybrid offence in the CCC. This means that Crown prosecutors may elect to proceed by summary conviction or by indictment. The former category is for lesser or simple offences and is associated with lower penalties; the latter is for more serious offences and carry with them more significant penalties and the option for a Preliminary Inquiry and a jury trial in Superior

In almost all jurisdictions approximately 90% of cases proceed by summary conviction.

¹ It should be noted that prior to 1985 charges of impaired driving causing bodily harm or death did not exist and the Crown would lay charges of criminal negligence causing death or criminal negligence causing bodily harm which were and still are more difficult to prove.

Court. Since the vast majority of cases do not involve bodily harm or death, in almost all jurisdictions approximately 90% of cases proceed by summary conviction. In many instances this is a practical decision as the workload, time and expense associated with proceeding by indictment mitigate any benefits. Some also believe that the technicalities associated with the scientific evidence may be too complex for a jury to reasonably understand. However, in Quebec only 80% of cases proceed by summary conviction. Since more cases proceed by indictment in Quebec, this means that individuals charged with impaired driving may face harsher criminal penalties for simple impaired driving offences more frequently than in other jurisdictions.

4.4 Blood Alcohol Concentration (BAC)

The legal BAC limit for impaired driving in Canada is 80mg of alcohol per 100ml of blood. Survey results from Crown prosecutors and defence counsel revealed that the majority of impaired driving cases involve a BAC ranging from 100-160mg%.

As shown in Table 4, nine to thirteen percent of Crown prosecutors in most jurisdictions reported that *almost all or most* of their cases involved a BAC of 101-120mg%. However in the Saskatchewan, Manitoba and the Northwest Territories region and in Quebec this was much higher at 24% and 28% respectively.

More than 70% of prosecutors in all regions except British Columbia and the Saskatchewan, Manitoba and the Northwest Territories region reported that *almost all or most* of their cases involved a BAC of 121-160mg%. Only 55% of prosecutors in British Columbia and 56% in the Saskatchewan, Manitoba and the Northwest Territories region reported cases in this BAC range.

A majority of prosecutors agree that almost all or most of their cases involved BACs over 120mg%.

Table 4: Estimate Percent of Cases by BAC Level in Impaired Driving Cases²

<i>Region</i>	81-100mg%		101-120mg%		121-160mg%		Over 160mg%	
BC	1%		9%		55%		41%	
AB/YK/NU	0%	4%**	13%	21%**	73%	52%**	19%	12%**
SK/MB/NWT	0%		24%		56%		18%	
ON	2%	9%**	13%	17%**	75%	53%**	20%	7%**
QC	6%	6%**	28%	35%**	76%	53%**	7%	15%**
Atlantic	1%		10%		72%		15%	

*Percent indicating always or often handle cases with these BAC readings.

** Defence estimates where available

Nationally, cases involving a “high” BAC of 160mg% or above were less common among defence lawyers -- only 8% of defence counsel reported that almost all or most of their cases involved a high BAC, compared to 20% of prosecutors. Prosecutors in British Columbia reported that a much greater percentage (41%) of their cases involve a BAC over 160mg%. This may be a function of the extensive application of administrative licensing sanctions for impaired driving offences that are applied at 50mg% (except in Quebec, which has no administrative limit). These higher BAC cases were much less common (less than 20%) in most other jurisdictions and only 7% in Quebec. It should be noted that the volume of cases in the higher BAC range in many respects is not unusual. A 1992 study also reported that the mean BAC of cases ranged between 160 and 180mg% (Moyer 1992).

Small percentages of both prosecutors and defence counsel acknowledge that almost all or most of their cases involve a BAC between 80-100mg%, suggesting that impaired driving cases in this lower BAC range are less common. Such cases were slightly more prevalent among defence counsel (8%) than among Crown (2%).

Impaired driving cases in the lower BAC range (80-100mg%) are less common.

²The questionnaire used in this study included several questions with a five-point scale as the answering format. Respondents could answer always, often, sometimes, rarely and never; or, almost all/all; most, some, a few, almost none/none. Responses were grouped according to always/often, sometimes, and rarely/never. Several tables summarize how many respondents answered always/often on this scale for different questions. Since the percentages presented in many of these tables come from different questions, they do not total 100%.

Cases in this lower BAC range are slightly more prevalent in some jurisdictions such as Ontario and Quebec than others (see Table 4). Similarly, looking solely at responses from Crown prosecutors, more than 90% in most jurisdictions reported that *a few or none* of their cases in the past two years involved BACs in the 80-100mg% range. This was slightly lower in Ontario at 86% and much lower in Quebec at 68%. The notable lack of cases with these lower BACs nationally may be a function of police practices, Crown policies, or a larger volume of high BAC cases.

4.5 Caseload

There are distinct differences between the average caseload size reported by Crown prosecutors and defence counsel. Prosecutors report handling an average of 456 criminal cases annually, compared to some 114 criminal cases handled by defence counsel – the typical criminal caseload for prosecutors is some 4 times greater than that of defence counsel. It should be noted that not all cases will require the same amount of time to process or the same level of attention -- i.e., there is a difference between caseload and workload. The complexity of a case in conjunction with how it will be processed (e.g., a simple impaired driving case resolved with a plea versus a simple impaired driving case with complex circumstances that is resolved at trial) can impact the amount of time and work associated with the case.

The typical criminal caseload of Crown is some 4 times greater than that of defence.

Consistent with this finding, 53% of Crown agree or strongly agree that caseload makes it difficult to prepare adequately for impaired driving cases, whereas only 15% of defence counsel agree or strongly agree that this is true. Such findings may also be due to the level of resources allocated towards impaired driving cases.

Caseload size makes it difficult for Crown to prepare for impaired driving cases.

Criminal caseload by jurisdiction. A closer examination of caseloads among prosecutors according to regional breakdowns is shown in Table 5. Overall criminal caseloads are much higher in the Atlantic region (an average of 583 cases handled annually), in Ontario (524 cases for prosecutors; 112 cases for defence) and in the Alberta, Yukon and Nunavut region (516 cases per annum for Crown; 120 cases for defence). Caseloads are a moderate size in Quebec (489 cases annually for Crown; 111 cases for defence). Conversely, somewhat smaller caseloads are more common in British Columbia and the Saskatchewan, Manitoba and the Northwest Territories region (annual averages of 416 and 480 cases, respectively).

Table 5: Estimated Average Total Criminal and Impaired Driving Caseload by Jurisdiction

<i>Region</i>	<i>Number of criminal cases</i>		<i>Number of impaired driving cases</i>		<i>% of impaired driving cases</i>	
BC	416		100		24%	
AB/YK/NU	516	120**	113	32**	22%	27%**
SK/MB/NWT	480		91		19%	
ON	524	112**	125	24**	24%	21%**
QC	489	111**	147	32**	30%	29%**
Atlantic	583		99		17%	

* In a 12-month period

**Defence results shown, where available

Impaired driving caseload. Nationally, prosecutors and defence counsel also agree that approximately 24% of their criminal caseload involves impaired driving cases. This is highly comparable to a 1988 study by Vingilis in Ontario that reported “Almost one-third of the Crown counsel’s caseload is criminal alcohol-related driving offences” (Vingilis et al. 1988; p. 6). There are, however, some variations in regions across the country. Prosecutors in the Atlantic region and the Saskatchewan, Manitoba and the Northwest Territories region report that only 17% and 19% respectively of their criminal caseload involves impaired driving cases. Prosecutors and defence counsel in Quebec report that approximately 30% of their criminal cases involve impaired driving – almost double the proportion.

24% of criminal cases are impaired driving.

These variations in criminal caseload and impaired driving caseload can result in increased pressures in some jurisdictions. For example, although prosecutors in the Atlantic region handle a larger volume of criminal cases, the number of impaired driving cases they handle is actually much smaller than in other jurisdictions. By contrast, Crown in Ontario has not only a substantial criminal caseload, relative to other jurisdictions, but also more of these cases involve impaired driving.

These findings suggests that jurisdictions such as Ontario and Quebec may face greater pressures in processing impaired driving cases relative to other jurisdictions because not only is the total criminal caseload in these jurisdictions higher, but the percentage of impaired driving cases they manage is also greater.

Repeat impaired driving caseload. Nationally, repeat offenders account for about 1/3 of the impaired driving cases each year -- Crown prosecutors report that 35% of the impaired driving cases they handle involve repeat offenders, compared to 30% reported by defence counsel. These findings also vary according to region (see Table 6). According to prosecutors, repeat offender cases are much more prevalent in the Saskatchewan, Manitoba and the Northwest Territories region (47%) and British Columbia (40%); less prevalent in Ontario, where both Crown and defence counsel estimate 29%.

Nationally, repeat offenders account for 1/3 of the impaired driving cases each year.

Sixty-four percent of prosecutors in the Saskatchewan, Manitoba and the Northwest Territories region strongly agree that their caseload makes it difficult to prepare for impaired driving cases which may perhaps be a result of the greater volume of repeat offender cases that they process. Conversely, Crown in the Atlantic region report less difficulty managing their caseload, despite the fact that they handle more cases. This may be a function of the fact that, in the Atlantic region, cases are resolved more frequently prior to trial and fewer cases actually proceed to trial, thereby reducing pressures associated with caseload.

Table 6: Estimated Number and Percent of Repeat Offender Cases by Jurisdiction

<i>Region</i>	<i>Number of impaired driving cases</i>		<i>Number of repeat offender cases</i>		<i>% of repeat offender cases</i>	
BC	100		40		40%	
AB/YK/NU	113	32**	41	11**	37%	34%**
SK/MB/NWT	91		43		47%	
ON	125	24**	36	7**	29%	29%**
QC	147	32**	52	9**	36%	28%**
Atlantic	99		35		35%	

*In a 12-month period

**Defence results shown where available

4.6 Evidence

A number of concerns pertaining to the evidence associated with impaired driving cases were revealed in this survey. Lawyers generally agree that impaired driving cases can be challenging to process as they frequently involve more scientific and technical

evidence and complex legal arguments, relative to other types of CCC cases. In fact, due to the nature of the evidence, these cases are often considered as challenging as homicides and sexual assaults. As such, the manner in which evidence is collected, documented, and presented in Court can significantly impact outcomes.

There is considerable agreement among Crown and defence counsel regarding the types of evidence that are most often available and most compelling in Court. The types of evidence that are most frequently available in impaired driving cases, in addition to the BAC result, are police testimony and documentation, and eyewitness testimony.

Lawyers agree that the most compelling evidence, again, in addition to the BAC, comes from the police (e.g., paperwork containing details of the investigation). However, Crown are more likely than defence counsel to report that eyewitness testimony is compelling evidence.

Lawyers agree that the most compelling evidence, in addition to the BAC, is police paperwork.

Video evidence. Survey respondents in many jurisdictions report that police videos (e.g., at roadside or booking videos) *can* provide an important source of evidence. Crown prosecutors and defence counsel note that video at the roadside is almost never available, and video taken during booking or the breath test is available slightly more often. Even though such video is not often available, both Crown prosecutors and defence counsel agree that it can sometimes or often be of considerable value, resulting in a guilty plea, a conviction at trial, or an acquittal.

Surprisingly, Crown and defence counsel in Ontario, where video is most often available, are least likely to report it can influence decision-making at trial. Anecdotal evidence suggests that, despite its availability, it is rarely admitted in Court as evidence due to unclear policies associated with the management, processing, retention and submission of this type of evidence.

Of some interest, and by contrast, video evidence is frequently available and used in the United States as evidence in impaired driving cases. U.S. prosecutors report that a well-documented video recorded by a trained and experienced officer can provide valuable evidence of impairment. At the same time, such evidence can on occasion work against the prosecution since high BAC offenders who are alcohol tolerant can actually appear

very sober and coherent on video, increasing the likelihood of acquittal. In some instances, it can be beneficial to ensure that police are well-trained and able to draw out the signs of impairment on the video (e.g., suspect is clearly visible, area is well-lighted, good audio to demonstrate the suspect did not/was not able to comply with instructions).

Evidence of impairment. A majority of Crown prosecutors across jurisdictions (50-70%) believe that police officers rely too heavily on the BAC result (CCC s. 253(b)) as evidence of impairment, to the detriment of other evidence related to behavioural signs of impairment. As a result, Crown must more often proceed on the “over 80” charge instead of the “impaired driving” charge. Unfortunately, when cases are challenged in Court and the results of the breath test are brought into question, the Crown do not often have behavioural evidence to demonstrate the defendant was impaired and prove any impaired driving charge (CCC s.253 (a)). So when the breath result is challenged by defence counsel, prosecutors encounter substantial difficulty proving the case beyond a reasonable doubt and these cases can result in an acquittal despite a positive BAC reading based on a two tier evaluation and a certificate from the breath technician.

50 -70% of Crown prosecutors across jurisdictions believe that police officers rely too heavily on the BAC result.

Paperwork. With regard to the availability (completeness) of police paperwork, 77% of Crown prosecutors and 72% of defence counsel agree it is often available in impaired driving cases. A greater percentage of Crown (84%) and defence counsel (78%) in Ontario as well as Crown in British Columbia (80%) reported that police paperwork was often available, indicating that the quality and quantity of documentation provided by police is better relative to other parts of the country. Conversely, only 65% of Crown prosecutors and defence counsel in Quebec and 69% of Crown prosecutors in the Alberta, Yukon and Nunavut region reported this was the case, indicating that the quality and quantity of documentation provided by police is occasionally lacking.

Errors in paperwork or police documentation always or often create evidentiary problems in impaired driving cases according to 12% of Crown prosecutors and 16% of defence counsel nationally. This problem is more common in British Columbia and the Saskatchewan, Manitoba and the Northwest Territories region with 19% and 17% of Crown prosecutors, respectively, reporting it is as problem. However, only 9% of Crown in Ontario and 7% of prosecutors in the Alberta, Yukon and Nunavut region report that

errors in paperwork or documentation are a problem. This may suggest that the police are providing a greater degree of accuracy and detail in their reports in those regions, or that these jurisdictions have more impaired driving versus over 80 cases (making the observations of impairment and other evidence noted in the paperwork more relevant).

Court testimony. While 54% of Crown prosecutors and defence counsel nationally report that police testimony is most compelling, the variation across the country is substantial. For example, only 40-47% of prosecutors in the Alberta, Yukon and Nunavut region and defence counsel in Alberta found police testimony to be compelling, compared to 70% of Crown in the Atlantic region. This may suggest that police officers in the Atlantic region have more experience testifying in Court or that the quality and amount of training they receive is greater.

Nationally, 54% of Crown and defence report that police testimony is most compelling.

Police training. To facilitate the accurate and relevant collection of evidence and its presentation in Court, a majority (85%) of prosecutors agreed that police officers can benefit from more training in the enforcement of impaired driving laws as well as in giving Court testimony. Conversely, only half of defence lawyers agree that this is true. Prosecutors in Quebec and the Atlantic region appear to be more satisfied with the quality and amount of police training, whereas Crown prosecutors in British Columbia and the Alberta, Yukon and Nunavut region appear less satisfied. Crown prosecutors in the Atlantic region report the most satisfaction with the quality of police testimony.

85% of Crown agreed that police officers can benefit from more training.

The concerns of the Crown prosecutors are actually consistent with those of police themselves. According to the earlier police survey at least half of officers agreed that more training was important, although some believed that officers receive too much training on too many issues (Jonah et al.1997). An even earlier study completed in 1992 also reiterated the desire among police for “more training in legislation, procedures, and giving evidence in Court” (Moyer 1992; p. 20).

4.7 Trials

4.7.1 Pre-trial or Resolution Discussions

Nationally, pre-trial or resolution discussions are common. This is not surprising given that this practice allows lawyers to resolve cases more quickly and with fewer

Crown and defence generally agree that, of those cases involving pre-trial discussions, a resolution is reached in only 35% of cases.

resources, thereby reducing the burden on the justice system. However, the prevalence of pre-trial discussions that result in a resolution or plea agreement are less substantial than expected. Crown prosecutors and defence counsel generally agree that, of those cases involving pre-trial discussions, a resolution is reached in only 35% of cases. This suggests that this form of resolution is much lower in Canada as compared to other jurisdictions. For example, in the U.S. it is estimated that up to 80% of impaired driving cases are negotiated using plea agreements (contents of plea agreements are discussed below). This contrast suggests that prosecutors and defence counsel in Canada are either less inclined to resolve cases using this method or that the ability of lawyers to negotiate a resolution is limited due to the minimum penalties stipulated in the CCC.

This reduced reliance on pre-trial resolutions may also be a function of Crown policies in some offices that limit the ability of Crown prosecutors to negotiate beyond certain parameters. It may also be that the consequences of conviction (beyond CCC penalties) are substantial (e.g., insurance, cost of re-licensing, impact of criminal record) so accused are more willing to go to trial to try and avoid a conviction. Previous studies have noted that, because a conviction results in a mandatory driving prohibition of one year, an accused is much more likely to contest the charges (Moyer 1992). As a consequence, “the Crown possesses less ‘leverage’ to induce a guilty plea since a fine or a short jail term is less of an inconvenience to many persons than a licence suspension” (Moyer 1992, p.42).

The findings regarding pre-trial resolutions reveal that reaching a resolution as opposed to proceeding to trial is slightly more common in the Saskatchewan, Manitoba and the Northwest Territories region (41%). Similarly, 41% of Crown prosecutors in the Alberta, Yukon and Nunavut region and defence counsel in Alberta report successful pre-trial discussions. This outcome is slightly less common in Ontario with 31% of Crown prosecutors and 25% of defence counsel in Ontario indicating they were able to reach a resolution.

Table 7: Estimated Percent of Outcomes of Pre-trial Discussions*

	<i>Statement of facts</i>	<i>Joint submission on sentence</i>	<i>Plea non-CCC</i>	<i>Plea non-alcohol CCC</i>	<i>Guilty plea</i>	<i>With drawn/stayed</i>	<i>No plea agreement</i>
Crown counsel	33%	52%	11%	3%	54%	2%	43%
Defence	36%	58%	16%	3%	38%	6%	44%

*Percent indicating always or often an outcome

The resolutions resulting from pre-trial discussions can involve a range of outcomes including an agreement on a statement of facts regarding the case, a joint submission on sentence, a guilty plea to a non-alcohol CCC or a non-CCC charge, a guilty plea to original charges, charges being withdrawn or stayed, or no plea resolution being reached. Table 7 shows the percent of respondents who indicate which outcomes of pre-trial discussions occur *always or often*. Nationally, approximately half of prosecutors report that a guilty plea as charged and a joint submission on sentence occur always or often as a result of pre-trial discussions. Less than half (43%) of Crown report that no plea agreement is reached always or often, and 33% indicate that an agreement on a statement of facts is always or often reached due to pre-trial discussions. Few prosecutors (less than 11%) report that a plea to a non-alcohol CCC charge or a non-CCC charge is always or often an outcome; the same is true of cases being withdrawn or stayed as a result of pre-trial discussions. These results are highly similar to results reported by defence counsel, with the exception of 38% of defence counsel reporting that a guilty plea as charged is always or often an outcome of pre-trial discussions.

Nationally, half of Crown report that a guilty plea as charged and a joint submission on sentence occur always or often as a result of discussions.

Not surprisingly, the frequency of these outcomes as a result of pre-trial discussions varies according to jurisdiction (see Table 8). About 1/3 of Crown prosecutors in most jurisdictions report that an agreement on an agreed statement of facts occurs always or often as a result of pre-trial discussions, with the exception of British Columbia (15%) and the Saskatchewan, Manitoba and the Northwest Territories region at 16%.

Table 8: Estimated Percent of Jurisdiction Outcomes of Pre-Trial Discussions by Region

<i>Region</i>	<i>Agreed statement of facts</i>		<i>Joint sentencing submission</i>		<i>Plea non-CCC</i>		<i>Plea non-alcohol CCC</i>		<i>Guilty plea</i>		<i>With drawn/stayed</i>		<i>No plea agreement</i>	
BC	15%		43%		38%		11%		26%		2%		42%	
AB/YK/NU	29%	39%**	39%	57%**	5%	26%**	3%	13%**	61%	17%**	5%	4%**	35%	9%**
SK/MB/NWT	16%		44%		4%		0%		58%		8%		38%	
ON	39%	27%**	50%	45%**	6%	17%**	1%	2%**	48%	22%**	2%	2%**	57%	59%**
QC	42%	43%**	80%	81%**	2%	12%**	1%	0%**	65%	61%**	2%	10%**	38%	43%**
Atlantic	35%		36%		5%		0%		83%		0%		24%	

*Percent indicating always or often an outcome

**Defence counsel results where available

In most regions, between 1/3 and 1/2 of Crown report that a joint submission on sentence is always or often an outcome of pre-trial discussions. However, this outcome appears to be substantially more common in Quebec with 80% of Crown and defence counsel reporting it always or often occurs in cases involving pre-trial discussions.

A majority of prosecutors report that pleas to non-alcohol CCC charges or non-CCC charges rarely occur *always or often* (meaning that pleas to lesser charges are infrequently used and rarely available), although in British Columbia these practices are more common with 38% of Crown indicating that pleas to non-CCC charges as a result of pre-trial discussions is always or often an outcome, and 11% indicating pleas to non-alcohol CCC charges occur always or often. Slightly more defence counsel in Alberta, Ontario and Quebec report that pleas to non-CCC charges occur always or often at 26%, 17% and 12% respectively.

A majority of Crown report that pleas to non-alcohol CCC charges or non-CCC charges are rarely used or available.

Guilty pleas frequently occur as a result of pre-trial discussions. In almost all jurisdictions, more than half of Crown prosecutors report this happens always or often. Slightly fewer Crown in Ontario (48%) report this is the case and substantially fewer Crown in British Columbia (26%) report that guilty pleas are an outcome of pre-trial

discussions. Anecdotal information suggests that these guilty pleas are often made in conjunction with an agreed statement of facts or an agreement on sentence.

More than half of Crown report guilty pleas frequently occur as a result of pre-trial discussions.

In almost all jurisdictions, less than 5% of prosecutors report that cases are withdrawn or stayed as a result of pre-trial discussions, with the exception of the Saskatchewan, Manitoba and the Northwest Territories region where 8% of Crown report this occurs always or often as a result of pre-trial discussions.

Finally, between 1/4 and 1/2 of Crown counsel report that no agreement is reached always or often as a result of pre-trial discussions – alternatively, 7%-18% of Crown estimate that *rarely or never* is no agreement reached. This is similar to an earlier 1992 study that reported that about 30% of defendants in Burnaby and Toronto pleaded not guilty. This is in sharp contrast to just 7% of simple impaired cases that were contested in Saskatoon (Moyer 1992). At this time it was stated that “The defence has nothing to gain by a guilty plea and nothing to lose by a trial” (Moyer 1992, p.43). This is probably even more true today. Indeed, the level of success in reaching a plea agreement is often a function of what offers are being made.

Just 9% of defence counsel in Alberta report that no agreement is reached always or often whereas 59% of defence counsel in Ontario and 44% of defence counsel in Quebec report this occurs always or often as a result of pre-trial discussions. Alternatively, 22% of defence counsel in Alberta report that no agreement is reached rarely or never, compared to 15% in Ontario and 28% in Quebec.

It is important to note that the variation in frequency and extent of plea negotiations can have a significant impact on caseloads and workloads for lawyers, as well as trial delays which may ultimately affect outcomes. In jurisdictions with larger caseloads or a larger percentage of cases going to trial, over time some lawyers may feel greater pressure to negotiate pleas as a more efficient method of resolving cases and managing workload. When a greater volume of cases proceed to trial, as opposed to being resolved through pre-trial resolutions, this may ultimately increase the burden on the Court and result in cases being dismissed due to delays in proceedings.

The variation in frequency and extent of pleas can significantly impact the caseloads and workloads for lawyers.

4.7.2 Case Processing

There are four typical ways that impaired driving cases can be resolved: charges are withdrawn or stayed before or at trial, a plea agreement is reached (an explanation of plea agreement options is discussed in the previous section), the accused pleads guilty as charged, or the accused can plead not guilty and go to trial. Results of the survey are summarized in Table 9.

Withdrawn/stayed. According to survey results, charges are rarely withdrawn or stayed in impaired driving cases, occurring in only 5-10% of cases nationally. This is least likely to occur in Ontario (5%), Quebec (4%) and the Atlantic region (5%); cases are more likely to be withdrawn or stayed in British Columbia (8%) and the Saskatchewan, Manitoba and the Northwest Territories region (9%).

Plea agreements. A plea agreement of some sort is likely to be reached in just about 16% of cases nationally according to Crown prosecutors and 20% of cases according to defence counsel. However, the frequency of plea agreements varies considerably across jurisdictions. Plea agreements are a relatively infrequent occurrence in Quebec (2% of cases according to prosecutors; 9% according to defence) but somewhat more common in Ontario (18% according to Crown; 21% according to defence). These agreements are most common in the Saskatchewan, Manitoba and the Northwest Territories region at 23% and British Columbia at 27%.

A plea agreement is likely to be reached in just 16% of cases nationally according to Crown; 20% according to the defence.

These results suggest that prosecutors in the Saskatchewan, Manitoba and the Northwest Territories region and British Columbia appear to be more willing or able to negotiate pleas in order to resolve cases more rapidly and minimize the resources expended as a result of trials, whereas those in Quebec and the Atlantic region are much less willing or able to negotiate pleas.

A propensity to resolve cases through plea agreements may occur as a result of the volume of cases being managed in each jurisdiction or a function of policies and practices that have been established regarding what cases will/not be negotiated. However, it is important to note that the level of plea negotiations can have a

The level of plea negotiations can have a substantial impact on the volume of cases going to trial.

substantial impact on the volume of cases going to trial, and has the potential to increase the workload associated with these cases.

Table 9: Estimated Percent of Case Resolution by Region

<i>Region</i>	<i>With-drawn</i>		<i>Plea agreement</i>		<i>Guilty plea as charged</i>		<i>Plead not guilty</i>	
BC	8%		27%		27%		38%	
AB/YK/NU	7%	10%**	15%	33%**	39%	24%**	39%	32%**
SK/MB/NWT	9%		23%		44%		29%	
ON	5%	10%**	18%	21%**	29%	17%**	49%	52%**
QC	4%	8%**	2%	9%**	53%	43%**	41%	40%**
Atlantic	5%		16%		53%		28%	

**Defence counsel results where available

Guilty pleas. Nationally, Crown prosecutors estimate that almost 40% of defendants plead guilty as charged; defence counsel believes it is lower at 29%. In Quebec and the Atlantic region, Crown estimate that more than half (53%) of cases are resolved with a guilty plea (Quebec defence 43%); this figure is 44% in the Saskatchewan, Manitoba and the Northwest Territories region, suggesting that prosecutors in these jurisdictions are better able to secure pleas. However, such a resolution is much less frequently reported by Crown prosecutors in British Columbia at 27%, Ontario at 29% (defence 17%) and the Alberta, Yukon and Nunavut region at 39% (AB defence 24%), suggesting that either Crown and/or defence are less likely to secure these pleas and more likely to go to trial.

Nationally, Crown estimate that almost 40% of accused plead guilty as charged; defence counsel estimate 29%.

Not guilty pleas. In aggregate, lawyers on both sides of the aisle agree that in a rather substantial proportion of cases (more than 40% of them), the defendant will plead not guilty and go to trial. One respondent to this survey notes that “Often people proceed to trial because of the consequences associated with a criminal conviction”; another reports that “Driving suspensions are increasing our caseloads significantly. Very rarely are there pleas of guilty.” Lawyers in Ontario (49%) and Quebec (41%) report more cases going to trial, whereas lawyers in the Atlantic region report the fewest cases going to trial at 28%. The percentage of cases in which defendants

Lawyers on both sides agree that in more than 40% of cases, accused will plead not guilty and go to trial.

plead not guilty can have a substantial impact on caseload as these cases often proceed to trial, resulting in an increased workload, time demands and use of resources.

4.7.3 Trial

When asked what percentage of impaired driving cases actually results in a trial, Crown prosecutors estimated an average of 45%, defence counsel reported a similar figure at 42%. Cases most often go to trial in Ontario (52%) and Quebec (44%) followed closely by British Columbia at 40%. In the former jurisdictions, this may be a function of reluctance among lawyers to plea cases; in the latter case it may be a function of smaller caseloads that provide prosecutors with greater opportunity to take cases to trial. Cases are least likely to result in a trial in the Atlantic region (22%) and the Saskatchewan, Manitoba and the Northwest Territories region (30%).³

Crown prosecutors and defence counsel across the country also agree that 90% of cases going to trial proceed by summary conviction and only a small proportion (10%) proceed by indictment. This is consistent with earlier findings that only 5% of impaired driving cases involve bodily harm or death, so there are substantially fewer cases proceeding by indictment.

A majority of prosecutors (70%) and defence counsel (72%) in Canada report that simple impaired driving cases always or often go to trial, whereas only 51% of Crown and 50% of defence counsel report that refusal cases always or often go to trial. This is perhaps a function of the nature of the case in that refusal is more objective and clear cut (either the accused refused/failed to comply or not) whereas impaired cases are more subjective (to what extent they were impaired). Sixty-nine percent of prosecutors and 54% of defence counsel report that impaired driving cases involving bodily harm or death always or often go to trial.

Repeat offenders. Repeat offenders are somewhat more likely to go to trial than first offenders. Nationally, approximately 41% of Crown prosecutors estimate that repeat offenders are more likely to go to trial, as compared to 34% of defence counsel. Anecdotal evidence suggests that repeat offenders are more likely to

Nationally, 41% of Crown estimate that repeat offenders are more likely to go to trial; defence estimate 34%.

³ These numbers are slightly different from those reported immediately above in the section on not guilty pleas because lawyers were asked to estimate as part of two different questions and based on a different segmentation of cases – however the results are highly similar, suggesting internal consistency in answering the survey)

go to trial because they have more to lose, or because they are more experienced with the system. More prosecutors in British Columbia (50%), the Saskatchewan, Manitoba and the Northwest Territories region (52%) and the Atlantic region (56%) estimate that repeat offenders are more likely to go to trial; this compares with 43% of prosecutors (57% defence) in the Alberta, Yukon and Nunavut region, and 45% of prosecutors (43% defence) in Ontario. Only 18% of Crown and 13% of defence counsel report this is true in Quebec.

Case preparation. Not surprisingly, the amount of time spent preparing for an impaired driving case varies substantially between prosecutors and defence counsel – assuming that Crown and defence require roughly equal amounts of time to manage a case. Results are summarized in Table 10. On average, Crown spend 2.5 hours preparing for simple impaired driving cases involving no victim or special circumstances. This is in sharp contrast to the 11.5 hours reported by defence lawyers. However, both generally agree that the amount of time needed in Court to resolve this type of case is between 4-5 hours.

Cases that proceed by indictment but that do not involve bodily harm or death require almost twice as much time for Crown counsel to prepare (4.5 hrs), as these cases may involve preliminary hearings and have jury implications. Defence counsel estimate that they take an average of 15.5 hrs to prepare such case. Again, lawyers generally agree on the time it takes to resolve these cases in Court -- an average of 5.6-7hrs; once more, the time needed for these cases is greater than the time required to resolve simple impaired driving cases in Court.

Cases that involve bodily harm and/or death require even more time to resolve. Crown prosecutors report spending an average of 17.6 hrs to prepare for such cases and defence counsel spend an average of 32 hrs in preparation. In addition, a considerable amount of time is required in Court to resolve these cases -- on average, lawyers report that 16-17 hrs of Court time is common.

Table 10: Estimated Average Case Preparation and Court Time*

Case type	Crown prep time	Defence prep time	Crown Court time	Defence Court time
Summary conviction	2.5	11.5	4	5
Indictment without injury	4.5	15.5	5.6	7
253(a) with bodily harm/death	17.6	32	17	16

*Figures represent number of hours per case.

As noted above, the survey revealed that defence counsel spend at least twice as many hours, and in some instances, four times as many hours preparing for impaired driving cases as do Crown -- assuming Crown and defence require about the same amount of time to manage each case. This may pose less of a problem for some Crown who possess considerable experience handling impaired driving cases and familiarity with relevant issues. Conversely, this may pose a more significant problem for those Crown who prosecute these cases irregularly and have limited experience with the complexity and diversity of trial issues, and who will likely require more time to prepare.

Defence counsel spend two to four times as many hours preparing for impaired driving cases as Crown.

On the one hand, the fact that Crown spend less time preparing per case is not surprising, given the relative size of their caseloads -- on the other hand, it raises some concern about just how level the playing field is in terms of case preparation. Such potential inequities in the system can have a significant impact on outcomes.

With regard to differences across jurisdictions (see Table 11), it generally appears that less preparation time is available to, or taken by, Crown prosecutors in eastern regions of the country as compared to the western provinces. In the Atlantic region, Crown prosecutors spend only 2.1 hrs preparing a summary conviction case; 2.4 hrs in Quebec. Crown in British Columbia spend 3.2 hrs and prosecutors in the Saskatchewan, Manitoba and the Northwest Territories region spend 3.6 hrs.

Table 11: Estimated Case Preparation Time by Region*

Case type	BC	AB/YK/NU		SK/MB/NWT	ON		QC		Atlantic
Summary conviction	3.2	2.6	7.3**	3.6	2.6	13**	2.4	12* *	2.1
Indictment without injury	5.4	5.2	10**	5.3	5.5	19**	2.7	14* *	3.8
253(a) with bodily harm/death	20	21	26**	21	18	38**	13	29* *	18

*Figures represent the number of hours per case.

**Defence results shown where available

With regard to indictable cases without bodily harm or death, Crown prosecutors in the Atlantic region spend 3.8 hrs and those in Quebec spend 2.7 hrs; Crown in all other jurisdictions spend more than 5 hrs preparing. Finally, prosecutors in Quebec spend just 13 hrs preparing for bodily harm or death cases, as compared to a range of 18-21 hrs in all other jurisdictions.

The amount of time spent in Court to resolve these different types of impaired driving cases also varies, as summarized in Table 12. It appears that somewhat less time is spent resolving cases in Court in Quebec, the Atlantic region, and the Alberta, Yukon and Nunavut region compared to other jurisdictions. Of some interest, Quebec respondents report they spend only 10.6 hrs resolving bodily harm/death cases in Court as compared to 23 hrs in Ontario.

Table 12: Estimated Court Time by Region*

Case type	BC	AB/YK/NU		SK/MB/NWT	ON		QC		Atlantic
Summary conviction	5.1	3.3	2.6**	4.6	5.0	6.2**	2.4	4.3**	2.6
Indictment without injury	7.3	4.6	3.8**	6.1	8.6	9.6**	2.6	5.9**	4.0
253(a) with injury/death	19.3	16.4	12.9**	15.2	23.1	18.3**	10.6	13.4**	14.8

*Figures represent the number of hours per case

**Defence results shown available

Expert witnesses. Nationally, Crown prosecutors and defence counsel agree that the prosecution rarely calls an expert witness to give testimony at trial. However, 54% of Crown estimated that the defence always or often called an expert witness to give testimony, as compared to 40% of defence counsel. Generally speaking the use of an expert witness is often associated with the use of an “evidence to the contrary” defence (see section 4.7.4 on Case Outcomes). It is expected this may change with the implementation of Bill C-2 designed to address the use of these defences. The calling of an expert witness at trial by defence counsel is more prevalent in Quebec and the Alberta, Yukon and Nunavut region with 77% and 63% of prosecutors respectively reporting this happens always or often. Only half of Crown in British Columbia (58%) and Ontario (50%) agree; and, just 35% of prosecutors in the Saskatchewan, Manitoba and the Northwest Territories region and 42% in the Atlantic region.

4.7.4 Case Outcomes

Overall conviction rate. The average overall conviction rate (including plea agreements, guilty pleas and convictions at trial) for impaired driving cases is 78%. This is comparable to a recent Statistics Canada study revealed that Criminal Code traffic offences had findings of guilt in almost 80% of cases (CTV 2008). These findings are in contrast to overall conviction rates reported in surveys in the past two decades (Moyer 1992; Jonah et al. 1997) in excess of 90%. Based on the findings from this survey, a majority of jurisdictions report an overall estimated conviction rate of 72%-73%. Higher overall conviction rates are reported in the Saskatchewan, Manitoba and Northwest Territories region (86%) and the Atlantic region (90%).

Nationally, the average overall conviction rate for impaired driving cases is 78%.

Conviction at trial. As expected, Crown prosecutors and defence counsel have slightly different perspectives on convictions and acquittals. Nationally, prosecutors report that accused are convicted in 52% of cases going to trial. On the other hand defence counsel estimates a lower conviction rate of only 33% in cases going to trial. It is possible that the lower figure reported by defence may also be due to sample bias due to the smaller number of defence counsel who participated in the survey.

Nationally, Crown report that accused are convicted in 52% of cases going to trial; defence estimates 33%.

Table 13: Estimated Overall Conviction Rate by Region According to Crown and Defence

	<i>Plea Agreement</i>		<i>Guilty plea</i>		<i>Convicted at trial</i>		<i>Overall conviction rate</i>	
BC	27%		27%		19%		73%	
AB/YK/NU	15%	33%**	39%	24%**	19%	11%**	73%	68%**
SK/MB/NWT	23%		44%		19%		86%	
ON	18%	21%**	29%	17%**	25%	19%**	72%	57%**
QC	2%	9%**	53%	43%**	17%	12%**	72%	64%**
Atlantic	16%		53%		21%		90%	

**Defence results shown available

Trial outcomes vary according to jurisdiction as shown in Table 14. Crown prosecutors in the Atlantic region estimate a conviction rate of 75% for cases going to trial which is substantially higher than the conviction rate reported in any other jurisdiction.

Prosecutors in the Saskatchewan, Manitoba and the Northwest Territories region report a rate of 65%. By contrast, prosecutors in Ontario, British Columbia and the Alberta, Yukon and Nunavut region indicate less success at trial with conviction rates of 52%, 50%, and 48% respectively. Finally, Crown prosecutors in Quebec estimate obtaining a conviction in only 41% of their cases resolved with a trial.

Table 14: Estimated Percent Convicted or Acquitted At Trial by Region According to Crown and Defence

<i>Trial Outcomes</i>	<i>Convicted</i>		<i>Acquitted</i>	
BC	50%		50%	
AB/YK/NU	48%	34%**	50%	67%**
SK/MB/NWT	65%		35%	
ON	52%	37%**	48%	63%**
QC	41%	29%**	59%	69%**
Atlantic	75%		22%	

**Defence counsel results shown where available



These findings are in stark contrast to those reported two decades ago in surveys of lawyers and police. According to a 1988 study in Ontario, only 25% of cases in Ontario and Saskatchewan involving a not guilty plea were not convicted --i.e., 75% were convicted (Moyer 1992). Similarly, the 1997 study involving police (Jonah et al. 1997) reported an 83% conviction rate among those pleading not guilty and proceeding to trial.

Such low conviction rates at trial in many jurisdictions suggest that challenges associated with impaired driving cases have increased over time. As an example, defences and legal arguments have become much more complex as case law has evolved. Similarly, low conviction rates at trial may be more evident in some jurisdictions due to the quality of cases that are brought to the Crown and the available evidence that has been gathered as part of the investigation -- cases with evidentiary issues are more likely to proceed to trial. In addition it may be due to the volume of cases being processed and the amount of preparation time, the experience of prosecutors, and the limited ability of prosecutors to negotiate pleas. In essence, these significant differences in outcomes may be as much a function of systemic issues and jurisdictional practices and policies as well as of the laws themselves.

Such low conviction rates at trial suggest that challenges associated with impaired driving cases have increased over time.

In the last decade, perceived improvements in impaired driving laws have mainly occurred in the form of enhanced penalties intended to strengthen general and specific deterrent effects. By contrast, little legislative attention has been given to improving the quality of prosecution (e.g., evidentiary provisions have not been revised). In light of the low level of conviction at trial in some jurisdictions, these findings suggest that little is to be gained by further increases in penalties until commensurate attention has been given to legislative provisions that address challenges within the system (e.g., such as Bill C-2, which includes a proposed legislative amendment to restrict the use of "evidence to the contrary" defences, and changes to other driving provisions that will impact the investigation, prosecuting and sentencing of impaired driving cases). The general and specific deterrent effect of further penalty enhancements at this time is questionable in that there have been limited declines in alcohol-related motor vehicle fatalities in the past decade despite substantial increases in associated penalties for impaired driving. Moreover, these findings clearly demonstrate that, in the face of such severe penalties, many of those accused of impaired driving see the penalties as an incentive to go to great lengths to avoid a

conviction, which has substantial implications for the ability of the justice system to manage such cases in its current form.

Reasons for acquittals. There are several factors that appear to contribute to an acquittal at trial. Some of the evidentiary issues identified by lawyers as contributing to an acquittal were noted and discussed in a previous section on evidence. These factors included the quality of police training and police testimony in court. Nationally, technical issues pertaining to a lack of availability of approved screening devices (ASD) or approved instruments, or improper functioning and/or use of these devices were rarely raised as factors contributing to an acquittal by either Crown prosecutors or defence counsel. Similarly, approximately half of both prosecutors and defence counsel report that breath tests not being given “as soon as practicable” or “forthwith” are reported as an issue only sometimes.

More prevalent issues related to acquittals are linked to procedures and practices followed by police during an investigation and arrest -- see Table 15. More than 1/3 of prosecutors and defence counsel (37% and 43% respectively) agree that improper procedures by arresting officers are always or often a problem. Defence counsel is somewhat more likely to report that officers did not have reasonable suspicion for an ASD demand; 17% of Crown and 26% of defence counsel say that officers always or often do not have reasonable and probable grounds for an evidential breath or blood test. Errors in police paper work were cited by prosecutors and defence counsel as always or often an issue in 13% and 16% of cases respectively.

Prevalent issues related to acquittals are linked to procedures and practices followed by police during an investigation and arrest.

Table 15: Reasons for Acquittals Nationally*

Lawyers	<i>Improper arrest procedures</i>	<i>No reasonable suspicion for ASD</i>	<i>No RPG** for test</i>	<i>Police paper work errors</i>	<i>Unreasonable delay to trial</i>
Crown prosecutors	37%	8%	17%	13%	13%
Defence	43%	22%	26%	16%	10%

*Percent indicating always or often these reasons resulted in an acquittal

** Reasonable and probable grounds

Less than 15% of prosecutors and defence counsel agree that unreasonable delays in time to trial were a factor in acquittals. Crown most often reported that delays were due to defence tactics (63%) and systemic issues (35%) and attributed only 7% of delays to their own colleagues. Conversely, defence counsel were most likely to identify systemic issues as a primary problem (47%) and themselves and prosecutors as being an equal source of delays.

Jurisdictional variations related to these issues are shown in Table 16. Improper arrest procedures seems to be a much larger issue in western provinces and territories with between 54% and 65% of prosecutors reporting this is always or often a problem. By contrast, in Ontario and the Atlantic region it is reported as always or often a problem by only 1/3 of Crown; just 10% of prosecutors in Quebec cite it as a problem.

Approximately 1/4 of Crown prosecutors in western provinces report that police always or often do not have reasonable and probable grounds to demand an evidential test; by contrast, less than 15% of prosecutors in eastern jurisdictions report that this is always or often a factor.

Table 16: Reasons for Acquittals by Jurisdiction*

<i>Region</i>	<i>Improper arrest procedures</i>		<i>No reasonable suspicion for ASD</i>		<i>No RPG for test</i>		<i>Police paper work errors</i>		<i>Unreasonable delay to trial</i>	
BC	65%		14%		26%		19%		7%	
AB/YK/NU	64%	64%**	9%	24%**	20 %;	32 % **	7%	25% **	4%	4%**
SK/MB/NWT	54%		11%		24%		17%		16%	
ON	34%	56%**	7%	26%**	14 %	30 % **	10%	16% **	13%	16%**
QC	10%	25%**	6%	17%**	11 %	20 % **	12%	13% **	3%	6%
Atlantic	33%		4%		14%		12%		4%	

*Percent indicating always or often a problem

**Defence results shown where available

Officers that do not have reasonable suspicion of alcohol in the body to make an ASD demand is rarely an issue -- less than 10% of Crown reported this is always or often a problem, with the exception of those in British Columbia (14%) and the Saskatchewan, Manitoba and the Northwest Territories region (11%) reporting it is always or often a problem. This is not surprising as “reasonable suspicion” is a very low threshold.

Unreasonable delay to trial is also a nominal problem in most jurisdictions, although it is slightly greater in the Saskatchewan, Manitoba and the Northwest Territories region (16%) and Ontario (13%). The source of these delays varies according to jurisdiction (see Table 17) with systemic delays being a more substantial problem in British Columbia, and the Alberta, Yukon and Nunavut region, whereas delays due to defence tactics are perceived as a more substantial problem in the Saskatchewan, Manitoba, and Northwest Territories region and Quebec. One respondent to the survey reports that “While impaired driving/over 80 is a serious crime, they are very difficult to prosecute given the technicalities of proof and the defence of “evidence to the contrary”. The stakes are high given insurance and loss of licence so these matters go to trial. These cases often involve detailed disclosure requests; *Charter* applications and expert evidence by the defence. While essential to prosecute these impaired driving cases, as prosecuted in their present form, has contributed significantly to systemic delays in the Courts”.

Table 17: Source of Unreasonable Delay to Trial*

Source of delay	BC	AB/YK/NU		SK/MB/NWT	ON		QC		Atlantic
Systemic delay	44%	44%	46%**	33%	36%	49%**	34%	44%**	14%
Crown delay	10%	19%	21%**	10%	3%	21%**	6%	21%**	6%
Defence delay	50%	66%	17%**	83%	54%	11%**	78%	36%**	61%

*Percent indicating always or often a source of delay

**Defence counsel results where available

Successful defences. Survey respondents were asked which defences were always or often successful in Court. Several *Charter of Rights and Freedoms* violations were noted as relatively prevalent. More than half of prosecutors (58%) and defence counsel (56%) report that *Charter* issues are always or often a reason for acquittal (see

the last row in Table 18).

The *Charter* issues most frequently raised include: officers not having reasonable and probable grounds (RPG) for arrest, section 8 pertaining to search and seizure, section 9 involving the right not to be arbitrarily detained, and section 10(b) which is the right to retain and instruct counsel without delay. Occasional and infrequent references to other *Charter* sections were noted, but not raised as serious concerns.

58% of Crown;
56% of defence
estimate that
Charter issues are
always or often a
reason for
acquittal.

Table 18: Successful Defences Nationally

<i>Defences resulting in acquittal</i>	<i>Crown</i>	<i>Defence</i>
2 drink or Carter defence	70%	60%
Last drink defence	27%	22%
Bolus or mouth alcohol defence	3%	5%
<i>Charter</i> issues (RPG, sections 8, 9, 10(b))	58%	56%

*Percent indicating always or often a successful defence

Results also suggest that a category of defences collectively called “evidence to the contrary” pose a significant challenge to prosecutors and the impact of this defence on court cases varies across the country. An “evidence to the contrary” defence seeks to rebut the presumption that the Crown receives by statute that the BAC at the time of testing is equal to the BAC at the time of the alleged offence. This group of defences imply that, for some reason, the breath test result was incorrect, and, therefore, should not be considered as evidence of guilt. In these instances, unless officers have documented other evidence of impairment (e.g., slurred speech, stumbling) or interviewed witnesses regarding the accused’s drinking in addition to collecting the BAC result, prosecutors typically have little evidence that can be presented to refute any claims made by the accused.

Results suggest that
“evidence to the
contrary” defences
pose a significant
challenge to Crown.

There are 3 different types of defences that can be classified as “evidence to the contrary”: the Carter or “2-drink” defence; the “last drink” defence; and the bolus or mouth alcohol defence (see Table 18).

With the “2-drink” defence, the accused suggests that the evidential breath test result must be incorrect because it is incompatible with other evidence (e.g., testimony of the accused or witnesses, receipts to demonstrate the amount of alcohol consumed, etc.). The defence will also often present testimony from an expert witness (e.g., a toxicologist) that, based on evidence of the amount of alcohol the accused *reported* he/she consumed, the accused’s BAC would have been less than that recorded by the evidential test. In such cases, it is not necessary for the accused to demonstrate that the machine used to capture the BAC was improperly functioning or that the technician administering the test made an error. One respondent in this survey states “Why is an approved instrument in good working order good enough for Parliament but not good enough for the Court?”

Nationally, the “2-drink” defence is the most problematic of the “evidence to the contrary” defences and many prosecutors would argue that it is the most problematic impaired driving prosecution issue. A majority of prosecutors (70%) report that this defence is always or often successfully used -- meaning that when used, this defence results in an acquittal. Similarly, 60% of defence counsel report that the “2-drink” defence always or often results in an acquittal. One Crown notes that “The Carter defence is like saying ‘Well, I didn’t commit the murder so the DNA must be wrong’.”

70% of Crown report that the “2-drink” defence always or often results in an acquittal; 60% of defence agree.

The “last drink” defence often involves evidence that the accused consumed alcohol immediately prior to being stopped by the police. As a consequence, the BAC reading *at the time of driving* was actually lower (i.e., below the legal limit) because the alcohol had not yet been fully absorbed into the bloodstream. However, by the time the accused was stopped, arrested, and taken to the police station for testing, enough time had passed so that the alcohol had been absorbed, hence the BAC reading at the time of testing (i.e., above the legal limit) was higher than the BAC at the time of driving (i.e., below the legal limit). Twenty-seven percent of prosecutors and 22% of defence counsel report that the “last drink” defence always or often results in an acquittal.

Lastly, the bolus defence involves a claim that the BAC reading in excess of the legal limit was artificially high due to mouth alcohol arising from alcohol that had been consumed immediately prior to the time of the stop, as opposed to a true positive BAC

resulting from ingested alcohol that had been absorbed into the blood stream. It does not contradict the BAC result obtained at the time of testing. It just explains it. Three percent of prosecutors and 5% of defence counsel report that the bolus defence always or often results in an acquittal. This low level of concern is not surprising as there is an observation period of at least 15 minutes between each of the two evidential tests, making it unlikely that mouth alcohol was the source of the elevated BAC result.

As a category, “evidence to the contrary” defences pose a more substantial problem in some jurisdictions as shown in Table 19. Survey results show that the “2-drink” defence is used in Quebec with much more success -- 93% of prosecutors estimate it always or often results in an acquittal in cases in which it is used. More than 3/4 (76%) of Crown in Ontario and the Alberta, Yukon and Nunavut region similarly estimate the “2-drink” defence always or often results in an acquittal when used. This defence poses a smaller problem in the Saskatchewan, Manitoba and the Northwest Territories region (63%) and British Columbia (58%). Prosecutors in the Atlantic region estimate that acquittals resulting from the “2-drink” defence are nominal with only 12% indicating it always or often results in an acquittal. Not surprisingly, one survey respondent notes that “The Carter defence is the most difficult to refute as Courts often accept the accused’s version of what he/she had to drink despite all other evidence”. Another states that “The Carter defence is the most difficult to refute because it is by nature irreconcilable with the BAC results. Where the trial judge believes the accused’s evidence, the judge is not required to determine whether the breath test results are valid, even though the machine is found to have been working and operated properly”.

Table 19: Successful Defences by Region*

<i>Region</i>	<i>2-drink</i>		<i>Last drink</i>		<i>Bolus</i>		<i>Charter</i>
BC	57%		42%		4%		99%
AB/YK/NU	76%	61%**	40%	21%**	2%	4%**	80%
SK/MB/NWT	63%		49%		10%		54%
ON	76%	45%**	20%	18%**	6%	6%**	100%
QC	93%	86%**	21%	27%**	1%	2%**	35%
Atlantic	12%		14%		4%		42%

*Percent indicating always or often successful

**Defence counsel where appropriate

According to Crown prosecutors, the “last drink” defence poses a greater problem in western provinces with 40-50% of them estimating that it always or often results in an acquittal when it is used as a defence. By contrast, only 20% of Crown in Ontario and Quebec report this is true and just 14% agree in the Atlantic region. In all jurisdictions, the bolus defence results in an acquittal always or often in less than 10% of cases in which it is used.

Also, acquittals based on challenges involving a violation of constitutional rights (see beginning of this section on successful defences) are frequently successful in some jurisdictions. One survey respondent notes that “*Charter* arguments have spiralled out of control and 40-50% of Ottawa’s proceeding trial time is impaired.” A majority of prosecutors in Ontario (100%), British Columbia (99%) and the Alberta, Yukon and Nunavut region (80%) report that *Charter* issues always or often contribute to an acquittal when they are used. However, only 54% of prosecutors in the Saskatchewan, Manitoba and the Northwest Territories region and 42% in Quebec agree that these challenges always or often result in an acquittal.

A closer examination of the *Charter* issues that are raised in impaired driving cases revealed that problems with violations of some sections of the *Charter* were more substantial than others; moreover, these issues were more prevalent in some jurisdictions than others (see Table 20). Challenges involving sections 8 (search and seizure) and 9 (arbitrary detention) of the *Charter* occurred more frequently in Ontario and British Columbia as compared to other jurisdictions. However, section 10(b) (retain and instruct counsel without delay) appeared to pose a significant problem across all jurisdictions.

Charter section 10(b) poses a considerable problem across all jurisdictions.

According to one survey respondent “Several provincial Court decisions have set an incredibly high standard for police in facilitating contact with counsel”. Another respondent reports that “The Ontario Court of Appeal decision (*R. v. George*) places an unusually difficult burden on an arresting officer to facilitate contact with counsel when the ASD is not immediately available”. Almost half of Crown prosecutors in Ontario (45%), British Columbia (45%) and the Alberta, Yukon and Nunavut region (46%) report this section as problematic; only 30% of Crown in the Saskatchewan, Manitoba and the

Northwest Territories region report it is a problem; and less than 20% of prosecutors in Quebec and the Atlantic region (15% and 17% respectively) say it is a problem.

Table 20: Charter issues by Region According to Crown Prosecutors*

<i>Region</i>	<i>RPG</i>	<i>Sec 8</i>	<i>Sec 9</i>	<i>Sec 10(b)</i>
BC	10%	10%	10%	45%
AB/YK/NU	**			46%
SK/MB/NWT				30%
ON		30%	15%	45%
QC				15%
Atlantic				17%

*Percent indicating always or often results in an acquittal

**Blank cells indicate the numbers are too small to report.

4.8 Sentencing

Upon conviction, judges impose a sentence that is largely guided by sentencing provisions contained in the CCC. The CCC incorporates mandatory minimum sentences for both first offenders and repeat offenders. As such, judges have limited discretion when imposing a sentence. Frequently, sentences for impaired driving involve a fine, a minimum mandatory driving prohibition, and sometimes a period of incarceration. According to a 2003 Statistics Canada publication, in 2001/02, in 77% of impaired driving cases the most serious sentence imposed by the Courts was a fine. In 3/4 of these cases, the amount of the fine ranged from \$500 - \$1,000, and the average was approximately \$785 which is slightly higher than the fines imposed for other CCC traffic offences (StatsCan 2003).

In 2001/02, a prison sentence was imposed in just 14% of impaired driving cases with an average period of incarceration of 73 days, or less than 3 months. Only about 1% of offenders were sentenced to a federal institution with a sentence of more than 2 years. Prison sentences were more common in some parts of the country than others. In Prince Edward Island, 91% of convicted impaired driving offenders were sentenced to prison, compared to only 28% in Newfoundland and Labrador. In Alberta, only 10% of offenders were sentenced to a period of incarceration, and just 4% in Nova Scotia. It is noted that those jurisdictions tending to impose incarceration more frequently imposed shorter

sentences (StatsCan 2003). Probation orders were imposed in 7% of cases and had an average length of more than one year (StatsCan 2003).

Availability and perceived effectiveness of sanctions nationally. As part of this national survey, lawyers were asked a series of questions regarding the availability of various sanctions in each jurisdiction and the perceived effectiveness of these sanctions (see Table 21). Respondents were asked to provide an indicator of effectiveness ranging from one to seven with one being the least effective and seven being the most effective. Responses from one to three were re-coded as being not effective, a response of four was re-coded as neutral, and responses five to seven were re-coded as effective. It should be emphasized that the following responses are based upon lawyers' perceptions of effectiveness according to personal or anecdotal experiences, and may not accurately reflect true availability and effectiveness of these sanctions.

Nationally, 95% of Crown and defence report that the most commonly available sanctions include incarceration, fines and driving prohibitions.

Nationally, a majority of Crown prosecutors and defence counsel (more than 95%) report that the sanctions that are most commonly available in all jurisdictions include incarceration, fines and driving prohibitions. A majority of lawyers (70-75%) also agreed that offender treatment and community service orders are commonly available to those sentenced for impaired driving offences. Relatively few lawyers (less than 1/3) reported that electronic monitoring is available.

There was some discrepancy between prosecutors and defence counsel regarding the availability of alcohol education and ignition interlocks. Almost 60% of prosecutors reported that these sanctions are available, in contrast with the findings from defence counsel (76% and 86% respectively).

Survey respondents were also asked for their opinion on the effectiveness of various sanctions (see Table 21). Although fines are commonly imposed as a sanction for impaired driving, only a small portion of lawyers believe that fines are effective – just 19% of Crown and 27% of defence counsel report that they agree. Incarceration received much stronger support as an effective sanction among prosecutors (63%) as compared to just 25% of defence counsel.

More than half of Crown prosecutors (66%) and defence counsel (57%) agree that a driving prohibition is effective. This runs counter to the research that demonstrates that more than 75% of offenders continue to drive after their licence has been suspended or revoked (Nichols and Ross 1990; Griffin III and De La Zerda 2000). In the same vein, approximately half (52%) of prosecutors and defence counsel (56%) agreed that ignition interlocks are effective in reducing recidivism. Again, this finding is surprisingly low in light of substantial research demonstrating that ignition interlocks reduce recidivism by 50%-90% while it is installed on the vehicle.⁴ Clearly, lawyers could benefit from more education about the effectiveness of these sanctions.

Just half of Crown and defence agreed that ignition interlocks are effective in reducing recidivism.

Table 21: Percent Indicating Availability and Effectiveness of Sanctions Nationally

<i>Sanctions</i>	<i>Availability</i>		<i>Effectiveness</i>	
	<i>Crown prosecutors</i>	<i>Defence</i>	<i>Crown prosecutors</i>	<i>Defence</i>
Incarceration	98%	98%	62.6%	25.2%
Offender treatment	72%	75%	45.9%	60%
Offender education	59%	76%	31.5%	45.8%
Ignition interlocks	58%	86%	52.3%	56.1%
Electronic monitoring	32%	29%	28.7%	29%
Fines	100%	98%	19.1%	27.4%
Community Service Orders	75%	70%	12.2%	30%
Driving Prohibition/Suspension	100%	99%	65.9%	57.3%

With regard to other sanctions, there is less support for the use of electronic monitoring with just 29% of prosecutors and defence counsel agreeing that it is an effective sanction. There was slightly more support among defence counsel (60%) for the use of treatment because it was believed to be effective, compared to 46% of prosecutors.

Availability and effectiveness of sanctions by jurisdiction. The availability and perceived effectiveness of various sanctions also varies according to jurisdiction. Incarceration is most commonly available across all jurisdictions but prosecutors in Alberta, Yukon, and Nunavut region believe it is more effective (72%) as compared to

⁴ It was difficult to determine how respondents defined recidivism -- i.e., short-term or long-term.

just 50% in British Columbia. Although fines are widely available, lawyers generally do not believe this is an effective sanction. More lawyers in the Atlantic region at 28% believed it is effective compared to substantially fewer lawyers in the Saskatchewan, Manitoba and Northwest Territories region at 11%. Prosecutors and defence counsel agree that driving prohibitions and suspensions are widely available and are relatively effective with 50-70% of lawyers in each jurisdiction agreeing.

Offender treatment opportunities are more often available with more than 70% of lawyers agreeing it is available. Treatment is less often available in Quebec according to prosecutors (only 59% said it is available), although 80% of defence counsel in this jurisdiction indicated treatment was available. There are nominal differences in the perceived effectiveness of treatment across jurisdictions with responses ranging from 40%-50%.

Community service orders are more commonly available in the Saskatchewan, Manitoba, and Northwest Territories region according to 96% of prosecutors and less common in Quebec where slightly more than half of lawyers agreed this was true. Less than 10% of lawyers believe that community service orders are effective, with only 6% of prosecutors in the Saskatchewan, Manitoba, and Northwest Territories region agreeing they are effective. Offender education was commonly available in most jurisdictions with more than 70% of lawyers agreeing that this was true, although its perceived effectiveness was substantially lower with only 1/3 of lawyers in all jurisdictions agreeing this was true.

Ignition interlocks are reported to be widely available in most jurisdictions although prosecutors in British Columbia and the Atlantic region report interlocks are rarely available. This is no doubt a function of the fact that the interlock programs in these jurisdictions are relatively new or under development. Slightly more than half of Crown believe interlocks are effective; this is somewhat lower in the Saskatchewan, Manitoba and the Northwest Territories region at 35%. Approximately half of Crown prosecutors in British Columbia, the Saskatchewan, Manitoba and the Northwest Territories region and Ontario report that electronic monitoring is available as compared to less than 20% of prosecutors in other jurisdictions. Only 1/4 to 1/3 of Crown agree this sanction is

effective compared to 47% in the Alberta, Yukon and Nunavut region. By contrast, defence counsel in Alberta report that this sanction is not effective.

Notice to seek a higher penalty. Repeat offenders, by virtue of their second or subsequent conviction, are often subject to increased mandatory minimum penalties. Hence, in these cases, Crown prosecutors can tender Notice that the prosecution will seek a higher minimum penalty as set out in the CCC. In cases involving repeat offences, 75% of prosecutors report that they always or often tender this Notice. Similarly, 81% of defence counsel agree that prosecutors always or often tender the Notice in repeat offender cases.

75% of Crown report they always or often tender notice to seek a higher penalty in repeat offender cases; 81% of defence agree.

Notice to seek the higher penalty occurs with greater frequency in the eastern regions with 86% of prosecutors and defence counsel in Ontario, 99% of Crown and 81% of defence in Quebec, and 99% of Crown in the Atlantic region reporting that they always or often tender Notice. In western regions including Saskatchewan, Manitoba and the Northwest Territories this Notice is less frequently tendered (77%). In the Alberta, Yukon and Nunavut region 66% of prosecutors and 60% of defence counsel report the use of Notice to seek the higher minimum penalty. In British Columbia, just 32% of prosecutors reporting giving Notice to seek the higher penalty in repeat offender cases.

Nationally, only 13% of prosecutors reported that they withheld the Notice to seek the higher minimum penalty in order to have the accused plead guilty to the original charges or as part of a joint submission on sentence. This practice, although relatively rare, is not new -- a 1992 study noted that prosecutors would sometimes not tender Notice to seek the higher penalty in an effort to reach a resolution (Moyer 1992). Survey findings were higher in some jurisdictions such as British Columbia (20%) and Quebec (36%) of prosecutors reported the notice was withheld for this reason; it was lower in Ontario at 12%, the Alberta, Yukon and Nunavut region at 2%, the Atlantic region at 1%, and not at all in the Saskatchewan, Manitoba and the Northwest Territories region.

Time to resolve cases. As discussed previously, there are several different methods by which impaired driving cases can be resolved. Some of these methods, (e.g., plea agreement) require less time to reach a resolution, whereas as other methods (e.g., trial) require considerably more time. Crown prosecutors and defence counsel agree that it takes an estimated 5.5 to 6 months to

It takes 5.5-6 months to resolve a case with a plea; 10.5-11 months for a summary conviction trial; 13.7-14.5 months for trial by indictment.

resolve a case (from arrest to sentencing) involving a negotiated plea agreement (see Table 22). It takes considerably more time (10.5-11 months) to resolve a case that goes to trial and proceeds by summary conviction. Cases going to trial that proceed by indictment require even more time with estimates averaging between 13.7-14.5 months to resolve these cases.

Table 22: Estimated Time to Resolve Cases*

<i>Case type</i>	<i>Crown</i>	<i>Defence</i>
Negotiated plea agreement	5.4 mo.	5.9 mo.
Summary conviction trial	10.5 mo.	11.0 mo.
Indictable trial	13.7 mo.	14.5 mo.
Time to resolve cases increased since began in job	73%	69%

*Numbers represent time in months

Respondents were also asked if they believe that the time it takes to resolve cases has substantially increased since they began practicing law. Of concern, approximately 70% of both Crown prosecutors and defence counsel similarly agree that the length of time it takes to resolve an impaired driving case has increased since they began practicing law. To illustrate, the time it takes to resolve cases as reported in this survey is substantially longer than the estimated 3-5 months reported by some jurisdictions in the earlier 1992 study, with some Courts requiring fewer hearings than others. This result is also comparable with a recent study released by Statistics Canada that revealed that the time required to resolve the average adult criminal case is increasing – an average of eight months was needed to resolve the average adult criminal case in 2006-2007 as compared to only six months that was required five years earlier (CTV 2008).

70% of lawyers agree that the time to resolve a case has increased.

The length of time required to resolve impaired driving cases varies across the country as shown in Table 23. Negotiated pleas are resolved in almost half the time in the Atlantic region (3.3 months) as compared to Quebec (6.8 months) and British Columbia (6.3 months). Summary conviction trials are also resolved more quickly in the Atlantic region (7.4 months) and take the longest to resolve in Quebec (12.6 months). Finally, indictable trials take 10.5 months in the Atlantic region as compared to 1.5 times longer

in British Columbia at 15.8 months. Surprisingly, prosecutors in Quebec are less likely to report that the time to resolve a case has increased since they began their job (57%) despite their significant caseloads. Similarly, only 58% of defence counsel in Quebec agreed case resolution times had increased. This is in comparison to an average of 70% of lawyers in most other jurisdictions agreeing this was true, and 83% of prosecutors in British Columbia.

Table 23: Case Resolution Times by Region*

Case Resolution	BC	AB/YK /NU		SK/MB/ NWT	ON		QC		Atlantic
Negotiated plea agreement	6.3	4.7	3.0**	5.4	4.7	4.1 **	6.8	8.9 **	3.3
Summary conviction trial	11.1	9.1	7.3**	10.3	10.1	10 **	12.6	13.5**	7.4
Indictable trial	15.8	12.1	12**	14.2	14.7	15 **	13.2	14.5**	10.5
Time to resolve cases has increased since job began	83%	73%	76%**	75%	79%	75%**	57%	58%**	69%

*Absolute numbers represent time in months

**Defence counsel results where available

4.9 General Perceptions and Attitudes

Crown prosecutors and defence counsel were presented with a series of statements about impaired driving and asked to indicate the extent to which they agreed with these statements. Respondents were asked to provide an indicator of agreement ranging from one to five with one being strong agreement and five being strong disagreement. Responses from one to two were re-coded as agreement, a response of three was re-coded as neutral, and responses four and five were re-coded as disagreement.

Overall, there is considerable concern among lawyers regarding the impaired driving problem. A majority of prosecutors (88%) agree that impaired driving is a serious problem in Canada and just 9% had a neutral opinion. Only 58% of defence counsel agreed with this statement. This statement was most strongly supported by Crown in the Atlantic region at 95%.

Enforcement. A majority of Crown prosecutors (74%) agreed that increased enforcement will contribute to a decrease in drinking and driving incidents; just 14% indicated a neutral response. Belief in this tactic was lower among defence counsel at just 42%. Results show that support for increased enforcement was not as strong in Quebec as compared to other jurisdictions with 68% of prosecutors and only 28% of defence counsel agreeing with this strategy.

At the same time, lawyers were asked if they agreed that more resources should be dedicated to the enforcement of impaired driving laws. Surprisingly, fewer lawyers agreed with this statement, despite the stronger support for increased enforcement indicated above. Slightly more than half of prosecutors and 1/3 of defence counsel agreed that more police resources should be dedicated to the enforcement of impaired driving laws and 30% of Crown reported a neutral opinion. Of interest, support for this initiative was stronger in Quebec with 54% of defence counsel and 66% of prosecutors indicating agreement, and also the Atlantic region where 74% of Crown agreed.

Prosecutors and defence counsel across the country both generally agree that public education programs are effective in reducing drunk driving (65% and 50% respectively) with support for this approach being lowest in Quebec. Less than 1/3 of Crown (28%) reported no opinion. This finding of support is lower than those reported in the previous police survey in which 75% of officers indicated support for public education programs.

Lowering the legal BAC limit. Within Canada, discussion has turned in recent years towards lowering the legal limit in the *Criminal Code of Canada* from 80mg% to 50mg%. As such, the opinion of lawyers about this issue was gauged as part of this survey.

Nationally, less than half of Crown prosecutors (40%) and just 11% of defence counsel agreed with lowering the legal BAC limit to 50mg% and 26% of Crown had a neutral opinion. As shown in Table 24, support among prosecutors for this measure was greatest in the Alberta, Yukon and Nunavut region and Ontario (47% and 50% respectively), and weakest in British Columbia, and Quebec (33% and 36% respectively). The national finding of 40% showing support is comparable to that reported in the earlier police survey in 1997 in which only 37% of police officers

Nationally, just 40% of Crown; 11% of defence counsel agreed with lowering the legal BAC limit to 50mg%.

agreed with lowering the BAC limit. In this prior survey, agreement with this measure was highest in Prince Edward Island and Newfoundland/Labrador.

This lack of strong support among Crown is not surprising. Albeit speculative, based on survey findings reported in earlier sections regarding the substantial caseloads that Crown manage relative to defence counsel, the substantial differences in case preparation time, and the significant amount of time required in Court to resolve each case, it appears that Crown and the Courts are already under tremendous pressure. Moreover, not only are more cases proceeding to trial, but it requires more time in months to resolve them than it did in the past.

In light of this situation, careful consideration should be given to measures, such as lowering the legal limit, that may ultimately increase the volume of cases flowing through the system and impact the ability of the system to process cases in an efficient, effective and satisfactory manner.

Table 24: Support for Lowering Legal Limit From 80 to 50mg%.

<i>Region</i>	<i>Agree</i>		<i>Neutral</i>		<i>Disagree</i>	
BC	33%		22%		45%	
AB/YK/NU	47%	4%**	24%	16%**	29%	80%**
SK/MB/NWT	36%		34%		30%	
ON	50%	10%**	24%	9%**	26%	81%**
QC	36%	9%**	25%	6%**	39%	85%**
Atlantic	38%		33%		29%	

**Defence counsel results where available

It is already well known that impaired driving cases account for a significant percentage of all criminal cases. For example, “Of the more than 452,000 cases heard in the Courts in 2001/2002, nearly 53,000, or about 12%, involved impaired driving offences. This was the largest offence category and compares to 11% for common assault and 9% for theft” (StatsCan 2003).



In 2006, there were more than 74,000 criminal incidents of impaired driving. In addition to this number, an informal survey of jurisdictions revealed that there were approximately an additional 47,000 administrative roadside suspensions of 12 or 24 hours issued by some jurisdictions (British Columbia, Saskatchewan, Manitoba, Nova Scotia, the Northwest Territories, and the Yukon) to drivers with a BAC greater than 50mg% and less than 80mg%. Other jurisdictions either do not have the lower administrative limit (Quebec) or do not track roadside suspensions (Ontario). As such, this figure excludes Ontario and Quebec, the two jurisdictions with the largest population, as well as Alberta, and it is likely that a rather substantial number of roadside suspensions are imposed in these jurisdictions as well.

In light of these figures, serious consideration must be given to the impact that lowering the legal limit to 50mg% would have on the caseload and workload of lawyers in Canada as well as the Courts. If the legal limit was to be lowered to 50mg%, and assuming sufficient police resources would be available to enforce this new limit, it is estimated that a minimum of an additional 100,000 impaired driving cases would be added to those cases currently being processed by the criminal justice system. At the same time, it is important to recognize that it takes much more time for a police officer to lay criminal impaired driving charges as compared to laying administrative charges. Given that it will be challenging to ensure increased police resources are available throughout the country to make these arrests, it is likely that the number of additional criminal cases created with a legal limit of 50mg% would be lower than 100,000. However, it is likely that the number of criminal impaired driving cases would increase considerably over the current figure of 50,000, and potentially even double, creating an overwhelming and impossible situation for lawyers and the Courts.

CCC Penalties. Survey respondents were also asked if the current CCC penalties as well as the post-conviction consequences imposed under the provincial/territorial Highway Traffic Act for impaired driving were about right. Approximately half of Crown prosecutors and defence counsel believe that these criminal sanctions are about right (52% and 57% respectively) with just 6% of Crown indicating no opinion. However substantial differences were noted with regard to post-conviction consequences currently imposed for impaired driving under the provincial Highway Traffic Act. This finding may be a function of the substantial

Half of Crown and defence agree that criminal penalties for impaired driving are about right.

differences in these penalties across jurisdictions. More than half of prosecutors (60%) believe they are about right while only 33% of defence counsel agrees. Only 9% of Crown had no opinion.

At the same time, only a small percentage of prosecutors (7%) and defence counsel (22%) agreed that impaired driving not involving a collision should be removed from the CCC. Less than 5% of Crown had no opinion. The Crown survey results are highly similar to those of police officers reported in the 1997 survey. Just 6% of officers in the earlier police survey agreed with this statement, although support was slightly higher among officers in British Columbia as well as traffic officers (i.e., those dedicated to traffic enforcement).

Random roadside screening. There appears to be limited support for including random roadside screening of drivers at the roadside without reasonable suspicion and this is likely due to the constitutional issues that are involved with this approach. Just 33% of Crown prosecutors and 5% of defence counsel agreed with this approach; and 14% of Crown had a neutral opinion. Greater support was noted in the Saskatchewan, Manitoba and the Northwest Territories region with 48% of prosecutors agreeing. Support was lowest in Quebec with only 27% of Crown and 5% of defence counsel supporting random roadside screening, in contrast to the 56% of police officers who supported this measure reported in the earlier police survey.

Mandatory breath testing in collisions. Survey results revealed greater support for a requirement that suspects submit to a mandatory breath or blood test without reasonable suspicion following all collisions resulting in serious injury or death. Two-thirds of Crown prosecutors (63%) agree with this approach compared to only 10% of defence counsel. Ten percent of Crown had a neutral response to this question.

Administrative licence suspensions. Between 2/3 and 3/4 of prosecutors agreed that there should be an administrative licence suspension of 90 days for a BAC over the legal limit regardless of a criminal conviction; less than 15% of defence counsel indicated agreement and 15% of Crown neither agreed nor disagreed. Support among Crown in Quebec was lower at 57%.

Only 1/3 of prosecutors agreed that the provincial license suspension for a first offence should be increased to two years and 26% neither agreed nor disagreed. This is not surprising in light of the fact that prosecutors and police officers previously reported that the implementation of the one year administrative licence suspension resulted in more cases going to Court to avoid conviction (Moyer 1992) and the loss of driving privileges. However, support was much higher among police at 66% with British Columbia officers indicating the most support (Jonah et al. 1997). Support among prosecutors for this increased suspension was lowest in British Columbia at just 10% and highest in the Atlantic region at 35%.

Vehicle impoundment. In several jurisdictions, a majority (75%) of Crown prosecutors supported a 30-day vehicle impoundment for disqualified drivers caught driving, compared to only 22% of defence counsel. Approximately 17% of Crown had a neutral response to this question. The result for prosecutors is highly similar to the some 80% of police officers who agreed with this measure in the earlier 1997 survey. Support for this approach was lower in Quebec and the Atlantic region with just 50% of prosecutors agreeing with impoundment for disqualified drivers.

Ignition interlocks. Survey results showed less support for the use of ignition interlocks either to shorten the period of license suspension or following the licence suspension. Thirty-four percent of Crown agreed with this statement while 27% had a neutral response. This is not surprising given the low participation rates in interlock programs in Canada (see Ignition Interlock Inventory at www.tirf.ca). Moreover, in Canada, all programs are administered by the licensing authority, as opposed to Court-based programs which are more prevalent in the U.S. These low levels of support suggest that efforts are needed to educate lawyers and Court professionals about the benefits of interlocks which have been proven effective in reducing recidivism by 50-90% while the device is installed.

Other measures. The use of dedicated Courts to process impaired driving cases also received limited support with just 29% of prosecutors and 20% of defence counsel agreeing with this measure. One-quarter (26%) of Crown reported a neutral response. Support was highest among prosecutors in the Alberta, Yukon and Nunavut region at 51%. This is in contrast to the popular support of “problem-solving courts” such as “Drug Courts” or “DWI Courts” in the U.S., which have been shown to reduce recidivism.

Finally, support for compulsory alcohol assessment and education/rehabilitation for all impaired drivers who receive an administrative licence suspension was moderate with 48% of Crown prosecutors and 26% of defence counsel indicating agreement; 28% of Crown reported a neutral response. Support was higher among prosecutors in the Alberta, Yukon and Nunavut region at 60%. Similarly, 60% of officers in the earlier police survey also agreed with this measure (Jonah et al. 1997). Survey results suggest that both Crown prosecutors and defence counsel have considerable regard for the constitutional rights and freedoms that are enshrined in the *Charter*. It also appears that greater efforts are needed to educate lawyers about both the availability and effectiveness of various sanctions, as well as expand the availability of certain alternative measures such as ignition interlocks and treatment resources.

The use of dedicated Courts to process impaired driving cases also received limited support.

5.0 Regional Profiles

Taken collectively, the results from this survey reveal some interesting insights into the challenges facing Crown prosecutors and defence counsel in processing impaired driving cases. However, a closer examination of the regional results from this survey can provide greater understanding of the variation in outcomes that different jurisdictions are experiencing, despite being governed by the same federal statute, and place these outcomes in their proper context. More importantly, regional profiles clearly illustrate how certain policies and practices can impact the effectiveness and efficiency of the system for dealing with impaired drivers.

Overall, findings reveal that the Atlantic region achieves a much higher total conviction rate and a lower acquittal rate for impaired driving cases going to trial, suggesting that they encounter fewer challenges processing these cases. There appears to be considerable satisfaction among Crown prosecutors in the Atlantic region with law enforcement and fewer cases go to trial. In those cases that do proceed to trial, *Charter* challenges and “evidence to the contrary” defences pose a smaller problem.

Conversely, in Quebec and Ontario, jurisdictions are, despite considerable efforts to apply the law in its current state, struggling with larger impaired driving caseloads, some of which involve BAC readings only slightly above the legal limit (i.e., 80-100mg%). In these jurisdictions there is an overall conviction rate (plea agreements, guilty pleas, convictions at trial) of 72%. Fewer pleas are negotiated and more cases proceed to trial. This may be due to the prevalent and often successful use of “evidence to the contrary” defences in these jurisdictions, and likely a function of the sanctions and impact of a criminal conviction. In these jurisdictions, the “2-drink” or Carter defence and constitutional challenges are a significant impediment that impact conviction at trial, despite general satisfaction with law enforcement efforts.

In the western regions, there appears to be somewhat less satisfaction with law enforcement and fewer cases involving lower BACs (e.g., 80-100mg%). More cases are resolved with plea agreements and more cases are withdrawn. Repeat offenders also appear to be more common in these regions. The overall conviction rate in western



regions varies from 73% - 86%. While the “2-drink” defence poses less of a challenge, the “last drink” defence is somewhat more prevalent and both of these defences significantly impact conviction at trial.

What follows is a brief analysis of the findings from this survey according to regional breakdowns focusing on caseloads, evidence, resolution discussions, case processing and preparation and case outcomes.

The tables contain results from key questions in the survey. A complete copy of the survey questions is included as an appendix to this report.

British Columbia		Crown	Crown		
Number of Responses		140	Yrs experience		15
Gender (male)		65%	Age		44
Type of Charges			BAC levels*		
impaired/over 80		80%	81-100		1%
refusal		14%	101-120		9%
injury/death		5%	121-160		55%
			160-		41%
Caseload			Caseload		
#criminal cases		416	%impaired cases		24%
#impaired cases		100	%repeat cases		40%
#repeat cases		40			
Evidence Available			Evidence Compelling		
police video		1%	police video		39%
expert testimony		37%	expert testimony		14%
police testimony		91%	police testimony		51%
eyewitness testimony		66%	eyewitness testimony		71%
defendant testimony		42%	defendant testimony		9%
documentation		80%	documentation		10%
Evidentiary Needs			Case management		
rely on 253b too often		68%	summary conviction		94%
need training to enforce		92%	indictment		7%
need training to testify		93%			
Outcomes of Pre-trial*		37%	Case Processing		
statement of facts		15%	withdrawn		8%
joint sentence		43%	plea agreement		27%
plea non-ccc		38%	guilty plea		27%
plea non-alcohol ccc		11%	not guilty		38%
guilty plea		26%			
withdrawn/stayed		2%	Trial Outcome		
no agreement		42%	Conviction		50%
			Acquittal		50%
Case Prep Time (hrs)			Court Time (hrs)		
summary conviction		3.2	summary conviction		5.1
indictment/no bodily harm		5.4	indictment/no bodily harm		7.3
indictment/bodily harm		20.0	indictment/bodily harm		19.3
Reasons for Acquittal*			Successful Defences*		
improper arrest		65%	Evidence to the Contrary		6%
no reas. Susp for ASD		14%	Carter		57%
no RPG for test		26%	2-drink		42%
paperwork errors		19%	Bolus		4%
unreasonable delay		7%	Charter		99%
Case Resolution Time (mos)			Case Resolution Time (mos)		
negotiated plea		6.3	indictable trial		15.8
summary trial		11.1	time to resolve increased		83%
*occurs always or often					



British Columbia

According to Crown prosecutors in British Columbia their criminal caseloads are smaller than in any other jurisdiction. However, a significant percentage of their cases (24%) are impaired driving cases, and 40% of these cases involve repeat offenders. In addition, Crown report slightly more injury and death cases. So while their caseloads may be somewhat smaller than in other jurisdictions, the cases they manage appear to be more complex, and cases are more likely to go to trial. This places a greater demand on their time and their resources.

The vast majority of impaired driving cases in British Columbia involve BACs above 120mg%. This is likely a result of a number of factors. First, the use of short-term licence suspensions (STS; an administrative sanction that immediately removes drivers from the road) is more common here than in any other jurisdictions. Second, there appears to be a greater proportion of repeat offender cases in British Columbia and it is not unusual for these cases to involve higher BACs.

Evidentiary issues appear to be a greater concern in western provinces and particularly in British Columbia. Prosecutors readily agree that police rely too heavily on the BAC result, more than in almost any other jurisdiction. The Crown is also more likely to report that police require more training on the enforcement of impaired driving laws and providing testimony in Court. Although police documentation is often available, it is considered less compelling. In combination, this suggests that training is an issue for law enforcement and that police could benefit from dialogue with Crown regarding ways that the prosecution of cases could be enhanced.

As in many jurisdictions, the most common outcome of pre-trial discussions is a joint submission on sentence with 43% of Crown reporting this occurs always or often. Unlike other jurisdictions, a substantial number of cases are plead down to a non-CCC offence and/or a non-alcohol CCC offence and guilty pleas are less common than in other jurisdictions. This may occur due to the quality of evidence that is gathered during an investigation or the fact that systemic delays are more common in this jurisdiction. Given the practice of Crown prosecutors in British Columbia to plea cases to lesser charges, it

is not surprising that plea agreements are more common in British Columbia than in any other jurisdiction, although more than 1/3 of cases still proceed to trial.

Prosecutors in this jurisdiction appear to spend more time preparing cases as well as more time in Court for both cases proceeding by summary conviction and by indictment. Common issues at trial include not having reasonable suspicion for the ASD demand and also not having reasonable and probable grounds for an arrest. Errors in police documentation are also more common in this jurisdiction.

The overall conviction rate for this jurisdiction is 73%. As was seen nationally, *Charter* challenges are common, as well as “evidence to the contrary” defences, contributing to a conviction rate of 50% for cases at trial. Moreover, it takes longer to resolve these cases than in almost any other jurisdiction and systemic as well as defence delays are prominent.



Alberta, Yukon, Nunavut	Crown	Defence		Crown	Defence (AB)
Number of Responses	45	25	Yrs experience	13	18
Gender(male)	53%	92%	Age	40	46
Type of Charges			BAC levels*		
impaired/over 80	82%	78%	81-100	0%	4%
refusal	16%	20%	101-120	13%	21%
injury/death	3%	3%	121-160	73%	52%
			160-	19%	12%
Caseload			Caseload		
#criminal cases	516	120	%impaired cases	22%	27%
#impaired cases	113	32	%repeat cases	37%	34%
#impaired cases	41	11			
Evidence Available			Evidence Compelling		
police video	7%	0%	police video	40%	48%
expert testimony	29%	36%	expert testimony	18%	32%
police testimony	93%	92%	police testimony	47%	40%
eyewitness testimony	78%	68%	eyewitness testimony	69%	32%
defendant testimony	20%	48%	defendant testimony	7%	12%
documentation	69%	80%	documentation	4%	24%
Evidentiary Needs			Case Management		
rely on 253b too often	48%	46%	summary conviction	89%	91%
need training to enforce	96%	52%	indictment	14%	11%
need training to testify	98%	48%			
Outcomes of Pre-trial*			Case Processing		
statement of facts	40%	42%	withdrawn	7%	10%
joint sentence	29%	39%	plea agreement	15%	33%
joint sentence	39%	57%	guilty plea	39%	24%
plea non-ccc	5%	26%	not guilty	39%	32%
plea non-alcohol ccc	3%	13%			
guilty plea	61%	17%	Trial Outcomes		
withdrawn/stayed	5%	4%	Conviction	48%	34%
no agreement	35%	9%	Acquittal	50%	67%
Case Prep Time (hrs)			Court Time (hrs)		
summary conviction	2.6	7.3	summary conviction	3.3	2.6
indictment/no injury	5.2	10.0	indictment/no bodily harm	4.6	3.8
indictment with injury	21.0	26.0	indictment/bodily harm	16.4	12.9
Reasons for Acquittal*			Successful Defences*		
improper arrest	64%	64%	Evidence to the Contrary	24%	N/A
no reas. Susp for ASD	9%	24%	Carter	76%	61%
no RPG for test	20%	32%	2-drink	40%	21%
paperwork errors	7%	25%	Bolus	2%	4%
unreasonable delay	4%	4%	Charter	80%	N/A
Case Resolution Time (mos)			Case Resolution Time (mos)		
negotiated plea	4.7	3.0	indictable trial	12.1	12
summary trial	9.1	7.3	time to resolve increased	73%	76%
*occurs always or often					

Alberta, Yukon, Nunavut

Crown prosecutors in the Alberta, Yukon and Nunavut region report higher criminal caseloads, although a smaller percentage of these (22%) pertain to impaired driving offences. More than 1/3 impaired cases involve repeat offenders. Most of these cases proceed by summary conviction and bodily harm/death cases are rare. Like most other jurisdictions, the average BAC of impaired driving cases is in the 120-160mg% range although cases in the 101-120mg% range are not uncommon.

While Crown report that police in this region are less likely to rely on CCC s. 253(b) (over 80) evidence, a majority of them also acknowledge that more training in the enforcement of laws and Court testimony is needed.

Pre-trial resolution discussions are somewhat more successful in this region with guilty pleas being more common. Pleas to a non-alcohol CCC offence are rare but do occur slightly more often than in other jurisdictions, and cases are withdrawn somewhat more often than in other jurisdictions. However, in many instances no agreement is reached and cases proceed to trial.

Prosecutors in this jurisdiction appear to spend a moderate amount of time preparing impaired driving cases and in Court for summary conviction offences; more time is allocated to cases proceeding by indictment. Improper arrest is a common issue at trial, however, officers are less likely to not have reasonable suspicion for the ASD or not have reasonable and probable grounds for the breath test. Although the overall conviction rate is 73%, *Charter* challenges are common, as well as “evidence to the contrary” defences, including the “2-drink” and the “last drink” defence, contributing to a conviction rate for cases at trial of 48%.

Moreover, it takes less time to resolve these cases than in almost any other jurisdiction, although systemic as well as defence delays are prominent. Limited time available for processing cases may contribute to more acquittals in this jurisdiction.

Saskatchewan	Crown	Crown	
Number of Responses	56	Yrs experience	15
Gender (male)	70%	Age	41
Type of Charges		BAC levels*	
impaired/over 80	79%	81-100	0%
refusal	17%	101-120	24%
injury/death	4.40%	121-160	56%
		160-	18%
Caseload		Caseload	
#criminal cases	480	%impaired cases	19%
#impaired cases	91	%repeat cases	47%
#repeat cases	43		
Evidence Available		Evidence Compelling	
police video	14%	police video	39%
expert testimony	23%	expert testimony	20%
police testimony	84%	police testimony	55%
eyewitness testimony	55%	eyewitness testimony	48%
defendant testimony	36%	defendant testimony	2%
documentation	77%	documentation	23%
Evidentiary Needs		Case Management	
rely on 253b too often	69%	summary conviction	88%
need training to enforce	91%	indictment	15%
need training to testify	98%		
Outcomes of Pre-trial*	41%	Case Processing	
statement of facts	16%	withdrawn	9%
joint sentence	44%	plea agreement	23%
plea non-ccc	4%	guilty plea	44%
plea non-alcohol ccc	0%	not guilty	29%
guilty plea	58%		
withdrawn/stayed	8%	Trial Outcomes	
no agreement	38%	Conviction	65%
		Acquittal	35%
Case Prep Time (hrs)		Court Time (hrs)	
summary conviction	3.6	summary conviction	4.6
indictment/no bodily harm	5.3	indictment/no bodily harm	6.1
indictment/bodily harm	21.0	indictment/bodily harm	15.2
Reasons for Acquittal*		Successful Defences*	
improper arrest	54%	Evidence to the Contrary	16%
no reas. Susp for ASD	11%	Carter	63%
no RPG for test	24%	2-drink	49%
paperwork errors	17%	Bolus	10%
unreasonable delay	16%	Charter	54%
Case Resolution Time (mos)		Case Resolution Time (mos)	
negotiated plea	5.4	indictable trial	14.2
summary trial	10.3	time to resolve increased	75%
*occurs always or often			

Saskatchewan, Manitoba, Northwest Territories

Crown prosecutors in the Saskatchewan, Manitoba, and the Northwest Territories region have smaller criminal caseloads as well as smaller impaired driving caseloads relative to most other jurisdictions. However, they do have a much higher proportion of repeat offender cases (47%) and slightly more of their cases involve refusal than in most other jurisdictions. The former may make cases more challenging to resolve. Crown in this region also appear to proceed more frequently by indictment than many other jurisdictions, so offenders may face harsher penalties more frequently. Moreover, 1/4 of prosecutors report they always or often handle cases below 120mg%.

Prosecutors in this jurisdiction are more likely to report that law enforcement relies too heavily on CCC s.253(b) evidence and a majority of Crown believe that officers need more training in the enforcement of laws as well as providing testimony in Court. Police testimony and documentation are often available, and police and eyewitness testimony are most compelling in these cases.

Pre-trial resolution discussions are successful in approximately 40% of cases in which these discussions take place. Guilty pleas and a joint submission on sentence are the most frequent outcomes. Approximately 1/3 of cases proceed to trial as only 1/4 of cases are resolved with in a plea agreement. In addition, more cases are withdrawn in this jurisdiction relative to any other.

Crown in this region spend more time preparing for summary conviction offences and bodily harm/death offences than any other jurisdiction. They spend somewhat less time than occurs elsewhere on cases proceeding by indictment that do not involve bodily harm.

The overall conviction rate for this region is 86%. The conviction rate for cases going to trial in this region is estimated at 65%, higher than in many other jurisdictions. Improper arrest and errors in police documentation are more often a reason for an acquittal than in other eastern regions. Similarly, unreasonable delays, attributed more often to defence than in any other jurisdiction, pose a significant challenge, making it more difficult for Crown to avoid a negative impact on the right to a trial within a reasonable time.



The “2-drink” defence is less of a problem in this region relative to other eastern jurisdictions. However, the last drink defence poses a greater problem here than in any other jurisdiction. *Charter* issues are less of a concern with only half of Crown (54%) reporting they always or often result in an acquittal, indicating the police are somewhat more effective in laying charges relative to other jurisdictions. Cases are resolved more quickly than in some jurisdictions, but less quickly than in other jurisdictions.



Ontario	Crown	Defence		Crown	Defence
Number of Responses	235	114	Yrs experience	13	17
Gender (male)	56%	82%	Age	42	46
Type of Charges			BAC levels*		
impaired/over 80	81%	82%	81-100	2%	9%
refusal	13%	13%	101-120	13%	17%
injury/death	4%	6%	121-160	75%	53%
			160-	20%	7%
Caseload			Caseload		
#criminal cases	524	112	%impaired cases	24%	21%
#impaired cases	125	24	%repeat cases	29%	29%
#repeat cases	36	7			
Evidence Available			Evidence Compelling		
police video	55%	56%	police video	43%	54%
expert testimony	29%	38%	expert testimony	20%	22%
police testimony	95%	89%	police testimony	51%	51%
eyewitness testimony	61%	51%	eyewitness testimony	65%	35%
defendant testimony	48%	61%	defendant testimony	7%	15%
documentation	84%	78%	documentation	11%	17%
Evidentiary Needs			Case Management		
rely on 253b	40%	35%	summary conviction	95%	95%
need training to enforc	82%	51%	indictment	6%	6%
need training to testify	91%	48%			
Outcomes of Pre-trial*			Case Processing		
statement of facts	31%	25%	withdrawn	5%	10%
joint sentence	39%	27%	plea agreement	18%	21%
plea non-ccc	50%	45%	guilty plea	29%	17%
plea non-alcohol ccc	6%	17%	not guilty	49%	52%
guilty plea	1%	2%			
withdrawn/stayed	48%	22%	Trial Outcomes		
no agreement	2%	2%	Conviction	52%	37%
	57%	59%	Acquittal	48%	63%
Case Prep Time (hrs)			Court Time (hrs)		
summary conviction	2.6	13.0	summary conviction	5.0	6.2
indictment/no bodily harm	5.5	19.0	indictment/no bodily harm	8.6	9.6
indictment/bodily harm	18.0	38.0	indictment/bodily harm	23.1	18.3
Reasons for Acquittal*			Successful Defences*		
improper arrest	34%	56%	Evidence to the Contrary	15%	N/A
no reas. Susp for ASD	7%	26%	Carter	76%	45%
no RPG for test	14%	30%	2-drink	20%	18%
paperwork errors	10%	16%	Bolus	6%	6%
unreasonable delay	13%	16%	Charter	100%	N/A
Case Resolution Time (mos)			Case Resolution Time (mos)		
negotiated plea	4.7	4.1	indictable trial	14.7	15.0
summary trial	10.1	10.0	time to resolve increa	79%	75%
*occurs always or often					

Ontario

In Ontario, Crown prosecutors manage substantial criminal caseloads and process a significant proportion (24%) of impaired driving cases. A majority of these cases involve first offenders, and lower BACs (e.g., 80-100mg%) tend to be more prevalent in this jurisdiction relative to other jurisdictions. Hence, for this group of offenders, particularly those without any prior criminal history, the consequences of a criminal conviction are more profound, possibly encouraging many to resist a criminal conviction.

Law enforcement appears to do their job well, with a smaller proportion of Crown indicating that police rely too heavily on CCC s. 253(b) evidence. Overall, prosecutors report that police are less likely to need more training in enforcement and Court testimony relative to other jurisdictions. However, police documentation is frequently available but is not considered compelling. Eyewitness testimony is considered more compelling in this jurisdiction, as is police testimony.

Pre-trial resolutions are least likely to occur in this jurisdiction. The most common outcomes of these discussions are a joint submission on sentence or a guilty plea. Few cases are withdrawn or benefit from reduced charges. Consequently, half of all cases proceed to trial as defendants have nothing to lose and everything to gain. However, this may change with the passage of provincial Bill 203 that allows for the reduction of the driving prohibition period with the interlock.

Crown prosecutors in Ontario spend slightly more time preparing for summary conviction and indictable offences not involving bodily harm or death, although caseload is an issue. Of some interest, lawyers in Ontario spend substantially more time in Court relative to other jurisdictions. This may occur because both *Charter* issues and the “2-drink” defence are considered significant obstacles to obtaining a conviction.

Conversely, improper arrest and errors in documentation are less frequent relative to other jurisdictions.

The overall conviction rate in this region is 72%. The conviction rate for cases going to trial in Ontario is 52%. Given the prevalence of first offenders with low BACs, coupled with high caseloads, and the strength of *Charter* challenges and evidence to the contrary



defences, this is really not surprising. Crown in this jurisdiction face immense challenges. Systemic and other delays only compound this problem.

Quebec	Crown	Defence		Crown	Defence
Number of Responses	180	93	Yrs experience	12	17
Gender (male)	55%	72%	Age	37	43
Type of Charges			BAC levels*		
impaired/over 80	83%	82%	81-100	6%	6%
refusal	12%	12%	101-120	28%	35%
injury/death	5%	4%	121-160	76%	53%
			160-	7%	15%
Caseload			Caseload		
#criminal cases	489	111	%impaired cases	30%	29%
#impaired cases	147	32	%repeat cases	36%	28%
#impaired cases	52	9			
Evidence Available			Evidence Compelling		
police video	6%	6%	police video	26%	15%
expert testimony	30%	48%	expert testimony	27%	37%
police testimony	88%	77%	police testimony	56%	57%
eyewitness testimony	59%	55%	eyewitness testimony	44%	31%
defendant testimony	62%	63%	defendant testimony	25%	41%
documentation	66%	64%	documentation	6%	15%
Evidentiary Needs			Case Management		
rely on 253b too often	66%	40%	summary conviction	80%	81%
need training to enforce	82%	67%	indictment	21%	16%
need training to testify	83%	45%			
Outcomes of Pre-trial*			Case Processing		
statement of facts	37%	38%	withdrawn	4%	8%
joint sentence	42%	43%	plea agreement	2%	9%
plea non-ccc	80%	81%	guilty plea	53%	43%
plea non-alcohol ccc	2%	12%	not guilty	41%	40%
guilty plea	1%	0%			
withdrawn/stayed	65%	61%	Trial Outcomes		
no agreement	2%	10%	Conviction	41%	29%
	38%	43%	Acquittal	59%	69%
Case Prep Time (hrs)			Court Time (hrs)		
summary conviction	2.4	12.0	summary conviction	2.4	4.3
indictment/no bodily harm	2.7	14.0	indictment/no bodily harm	2.6	5.9
indictment/bodily harm	13.0	29.0	indictment/bodily harm	10.6	13.4
Reasons for Acquittal*			Successful Defences*		
improper arrest	10%	25%	Evidence to the Contrary	22%	N/A
no reas. Susp for ASD	6%	17%	Carter	93%	86%
no RPG for test	11%	20%	2-drink	21%	27%
paperwork errors	12%	13%	Bolus	1%	2%
unreasonable delay	3%	6%	Charter	35%	N/A
Case Resolution Time (mos)			Case Resolution Time (mos)		
negotiated plea	6.8	8.9	indictable trial	13%	14.5
summary trial	12.6	13.5	time to resolve increased	57%	58%
*occurs always or often					

Quebec

Crown prosecutors in Quebec routinely cope with substantial criminal caseloads, of which a substantial portion (30%) is impaired driving-related. These impaired driving cases consist of a not insignificant proportion of repeat offenders (36%), who may be more likely to proceed to trial. Cases involving lower BACs (e.g., 80-100mg%) are also more common in this jurisdiction with 6% of Crowns reporting that almost all or most of their cases are in this range; 28% of Crowns report almost all or most of their cases involve BACs in the 101-120mg% range. Of some interest, more cases proceed by indictment relative to any other jurisdictions, meaning that more offenders in this jurisdiction face harsher penalties if convicted.

Crown report that law enforcement in this jurisdiction tend to rely too heavily on CCC s.253(b) evidence although fewer of them agree that more training is needed on the enforcement of laws as compared to other jurisdictions. The Court testimony provided by police is also considered to be of higher quality than in other jurisdictions and their testimony is considered compelling. Eyewitness testimony is also considered compelling.

Pre-trial resolution discussions result in an agreement in 37% of cases in which discussions occur. The most common outcomes include a joint submission on sentence and a significant proportion of guilty pleas. Pleas to non-alcohol CCC and non-CCC offences are rare, as are cases that are withdrawn. Almost 40% of Crown report that no agreement is a result of discussions always or often and 41% of accused plead not guilty and go to trial.

Case preparation times as well as Court time is lower in Quebec than in any other jurisdiction. This is perhaps a function of the overall volume of cases as well as the significant number of cases going to trial. No doubt less time is available for preparation for this reason and, not surprisingly, it impacts outcomes of cases. Consequently, the conviction rate in Quebec for cases going to trial is just 41%, although the overall conviction rate is 72%.



Few cases result in an acquittal due to police error, and prosecutors acknowledge that police work is strong on these cases. However, “evidence to the contrary” defences are a substantial challenge and difficult to overcome. *Charter* issues are less of a concern than in any other jurisdiction.

Case resolution time is certainly higher in Quebec, perhaps a function of defence delays in processing as well as the volume of cases being processed.



Atlantic	Crown	Crown	
Number of Responses	84	Yrs experience	16
Gender (male)	73%	Age	43
Type of Charges		BAC levels*	
impaired/over 80	77%	81-100	1%
refusal	20%	101-120	10%
injury/death	4%	121-160	72%
		160-	15%
Caseload		Caseload	
#criminal cases	583	%impaired cases	17%
#impaired cases	99	%repeat cases	35%
#repeat cases	35		
Evidence Available		Evidence Compelling	
police video	4%	police video	30%
expert testimony	0	expert testimony	20%
police testimony	93%	police testimony	69%
eyewitness testimony	71%	eyewitness testimony	49%
defendant testimony	25%	defendant testimony	1%
documentation	77%	documentation	13%
Evidentiary Needs		Case Management	
rely on 253b too often	54%	summary conviction	90%
need training to enforce	74%	indictment	11%
need training to testify	83%		
Outcomes of Pre-trial*		Case Processing	
	39%	withdrawn	5%
statement of facts	35%	plea agreement	16%
joint sentence	36%	guilty plea	53%
plea non-ccc	5%	not guilty	28%
plea non-alcohol ccc	0%		
guilty plea	83%	Trial Outcome	
withdrawn/stayed	0%	Conviction	75%
no agreement	24%	Acquittal	22%
Case Prep Time (hrs)		Court Time (hrs)	
summary conviction	2.1	summary conviction	2.6
indictment/no injury	3.8	indictment/no bodily harm	4.0
indictment with injury	18.0	indictment/bodily harm	14.8
Reasons for Acquittal*		Successful Defences*	
improper arrest	33%	Evidence to the Contrary	2%
no reas. Susp for ASD	4%	Carter	12%
no RPG for test	14%	2-drink	14%
paperwork errors	12%	Bolus	4%
unreasonable delay	4%	Charter	42%
Case Resolution Time (mos)		Case Resolution Time (mos)	
negotiated plea	3.3	indictable trial	10.5
summary trial	7.4	time to resolve increased	69%
*occurs always or often			

Atlantic

Criminal caseloads are higher in the Atlantic region than in any other jurisdiction. However, the proportion of impaired driving cases is lower (17%) than in any other jurisdiction and they have a reasonable percentage of repeat offender cases. As such, their impaired driving caseload appears to be more manageable relative to other jurisdictions. Of interest, the majority of cases are above 120mg% and cases with lower BACs (e.g., 80-100mg%) are rare.

Few prosecutors report that police rely too heavily on CCC s. 253(b) evidence, and a smaller percentage report that police need more training on the enforcement of laws or training in how to testify in Court. Police and eyewitness testimony are most often available and police testimony is considered most compelling. In summary, Crown appear to be pleased with the efforts of law enforcement and this suggests that there is a good rapport among prosecutors and police.

Pre-trial resolution discussions result in an agreement in 39% of cases in which they occur. The most frequent outcome is a guilty plea, substantially greater than in any other jurisdiction. This may be a function of the strength of police evidence that is provided and/or that the judiciary is less accepting of “evidence to the contrary” defences. It may also be the case that defence counsel does not go to the same lengths to argue these defences relative to other jurisdictions. No agreement as a result of discussions is reached less frequently than in any other jurisdiction, so substantially fewer cases proceed to trial.

Significantly less time is devoted to case preparation as well as time in Court to handle cases. Despite this fact, Crown in the Atlantic region report a conviction in 75% of cases going to trial and an overall conviction rate of 90%. Errors by police, “evidence to the contrary” defences, and *Charter* challenges are much less frequent in this jurisdiction, making convictions more likely. This may be a function of the strong police work combined with smaller caseloads and higher BAC cases. Not surprisingly, because fewer cases go to trial, it takes less time to resolve these cases than in any other jurisdiction.

6.0 Conclusions

The findings from this national survey of Crown prosecutors and defence counsel in Canada suggest that there are important challenges within the criminal justice system that impede the effective and efficient processing of impaired driving cases. Some of these challenges occur as a function of practices and policies (e.g., variable investigative/arrest procedures by police, variations in charging practices, frequency of plea agreements and trials) while others occur as a function of legislation (e.g., the increasing use of “evidence to the contrary” defences and *Charter* challenges).

Collectively, these issues significantly impact case processing and case outcomes. It appears that fewer cases are resolved through plea agreements and case backlogs are growing as it takes longer to resolve these cases than it did a decade ago. This means that those individuals accused of impaired driving are able to continue to drive for extended periods after charges have been laid and administrative licence suspension periods have been applied and prior to conviction. Those accused of impaired driving also not infrequently appear able to avoid conviction at trial. Quite possibly, this has contributed to an erosion of the specific and general deterrent effect of impaired driving laws among offenders, and the perception among the public that there are no serious consequences for such behaviour. This may provide some insight into why there has been limited improvement in reducing impaired driving in the past decade.

Although jurisdictions report overall conviction rates in excess of 70%, a substantial proportion of cases going to trial result in an acquittal. This poses considerable concern and suggests that there are a number of hurdles that the prosecution must overcome. These acquittals are surprising in light of the availability of a valid and reliable method of measuring breath and blood alcohol. The success of challenges of the breath testing device has resulted in substantial frustration among Crown and may serve as an encouragement for accused to go to trial.

Many of the challenges identified in the survey have been recognized in earlier research and, as such, are not new. However, this current survey suggests that the magnitude and extent of these problems is increasing. Not only have conviction rates declined in

recent years, but it takes longer to resolve cases today than it did a decade ago. Collectively, this suggests that action is needed to address the impediments in the criminal justice system that impact the processing of impaired driving cases, and, more importantly, that such changes are needed to re-enforce the deterrent effect of laws to ensure that persons convicted of impaired driving do not continue to offend.

In part, the problems within the system are inherent in its complexity. Impaired driving cases are complex due to the nature of intersecting scientific, legal and constitutional issues. Case law in this area has grown exponentially, making it difficult for police and lawyers to keep abreast of current decisions. To illustrate, one survey respondent reports “This is an area of law in desperate need of reform. No area is more contested by the defence.” Indeed, there are legislative initiatives that have recently been implemented that are designed to address some of these issues, such as Bill C-2 which focuses on “evidence to the contrary” defences.

It cannot be overlooked that, while *Charter* issues pose a considerable challenge in the processing of impaired driving cases, this is not unusual. In fact, these issues impact a broad cross-section of cases and will likely continue to do so in the future. However, efforts can be taken to minimize their impact by ensuring that police are aware of relevant cases as the law evolves, and understand what impact these decisions will have on their investigative procedures. Crown and defence counsel can play a significant role in ensuring that officers are well-equipped to navigate constitutional issues in the future.

The findings also suggest that the processing of cases can be improved with some practical measures. To begin, Crown and police can benefit from more consistent and sustained institutional efforts regarding education and training in this area, particularly in light of the rapidly evolving jurisprudence. Some jurisdictions have more ongoing and comprehensive initiatives than others however, they are frequently ad hoc and informal. Unfortunately, educational and training efforts are driven internally, often as a function of policy, available resources, and competing priorities. To this end, better and more consistent education and training initiatives for practitioners on impaired driving issues can help agencies move collectively towards reducing or eliminating cases in which evidentiary issues lead to an acquittal. It has been suggested previously that initiatives

that encourage cross-professional training for police and prosecutors can have significant benefits and such an approach is actively adopted in some U.S. jurisdictions (Robertson and Simpson 2004).

Although it has been noted that some prosecutors may have some concerns related to communication with police on cases, results from this survey suggest that necessary and appropriate communication with police on relevant case issues can have benefits. As such, there is also a need to improve communication among Crown and police. To some extent, there is also a tendency among agencies to work in silos, resulting in poor communication among professionals in some areas. This can build barriers and detract from effective case management. Communication among practitioners is not always reciprocal and feedback is rare, both internally and externally, which creates challenges for practitioners in effectively and efficiently managing cases to reach suitable and appropriate outcomes. In some instances, police and lawyers may have a good sense of procedures and practices, however, they lack insight into how, where, and why things can go wrong, and, more importantly, what is needed to address these issues. In other cases, they may be well aware of the reasons why things may go wrong (e.g., “evidence to the contrary” defences) but can do little to avoid it. However, informed discussion that shares differing perspectives can provide a better sense of understanding and ways that practices can be improved.

There are lessons to be learned by examining more closely the jurisdictions in which effective working relationships between Crown and police have been established. Perhaps there are practices that can be shared with other jurisdictions to improve the quality of impaired driving cases that are brought to Court and to minimize constitutional challenges. In jurisdictions where there is a high level of satisfaction with police investigations and procedures, cases appear to be resolved more quickly and convictions are more common. Indeed, the importance of noting signs of impairment, gathering information about a suspect’s drinking history, and improving the documentation of evidence has been noted in earlier reports (Moyer 1992; Jonah et al. 1997) and such increased interaction between Crown and police was recommended almost two decades ago (Vingilis et al. 1988).

In addition, Crown offices should be encouraged to internally review their policies and practices (e.g., regarding plea negotiations, laying of charges, case preparation) to determine what effect they are having on case outcomes. Clearly, while jurisdictions desire to reinforce the seriousness of an impaired driving offence by taking a strong approach to dealing with offenders, the impact of this approach on the processing of cases must be recognized. In jurisdictions where pleas are limited and cases proceed by indictment, particularly lower BAC (e.g., 80-100mg%) cases, there is little incentive for offenders to resolve cases. Not only does this result in a substantial drain on resources as more cases go to trial, but it also opens the door for less satisfactory outcomes due to such things as “evidence to the contrary” defences. As such, a clear understanding of the outcomes of certain practices is the first step towards the identification of optimal and acceptable policies to improve case processing.

Some aspects of existing legislation also require closer scrutiny. For example, over a decade ago, it was reported that the 1985 amendments to impaired driving legislation, which included a driving prohibition, resulted in more offenders going to trial (Moyer 1992) in an effort to retain their driving privileges. This is certainly even more true today, as one survey respondent reports, “Some modest discretion given to Crown counsel re: mandatory prohibition would prevent a lot of trials”. Lawyers have clearly recognized the impact that the mandatory driving prohibition has had on case processing. Moreover, research clearly demonstrates that more than 70% of offenders continue to drive despite having a licence that has been suspended or revoked. As such, the consequences of such a policy must be closely examined in view of any benefits that are accrued -- i.e., it may be more beneficial to permit impaired drivers to regain their licence earlier with the condition of an ignition interlock. Additionally, the optimal length of time for a hard suspension period should be examined to promote the increased use of interlocks.

Finally, it is clear that more work is needed to increase the availability of alternative sanctions across jurisdictions and improve awareness among lawyers regarding the effectiveness of such sanctions. To date, the effectiveness of incarceration and/or fines in reducing drunk driving has been limited, suggesting alternative approaches are needed. As an example, ignition interlocks reduce recidivism by 50-90% while installed on the vehicle, yet only a small proportion of Crown believe interlocks are effective.



Conversely, defence counsel seem to have greater knowledge in this area and generally are supportive of the use of interlocks.

In conclusion, the challenges that currently exist in prosecuting impaired driving offences appear to be, in part, a function of policies and practices and, to a lesser extent, the laws that are in place. This is evidenced by the fact that some jurisdictions appear to be coping reasonably well with these issues while others are not. At the same time, “evidence to the contrary” defences clearly pose a substantial problem in almost all jurisdictions, indicating a need for legislative change. It is hoped that the recently passed Bill C-2 will bring about the desired improvement in this regard.

Today, defendants are willing to go to trial because the potential payoff is significant. One commonality that cannot be overlooked is the distinct willingness of people to fight to avoid a criminal conviction as well as the one year driving prohibition. These findings clearly demonstrate that, in the face of such severe penalties, many of those accused of impaired driving see the penalties as an incentive to go to great lengths to avoid a conviction, which has substantial implications for the ability of the justice system to manage such cases in its current form.

Appendix I

Crown Survey



Transport
Canada

Transports
Canada

CCMTA • CCATM
CANADIAN COUNCIL OF MOTOR TRANSPORT ADMINISTRATORS
CONSEIL CANADIEN DES ADMINISTRATEURS EN TRANSPORT MOTORISÉ

THE DRIVING WHILE IMPAIRED SURVEY:

Transport Canada and the Canadian Council of Motor Transport Administrators would like your opinions on issues related to driving while impaired (DWI) offences. The information collected will be used in a review of the legislation surrounding these offences.

Crown Prosecutors from across the country are being asked to complete the survey. Your participation is valuable because you are actively involved in prosecuting drinking and driving offences.

The views of Defence Attorneys will be requested in a separate survey on this issue.

THE PROCESS:

- The survey results will be tabulated in aggregate form only.
- The survey has been designed to be relatively easy and quick to complete.
- Mail the survey back in the self-addressed, stamped envelope provided.

Your responses are anonymous and confidential.

FINAL REPORT:

- **Will be released jointly by Transport Canada and the Canadian Council of Motor Transport Administrators.**
- **Will be available to those who fax a request to DWI Survey, Transport Canada Road Safety Programs at (613) 990-2912**

CONTACT:

If you have any questions about the survey, please call or email Paul Boase at Transport Canada:

PHONE: 613-993-4463
EMAIL: boasep@tc.gc.ca

Canada

DRINKING AND DRIVING SURVEY CROWN PROSECUTORS

- *This questionnaire has been designed to obtain feedback from Crown Prosecutors on the issues surrounding drinking and driving offences.*
- *Your participation is extremely valuable because you are actively involved in prosecuting these cases.*
- *The views of defence lawyers are also being requested in a separate survey on this issue.*
- *The information collected will be used in the review of impaired driving legislation.*

YOUR RESPONSES ARE ANONYMOUS AND CONFIDENTIAL.

1. In the past 24 months, have you prosecuted anyone for, or otherwise resolved, any drinking and driving-related offences under the CCC, including:

a) 253(a) (impaired)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
b) 253(b) [over 80 mg%]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
c) 254(5) [refusing to provide a sample]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
d) 255(2) [impaired driving causing bodily harm]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
e) 255(3) [impaired driving causing death]	Yes <input type="checkbox"/>	No <input type="checkbox"/>

This includes cases resolved through guilty pleas, plea agreements, withdrawals or cases that went to trial.

IF 'NO' TO ALL OF THE OFFENCES IN Q.1, PLEASE RETURN THE BLANK SURVEY.
IF "YES" PLEASE COMPLETE AND RETURN THE SURVEY.

Note: For the purposes of this questionnaire, all of the above-mentioned offences are collectively referred to as 'impaired driving' offences or 'impaired driving' cases. Most of the questions refer to a time frame of the past 24 months, unless otherwise specified.



DRINKING AND DRIVING SURVEY

June 16, 2005

SECTION ONE: EXPERIENCE

A case is defined as 'all of the criminal charges arising out of a single alleged criminal incident or event.'

2. In the past 24 months, estimate the total number of all criminal cases you have been assigned to prosecute or otherwise resolve. (This includes all guilty pleas, plea agreements or trials.)

(Write in number) _____

3. In the past 24 months, what percentage of all cases from question 2 would you estimate were impaired driving cases?

_____ %

4. Since you began working as a criminal lawyer, would you say that the length of time required to prosecute (including preparation and trial time) an impaired driving case at trial has:

increased ☐
 remained the same ☐
 decreased ☐

SECTION TWO: OPINION

5. Do you think that CCC penalties currently imposed for those convicted of impaired driving offences are:

Too light About right Too stringent No opinion

6. Do you think the post-conviction consequences currently imposed for impaired driving offences under the Provincial Highway Traffic Act in your province/jurisdiction are:

Too light About right Too stringent No opinion

7. Below is a series of statements. Please indicate how strongly you agree or disagree with each.

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
a) Increased enforcement will contribute to a decrease in drinking and driving incidents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) The police rely too much on 253(b) evidence to the detriment of 253(a) evidence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Caseload makes it difficult for me to prepare adequately for impaired driving prosecutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Impaired driving not involving a collision should be removed from the Criminal Code	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) There should be a dedicated court for impaired driving cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Drinking and driving is a serious problem in Canada	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DRINKING AND DRIVING SURVEY

June 16, 2005

8. Please indicate the extent to which you agree or disagree with each of the following statements about measures to reduce the incidence of alcohol-related vehicle accidents in Canada:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
a) More police resources should be dedicated to the enforcement of impaired driving laws	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Police officers need more training in the enforcement of impaired driving laws	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Police officers need more training in how to testify effectively in court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) The CCC should require all drivers to provide a screening breath sample at the roadside <u>without reasonable suspicion</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) The legal limit in the CCC should be lowered from 80 mg% to 50 mg%.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Breath testing should be mandatory under the CCC in all collisions involving a fatality or serious injury <u>without reasonable suspicion</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) There should be an administrative licence suspension for 90 days if the BAC is over 80 mg%, independent of criminal proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) The provincial driver licence suspension for a first offence should be increased to 2 years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Vehicles driven by disqualified drivers should be impounded for 30 days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Ignition interlock devices should be installed on vehicles driven by convicted impaired drivers to shorten the mandatory licence suspension period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Ignition interlock devices should be installed on vehicles driven by convicted impaired drivers after the mandatory licence suspension period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) There should be compulsory alcohol assessment and education/ rehabilitation for all impaired drivers <u>who receive only an administrative suspension</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Public education programs are effective in reducing impaired driving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION THREE: CASE SPECIFICS

9. Of the impaired driving cases you have prosecuted in the past 24 months, approximately what percentage were:

Impaired/Over 80 mg% with no injury _____ %

Refusal to provide sample _____ %

Impaired with injury /death _____ %

100%



DRINKING AND DRIVING SURVEY

June 16, 2005

10. For cases that you prosecuted under 253 (b), please estimate how many had a BAC in each of the following ranges:

	All/ almost all	Most	Some	A few	Almost none/none
81-100 mg%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
101-120 mg%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
121-160 mg%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Over 160 mg%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Have not prosecuted cases under 253(b) ☐

11. Of all the impaired driving cases you have prosecuted in the past 24 months, approximately what percentage were:

Withdrawn/Stayed before or at trial _____ %

Plea agreement _____ %

Pled guilty as charged _____ %

Pled not guilty, go to trial _____ %

100%

12. Of your cases "not guilty" with a trial in the past 24 months, what percent were:

convicted _____ %

acquitted _____ %

SECTION FOUR: EVIDENCE

13. How often would you estimate that a police video is available? (*Check one response for each*)

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) Roadside	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) During breath test	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) At booking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14. In your experience, when the police video is available, how often would you estimate the video influences each of the following? (*Check one response for each*)

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) A guilty plea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) A conviction at trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) An acquittal at trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DRINKING AND DRIVING SURVEY

June 16, 2005

15. Aside from breath test results, which of the following pieces of evidence are often available and which TWO would be the most compelling in an impaired driving prosecution? (*Check only two most compelling.*)

	Check if often available	Check two most compelling
a) police video (roadside, booking, breath test)	_____	_____
b) expert testimony	_____	_____
c) police testimony	_____	_____
d) eyewitness testimony	_____	_____
e) defendant testimony	_____	_____
f) police documentation (notes)	_____	_____
g) other (please specify) _____	_____	_____

16. How often does an acquittal result because of the following reasons?

(*Check one response for each question*)

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) improper procedures (arrest/ right to counsel issues) by arresting officer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) officer did not have reasonable suspicion for an approved screening device demand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) officer did not have reasonable and probable grounds for an approved instrument breath test/ blood demand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) screening device equipment issues (availability)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) screening device equipment issues (functioning and use)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) approved instrument equipment issues (availability)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) approved instrument equipment issues (functioning and use)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) breath test not given "as soon as practicable" or "forthwith"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) errors in paperwork/police documentation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) unreasonable delay in time to trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Other (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



DRINKING AND DRIVING SURVEY

June 16, 2005

SECTION FIVE: PLEAS

17. Please estimate what percent of your impaired driving cases in the past 24 months involved any pre-trial discussions that led to a resolution?

_____ % If response is 'Zero', skip to Q.19

18. In your impaired driving cases, estimate how often pre-trial discussions resulted in each of the following outcomes?

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
Agreement on statement of facts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Guilty plea on a non-CCC charge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Guilty plea on a non-alcohol CCC charge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Guilty plea as charged	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Withdrawn/stayed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No plea agreement reached	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joint submission on sentence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION SIX: TRIAL

19. Please estimate in what percent of your total impaired driving cases has a trial actually occurred?
_____ %. If response is 'Zero', skip to Q.28

20. How often do each of the following cases go to trial?

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) Impaired/Over 80 mg% with no injury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Refusal to provide sample	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Impaired with injury/death	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

21. Of the 253(a) (except injury/death) & 253(b) and 254(5) cases that go to trial, approximately what percent proceed by:

- a) summary conviction _____ %
b) indictment _____ %

22. On average, how many hours do you spend preparing for an impaired driving trial that proceeds by:

- a) summary conviction _____ hrs
b) indictment without injury _____ hrs
c) 253(a) with injury/death _____ hrs

DRINKING AND DRIVING SURVEY
June 16, 2005

23. On average, how many hours do you spend in court prosecuting an impaired driving case at trial that proceeds by:

- a) summary conviction _____ hrs
b) indictment without injury _____ hrs
c) 253(a) with injury/death _____ hrs

24. On average, what is the usual length of time (in months) between the arrest and the conclusion of the impaired driving case (including sentencing) for:

- a) a negotiated plea _____ (months)
b) summary conviction trial _____ (months)
c) indictable trial _____ (months)

25. How often does each of the following happen to cases in which you are involved?

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) A systemic delay in proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) The Crown delays/adjourns proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) The Defence delays/adjourns proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

26. In 253(b) cases that proceed to trial, how often would you estimate that each of the following are successfully used (i.e. result in an acquittal)?

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) Carter or "2-drink defence" (evidence to the contrary)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) 'Last drink defence' (evidence to the contrary)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) 'Bolus' (e.g. mouth alcohol)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Charter issues (Please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Other (Please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

27. Of these defence strategies, which one do you find the most difficult to refute and why? *(Please give as complete a response as possible)*



DRINKING AND DRIVING SURVEY

June 16, 2005

SECTION SEVEN: SENTENCING

28. How effective do you think each of the following measures are in changing offender behaviour and reducing recidivism? *[Please indicate what is available in your jurisdiction and then rate each one on a 1-7 scale such that 1 means it is not effective at all and 7 means it is very effective. Please rate each one, even if it is not available in your jurisdiction.]*

	Currently available?		How effective is it?						
	Yes	No	Not effective at all 1	2	3	4	5	Very effective 6	7
a) Incarceration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Offender treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Offender Education	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Ignition interlocks post-conviction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Electronic monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Fines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Community service orders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Driving prohibition/suspension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION EIGHT: REPEAT OFFENDERS

29. In the past 24 months, estimate the percent of your impaired driving cases that involved repeat offenders (meaning there were prior related criminal convictions in the search period your jurisdiction uses)?

_____ %. If response is 'Zero', skip to Q.35

30. Of the cases in question 29, how often did you tender the notice of higher minimum penalty?

Always/almost always Often Sometimes Rarely Almost never/never

31. Of the cases in question 29, how often did you withhold the notice of higher minimum penalty in order to have the accused plead guilty (plea/joint submission)?

Always/almost always Often Sometimes Rarely Almost never/never

32. When the driver has a previous record involving impaired driving, how often is the notice seeking higher penalties served by the police service?

Always/almost always Often Sometimes Rarely Almost never/never

DRINKING AND DRIVING SURVEY

June 16, 2005

33. In the past 24 months, in repeat offender 253b trials, how often ...?

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
Did you call an expert witness to give testimony?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you require an expert witness, but one was not available?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the defence call an expert witness to give testimony?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

34. Compared with those charged for the first time, how often would you say that "repeat offenders" go to trial?
Less often ____ About the same ____ More often ____

DEMOGRAPHICS

35. Please indicate which province/Territory you primarily practice in.

B.C.	<input type="checkbox"/>
Alberta	<input type="checkbox"/>
Saskatchewan	<input type="checkbox"/>
Manitoba	<input type="checkbox"/>
Ontario	<input type="checkbox"/>
Quebec	<input type="checkbox"/>
Nova Scotia	<input type="checkbox"/>
New Brunswick	<input type="checkbox"/>
Newfoundland/Labrador	<input type="checkbox"/>
P.E.I.	<input type="checkbox"/>
Yukon	<input type="checkbox"/>
North West Territories	<input type="checkbox"/>
Nunavut	<input type="checkbox"/>

36. Age? ____ years

37. Gender? Male ☐ Female ☐

38. How many years have you been a lawyer? ____ years

39. How many years have you practiced criminal law? ____ years

40. How many years have you practiced as a Crown? ____ years

DRINKING AND DRIVING SURVEY

June 16, 2005

41. Any other comments you would like to add:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

Thank you for your cooperation in this important project. A final report will be made available through Transport Canada and the Canadian Council of Motor Transport Administrators. To receive a copy of the final report, please fax your request to Transport Canada Road Safety Programs at (613) 990-2912



Transport
Canada

Transports
Canada

CCMTA • CCATM

CANADIAN COUNCIL OF MOTOR TRANSPORT ADMINISTRATORS
CONSEIL CANADIEN DES ADMINISTRATEURS EN TRANSPORT MOTORISÉ

LE SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES :

Transports Canada et le Conseil canadien des administrateurs en transport motorisé aimeraient connaître votre opinion sur des questions liées aux infractions de conduite avec facultés affaiblies (CFA). Les renseignements ainsi recueillis serviront à revoir la législation portant sur ces infractions.

Les procureurs de la Couronne de partout au pays sont appelés à répondre au sondage. Votre participation est importante car vous prenez une part active dans les poursuites lors d'infraction de conduite avec facultés affaiblies.

Les points de vue des avocats de la défense seront demandés dans un sondage distinct sur la question.

LA MARCHE À SUIVRE :

- Les résultats du sondage seront seulement présentés en un tout;
- Le sondage a été conçu de façon à ce qu'il soit rempli assez facilement et rapidement;
- Renvoyer le sondage par la poste au moyen de l'enveloppe pré-adressée et pré-affranchie fournie.

Vos réponses sont anonymes et confidentielles.

LE RAPPORT FINAL :

- sera publié conjointement par Transports Canada et le Conseil canadien des administrateurs en transport motorisé;
- pourra être envoyé à ceux qui en font la demande par fax à Sondage sur la CFA, Programmes de sécurité routière, Transports Canada, au (613) 990-2912.

PERSONNE-RESSOURCE :

Pour des questions sur le sondage, veuillez communiquer avec Paul Boase à Transports Canada :

TÉLÉPHONE : (613) 993-4463
COURRIEL : boasep@tc.gc.ca

Canada

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES PROCUREURS DE LA COURONNE

- *Ce questionnaire a été conçu dans le but d'obtenir l'opinion des procureurs de la Couronne sur des questions portant sur les infractions de conduite avec facultés affaiblies.*
- *Votre collaboration est extrêmement importante parce que vous participez activement à ces poursuites.*
- *L'opinion des avocats de la défense sera également sollicitée, dans un autre sondage.*
- *Les renseignements recueillis permettront de réviser les dispositions législatives sur la conduite avec facultés affaiblies.*

VOS RÉPONSES SONT ANONYMES ET CONFIDENTIELLES.

1. Au cours des 24 derniers mois, avez-vous poursuivi quelqu'un pour, ou résolu autrement, des accusations de conduite avec facultés affaiblies en vertu du *Code criminel*, y compris les dispositions :

- | | | |
|--|------------------------------|------------------------------|
| a) Al. 253a) (conduite avec facultés affaiblies) | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |
| b) Al. 253b) [taux d'alcoolémie dépassant 80 mg %] | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |
| c) Par. 254(5) [refus de fournir un échantillon] | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |
| d) Par. 255(2) [conduite avec facultés affaiblies ayant causé des lésions corporelles] | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |
| e) Par. 255(3) [conduite avec facultés affaiblies ayant causé la mort] | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |

Ceci inclut les affaires ayant entraîné un plaidoyer de culpabilité, une transaction pénale, le retrait de l'accusation ou un procès.

SI « NON » À TOUTES LES INFRACTIONS À Q.1, VEUILLEZ RETOURNER LE SONDAGE NON REMPLI.

SI « OUI », VEUILLEZ REMPLIR LE SONDAGE ET LE RETOURNER.

Commentaire : Pour les besoins de ce sondage, toutes les infractions ci-dessus seront appelées infractions de « conduite avec facultés affaiblies » ou affaires concernant la « conduite avec facultés affaiblies ». La plupart des questions portent sur les 24 derniers mois, à moins d'avis contraire.

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

22 juin. 05

SECTION UN : EXPÉRIENCE

Une affaire s'entend de « toutes les accusations découlant d'un seul incident ou événement de nature criminelle allégué ».

2. Veuillez estimer le nombre total d'affaires criminelles qui vous ont été confiées au cours des 24 derniers mois. (Ceci inclut tous les plaidoyers de culpabilité, les transactions pénales et les procès.)

(Inscrire nombre) _____
3. Quel a été, selon vous, le pourcentage des affaires visées à la question 2 qui sont des affaires de conduite avec facultés affaiblies, au cours des 24 derniers mois?

_____ %
4. Depuis que vous travaillez comme avocat/e au criminel, diriez-vous que le temps requis pour poursuivre une affaire (y compris la préparation au procès et le procès lui-même) pour conduite avec facultés affaiblies :

A augmenté	<input type="checkbox"/>
Est demeuré le même	<input type="checkbox"/>
A diminué	<input type="checkbox"/>

SECTION DEUX : OPINION

5. Pensez-vous que les peines prévues au CCC et qui ont été imposées aux personnes déclarées coupables d'une infraction de conduite avec facultés affaiblies sont :

Trop légères	Juste bien	Trop sévères	Aucune opinion
--------------	------------	--------------	----------------
6. Pensez-vous que les conséquences d'une déclaration de culpabilité qui sont prévues et qui s'appliquent aux personnes déclarées coupables d'une infraction de conduite avec facultés affaiblies en vertu du *Code de la route* de votre province sont :

Trop légères	Juste bien	Trop sévères	Aucune opinion
--------------	------------	--------------	----------------

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

22 juin. 05

7. Voici une série d'énoncés. Veuillez indiquer dans quelle mesure vous êtes d'accord ou en désaccord avec chacun d'eux.

	Fortement d'accord	D'accord	Ni d'accord, ni en désaccord	En désaccord	Fortement en désaccord
a) Une augmentation des mesures d'application de la loi contribuera à une diminution des incidents reliés à la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) La police se fie trop à une preuve en vertu de l'alinéa 253b) au détriment de la preuve en vertu de l'alinéa 253a)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) En raison de la charge de travail, il m'est difficile de me préparer adéquatement à un procès pour conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Les affaires de conduite avec facultés affaiblies dans lesquelles il n'y a pas eu de collision ne devraient pas figurer au <i>Code criminel</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Il devrait y avoir un tribunal réservé aux poursuites concernant la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) La conduite avec facultés affaiblies est un problème important au Canada	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8. Veuillez indiquer dans quelle mesure vous êtes d'accord ou en désaccord avec chacun des énoncés suivants qui portent sur les mesures visant à réduire le nombre d'accidents automobiles reliés à l'alcool au Canada :

	Fortement d'accord	D'accord	Ni d'accord, ni en désaccord	En désaccord	Fortement en désaccord
a) Il devrait y avoir davantage de ressources policières vouées à l'application des dispositions législatives sur la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Les agents de police devraient être formés davantage sur l'application des dispositions législatives sur la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Les agents de police devraient être formés davantage sur la façon de témoigner efficacement devant les tribunaux	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Le <i>Code criminel</i> du Canada devrait exiger que tous les chauffeurs fournissent un échantillon d'haleine pour analyse sur place sans que l'agent ait des motifs raisonnables de soupçonner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) La limite légale indiquée au <i>Code criminel</i> devrait passer de 80 mg % à 50 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Les analyses d'haleine devraient être obligatoires selon le <i>Code criminel</i> pour toute collision ayant causé un décès ou des blessures graves sans que l'agent ait des motifs raisonnables de soupçonner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

22 juin. 05

	Fortement d'accord	D'accord	Ni d'accord, ni en désaccord	En désaccord	Fortement en désaccord
g) Il devrait y avoir une suspension administrative du permis de conduire de 90 jours si le taux d'alcoolémie est supérieur à 80 mg %, qu'il y ait ou non une poursuite au criminel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) La période de suspension du permis de conduire provincial pour une première infraction devrait être portée à 2 ans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Les véhicules conduits par les chauffeurs privés/es de l'exercice de leur droit devraient être saisis pendant 30 jours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Un dispositif de verrouillage du système de démarrage devrait être installé sur les véhicules des chauffeurs qui ont été déclarés coupables de conduite avec facultés affaiblies pour <u>réduire</u> la période obligatoire de suspension du permis de conduire	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Un dispositif de verrouillage du système de démarrage devrait être installé sur les véhicules des chauffeurs ayant été déclarés coupables de conduite avec facultés affaiblies <u>après</u> la période obligatoire de suspension du permis de conduire	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Il devrait y avoir une évaluation de l'alcoolisme et une formation / réhabilitation obligatoires pour tous les chauffeurs ayant été déclarés coupables de conduite avec facultés affaiblies à qui il a été imposé <u>une suspension administrative du permis de conduire seulement</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Les programmes d'éducation publique sont efficaces pour réduire la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION TROIS : QUESTIONS PORTANT SUR LES AFFAIRES DE CONDUITE AVEC FACULTÉS AFFAIBLIES

9. De toutes les affaires de conduite avec facultés affaiblies que vous avez poursuivies au cours des 24 derniers mois, environ quel pourcentage concernait :

Conduite avec facultés affaiblies / taux d'alcoolémie supérieur à 80 mg % sans lésions corporelles _____ %

Refus de fournir un échantillon _____ %

Conduite avec facultés affaiblies ayant causé des lésions corporelles / la mort _____ %

100%

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

22 juin. 05

10. De toutes les affaires de conduite avec facultés affaiblies que vous avez poursuivies selon l'alinéa 253b), veuillez estimer combien d'entre elles présentaient un taux d'alcoolémie :

	Toutes/ <u>presque toutes</u>	<u>La plupart</u>	<u>Certaines</u>	<u>Quelques</u> <u>unes</u>	Presque aucune / <u>aucune</u>
Entre 81 et 100 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Entre 101 et 120 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Entre 121 et 160 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plus de 160 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Je n'ai poursuivi aucune affaire en vertu de l'alinéa 253b) ☐

11. De toutes les affaires pour conduite avec facultés affaiblies que vous avez poursuivies au cours des 24 derniers mois, environ quel pourcentage correspond à chacune des catégories suivantes :

Accusation retirée / suspendue avant ou pendant le procès _____ %

Transaction en matière pénale _____ %

Plaidoyer de culpabilité _____ %

Plaidoyer de non culpabilité, procès _____ %

100 %

12. Parmi les affaires où l'accusé/e a plaidé non coupable et pour lesquelles **il y a eu procès** au cours des 24 derniers mois, quel pourcentage des accusés a été :

Déclaré coupable _____ %

Acquitté _____ %

SECTION QUATRE : PREUVE

13. À quelle fréquence estimez-vous qu'un enregistrement vidéo de la police est disponible? (**Cocher une case pour chacun**)

	Toujours / <u>presque toujours</u>	<u>Souvent</u>	<u>Parfois</u>	<u>Rarement</u>	Jamais / <u>presque jamais</u>
a) Sur le bord de la route	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Pendant le test d'alcoolémie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Au moment de la mise en détention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14. D'après votre expérience, quand l'enregistrement vidéo de la police est disponible, à quelle fréquence estimez-vous qu'il a un impact sur chacun des points suivants? (**Cocher une case pour chacun**)

	Toujours / <u>presque toujours</u>	<u>Souvent</u>	<u>Parfois</u>	<u>Rarement</u>	Jamais / <u>presque jamais</u>
a) Un plaidoyer de culpabilité	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Une déclaration de culpabilité au procès	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Un acquittement au procès	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

22 juin. 05

15. À part les résultats des tests d'alcoolémie, parmi les preuves suivantes, quelles sont celles qui sont souvent disponibles et quelles sont les DEUX preuves les plus probantes dans une poursuite pour conduite avec facultés affaiblies? (Cocher les deux plus probantes seulement.)

	Cocher si souvent disponible	Cocher deux plus probantes
a) Vidéo de la police (bord de la route, mise en détention, test d'alcoolémie)	_____	_____
b) Témoignage d'expert	_____	_____
c) Témoignage de la police	_____	_____
d) Témoignage de témoin	_____	_____
e) Témoignage du défendeur / de la défenderesse	_____	_____
f) Documents de la police (notes)	_____	_____
g) Autre (veuillez préciser) _____	_____	_____

16. À quelle fréquence y a-t-il acquittement à cause des raisons suivantes?

(Cocher une case pour chaque raison)

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
a) Procédure irrégulière (lors de l'arrestation / concernant le droit à un avocat) de la part de l'agent procédant à l'arrestation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) L'agent n'avait pas de « motifs raisonnables de soupçonner » de manière à pouvoir exiger un échantillon sur un appareil de détection approuvé	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) L'agent n'avait pas de motifs raisonnables pour demander un alcootest approuvé ou un échantillon sanguin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Questions reliées à l'appareil de détection (disponibilité)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Questions reliées à l'appareil de détection (fonctionnement et utilisation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Questions reliées à l'instrument approuvé (disponibilité)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Questions reliées aux appareils approuvés (fonctionnement et utilisation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Test d'échantillon non administré « aussitôt que possible » ou « sans délai »	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Erreurs dans les dossiers / documents des agents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Retard déraisonnable avant le procès	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Autre (veuillez préciser) : _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

22 juin. 05

SECTION CINQ : PLAIDOYERS

17. Veuillez estimer le nombre d'affaires de conduite avec facultés affaiblies, au cours des 24 derniers mois, qui ont fait l'objet de discussions avant le procès ayant mené à une résolution?

_____ % Si réponse = zéro, passer à Q.19

18. Dans le cadre de vos affaires de conduite avec facultés affaiblies, veuillez estimer à quelle fréquence les discussions avant le procès ont entraîné les résultats suivants :

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
Accord sur l'exposé des faits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaidoyer de culpabilité pour une accusation qui n'est pas en vertu du <i>Code criminel</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaidoyer de culpabilité pour une accusation en vertu du CCC non reliée à l'usage de l'alcool	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaidoyer de culpabilité conformément à l'accusation portée	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Accusation retirée / suspendue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Aucune entente sur le plaidoyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Représentations conjointes sur la sentence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION SIX : PROCÈS

19. Veuillez estimer le pourcentage des affaires de conduite avec facultés affaiblies ayant entraîné un procès.

_____ %. Si réponse = zéro, passer à Q.28

20. À quelle fréquence y a-t-il procès pour chacune des causes suivantes?

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
a) Conduite avec facultés affaiblies / plus de 80 mg % sans lésions corporelles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Refus de fournir un échantillon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Conduite avec facultés affaiblies ayant causé des lésions corporelles / la mort	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

21. Parmi les affaires relatives aux alinéas 253a) (sauf lésions / mort) et 253b) et au paragraphe 254(5) pour lesquelles il y a eu procès, pour environ quel pourcentage il y a eu :

- a) déclaration de culpabilité par procédure sommaire _____ %
b) mise en accusation _____ %

22. En moyenne, combien d'heures consacrez-vous à la préparation d'un procès pour conduite avec facultés affaiblies pour lequel il y a :

- a) déclaration de culpabilité par procédure sommaire _____ heures
b) mise en accusation sans lésions _____ heures
c) 253a) avec lésions / mort _____ heures

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

22 juin. 05

23. En moyenne, combien d'heures passez-vous en cour pour un procès pour conduite avec facultés affaiblies pour lequel il y a :
- a) déclaration de culpabilité par procédure sommaire _____ heures
 - b) mise en accusation sans lésions _____ heures
 - c) 253a) avec lésions / mort _____ heures

24. En moyenne, quel est le délai habituel (en mois) entre le moment de l'arrestation et la fin d'une affaire de conduite avec facultés affaiblies (y compris le prononcé de la sentence) pour :
- a) une négociation de plaidoyer _____ (mois)
 - b) un procès avec déclaration de culpabilité par procédure sommaire _____ (mois)
 - c) un procès pour acte criminel _____ (mois)

25. À quelle fréquence se produit chacune des situations suivantes dans les affaires auxquelles vous travaillez?

	Toujours / presque toujours	Souven t	Parfois	Rareme nt	Jamais / presque jamais
a) Un délai systémique de la procédure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) La Couronne retarde / ajourne la procédure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) La défense retarde / ajourne la procédure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

26. Pour les affaires relatives à l'al. 253b) pour lesquelles il y a eu procès, à quelle fréquence estimez-vous que chacun des éléments suivants ont été utilisés avec succès (c.-à-d. qu'il y a eu acquittement)?

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
a) Défense Carter (preuve du contraire)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) La « défense du dernier verre » (preuve du contraire)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) « Bolus » (p.ex. présence d'alcool dans la bouche)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Questions reliées à la <i>Charte</i> (veuillez préciser) :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Autre (veuillez préciser) :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

27. Parmi ces moyens de défense, lequel selon vous est le plus difficile à réfuter et pourquoi? (*Veuillez fournir une réponse aussi complète que possible*)

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

22 juin. 05

SECTION SEPT : PRONONCÉ DE SENTENCE

28. À quel point chacune des mesures suivantes est-elle efficace pour changer le comportement du contrevenant / de la contrevenante et de réduire les récidives? *[Veuillez indiquer les mesures disponibles dans votre juridiction et ensuite évaluer les mesures sur une échelle de 1 à 7, où 1 signifie « pas du tout efficace » et où 7 signifie « très efficace ». Veuillez évaluer toutes les mesures, même celles qui ne sont pas disponibles dans votre juridiction.]*

	Présentement disponible?		À quel point est-elle efficace?						
	Oui	Non	Pas du tout 1	2	3	4	5	Très 6	7
a) Incarcération	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Traitement des contrevenants/es	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Formation des contrevenants/es	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Verrouillage du système de démarrage après condamnation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Surveillance électronique	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Amendes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Ordonnance de travaux compensatoires	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Suspension du permis de conduire	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Autre (préciser) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION HUIT : RÉCIDIVISTES

29. Au cours des 24 derniers mois, veuillez estimer le pourcentage d'affaires de conduite avec facultés affaiblies concernant des récidivistes (c'est-à-dire qu'il y avait des condamnations préalables au criminel pendant la période d'examen d'archives utilisée dans votre province)?
 _____ % (Si réponse = zéro, passer à Q.35)
30. Parmi les affaires visées à la question 29, à quelle fréquence avez-vous émis un avis relatif à une peine minimale plus élevée?
- Toujours / presque toujours Souvent Parfois Rarement Jamais / presque jamais
31. Parmi les causes de la question 29, à quelle fréquence avez-vous retenu l'avis relatif à une peine minimale plus élevée pour inciter l'accusé/e à plaider coupable (plaidoyer / représentations conjointes)?
- Toujours / presque toujours Souvent Parfois Rarement Jamais / presque jamais
32. Lorsque le chauffeur avait déjà un dossier concernant la conduite avec facultés affaiblies, à quelle fréquence l'avis relatif à une peine minimale plus élevée est-il signifié par le service de police?
- Toujours / presque toujours Souvent Parfois Rarement Jamais / presque jamais

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES
22 juin. 05

33. Au cours des 24 derniers mois, lors de procès avec récidivistes dans des affaires relatives à l'alinéa 253b), à quelle fréquence...?

	Toujours / <u>presque</u> <u>toujours</u>	Souvent	Parfois	Raremen <u>t</u>	Jamais / presque <u>jamais</u>
Avez-vous fait témoigner un témoin expert?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Avez-vous demandé un témoin expert, mais il n'y en avait pas de disponible?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
La défense a-t-elle fait témoigner un témoin expert?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

34. À quelle fréquence y a-t-il procès pour les récidivistes en comparaison avec ceux et celles accusés/es pour la première fois?

Moins souvent ____

Aussi souvent ____

Plus souvent ____

DONNÉES DÉMOGRAPHIQUES

35. Veuillez indiquer dans quelle province / territoire vous pratiquez principalement.

C.-B.	<input type="checkbox"/>
Alberta	<input type="checkbox"/>
Saskatchewan	<input type="checkbox"/>
Manitoba	<input type="checkbox"/>
Ontario	<input type="checkbox"/>
Québec	<input type="checkbox"/>
Nouvelle-Écosse	<input type="checkbox"/>
Nouveau-Brunswick	<input type="checkbox"/>
Terre-Neuve / Labrador	<input type="checkbox"/>
I.-P.-É.	<input type="checkbox"/>
Yukon	<input type="checkbox"/>
Territoires du Nord-Ouest	<input type="checkbox"/>
Nunavut	<input type="checkbox"/>

36. Quel âge avez-vous? ____ ans

37. Vous êtes...? Un homme ☐ Une femme ☐

38. Depuis combien d'années êtes-vous avocat/e? ____ années

39. Depuis combien d'années pratiquez-vous le droit criminel? ____ années

40. Depuis combien d'années êtes-vous procureur de la Couronne? ____ années

22 juin. 05

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

12

Appendix II

Defence Survey



Transport
Canada

Transports
Canada

CCMTA • CCATM
CANADIAN COUNCIL OF MOTOR TRANSPORT ADMINISTRATORS
CONSEIL CANADIEN DES ADMINISTRATEURS EN TRANSPORT MOTORISÉ

THE IMPAIRED DRIVING SURVEY:

Transport Canada and the Canadian Council of Motor Transport Administrators would like your opinions on issues related to impaired driving offences. The information collected will be used in a review of the legislation surrounding these offences.

Defence Attorneys from across the country are being asked to complete the survey. Your participation is valuable because you are actively involved in prosecuting drinking and driving offences.

The views of Crown Prosecutors have been requested in a separate survey on this issue.

THE PROCESS:

- The survey results will be tabulated in aggregate form only.
- The survey has been designed to be relatively easy and quick to complete.
- Mail the survey back in the self-addressed, stamped envelope provided.

Your responses are anonymous and confidential.

FINAL REPORT:

- Will be released jointly by Transport Canada and the Canadian Council of Motor Transport Administrators.
- Will be available to those who fax a request to Impaired Driving Survey Transport Canada Road Safety Programs at (613) 990-2912

CONTACT:

If you have any questions about the survey, please call or email Paul Boase at Transport Canada:

PHONE: 613-993-4463
EMAIL: boasep@tc.gc.ca

Canada

DRINKING AND DRIVING SURVEY DEFENCE ATTORNEYS

- *This questionnaire has been designed to obtain feedback from Defence Attorneys on the issues surrounding drinking and driving offences.*
- *Your participation is extremely valuable because you are actively involved in defending these cases.*
- *The views of Crown Prosecutors are also being requested in a separate survey on this issue.*
- *The information collected will be used in the review of impaired driving legislation.*

YOUR RESPONSES ARE ANONYMOUS AND CONFIDENTIAL.

1. In the past 24 months, have you defended anyone for, or otherwise resolved, any drinking and driving-related offences under the CCC, including:

a) 253(a) (impaired)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
b) 253(b) (over 80 mg%)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
c) 254(5) (refusing to provide a sample)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
d) 255(2) (impaired driving causing bodily harm)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
e) 255(3) (impaired driving causing death)	Yes <input type="checkbox"/>	No <input type="checkbox"/>

This includes cases resolved through guilty pleas, plea agreements, withdrawals or cases that went to trial.

IF 'NO' TO ALL OF THE OFFENCES IN Q.1, PLEASE RETURN THE BLANK SURVEY.
IF "YES" PLEASE COMPLETE AND RETURN THE SURVEY .

Note: For the purposes of this questionnaire, all of the above-mentioned offences are collectively referred to as 'impaired driving' offences or 'impaired driving' cases. Most of the questions refer to a time frame of the past 24 months, unless otherwise specified

DRINKING AND DRIVING SURVEY
Jun. 16, 05
SECTION ONE: EXPERIENCE

A case is defined as 'all of the criminal charges arising out of a single alleged criminal incident or event.'

2. In the past 24 months, estimate the total number of all criminal cases you have resolved. (This includes all guilty pleas, plea agreements or trials.)
(Write in number) _____
3. In the past 24 months, what percentage of all cases from question 2 would you estimate were impaired driving cases?
_____ %
4. Since you began working as a criminal lawyer, would you say that the length of time required to defend (including preparation and trial time) an impaired driving case at trial has:

increased	<input type="checkbox"/>
remained the same	<input type="checkbox"/>
decreased	<input type="checkbox"/>

SECTION TWO: OPINION

5. Do you think that CCC penalties currently imposed for those convicted of impaired driving offences are:

Too light	About right	Too stringent	No opinion
-----------	-------------	---------------	------------
6. Do you think the post conviction consequences currently imposed for impaired driving offences under the Provincial Highway Traffic Act in your province/jurisdiction are:

Too light	About right	Too stringent	No opinion
-----------	-------------	---------------	------------
7. Below is a series of statements. Please indicate how strongly you agree or disagree with each.

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
a) Increased enforcement will contribute to a decrease in drinking and driving incidents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) The police rely too much on 253(b) evidence to the detriment of 253(a) evidence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Caseload makes it difficult for me to prepare adequately for impaired driving prosecutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Impaired driving not involving a collision should be removed from the Criminal Code	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) There should be a dedicated court for impaired driving cases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Drinking and driving is a serious problem in Canada	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DRINKING AND DRIVING SURVEY
Jun. 16, 05

8. Please indicate the extent to which you agree or disagree with each of the following statements about measures to reduce the incidence of alcohol-related vehicle accidents in Canada:

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
a) More police resources should be dedicated to the enforcement of impaired driving laws	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Police officers need more training in the enforcement of impaired driving laws	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Police officers need more training in how to testify effectively in court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) The CCC should require all drivers to provide a screening breath sample at the roadside <u>without reasonable suspicion</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) The legal limit in the CCC should be lowered from 80 mg% to 50 mg%.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Breath testing should be mandatory under the CCC in all collisions involving a fatality or serious injury <u>without reasonable suspicion</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) There should be an administrative licence suspension for 90 days if the BAC is over 80 mg%, independent of criminal proceedings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) The provincial driver licence suspension for a first offence should be increased to 2 years	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Vehicles driven by disqualified drivers should be impounded for 30 days	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Ignition interlock devices should be installed on vehicles driven by convicted impaired drivers to shorten the mandatory licence suspension period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Ignition interlock devices should be installed on vehicles driven by convicted impaired drivers after the mandatory licence suspension period	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) There should be compulsory alcohol assessment and education/ rehabilitation for all impaired drivers <u>who receive only an administrative suspension</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Public education programs are effective in reducing impaired driving	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION THREE: CASE SPECIFICS

9. Of the impaired driving cases you have defended in the past 24 months, approximately what percentage were:

Impaired/Over 80 mg% with no injury _____ %

Refusal to provide sample _____ %

Impaired with injury /death _____ %

100%

DRINKING AND DRIVING SURVEY
Jun. 16, 05

10. For cases that you defended under 253 (b), please estimate how many had a BAC in each of the following ranges:

	All/ almost all	Most	Some	A few	Almost none/none
81-100 mg%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
101-120 mg%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
121-160 mg%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Over 160 mg%	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Have not defended any cases under 253(b) ☐

11. Of all the impaired driving cases you have defended in the past 24 months, approximately what percentage were:

Withdrawn/Stayed before or at trial _____%

Plea agreement _____%

Pled guilty as charged _____%

Pled not guilty, go to trial _____%

100%

12. Of your cases "not guilty" **with a trial** in the past 24 months, what percent were:

convicted _____%

acquitted _____%

SECTION FOUR: EVIDENCE

13. How often would you estimate that a police video is available? (**Check one response for each**)

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) Roadside	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) During breath test	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) At booking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14. In your experience, when the police video is available, how often would you estimate the video influences each of the following?: (**Check one response for each**)

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) A guilty plea	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) A conviction at trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) An acquittal at trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DRINKING AND DRIVING SURVEY
Jun. 16, 05

15. Aside from breath test results, which of the following pieces of evidence are often available and which TWO would be the most compelling in an impaired driving charge? (*Check only two most compelling.*)

	Check if often available	Check two most compelling
a) police video (roadside, booking, breath test)	___	___
b) expert testimony	___	___
c) police testimony	___	___
d) eyewitness testimony	___	___
e) defendant testimony	___	___
f) police documentation (notes)	___	___
g) other (please specify) _____	___	___

16. How often does an acquittal result because of the following reasons?

(*Check one response for each question*)

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) improper procedures (arrest/ right to counsel issues) by arresting officer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) officer did not have reasonable suspicion for an approved screening device demand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) officer did not have reasonable and probable grounds for an approved instrument breath test/ blood demand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) screening device equipment issues (availability)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) screening device equipment issues (functioning and use)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) approved instrument equipment issues (availability)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) approved instrument equipment issues (functioning and use)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) breath test not given "as soon as practicable" or "forthwith"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) errors in paperwork/police documentation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) unreasonable delay in time to trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Other (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DRINKING AND DRIVING SURVEY

Jun. 16, 05

SECTION FIVE: PLEAS

17. Please estimate what percent of your impaired driving cases in the past 24 months involved any pre-trial discussions that led to a resolution?

_____ % If response is 'Zero', skip to Q.19

18. In your impaired driving cases, estimate how often pre-trial discussions resulted in each of the following outcomes?

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
Agreement on statement of facts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Guilty plea on a non-CCC charge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Guilty plea on a non-alcohol CCC charge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Guilty plea as charged	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Withdrawn/stayed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No plea agreement reached	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joint submission on sentence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION SIX: TRIAL

19. Please estimate in what percent of your total impaired driving cases has a trial actually occurred?
_____ %. If response is 'Zero', skip to Q.28

20. How often do each of the following cases go to trial?

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
a) Impaired/Over 80 mg% with no injury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Refusal to provide sample	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Impaired with injury/death	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

21. Of the 253(a) (except injury/death) & 253(b) and 254(5) cases that go to trial, approximately what percent proceed by:

- a) summary conviction _____ %
b) indictment _____ %

22. On average, how many hours do you spend preparing for an impaired driving trial that proceeds by:

- a) summary conviction _____ hrs
b) indictment without injury _____ hrs
c) 253(a) with injury/death _____ hrs

DRINKING AND DRIVING SURVEY

Jun. 16, 05

23. On average, how many hours do you spend in court defending an impaired driving case at trial that proceeds by:
- a) summary conviction _____ hrs
- b) indictment without injury _____ hrs
- d) 253(a) with injury/death _____ hrs
24. On average, what is the usual length of time (in months) between the arrest and the conclusion of the impaired driving case (including sentencing) for:
- a) a negotiated plea _____ (months)
- b) summary conviction trial _____ (months)
- c) indictable trial _____ (months)
25. How often does each of the following happen to cases in which you are involved?
- | | Always/almost
always | Often | Sometimes | Rarely | Almost never/
never |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a) A systemic delay in proceedings | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b) The Crown delays/adjourns proceedings | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c) The Defence delays/adjourns proceedings | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
26. In 253(b) cases that proceed to trial, how often would you estimate that each of the following are successfully used (i.e. result in an acquittal)?
- | | Always/almost
always | Often | Sometimes | Rarely | Almost never/
never |
|---|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a) Carter or "2-drink defence" (evidence to the contrary) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b) 'Last drink defence' (evidence to the contrary) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c) 'Bolus' (e.g. mouth alcohol) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d) Charter issues (Please specify): _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e) Other (Please specify): _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
27. Of these defence strategies, which one do you find the most successful and why? *(Please give as complete a response as possible)*
- _____
- _____
- _____
- _____

DRINKING AND DRIVING SURVEY

Jun. 16, 05

SECTION SEVEN: SENTENCING

28. How effective do you think each of the following measures are in changing offender behaviour and reducing recidivism? *[Please indicate what is available in your jurisdiction and then rate each one on a 1-7 scale such that 7 means it is very effective and 1 means it is not effective at all. Please rate each one, even if it is not available in your jurisdiction.]*

	Currently available?		How effective is it?						
	Yes	No	Not effective at all 1	2	3	4	5	Very effective 6	7
a) Incarceration	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Offender treatment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Offender Education	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Ignition interlocks post-conviction	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Electronic monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Fines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Community service orders	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Driving prohibition/suspension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION EIGHT: REPEAT OFFENDERS

29. In the past 24 months, estimate the percent of your impaired driving cases that involved repeat offenders (meaning there were prior related criminal convictions in the search period your jurisdiction uses)?

_____ %. If response is 'Zero', skip to Q.33)

30. Of the cases in question 29, how often did the prosecution tender the notice of higher minimum penalty?

Always/almost always Often Sometimes Rarely Almost never/never

31. In the past 24 months, in repeat offender trials, how often ...?

	Always/almost always	Often	Sometimes	Rarely	Almost never/ never
Did you call an expert witness to give testimony?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the prosecution call an expert witness to give testimony?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

32. Compared with those charged for the first time, how often would you say that "repeat offenders" go to trial?

Less often _____ About the same _____ More often _____

DRINKING AND DRIVING SURVEY

Jun. 16, 05

DEMOGRAPHICS

33. Please indicate which province/Territory you primarily practice in.

B.C.	<input type="checkbox"/>
Alberta	<input type="checkbox"/>
Saskatchewan	<input type="checkbox"/>
Manitoba	<input type="checkbox"/>
Ontario	<input type="checkbox"/>
Quebec	<input type="checkbox"/>
Nova Scotia	<input type="checkbox"/>
New Brunswick	<input type="checkbox"/>
Newfoundland/Labrador	<input type="checkbox"/>
P.E.I.	<input type="checkbox"/>
Yukon	<input type="checkbox"/>
North West Territories	<input type="checkbox"/>
Nunavut	<input type="checkbox"/>

34. Age? _____ years

35. Gender? Male ☐ Female ☐

36. How many years have you been a lawyer? _____ years

37. How many years have you practiced criminal law? _____ years

38. How many years have you practiced as a defence attorney? _____ years

DRINKING AND DRIVING SURVEY

June 16, 2005

41. Any other comments you would like to add:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

Thank you for your cooperation in this important project. A final report will be made available through Transport Canada and the Canadian Council of Motor Transport Administrators. To receive a copy of the final report, please fax your request to Transport Canada Road Safety Programs at (613) 990-2912



Transport
Canada

Transports
Canada

CCMTA • CCATM
CANADIAN COUNCIL OF MOTOR TRANSPORT ADMINISTRATORS
CONSEIL CANADIEN DES ADMINISTRATEURS EN TRANSPORT MOTORISÉ

LE SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES :

Transports Canada et le Conseil canadien des administrateurs en transport motorisé aimeraient connaître votre opinion sur des questions liées aux infractions de conduite avec facultés affaiblies (CFA). Les renseignements ainsi recueillis serviront à revoir la législation portant sur ces infractions.

Les avocats de la défense de partout au pays sont appelés à répondre au sondage. Votre participation est importante car vous prenez une part active dans les poursuites lors d'infraction de conduite avec facultés affaiblies.

Les points de vue des procureurs de la Couronne seront demandés dans un sondage distinct sur la question.

LA MARCHÉ À SUIVRE :

- Les résultats du sondage seront seulement présentés en un tout;
- Le sondage a été conçu de façon à ce qu'il soit rempli assez facilement et rapidement;
- Renvoyer le sondage par la poste au moyen de l'enveloppe pré-adressée et pré-affranchie fournie.

Vos réponses sont anonymes et confidentielles.

LE RAPPORT FINAL :

- sera publié conjointement par Transports Canada et le Conseil canadien des administrateurs en transport motorisé;
- pourra être envoyé à ceux qui en font la demande par fax à Sondage sur la CFA, Programmes de sécurité routière, Transports Canada, au (613) 990-2912.

PERSONNE-RESSOURCE :

Pour des questions sur le sondage, veuillez communiquer avec Paul Boase à Transports Canada :

TÉLÉPHONE : (613) 993-4463
COURRIEL : boasep@tc.gc.ca

Canada 

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES AVOCATS/ES DE LA DÉFENSE

- *Ce questionnaire a été conçu dans le but d'obtenir l'opinion avocats/es de la défense sur des questions portant sur les infractions de conduite avec facultés affaiblies.*
- *Votre collaboration est extrêmement importante parce que vous participez activement à ces affaires.*
- *L'opinion des procureurs de la Couronne sera également sollicitée, dans un autre sondage.*
- *Les renseignements recueillis permettront de réviser les dispositions législatives sur la conduite avec facultés affaiblies.*

VOS RÉPONSES SONT ANONYMES ET CONFIDENTIELLES.

1. Au cours des 24 derniers mois, avez-vous défendu quelqu'un pour, ou résolu autrement, des accusations de conduite avec facultés affaiblies en vertu du *Code criminel*, y compris les dispositions :

- | | | |
|--|------------------------------|------------------------------|
| a) Al. 253a) (conduite avec facultés affaiblies) | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |
| b) Al. 253b) [taux d'alcoolémie dépassant 80 mg %] | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |
| c) Par. 254(5) [refus de fournir un échantillon] | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |
| d) Par. 255(2) [conduite avec facultés affaiblies ayant causé des lésions corporelles] | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |
| e) Par. 255(3) [conduite avec facultés affaiblies ayant causé la mort] | Oui <input type="checkbox"/> | Non <input type="checkbox"/> |

Ceci inclut les affaires ayant entraîné un plaidoyer de culpabilité, une transaction pénale, le retrait de l'accusation ou un procès.

SI « NON » À TOUTES LES INFRACTIONS À Q.1, VEUILLEZ RETOURNER LE SONDAGE NON REMPLI.

SI « OUI », VEUILLEZ REMPLIR LE SONDAGE ET LE RETOURNER.

Commentaire : Pour les besoins de ce sondage, toutes les infractions ci-dessus seront appelées infractions de « conduite avec facultés affaiblies » ou affaires concernant la « conduite avec facultés affaiblies ». La plupart des questions portent sur les 24 derniers mois, à moins d'avis contraire.

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

SECTION UN : EXPÉRIENCE

Une affaire s'entend de « toutes les accusations découlant d'un seul incident ou événement de nature criminelle allégué ».

2. Veuillez estimer le nombre total d'affaires criminelles que vous avez résolues au cours des 24 derniers mois. (Ceci inclut tous les plaidoyers de culpabilité, les transactions pénales et les procès.)

(Inscrire nombre) _____

3. Quel a été, selon vous, le pourcentage des affaires visées à la question 2 qui sont des affaires de conduite avec facultés affaiblies, au cours des 24 derniers mois?

_____ %

4. Depuis que vous travaillez comme avocat/e au criminel, diriez-vous que le temps requis pour défendre une affaire (y compris la préparation au procès et le procès lui-même) pour conduite avec facultés affaiblies :

A augmenté ☐

Est demeuré le même ☐

A diminué ☐

SECTION DEUX : OPINION

5. Pensez-vous que les peines prévues au CCC et qui ont été imposées aux personnes déclarées coupables d'une infraction de conduite avec facultés affaiblies sont :

Trop légères

Juste bien

Trop sévères

Aucune opinion

6. Pensez-vous que les conséquences d'une déclaration de culpabilité qui sont prévues et qui s'appliquent aux personnes déclarées coupables d'une infraction de conduite avec facultés affaiblies en vertu du Code de la route de votre province sont :

Trop légères

Juste bien

Trop sévères

Aucune opinion

7. Voici une série d'énoncés. Veuillez indiquer dans quelle mesure vous êtes d'accord ou en désaccord avec chacun d'eux.

	Fortement d'accord	D'accord	Ni d'accord, ni en désaccord	En désaccord	Fortement en désaccord
a) Une augmentation des mesures d'application de la loi contribuera à une diminution des incidents reliés à la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) La police se fie trop à une preuve en vertu de l'alinéa 253b) au détriment de la preuve en vertu de l'alinéa 253a)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) En raison de la charge de travail, il m'est difficile de me préparer adéquatement à un procès pour conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Les affaires de conduite avec facultés affaiblies dans lesquelles il n'y a pas eu de collision ne devraient pas figurer au Code criminel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Il devrait y avoir un tribunal réservé aux poursuites concernant la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) La conduite avec facultés affaiblies est un problème important au Canada	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

8. Veuillez indiquer dans quelle mesure vous êtes d'accord ou en désaccord avec chacun des énoncés suivants qui portent sur les mesures visant à réduire le nombre d'accidents automobiles reliés à l'alcool au Canada :

	Fortement d'accord	D'accord	Ni d'accord, ni en désaccord	En désaccord	Fortement en désaccord
a) Il devrait y avoir davantage de ressources policières vouées à l'application des dispositions législatives sur la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Les agents de police devraient être formés davantage sur l'application des dispositions législatives sur la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Les agents de police devraient être formés davantage sur la façon de témoigner efficacement devant les tribunaux	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Le <i>Code criminel</i> du Canada devrait exiger que tous les chauffeurs fournissent un échantillon d'haleine pour analyse sur place sans que l'agent ait des <u>motifs raisonnables de soupçonner</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) La limite légale indiquée au <i>Code criminel</i> devrait passer de 80 mg % à 50 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Les analyses d'haleine devraient être obligatoires selon le <i>Code criminel</i> pour toute collision ayant causé un décès ou des blessures graves sans que l'agent ait des <u>motifs raisonnables de soupçonner</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Il devrait y avoir une suspension administrative du permis de conduire de 90 jours si le taux d'alcoolémie est supérieur à 80 mg %, qu'il y ait ou non une poursuite au criminel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) La période de suspension du permis de conduire provincial pour une première infraction devrait être portée à 2 ans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Les véhicules conduits par les chauffeurs privés/es de l'exercice de leur droit devraient être saisis pendant 30 jours	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Un dispositif de verrouillage du système de démarrage devrait être installé sur les véhicules des chauffeurs qui ont été déclarés coupables de conduite avec facultés affaiblies pour <u>réduire</u> la période obligatoire de suspension du permis de conduire	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Un dispositif de verrouillage du système de démarrage devrait être installé sur les véhicules des chauffeurs ayant été déclarés coupables de conduite avec facultés affaiblies <u>après</u> la période obligatoire de suspension du permis de conduire	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Il devrait y avoir une évaluation de l'alcoolisme et une formation / réhabilitation obligatoires pour tous les chauffeurs ayant été déclarés coupables de conduite avec facultés affaiblies à qui il a été imposé <u>une suspension administrative du permis de conduire seulement</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Les programmes d'éducation publique sont efficaces pour réduire la conduite avec facultés affaiblies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

SECTION TROIS : QUESTIONS PORTANT SUR LES AFFAIRES DE CONDUITE AVEC FACULTÉS AFFAIBLIES

9. De toutes les affaires de conduite avec facultés affaiblies que vous avez défendues au cours des 24 derniers mois, environ quel pourcentage concernait :

Conduite avec facultés affaiblies / taux d'alcoolémie supérieur à 80 mg % sans lésions corporelles _____ %

Refus de fournir un échantillon _____ %

Conduite avec facultés affaiblies ayant causé des lésions corporelles / la mort _____ %

100%

10. De toutes les affaires de conduite avec facultés affaiblies que vous avez défendues selon l'alinéa 253b), veuillez estimer combien d'entre elles présentaient un taux d'alcoolémie :

	Toutes/ presque toutes	La plupart	Certaines	Quelques unes	Aucune / presque aucune
Entre 81 et 100 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Entre 101 et 120 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Entre 121 et 160 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plus de 160 mg %	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Je n'ai défendu aucune affaire en vertu de l'alinéa 253b) ☐

11. De toutes les affaires pour conduite avec facultés affaiblies que vous avez défendues au cours des 24 derniers mois, environ quel pourcentage correspond à chacune des catégories suivantes :

Accusation retirée / suspendue avant ou pendant le procès _____ %

Transaction en matière pénale _____ %

Plaidoyer de culpabilité _____ %

Plaidoyer de non culpabilité, procès _____ %

100 %

12. Parmi les affaires où l'accusé/e a plaidé non coupable et pour lesquelles il y a eu procès au cours des 24 derniers mois, quel pourcentage des accusés a été :

Déclaré coupable _____ %

Acquitté _____ %

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

SECTION QUATRE : PREUVE

13. À quelle fréquence estimez-vous qu'un enregistrement vidéo de la police est disponible? **(Cocher une case pour chacun)**

	Toujours / <u>presque toujours</u>	<u>Souvent</u>	<u>Parfois</u>	<u>Rarement</u>	Jamais / <u>presque jamais</u>
a) Sur le bord de la route	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Pendant le test d'alcoolémie	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Au moment de la mise en détention	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14. D'après votre expérience, quand l'enregistrement vidéo de la police est disponible, à quelle fréquence estimez-vous qu'il a un impact sur chacun des points suivants? **(Cocher une case pour chacun)**

	Toujours / <u>presque toujours</u>	<u>Souvent</u>	<u>Parfois</u>	<u>Rarement</u>	Jamais / <u>presque jamais</u>
a) Un plaidoyer de culpabilité	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Une déclaration de culpabilité au procès	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Un acquittement au procès	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. À part les résultats des tests d'alcoolémie, parmi les preuves suivantes, quelles sont celles qui sont souvent disponibles et quelles sont les DEUX preuves les plus probantes dans une accusation de conduite avec facultés affaiblies? **(Cocher les deux plus probantes seulement.)**

	Cocher si souvent disponible	Cocher deux <u>plus probantes</u>
a) Vidéo de la police (bord de la route, mise en détention, test d'alcoolémie)	<input type="checkbox"/>	<input type="checkbox"/>
b) Témoignage d'expert	<input type="checkbox"/>	<input type="checkbox"/>
c) Témoignage de la police	<input type="checkbox"/>	<input type="checkbox"/>
d) Témoignage de témoin	<input type="checkbox"/>	<input type="checkbox"/>
e) Témoignage du défendeur / de la défenderesse	<input type="checkbox"/>	<input type="checkbox"/>
f) Documents de la police (notes)	<input type="checkbox"/>	<input type="checkbox"/>
g) Autre (veuillez préciser) _____	<input type="checkbox"/>	<input type="checkbox"/>

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

16. À quelle fréquence y a-t-il acquittement à cause des raisons suivantes?

(Cocher une case pour chaque raison)

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
a) Procédure irrégulière (lors de l'arrestation / concernant le droit à un avocat) de la part de l'agent procédant à l'arrestation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) L'agent n'avait pas de « motifs raisonnables de soupçonner » de manière à pouvoir exiger un échantillon sur un appareil de détection approuvé	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) L'agent n'avait pas de motifs raisonnables pour demander un alcootest approuvé ou un échantillon sanguin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Questions reliées à l'appareil de détection (disponibilité)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Questions reliées à l'appareil de détection (fonctionnement et utilisation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Questions reliées à l'instrument approuvé (disponibilité)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Questions reliées aux appareils approuvés (fonctionnement et utilisation)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Test d'échantillon non administré « aussitôt que possible » ou « sans délai »	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Erreurs dans les dossiers / documents des agents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Retard déraisonnable avant le procès	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Autre (veuillez préciser) :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION CINQ : PLAIDOYERS

17. Veuillez estimer le nombre d'affaires de conduite avec facultés affaiblies, au cours des 24 derniers mois, qui ont fait l'objet de discussions avant le procès ayant mené à une résolution?

_____ % Si réponse = zéro, passer à Q.19

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

18. Dans le cadre de vos affaires de conduite avec facultés affaiblies, veuillez estimer à quelle fréquence les discussions avant le procès ont entraîné les résultats suivants :

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
Accord sur l'exposé des faits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaidoyer de culpabilité pour une accusation qui n'est pas en vertu du Code criminel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaidoyer de culpabilité pour une accusation en vertu du CCC non reliée à l'usage de l'alcool	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plaidoyer de culpabilité conformément à l'accusation portée	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Accusation retirée / suspendue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Aucune entente sur le plaidoyer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Représentations conjointes sur la sentence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION SIX : PROCÈS

19. Veuillez estimer le pourcentage des affaires de conduite avec facultés affaiblies ayant entraîné un procès. _____%. Si réponse = zéro, passer à Q.28

20. À quelle fréquence y a-t-il procès pour chacune des causes suivantes?

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
a) Conduite avec facultés affaiblies / plus de 80 mg % sans lésions corporelles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Refus de fournir un échantillon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Conduite avec facultés affaiblies ayant causé des lésions corporelles / la mort	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

21. Parmi les affaires relatives aux alinéas 253a) (sauf lésions / mort) et 253b) et au paragraphe 254(5) pour lesquelles il y a eu procès, pour environ quel pourcentage il y a eu :

- a) déclaration de culpabilité par procédure sommaire _____ %
b) mise en accusation _____ %

22. En moyenne, combien d'heures consacrez-vous à la préparation d'un procès pour conduite avec facultés affaiblies pour lequel il y a :

- a) déclaration de culpabilité par procédure sommaire _____ heures
b) mise en accusation sans lésions _____ heures
c) 253a) avec lésions / mort _____ heures

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

23. En moyenne, combien d'heures passez-vous en cour pour un procès pour conduite avec facultés affaiblies pour lequel il y a :

- a) déclaration de culpabilité par procédure sommaire _____ heures
b) mise en accusation sans lésions _____ heures
c) 253a) avec lésions / mort _____ heures

24. En moyenne, quel est le délai habituel (en mois) entre le moment de l'arrestation et la fin d'une affaire de conduite avec facultés affaiblies (y compris le prononcé de la sentence) pour :

- a) une négociation de plaidoyer _____ (mois)
b) un procès avec déclaration de culpabilité par procédure sommaire _____ (mois)
c) un procès pour acte criminel _____ (mois)

25. À quelle fréquence se produit chacune des situations suivantes dans les affaires auxquelles vous travaillez?

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
a) Un délai systématique de la procédure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) La Couronne retarde / ajourne la procédure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) La défense retarde / ajourne la procédure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

26. Pour les affaires relatives à l'al. 253b) pour lesquelles il y a eu procès, à quelle fréquence estimez-vous que chacun des éléments suivants ont été utilisés avec succès (c.-à-d. qu'il y a eu acquittement)?

	Toujours / presque toujours	Souvent	Parfois	Rarement	Jamais / presque jamais
a) Défense Carter (preuve du contraire)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) La « défense du dernier verre » (preuve du contraire)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) « Bolus » (p.ex. présence d'alcool dans la bouche)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Questions reliées à la Charte (veuillez préciser) :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Autre (veuillez préciser) :	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

27. Parmi ces moyens de défense, lequel selon vous est le plus efficace et pourquoi? (Veuillez fournir une réponse aussi complète que possible)

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

SECTION SEPT : PRONONCÉ DE SENTENCE

28. À quel point chacune des mesures suivantes est-elle efficace pour changer le comportement du contrevenant / de la contrevenante et de réduire les récidives? [Veuillez indiquer les mesures disponibles dans votre juridiction et ensuite évaluer les mesures sur une échelle de 1 à 7, où 1 signifie « pas du tout efficace » et où 7 signifie « très efficace ». Veuillez évaluer toutes les mesures, même celles qui ne sont pas disponibles dans votre juridiction.]

	Présentement disponible?		À quel point est-elle efficace?						
	Oui	Non	Pas du tout 1	2	3	4	5	Très 6	7
a) Incarcération	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Traitement des contrevenants/es	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Formation des contrevenants/es	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Verrouillage du système de démarrage après condamnation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Surveillance électronique	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Amendes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Ordonnance de travaux compensatoires	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Suspension du permis de conduire	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Autre (préciser) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION HUIT : RÉCIDIVISTES

29. Au cours des 24 derniers mois, veuillez estimer le pourcentage d'affaires de conduite avec facultés affaiblies concernant des récidivistes (c'est-à-dire qu'il y avait des condamnations préalables au criminel pendant la période d'examen d'archives utilisée dans votre province)?

_____ % (Si réponse = zéro, passer à Q.33)

30. Parmi les affaires visées à la question 29, à quelle fréquence la Couronne a-t-elle émis un avis relatif à une peine minimale plus élevée?

Toujours / presque toujours Souvent Parfois Rarement Jamais / presque jamais

SONDAGE SUR LA CONDUITE AVEC FACULTÉS AFFAIBLIES

24 juin 2005

31. Au cours des 24 derniers mois, lors de procès avec récidivistes, à quelle fréquence...?

	Toujours / <u>presque</u> toujours	Souvent	Parfois	Raremen <u>t</u>	Jamais / presque jamais
Avez-vous fait témoigner un témoin expert?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
La Couronne a-t-elle fait témoigner un témoin expert?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

32. À quelle fréquence y a-t-il procès pour les récidivistes en comparaison avec ceux et celles accusés/es pour la première fois?

Moins souvent ____

Aussi souvent ____

Plus souvent ____

DONNÉES DÉMOGRAPHIQUES

33. Veuillez indiquer dans quelle province / territoire vous pratiquez principalement.

C.-B.	<input type="checkbox"/>
Alberta	<input type="checkbox"/>
Saskatchewan	<input type="checkbox"/>
Manitoba	<input type="checkbox"/>
Ontario	<input type="checkbox"/>
Québec	<input type="checkbox"/>
Nouvelle-Écosse	<input type="checkbox"/>
Nouveau-Brunswick	<input type="checkbox"/>
Terre-Neuve / Labrador	<input type="checkbox"/>
Î.-P.-É.	<input type="checkbox"/>
Yukon	<input type="checkbox"/>
Territoires du Nord-Ouest	<input type="checkbox"/>
Nunavut	<input type="checkbox"/>

34. Quel âge avez-vous? ____ ans

35. Vous êtes...? Un homme ☐ Une femme ☐

36. Depuis combien d'années êtes-vous avocat/e? ____ années

37. Depuis combien d'années pratiquez-vous le droit criminel? ____ années

38. Depuis combien d'années êtes-vous avocat/e de la défense? ____ années

39. Avez-vous d'autres commentaires?

[illegible]

Merci de votre collaboration à ce projet important. Un rapport final sera disponible via Transport Canada et le Conseil canadien des administrateurs en transport motorisé. Pour recevoir une copie du rapport final, veuillez envoyer votre demande par télécopieur au Programme de sécurité routière de Transport Canada au (613) 990-2912.

References

- Beck, K., Rauch, W., Baker, E., and Williams, A. (1999). Effects of ignition interlock license restrictions on drivers with multiple alcohol offences: a random trial in Maryland. *American Journal of Public Health* 89: 1696-1700.
- Beirness, D.J. (2001). *Best practices for alcohol interlock programs*. Ottawa, Ontario: Traffic Injury Research Foundation.
- Beirness, D.J., Mayhew, D.R., and Simpson, H.M. (1997). *DWI Repeat Offenders: A Review and Synthesis of the Literature*. Ottawa, Ontario: Minister of Public Works and Government Services.
- CTV Globemedia (2008). Adult criminal cases taking more time: study.
http://www.ctv.ca/servlet/ArticleNews/print/CTVNews/20080520/court_stats_080520/2008.
- Goldsmith, S. (1992). Prosecutors and Drunk Driving: Choosing an Effective Role. *Alcohol, Drugs and Driving* 8(1): 1-15.
- Griffin III, L.I. and DeLaZerda, S. (2000). Cognitive impairment screening in second offense DUI programs. *Journal of Substance Abuse Treatment* 19: 369-373.
- Hedlund, J., Beirness, D., Berning, A. (2007). Search Warrants for BAC Test Refusals. International Council of Alcohol, Drugs and Traffic Safety, ICADTS, T2007, August 26th-30th, 2007, Seattle, Washington.
- Hedlund, J.H., and McCartt, A.T. (2001). *Drunk Driving: Seeking Additional Solutions*. Washington, D.C.: AAA Foundation for Traffic Safety.
- Krause, K.R., Howells, G.A., Bair, H.A., Bendick, P.J., and Glover, J.L. (1998). Prosecution and conviction of the injured intoxicated driver. *The Journal of Trauma: Injury, Infection, and Critical Care* 45(6): 1069-1073.
- Jonah, B., Yuen, L., Au-Yeung, E., Paterson, D., Dawson, N., Thiessen, R., Arora, H., Graham, B., and Pilon, M. (1997). *Front-line Police Officers Perceptions and Attitudes About the Enforcement of Impaired Driving Laws in Canada*. Ottawa, Ontario: Transport Canada.
- Jones, R.K., Lacy, J.H., and Wiliszowski, C.H. (1998). *Problems and solutions in DWI enforcement systems*. National Highway Traffic Safety Administration. Technical Report. U.S. Department of Transportation.

- Mayhew, D.R., Brown, S.W., and Simpson, H.M. (2008). The Alcohol-Crash Problem In Canada : 2005. Traffic Injury Research Foundation. Canadian Council of Motor Transport Administrators.
- Moyer, S.(1992). The Implementation of the 1985 Amendments to the Drinking and Driving Sections of the *Criminal Code*. Department of Justice. Canada.
- Nichols, J.L. and Ross, H.L. (1990). The effectiveness of legal sanctions in dealing with drinking drivers. *Alcohol, Drugs and Driving* 6: 33-60
- Pearson, J. (2000) Preserving the Independent and Objective Public Prosecutor. Unpublished manuscript presented November 17, 2000. St.John's, Newfoundland.
- Piccinato, M. P. (2003) Plea Bargaining. The International Cooperation Group. Department of Justice.
- Rehm, C.G., Nelson, J., MacKenzie, D., and Ross, S.E. (1993). Failure of the legal system to enforce drunk driving legislation effectively. *Annals of Emergency Medicine* 22(8): 66-68,1295-1297.
- Revised Statutes of Canada, 1985, Chap.C-46, as amended. (Criminal Code of Canada).
- Robertson, R.D., Simpson, H.M., Beirness, D.J., Mayhew, D.R. (2004). DWI System Improvements: Proceedings of the Inaugural Meeting. Ottawa, Ontario. Traffic Injury Research Foundation.
- Robertson, R.D., and Simpson, H.M. (2003a). *DWI System Improvements for Dealing with Hard Core Drinking Drivers: Monitoring*. Ottawa, Ontario: Traffic Injury Research Foundation of Canada.
- Robertson, R.D., and Simpson, H.M. (2002a). *DWI System Improvements for Dealing with Hard Core Drinking Drivers: Prosecution*. Ottawa, Ontario: Traffic Injury Research Foundation of Canada.
- Robertson, R.D., and Simpson, H.M. (2002b). *DWI System Improvements for Dealing with Hard Core Drinking Drivers: Adjudication*. Ottawa, Ontario: Traffic Injury Research Foundation of Canada.
- Simpson, H.M., and Robertson, R.D. (2001). *DWI System Improvements for Dealing with Hard Core Drinking Drivers: Enforcement*. Ottawa, Ontario: Traffic Injury Research Foundation of Canada.
- Statistics Canada. (Friday, November 7, 2003). Impaired Driving and Other Traffic Offences 2002. The Daily.
- Statistics Canada. (Wednesday July 18, 2007). Crime Statistics 2006 (correction). The Daily.
- Vingilis, E., Bleggen, H., Colbourne, D., Reynolds, D., Wasylyk, N., and Solomon, R. (1985). Ontario Police officers' enforcement and perceptions of drinking-driving



- laws. In S. Kaye and G.W. Meier (Eds). *Alcohol Drugs and Traffic Safety*, Washington, D.C.: National Highway Traffic Safety Administration, pp. 1407-1416.
- Vingilis, E., Bleggen, H., Colbourne, D., Culver, P., Farmer, B., Hackett, D., Soloman, R., Treleaven, J. (1988). *Recommendations from the Survey of Crown Attorneys on the Adjudication of Alcohol-Related Criminal Driving Cases in Ontario*. Alcoholism and Drug Addiction Research Foundation.
- Vanlaar, W., Simpson, H., Mayhew, D., and Robertson, R. (2006) *Road Safety Monitor: Drinking and Driving*. Traffic Injury Research Foundation.
- Vanlaar, W., Emery, P., and Simpson, H. (2007) *Road Safety Monitor: Drinking and Driving*. Traffic Injury Research Foundation.
- Voas, R.B., Marques, P.R., Tippetts, A.S., and Beirness, D.J. (1999). The Alberta interlock program: The evaluation of a province-wide program on DUI recidivism. *Addiction* 94: 1849-1859.
- Voas, R.B., and Tippetts, A.S. (1994). *Assessment of Impoundment and Forfeiture Laws for Drivers Convicted of DWI: Phase II Report*. Washington: National Highway Traffic Safety Administration.
- Voas, R.B., Tippetts, A.S., and Taylor, E. (1996). The effect of vehicle impoundment and immobilization on driving offenses of suspended and repeat DWI drivers. In *40th Annual Proceedings of the Association for the Advancement of Automotive Medicine*, 293-305. Des Plaines, IL: AAAM.