

**Observations
to the twenty-fourth Report of the Standing Senate Committee on Legal and Constitutional
Affairs (Bill C-46)**

Bill C-46, An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts¹ was introduced in the House of Commons by the Minister of Justice and Attorney General of Canada on 13 April 2017. The bill was referred for study to the House of Commons Standing Committee on Justice and Human Rights on 31 May 2017. That committee adopted several amendments to the bill on 16 October 2017.² The bill was given first reading in the Senate on 1 November 2017, and second reading on 14 December 2017, before being referred that same day to the Standing Senate Committee on Legal and Constitutional Affairs. The Senate adjourned on 14 December 2017 until 30 January 2018.

The committee held 13 meetings on this bill (including clause-by-clause consideration) between 31 January and 23 May 2018. However, the committee suspended its consideration of the bill between 21 March and 1 May 2018, to study specific elements of Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (herein after, Bill C-45), in accordance with the Senate order of reference of 15 February 2018, which required that the committee submit its report to the Senate no later than 1 May 2018.

The committee heard from a total of 68 witnesses, including the Minister of Justice and Attorney General of Canada, the Minister of Public Safety and Emergency Preparedness, the Parliamentary Secretary to the Minister of Justice and Attorney General of Canada and to the Minister of Health, officials from the Department of Justice, Public Safety Canada, Statistics Canada and the Transportation Safety Board, police services, legal experts, academics, health and toxicology professionals, victims and victim support groups, representatives from the transportation sector and other stakeholders (see Appendix A). The committee also received written briefs (see Appendix B).³

Bill C-46

The objective of Bill C-46 is to strengthen and update the *Criminal Code* provisions concerning impaired driving, which is one of the most common criminal offences, is the second leading criminal cause of death, and has a high rate of recidivism.⁴ Part 1 of the bill, which will come into force upon receiving Royal Assent, seeks specifically to strengthen legislative provisions concerning driving while impaired by

¹ [Bill C-46, An Act to amend the Criminal Code \(offences relating to conveyances\) and to make consequential amendments to other Acts](#), 1st Session, 42nd Parliament. Bill C-46 includes many of the amendments set out in [Bill C-73, An Act to amend the Criminal Code \(offences in relation to conveyances\) and the Criminal Records Act and to make consequential amendments to other Acts](#), 2nd Session, 41st Parliament. That Bill died on the *Order Paper* when Parliament was dissolved after the general election was called in August 2015. In early 2016, the content of Bill C-73 was also reprised (with some changes) in [Bill C-226, An Act to amend the Criminal Code \(offences in relation to conveyances\) and the Criminal Records Act and to make consequential amendments to other Acts](#). The proceedings on this bill came to an end on 3 May 2017 following a [vote](#) in the House of Commons.

² House of Commons, Standing Committee on Justice and Human Rights, [Fifteenth Report](#), 1st Session, 42nd Parliament, October 2017.

³ Due to the committee's intention to hear from as many witnesses as possible, a full summary of witness testimony is not possible. Given the wide range of important issues that were raised and discussed and the value of this evidence, the committee has nonetheless summarized the key issues that were studied.

⁴ See the testimony of Yvan Clermont, Statistics Canada ([8 February 2018](#)).

drugs, including cannabis, and follows through on the government's plan to allow regulated access to cannabis, as set out in Bill C-45.⁵ Part 2 of the bill, which will come into force on the 180th day after the bill receives Royal Assent, enacts a complete overhaul of *Criminal Code* provisions for offences related to conveyances (the word used for motor vehicles and modes of transportation in the bill). The Minister of Justice told the committee that this bill represents one of the most comprehensive reforms in this area of law in almost 50 years.⁶ In particular, the bill aims at limiting certain defences, such as the “intervening drink defence” and the “two-beer defence.”⁷

This report provides an overview of the main subject areas addressed by witnesses who appeared before the committee, such as new methods of investigation and new offences contained in the bill, and the anticipated impacts on police services, the courts, victims, the general public and specific groups or communities (including Indigenous communities).

Oral fluid drug screening devices

The bill gives peace officers a new investigative power to ascertain the presence of a drug in a driver's body by means of oral fluid drug screening devices (called “approved drug screening equipment” in the bill) following a roadside check stop (Part 1: ss. 254(1) and 254(2)(c); Part 2: ss. 320.11 and 320.27(1)(c)).⁸ Peace officers may make this request when they have reasonable grounds to suspect that a driver has a drug in his or her body. These devices are to be approved by order of the Attorney General of Canada (Part 1: s. 254.01(b); Part 2: s. 320.39(b)).

Government officials presented these devices as new tools to help police officers perform their duties. The process for evaluating, certifying and approving the devices was discussed at length.⁹ Between December 2016 and March 2017, Public Safety Canada, the Royal Canadian Mounted Police and the Canadian Council of Motor Transport Administrators conducted a pilot project in cooperation with several police jurisdictions¹⁰ to test certain devices.¹¹ The Drugs and Driving Committee (DDC) of the Canadian Society of Forensic Science subsequently issued evaluation standards and procedures on November 1, 2017.¹² The committee also learned that the National Research Council of Canada was designated to test the devices to determine whether they met the DDC's standards. Lastly, the DDC is responsible for conducting a final evaluation and recommending to the Attorney General of Canada whether a specific device should be approved. Once the bill is in force and the devices have been

⁵ See Department of Justice, [Legislative Background: reforms to the Transportation Provisions of the Criminal Code \(Bill C-46\)](#), May 2017, p. 8.

⁶ See the testimony of Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada ([21 January 2018](#)).

⁷ Government of Canada, [Backgrounder: Changes to Impaired Driving Laws](#), April 2017.

⁸ All references are to the new proposed *Criminal Code* provisions.

⁹ See the testimony of Ralph Goodale, Minister of Public Safety and Emergency Preparedness ([1 February 2018](#)); Trevor Bhupsingh, Public Safety Canada; Amy Peaire, Drugs and Driving Committee, Canadian Society of Forensic Sciences ([14 February 2018](#)); Trevor Bhupsingh, Public Safety Canada ([10 May 2018](#)), among others.

¹⁰ Vancouver Police Department, Halifax Regional Police Service, Toronto Police Service, Gatineau Police Service, Ontario Provincial Police, North Battleford RCMP, and Yellowknife RCMP.

¹¹ See Public Safety Canada, Royal Canadian Mounted Police, Canadian Council of Motor Transport Administrators, [Final Report on the Oral Fluid Drug Screening Device Pilot Project](#), June 2017.

¹² Drugs and Driving Committee, Canadian Society of Forensic Science, [Drug Screening Equipment – Oral Fluid Standards and Evaluation Procedures](#), 1 November 2017. These procedures provide, among other things, that the devices must be able to detect the presence of tetrahydrocannabinol (THC), cocaine, and methamphetamine at cut-off levels of 25 ng/ml; 50 ng/ml; and 50 ng/ml respectively.

approved, it is up to police forces to purchase them. On 14 February 2018, officials from Public Safety Canada informed the committee they were expecting the laboratory testing of the devices to be concluded in March or April and that a recommendation to the Attorney General would follow soon after. The same officials told the committee on 10 May 2018 that no laboratory testing had yet been done and that they were hopeful “that it won’t be six or eight months before a device is identified”.¹³

A number of witnesses from police agencies shared their concerns about whether or not this equipment would be available in time, the cost of purchasing them and the time needed to properly train police forces (particularly members of Indigenous police services).¹⁴ However, these same witnesses explained that they have already been arresting drug-impaired drivers for many years and that they will continue to do so until these devices are available. In addition, Public Safety Canada noted that last year the federal government announced \$274 million in new funding over five years to help police services implement the new system. A national train-the-trainer curriculum on the use of this equipment will also be rolled out promptly.¹⁵

Some witnesses stated that current scientific evidence does not establish a link between the level of tetrahydrocannabinol (THC) in saliva, for example, and the blood-drug concentration level (which is part of the new *per se* offences in the bill).¹⁶ In particular, this would be the case if the THC is consumed by other means than smoking cannabis.¹⁷ However, the committee heard that a positive result from an oral fluid drug screening device, as the concentration level is set at 25 ng/ml, is a good indication of impairment.¹⁸ Some witnesses did also agree that THC impairs a person’s ability to drive.¹⁹ Certain witnesses had doubts about the statement by the Minister of Public Safety and Emergency Preparedness that a positive reading from a roadside screening device would give the officer reasonable grounds to believe that an offence had been committed. In their view, a positive result would not on its own give an officer reasonable grounds to believe that a person was impaired.²⁰ Other tests would still have to be conducted, such as physical coordination tests (or standardized sobriety tests). The committee was also told that, in a decision concerning a labour law issue, the Ontario Superior Court of Justice found that, on the basis of expert testimony and the particular facts of the case, a positive saliva

¹³ See the testimony of Trevor Bhup Singh, Public Safety Canada ([10 May 2018](#)).

¹⁴ See the testimony of Mario Harel, Canadian Association of Chiefs of Police; Tom Stamatakis, Canadian Police Association ([15 February 2018](#)); Lennard Busch, First Nations Chiefs of Police Association ([9 May 2018](#)), among others.

¹⁵ See the testimony of Trevor Bhup Singh and Rachel Huggins, Public Safety Canada ([10 May 2018](#)).

¹⁶ See the testimony of Chuck Cox and Lara Malashenko, Canadian Association of Chiefs of Police ([15 February 2018](#)); James Palangio, Canadian Association of Crown Counsel ([28 February 2018](#)); Graham Wood, Altasciences Clinical Research ([3 May 2018](#)), among others.

¹⁷ See the testimony of Greg Yost, Department of Justice Canada ([1 February 2018](#)).

¹⁸ See the testimony of Graham Wood, Altasciences Clinical Research ([3 May 2018](#)).

¹⁹ See the testimony of Amy Peaire, Drugs and Driving Committee, Canadian Society of Forensic Sciences ([14 February 2018](#)), among others.

²⁰ See the testimony of Chuck Cox, Chief Superintendent and Co-Chair of the Canadian Association of Chiefs of Police Traffic Committee; Lara Malashenko, Legal Counsel, Ottawa Police Services, Canadian Association of Chiefs of Police Law Amendments Committee ([15 February 2018](#)); Sarah E. Leamon, Acumen Law Corporation ([1 March 2018](#)), among others.

test can be associated with the recent use of the drug and can therefore be compared to known time periods during which a person's abilities are impaired.²¹

Evaluating officers (or drug recognition experts) and the taking of samples

The bill codifies the Supreme Court of Canada's 2017 decision in *R. v. Bingley*,²² in which it determined that the opinion of an evaluating officer is admissible in evidence without first qualifying the evaluating officer as an expert (Part 1: s. 254(3.5); Part 2: ss. 320.12(d) and 320.31(5)). A further amendment in the bill allows a peace officer (and no longer only an evaluating officer) who has reasonable grounds to believe that a person is impaired by a drug or the combined effect of a drug and alcohol to require that person to provide a blood sample to determine the presence of a drug in his or her body (Part 1: s. 254(3.1)(b); Part 2: s. 320.28(2)(b)).

Currently, peace officers who want to become drug recognition experts (DREs) must go to the United States to be certified. This is a long and costly process. The committee learned that consultations are under way to introduce a Canadian training program that would be available in both official languages, and that funding has been allocated for this purpose.²³ The École nationale de police du Québec conducted a training pilot project from December 2016 to March 2017.²⁴ Officials from Public Safety Canada stated that the government wants to double the number of DREs over the next two to three years (as of 8 May 2018, there are a total of 743 DREs across Canada – 533 municipal police officers and 210 RCMP officers).²⁵ It was mentioned that the Canadian chiefs of police informed the federal government they need as many as 3,000.²⁶ A number of witnesses stated that there are currently not enough officers trained as DREs (or trained to conduct standardized sobriety tests) and that there is a significant need for people with this certification throughout the country.²⁷ The committee was told that, as of January 2018, Public Safety Canada and the RCMP have offered a new training curriculum for all Canadian law enforcement officers covering such topics as standardized sobriety tests and drug impairment identification methods.²⁸

Mandatory (or random) alcohol screening

Before being amended by the committee on division, Part 2 of the bill would have authorized peace officers to conduct mandatory (or random) roadside screening for the presence of alcohol in a driver's body without needing reasonable grounds to believe an offence has been committed (Part 2: s.

²¹ See the testimony of Megan MacRae and Brian Leck, Toronto Transit Commission ([2 May 2018](#)). See also *Amalgamated Transit Union, Local 113 v. Toronto Transit Commission*, 2017 ONSC 2078, paras. 108 and 114.

²² *R. v. Bingley*, 2017 CSC 12.

²³ See the testimony of Bill Blair, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada and to the Minister of Health ([21 January 2018](#)).

²⁴ See the testimony of Ralph Goodale, Minister of Public Safety and Emergency Preparedness ([1 February 2018](#)); Mario Harel, Canadian Association of Chiefs of Police; Jean-François Grégoire, Gatineau Police ([15 February 2018](#)).

²⁵ Public Safety Canada, *Additional Response*, 10 May 2018.

²⁶ See the testimony of Bill Blair, Parliamentary Secretary to the Minister of Justice and Attorney General of Canada and to the Minister of Health ([21 January 2018](#)).

²⁷ See the testimony of Mario Harel, Canadian Association of Chiefs of Police; Tom Stamatakis, Canadian Police Association ([15 February 2018](#)); James Palangio, Canadian Association of Crown Counsel ([28 February 2018](#)); Gary G. Kay, Georgetown University and Cognitive Research Corporation ([3 May 2018](#)); Ian Jack, Canadian Automobile Association; Marc Paris, Drug Free Kids Canada ([9 May 2018](#)), among others.

²⁸ See the testimony of Trevor Bhupsingh, Public Safety Canada ([10 May 2018](#)).

320.27(2)). Witnesses told the committee that this practice has been introduced in a number of countries, including Australia, New Zealand and various European countries, where it has considerably reduced the number of road accidents and deaths.²⁹ A witness noted that some of these countries (including Australia) do not have the same entrenched constitutional rights as contained in the *Canadian Charter of Rights and Freedoms* (the Charter). Furthermore, some countries went from not performing roadside check stops to permitting random testing. In Canada, we already allow selective breathalyser testing.³⁰ A number of witnesses underscored that random testing would have a deterrent effect and help to reduce impaired driving.³¹

Many opposing arguments were raised regarding the constitutionality of this new provision,³² as it could affect a number of rights protected by the Charter, especially section 8 (protection from unreasonable search or seizure), as well as section 9 (protection from arbitrary detention or imprisonment) and section 10(b) (the right to retain counsel). Since it would permit a peace officer to order a driver to provide a breath sample without reasonable grounds to suspect an offence has been committed, this could result in a warrantless search and/or seizure, the reasonableness of which would have to be assessed with regard to section 8 and the relevant case law. For example, Peter W. Hogg noted that mandatory breath testing would not cause any infringement of section 8 as it would be authorized by law, be held to be reasonable and carried out in a reasonable manner.³³ According to Don Stuart, without the need for reasonable suspicion this provision would clearly violate section 8 against unreasonable search or seizure and cannot be demonstrably justified under section 1.³⁴ Some witnesses were concerned that this measure will lead to racial profiling if it is not administered properly particularly among Indigenous peoples and other marginalized groups such as Black Canadians.³⁵ The committee

²⁹ See the testimony of Ralph Goodale, Minister of Public Safety and Emergency Preparedness ([1 February 2018](#)), among others. See also Erika Chamberlain and Robert Solomon, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 8 February 2018.

³⁰ See the testimony of Kathryn Pentz, Canadian Bar Association ([28 February 2018](#)).

³¹ See the testimony of Chuck Cox, Canadian Association of Chiefs of Police; Tom Stamatakis, Canadian Police Association ([15 February 2018](#)); James Palangio, Canadian Association of Crown Counsel; Howard Bebbington, Canadian Criminal Justice Association ([28 February 2018](#)); Andrew Murie, Mothers Against Drunk Driving Canada ([1 March 2018](#)); Hubert Sacy, Éduc'alcool ([9 May 2018](#)). See also, Erika Chamberlain and Robert Solomon, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 8 February 2018.

³² Peter Hogg, [Brief Submitted to the House of Commons Standing Committee on Justice and Human Rights](#), 18 September 2017; Don Stuart, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 16 April 2018; Barreau du Québec, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 2 March 2018; Canadian Criminal Justice Association, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 6 March 2018; Indigenous Bar Association, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 27 February 2018; Canadian Bar Association, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 27 February 2018; Erika Chamberlain and Robert Solomon, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 8 February 2018; Kyla Lee and Sarah E. Leamon, Acumen Law Corporation, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 16 March 2018; Criminal Lawyers Association, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 28 February 2018, among others. See also the testimony of Adam Steven Boni, Canadian Council of Criminal Defence Lawyers ([28 February 2018](#)).

³³ Peter Hogg, [Brief Submitted to the House of Commons Standing Committee on Justice and Human Rights](#), 18 September 2017.

³⁴ See the testimony of Don Stuart (23 May 2018). See also Don Stuart, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 16 April 2018. Mr. Stuart mentioned that the Supreme Court of Canada has never saved a section 8 violation under section 1 of the Charter.

³⁵ See the testimony of Michael Bryant, Canadian Civil Liberties Association; Josephine A. de Whytell, Indigenous Bar Association; Leo Russomanno, Criminal Lawyers' Association ([28 February 2018](#)); Kyla Lee, Acumen Law Corporation ([1 March 2018](#)), among others.

also heard testimony from members of the Ottawa Police Service, who shared their experiences with a traffic-stop race data collection project that was launched in 2012 to combat racial profiling. The project's results showed that drivers from different racial backgrounds were stopped a disproportionate number of times.³⁶

Witnesses also raised the point that the bill does not provide for mandatory drug screening³⁷ and that random testing under the bill only applies to motor vehicles and not to vessels, aircraft or railway equipment.³⁸ In addition, the committee examined how the lack of workplace screening regulations (mandatory or otherwise) affects the transportation sector, particularly in the case of safety-sensitive positions.³⁹ Although regulations of this kind are outside the scope of Bill C-46 and the *Criminal Code*, witnesses highlighted this issue. The committee heard that a tripartite dialog is underway to discuss these matters involving Employment and Social Development Canada and groups representing labour organisations and employers.⁴⁰

Officials from the Transportation Safety Board of Canada (TSB), who did not wish to comment on Bill C-46, appeared before the committee to discuss a recommendation made in November 2017 following the TSB's investigation into the in-flight breakup of a small cargo plane in April 2015 in North Vancouver.⁴¹ The TSB concluded that alcohol intoxication almost certainly played a role in the accident, and it recommended that Transport Canada (and others) develop and introduce a comprehensive substance abuse program that would include drug and alcohol testing. The TSB officials mentioned that they have conducted investigations involving the consumption of cannabis in the past.

Police services and toxicology laboratories

Although increased funding has been announced to help police services implement the changes proposed in the bill (for example, through the First Nations Policing Program), a number of representatives from police services are still concerned that there are insufficient resources available.⁴² This is particularly true among Indigenous police forces, as their staff, budgets and training capacity are limited; however there is some cooperation and sharing their expertise and their resources with other

³⁶ See the testimony of Chris Rheume and Laurie Fenton, Ottawa Police Services ([15 February 2018](#)). See also, Ottawa Police Service, [Traffic Stop Race Data Collection Project](#).

³⁷ See the testimony of Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada ([21 January 2018](#)); Ralph Goodale, Minister of Public Safety and Emergency Preparedness ([1 February 2018](#)), among others.

³⁸ See the testimony of Greg Yost, Department of Justice Canada ([7 February 2018](#)); Mario Harel, Canadian Association of Chiefs of Police ([15 February 2018](#)); Derrick Hynes, Federally Regulated Employers Transportation and Communications ([2 May 2018](#)); Hubert Sacy, Éduc'alcool ([9 May 2018](#)), among others.

³⁹ See the testimony of Derrick Hynes, Federally Regulated Employers Transportation and Communications; Gérald Gauthier and Simon-Pierre Paquette, Railway Association of Canada; Megan MacRae and Brian Leck, Toronto Transit Commission; Nathalie Léveillé, Association du camionnage du Québec; Serge Buy, Canadian Ferry Association ([2 May 2018](#)).

⁴⁰ See the testimony of Derrick Hynes, Federally Regulated Employers Transportation and Communications ([2 May 2018](#)).

⁴¹ Transportation Safety Board of Canada, [Aviation Investigation Report A15P0081](#), Recommendation A17-02, November 2017. The report mentioned among other things that "[a]lthough random drug and alcohol testing can be an effective means of identifying individuals who may be at risk of performing safety-sensitive duties while impaired, it is only one aspect of a comprehensive response to inappropriate drug and alcohol use in aviation."

⁴² See the testimony of Tom Stamatakis, Canadian Police Association; Mario Harel, Canadian Association of Chiefs of Police ([15 February 2018](#)).

police services, including the RCMP.⁴³ The committee noted, however, that the *Criminal Code* already provides for the offence of drug-impaired driving and for evaluation tools that authorize police to arrest persons they believe are impaired.

With regard to the RCMP's toxicology services (which serve all provinces except Ontario and Quebec), the committee learned that the RCMP is currently operating at full capacity, and demand is expected to increase.⁴⁴ In response, the RCMP plans to reorganize some of its facilities in order to prioritize certain toxicology services starting in 2019 and to establish an interim laboratory in 2021. It also intends to pursue other options, such as modifying certain workplace practices and procedures. The committee also learned that the storage of samples would not be a significant concern.

New drug-impaired driving offences (*per se* limits)

The bill creates three new offences for drivers with a blood drug concentration (or drug and alcohol concentration) that is equal to or exceeds the level prescribed by regulation within two hours after ceasing to operate a conveyance (Part 1: ss. 253(3) and 253.1; Part 2: ss. 320.14(1), 320.14(4) and 320.38).⁴⁵ These concentrations were determined by the government in proposed regulations following consultation with the DDC.⁴⁶ The concentrations for cannabis (THC) are as follows:

- 2 nanograms (ng) per millilitre (ml) of blood (an offence punishable on summary conviction);
- 5 ng/ml of blood (hybrid offence);
- Combination of 2.5 ng of THC/ml of blood and 50 milligrams (mg) of alcohol/100 ml of blood (0.05) (hybrid offence).

The committee often heard that, in the case of cannabis, there is a lack of clear scientific evidence on the correlation between consumption, impairment of cognitive abilities and the proposed concentrations.⁴⁷ In addition, THC impairment varies among persons (or users) based on their individual characteristics.⁴⁸ Many witnesses anticipate that these new offences will be challenged in the courts,⁴⁹ even though the offence is based on a specific blood-drug concentration in the body and not on impairment. Some witnesses also noted that people who regularly use cannabis for medical purposes and chronic users would maintain a certain concentration of THC in their body.⁵⁰

⁴³ See the testimony of Lennard Busch, First Nations Chiefs of Police Association ([9 May 2018](#)).

⁴⁴ See the testimony of Wade Oldford, Royal Canadian Mounted Police ([3 May 2018](#)).

⁴⁵ ([Proposed Regulatory Text on Blood Drug Concentration Regulations](#), in *Canada Gazette*, Part 1, Vol. 151, No. 41, 14 October 2017, p. 3900.

⁴⁶ Drugs and Driving Committee, Canadian Society of Forensic Science, [Report on Drug Per Se Limits](#), September 2017.

⁴⁷ See the testimony of Graham Wood, Altasciences Clinical Research; Gary G. Kay, Georgetown University and Cognitive Research Corporation ([3 May 2018](#)), among others.

⁴⁸ See the testimony of D'arcy Smith, Royal Canadian Mounted Police ([14 February 2018](#)).

⁴⁹ See the testimony of Lara Malashenko, Canadian Association of Chiefs of Police ([15 February 2018](#)); Kathryn Pentz, Canadian Bar Association ([28 February 2018](#)); Kyla Lee, Acumen Law Corporation ([1 March 2018](#)), among others.

⁵⁰ See the testimony of D'arcy Smith, Royal Canadian Mounted Police; Amy Peaire, Drugs and Driving Committee, Canadian Society of Forensic Science ([14 February 2018](#)); Graham Wood, Altasciences Clinical Research; Gary G. Kay, Georgetown University and Cognitive Research Corporation ([3 May 2018](#)).

Punishment

Part 2 of the bill amends and harmonizes penalties for offences related to conveyances. For example, the maximum penalties for offences not causing bodily harm or death (simpliciter offences) are doubled on conviction on indictment, and the maximum penalty for offences causing bodily harm is set at 14 years' imprisonment (on conviction on indictment).

A number of witnesses on both sides emphasized that these penalties are inadequate. Victims and victim support groups stated that mandatory minimum penalties should be increased, particularly when a death is involved.⁵¹ A witness pointed out that the existing minimum penalties under the *Criminal Code* for this type of offence in particular are acknowledged for having a deterrent effect.⁵² The Minister of Justice underscored that mandatory minimum penalties have been seen to discourage impaired driving. Other witnesses, however, were opposed to the use of mandatory minimum penalties, either generally or specifically in relation to offences involving conveyances (for example, because they prevent judges from exercising their discretion), and criticized their inclusion in the bill.⁵³ The committee notes that, under Part 2 of the bill (s. 320.23), a court is not required to impose the mandatory minimum punishment or make a prohibition order against driving if the offender successfully completes an approved treatment program in the province of residence. However, some witnesses criticized the fact that this option is left to the discretion of the prosecutor and the court, and that access to this type of program may be unavailable in certain parts of Canada, particularly for Indigenous persons, and for Canadians with lower incomes.⁵⁴

Some witnesses also expressed their concern about increasing some maximum penalties to 10 years' imprisonment, because they would make a permanent resident inadmissible on grounds of serious criminality under the *Immigration and Refugee Protection Act* (s. 36(1)).⁵⁵

Disclosure of information (approved instruments)

Given the legal presumptions in the *Criminal Code* (ss. 258(1)(c), 258(1)(d.01) and 258(1)(d.1)) concerning the accuracy of breath test results (the bill uses the term “instrument”) and given that these results correspond to the blood alcohol concentration at the time a person was driving, the evidence that the defence may call to refute these presumptions is very limited. Since the 2012 decision by the Supreme Court of Canada in *R. v. St-Onge Lamoureux*,⁵⁶ many applications have been made by the defence for the disclosure of manuals and maintenance records and other documents related to the

⁵¹ See the testimony of Markitas Kaulius, Families for Justice; Grace G. Pesa ([1 March 2018](#)). See also, Sheri Arsenault, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 20 March 2018.

⁵² See the testimony of James Palangio, Canadian Association of Crown Counsel ([28 February 2018](#)).

⁵³ See the testimony of Howard Bebbington, Canadian Criminal Justice Association; Michael Bryant, Canadian Civil Liberties Association; Jonathan Rudin, Aboriginal Legal Services ([28 February 2018](#)). See also Canadian Bar Association, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 27 February 2018.

⁵⁴ See the testimony of Howard Bebbington, Canadian Criminal Justice Association; Jonathan Rudin, Aboriginal Legal Services ([28 February 2018](#)). See also Indigenous Bar Association, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 27 February 2018.

⁵⁵ See the testimony of Jonathan Leebosh, Canadian Bar Association ([28 February 2018](#)). See also Criminal Lawyers Association, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 28 February 2018.

⁵⁶ [R. v. St-Onge Lamoureux](#), 2012 CSC 57.

maintenance of the approved instruments.⁵⁷ The committee also notes that two cases involving this subject are currently before the Supreme Court of Canada.⁵⁸ In response, Part 2 of the bill outlines the information that the prosecutor must disclose to the defence (s. 320.34). In addition, the bill recognizes and declares that the analysis of a sample of a person's breath by means of an approved instrument produces reliable and accurate readings of blood alcohol concentration (s. 320.12(c)). The stated objective of these new provisions is to reduce the number of challenges and applications for disclosure.⁵⁹ However, the representative from the Alcohol Test Committee of the Canadian Society of Forensic Science raised concerns about the wording of the new provisions and proposed amendments to prevent potential challenges.⁶⁰ Some witnesses also raised the concern that these new provisions could lead to new court challenges and applications for further disclosure before the courts.⁶¹

Dissuasion and public awareness

The committee heard from representatives of organizations whose mandates are to increase awareness and educate the Canadian public on the dangers of drug- and alcohol-impaired driving.⁶² For example, some witnesses pointed out the importance of changing the perception some young people have that it is not dangerous to drive after consuming cannabis.⁶³ Representatives from these organizations highlighted the benefits of the information and education campaigns they and other organizations have done, and said that it is important to increase funding in this area.⁶⁴ The committee also learned that national education campaigns are being rolled out on various platforms, including on social media, in partnership with Public Safety Canada and other organizations.⁶⁵

Court Delays and *R. v. Jordan*

This committee tabled its final report entitled *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada* in June 2017.⁶⁶ The committee remained very concerned about court delays and the impact of *R. v. Jordan* (and *R. v. Cody*).⁶⁷ The Minister of Justice stated that

⁵⁷ Government of Canada, "[The Dangerous and Impaired Driving Act – Criminal Code Reforms for Transportation-Related Offences](#)," Backgrounder, June 2015.

⁵⁸ Supreme Court of Canada, [Kevin Patrick Gubbins v. Her Majesty the Queen](#) and [Darren John Chip Vallentgoed v. Her Majesty the Queen](#).

⁵⁹ See the testimony of Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada ([21 January 2018](#)).

⁶⁰ See the testimony of Daryl Mayers, Alcohol Test Committee, Canadian Society of Forensic Sciences ([14 February 2018](#)). See also Canadian Society of Forensic Sciences, Alcohol Test Committee, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 13 February 2018.

⁶¹ See the testimony of Sarah E. Leamon, Acumen Law Corporation ([1 March 2018](#)). See also Kyla Lee and Sarah E. Leamon, Acumen Law Corporation, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 16 March 2018; Barreau du Québec, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 2 March 2018.

⁶² See the testimony of Andrew Murie, Mothers Against Drunk Driving Canada ([1 March 2018](#)); Marc Paris, Drug Free Kids Canada; Ian Jack, Canadian Automobile Association ([9 May 2018](#)).

⁶³ See the testimony of Marc Paris, Drug Free Kids Canada; Ian Jack, Canadian Automobile Association ([9 May 2018](#)).

⁶⁴ See the testimony of Marc Paris, Drug Free Kids Canada; Ian Jack, Canadian Automobile Association ([9 May 2018](#)), among others.

⁶⁵ See the testimony of Trevor Bhupsingh, Public Safety Canada ([10 May 2018](#)).

⁶⁶ Senate, Standing Senate Committee on Legal and Constitutional Affairs, [Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada](#) (Final Report), June 2017.

⁶⁷ [R. v. Jordan](#), 2016 CSC 27; [R. v. Cody](#), 2017 CSC 31.

the reforms in Part 2 of the bill would facilitate investigations and prosecutions while reducing court delays, but the committee is concerned about testimony that said the opposite was likely to occur. Given that impaired driving is one of the most litigated areas of criminal law, and each aspect of the current regime has been subject to intense constitutional scrutiny,⁶⁸ witnesses stated that the many reforms in the bill can be expected to result in numerous challenges, because each new provision will have to be interpreted by the courts (especially those mentioned earlier).⁶⁹ These challenges could compound the problem of court delays. This being said, a number of issues related to the matters covered by the bill have already been decided by the courts, particularly respecting alcohol-impaired driving.

Impacts on victims

The committee heard key testimony from victims whose loved ones had been injured or killed in accidents caused by impaired drivers, and from victim support groups.⁷⁰ These witnesses shared the pain of their loss and made recommendations on using deterrent and preventive measures (including mandatory alcohol screening) to fight impaired driving more effectively. A number of them told the committee that sentences should be more severe to reflect the seriousness of the offence and to increase public safety on the roads.⁷¹

Impacts on Indigenous communities

The committee was particularly concerned about the impact that the proposed amendments could have on Indigenous communities in Canada. Some witnesses shared their view that the amendments could jeopardize the relationship between members of Indigenous communities and the police⁷² and that police interventions must not unduly target members of Indigenous communities, particularly those who consume cannabis for medical reasons.⁷³ The committee learned that Public Safety Canada carried out special consultations with the First Nations Chiefs of Police Association.⁷⁴ The committee was also informed of specific issues some Indigenous communities are facing in terms of violence, crimes against property and drug use.⁷⁵ The committee was also made aware of the specific challenges Indigenous police services are facing in order to be ready to implement the amendments proposed in the bill, particularly as regards the training of officers.⁷⁶

After studying the points addressed above, the committee made the following observation:

⁶⁸ See the testimony of Kathryn Pentz, Canadian Bar Association ([28 February 2018](#)).

⁶⁹ See the testimony of Chuck Cox and Lara Malashenko, Canadian Association of Chiefs of Police ([15 February 2018](#)); Kathryn Pentz, Canadian Bar Association; Michael Bryant, Canadian Civil Liberties Association ([28 February 2018](#)); Kyla Lee and Sarah E. Leamon, Acumen Law Corporation ([1 March 2018](#)), among others.

⁷⁰ See the testimony of Andrew Murie, Mothers Against Drunk Driving Canada; Markitas Kaulius, Families for Justice; Sheri Arsenault; Grace G. Pesa ([1 March 2018](#)).

⁷¹ See the testimony of Markitas Kaulius, Families for Justice; Sheri Arsenault; Grace G. Pesa ([1 March 2018](#)).

⁷² See the testimony of Josephine A. de Whytell, Indigenous Bar Association ([28 February 2018](#)). See also Indigenous Bar Association, [Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 27 February 2018.

⁷³ See the testimony of Josephine A. de Whytell, Indigenous Bar Association ([28 February 2018](#)).

⁷⁴ See the testimony of Kathy Thompson, Public Safety Canada ([1 February 2018](#)).

⁷⁵ See the testimony of Lennard Busch, First Nations Chiefs of Police Association ([9 May 2018](#)).

⁷⁶ See the testimony of Lennard Busch, First Nations Chiefs of Police Association ([9 May 2018](#)).

1. Recognize that all forms of impaired driving are dangerous and that those who choose to drive while impaired should face serious consequences, but also recognize that permanent residents and foreign nationals are deemed inadmissible to Canada on grounds of serious criminality under section 36(1) of the Immigration and Refugee Protection Act when convicted of an offence punishable by a maximum term of imprisonment of at least ten years. As Bill C-46 would increase the maximum penalties for offences not causing bodily harm or death (simpliciter offences) prosecuted on indictment from five to ten years of imprisonment, the committee encourages the government to consider making changes to ensure that permanent residents and foreign nationals who drive while impaired are not disproportionately affected.

APPENDIX A – LIST OF WITNESSES

Wednesday, January 31, 2018

- The Honourable Jody Wilson-Raybould, P.C., M.P., Minister of Justice and Attorney General of Canada (*Department of Justice Canada*)
- Bill Blair, M.P., Parliamentary Secretary to the Minister of Justice and Attorney General of Canada and to the Minister of Health (*Department of Justice Canada*)
- François A. Daigle, Associate Deputy Minister (*Department of Justice Canada*)
- Carole Morency, Director General and Senior General Counsel, Criminal Law Policy Section, Policy Sector (*Department of Justice Canada*)
- Greg Yost, Counsel, Criminal Law Policy Section, Policy Sector (*Department of Justice Canada*)

Thursday, February 1, 2018

- The Honourable Ralph Goodale, P.C., M.P., Minister of Public Safety and Emergency Preparedness (*Public Safety Canada*)
- Kathy Thompson, Assistant Deputy Minister, Community Safety and Countering Crime Branch (*Public Safety Canada*)
- Kevin Brosseau, Acting Commissioner (*Royal Canadian Mounted Police*)
- Rachel Huggins, Manager, Policy and Development, Serious and Organized Crime Strategies Division, Community Safety and Countering Crime Branch (*Public Safety Canada*)
- Greg Yost, Counsel, Criminal Law Policy Section, Policy Sector (*Department of Justice Canada*)

Wednesday, February 7, 2018

- François A. Daigle, Associate Deputy Minister (*Department of Justice Canada*)
- Carole Morency, Director General and Senior General Counsel, Criminal Law Policy Section, Policy Sector (*Department of Justice Canada*)
- Greg Yost, Counsel, Criminal Law Policy Section, Policy Sector (*Department of Justice Canada*)

Thursday, February 8, 2018

- Kathy Aucoin, Chief, Canadian Centre for Justice Statistics (*Statistics Canada*)
- Yvan Clermont, Director, Canadian Centre for Justice Statistics (*Statistics Canada*)

Wednesday, February 14, 2018

- Trevor Bhupsingh, Director General, Law Enforcement and Border Strategies (*Public Safety Canada*)
- Byron Boucher, Assistant Commissioner Contract and Aboriginal Policing (*Royal Canadian Mounted Police*)
- Rachel Huggins, Manager, Policy Development (*Public Safety Canada*)
- Wade Oldford, Chief Superintendent and Director General, National Forensic Laboratory Services (*Royal Canadian Mounted Police*)
- D'Arcy Smith, Special Advisor, Drug Evaluation and Classification Program (*Royal Canadian Mounted Police*)
- Daryl Mayers, Chair, Alcohol Test Committee (*Canadian Society of Forensic Sciences*)
- Amy Peaire, Chair, Drugs and Driving Committee (*Canadian Society of Forensic Sciences*)

Thursday, February 15, 2018

- Chief Mario Harel, President (*Canadian Association of Chiefs of Police*)
- Chuck Cox, Chief Superintendent and Co-Chair of the CACP Traffic Committee (*Canadian Association of Chiefs of Police*)
- Lara Malashenko, Legal Counsel, Ottawa Police Services, CACP Law Amendments Committee (*Canadian Association of Chiefs of Police*)
- Tom Stamatakis, President (*Canadian Police Association*)
- Laurie Fenton, Project Manager Traffic Stop Race Based Data Collection (*Ottawa Police Services*)
- Chris Rheaume, Superintendent Support Services (*Ottawa Police Services*)
- Lt. Jean-François Grégoire, Shift Supervisor (*Gatineau Police*)

Wednesday, February 28, 2018

- Howard Bebbington, Chair, Policy Review Committee (*Canadian Criminal Justice Association*)
- François Boillat-Madfouny, Member of the CCJA Policy Review Committee (*Canadian Criminal Justice Association*)
- Adam Steven Boni, Representative (*Canadian Council of Criminal Defence Lawyers*)
- Michael Bryant, Executive Director and General Counsel (*Canadian Civil Liberties Association*)
- Josephine A. de Whytell, Barrister and Solicitor (*Indigenous Bar Association*)
- Michael Edelson, Member and Lawyer, Edelson and Friedman LLP (*Criminal Lawyers' Association*)
- Jonathan Leeboosh, Member, Immigration Law Section (*Canadian Bar Association*)
- Kathryn Pentz, Q.C., Secretary, Criminal Justice Section (*Canadian Bar Association*)
- James Palangio, Crown Counsel (*Canadian Association of Crown Counsel*)
- Leo Russomanno, Ottawa Director and Lawyer, Russomanno Criminal Law (*Criminal Lawyers' Association*)
- Jonathan Rudin, Program Director (*Aboriginal Legal Services*)

Thursday, March 1, 2018

- Sheri Arsenault (*As an Individual*)
- Markitas Kaulius, Founder and President (*Families for Justice*)
- Andrew Murie, Chief Executive Officer (Mothers Against Drunk Driving Canada)
- Grace G. Pesa (*As an Individual*)
- Sarah E. Leamon, Criminal Defence Lawyer, Acumen Law Corporation (*As an Individual*)
- Kyla Lee, Lawyer, Acumen Law Corporation (*As an Individual*)

Wednesday, May 2, 2018

- Derrick Hynes, Executive Director (*Federally Regulated Employers Transportation and Communications*)
- Gérald Gauthier, Acting President (*Railway Association of Canada*)
- Simon-Pierre Paquette, Legal Counsel, Canadian National Railway (*Railway Association of Canada*)
- Megan MacRae, Executive Director, Human Resources (*Toronto Transit Commission*)
- Brian Leck, Head of Legal and General Counsel (*Toronto Transit Commission*)
- Nathalie Léveillé, Coordinator, Legal Affairs and Compliance (*Association du camionnage du Québec*)
- Serge Buy, Chief Executive Officer (*Canadian Ferry Association*)

Thursday, May 3, 2018

- Kathleen Fox, Chair (*Transportation Safety Board of Canada*)
- Jean L. Laporte, Chief Operating Officer (*Transportation Safety Board of Canada*)
- Gary G. Kay, President, Associate Professor of Neurology, Georgetown University (*Cognitive Research Corporation*)
- Wade Oldford, Chief Superintendent and Director General, National Forensic Laboratory Services (*Royal Canadian Mounted Police*)
- Gillian Sayer, Toxicology Scientific Officer (*Royal Canadian Mounted Police*)
- Graham Wood, Chief Research and Development Officer (*Altasciences Clinical Research*)

Wednesday, May 9, 2018

- Lennard Busch, Vice President West and Chief of Police of the File Hills First Nations Police Service (*First Nations Chiefs of Police Association*)
- Ian Jack, Managing Director, Communications and Government Relations (*Canadian Automobile Association*)
- Marc Paris, Executive Director (*Drug Free Kids Canada*)
- Hubert Sacy, Director General (*Éduc'alcool*)

Thursday, May 10, 2018

- Trevor Bhupsingh, Director General, Law Enforcement and Border Strategies (*Public Safety Canada*)
- Rachel Huggins, Manager, Policy Development (*Public Safety Canada*)
- Carole Morency, Director General and Senior General Counsel, Criminal Law Policy Section (*Department of Justice Canada*)
- Greg Yost, Counsel, Criminal Law Policy Section (*Department of Justice Canada*)

Wednesday, May 23, 2018

- Don Stuart, professor of criminal law, Queen's University (*As an individual*)

APPENDIX B – LIST OF BRIEFS

Alcohol Countermeasure Systems

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 14 May 2018.

Éduc'alcool

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 11 May 2018.

Railway Association of Canada

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 10 May 2018.

Canadian Urban Transit Association

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 8 May 2018.

Federally Regulated Employers Transportation and Communications

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 2 May 2018.

Barreau du Québec

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 2 March 2018.

Canadian Association of Crown Counsel

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 28 February 2018.

Canadian Criminal Justice Association

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 6 March 2018.

Indigenous Bar Association

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 27 February 2018.

Canadian Bar Association

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 27 February 2018.

Erika Chamberlain and Robert Solomon

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 8 February 2018.

Sheri Arsenault

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 20 March 2018.

Families for Justice

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 1 March 2018.

Grace G. Pesa

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 1 March 2018.

Kyla Lee and Sarah E. Leamon, Acumen Law Corporation

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 16 March 2018.

Criminal Lawyers Association

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 28 February 2018.

Draeger Safety Canada Ltd.

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 5 March 2018.

Canadian Society of Forensic Sciences, Alcohol Test Committee

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 13 February 2018.

Don Stuart

[Brief Submitted to the Standing Senate Committee on Legal and Constitutional Affairs](#), 16 April 2018.

Peter Hogg

[Brief Submitted to the House of Commons Standing Committee on Justice and Human Rights](#), 18 September 2017.