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DRINKING AND DRIVING IN CANADA:  
AN EVALUATION OF LEGAL POLICY  
AND OTHER COUNTERMEASURES

BY

WILLIAM M. HAYNES

1985

A THESIS

SUBMITTED TO THE DEPARTMENT OF  
CRIMINOLOGY, UNIVERSITY OF OTTAWA, IN  
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## ABSTRACT

Increasing criticism, initiated largely by grass-root victim advocate groups has brought into question the effectiveness of drinking and driving laws in curtailing such activity. The purpose of this study was to investigate the legal approach employed by the federal government of Canada to deal with drinking and driving.

In addition to a comprehensive literature review to provide the theoretical basis for this study, three other research strategies were used. A detailed review of the enactment of drinking and driving laws under the Criminal Code of Canada was conducted. This enabled a clear understanding of the principles and objectives of the laws as well as the various influences which have forged their development over time. A statistical evaluation of enforcement of the drinking and driving laws since 1962 was also presented. This provided an indication of the ability of the laws to apprehend drinking-drivers and reduce or prevent traffic accidents involving alcohol. Finally, a field survey of 19 representatives of various agencies involved in the drinking and driving issue was included. This afforded insight into the present and future status of the drinking and driving laws in Canada.

The thesis brought to light many interesting conclusions. Among them were:

1. The evolution of Canadian drinking and driving laws reflects a continuous process of legislative refinement toward maintaining a balance between justice and security goals. While protection of the public via restrictive laws has long been of paramount concern to legislators, growing concern has also been voiced over the potential violations of individual liberties inherent in such coercive measures.
2. Drinking and driving laws are punitive in nature and attempt to fulfill a deterrent role both in terms of preventing recidivism by offenders and continued drinking and driving within the general public.
3. Since 1962 legislative amendments have enabled increased apprehension of drinking-drivers. However only short-lived reductions in alcohol-related traffic fatalities have occurred. Drinking and driving laws and their enforcement have not afforded a deterrent effect.
4. A growing sense of shared responsibility initiated by victim advocate groups has spread.

within the private sector organizations, other government departments outside the criminal justice system and to some extent, within the general public. It is fast becoming recognized that long-term prevention of drinking and driving must begin with such an integrated approach to change social attitudes.

5. Legal policy to confront drinking and driving is likely to continue a strong punitive stance attempting to reinforce a deterrent role.
6. It is recommended that legal policy incorporate a stronger educational component in dealing with drinking and driving offenders. Such a component may facilitate a deterrent effect and is compatible with the current emphasis on public education.

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## CHAPTER ONE

### THE PROBLEM

#### Introduction

The consumption of alcohol and use of motor vehicles have become essential and valued facets of Canadian culture and life style. Both behaviours have long been viewed as pleasurable social activities. With the advent of motorized vehicles the combination of drinking and driving fast gained widespread acceptance as a natural part of social activity, despite legislation denouncing it. Until recently however, the extent of damage and harm caused by traffic accidents involving alcohol and the threat posed by impaired drivers have not been fully realized by the general public. Few Canadians are aware for instance that "approximately 40 percent of all drivers and 50 percent of all adult pedestrians killed on Canadian roads were impaired at the time of their death" (Smashed, 1979, p.3).

A number of grass-root victim organizations have gained rapid popularity and played the predominant role in emphasizing the serious nature of drinking and driving. Using extensive media exposure they have been instrumental in stimulating public awareness and making drinking and driving a priority issue for researchers and legislators. Much of their criticism is focused on the apparent inability of existing laws, sanctions

and enforcement practices, to curtail drinking and driving. Their mandate is primarily concerned with promoting legislative reforms and effecting change within general societal attitudes. In general these groups have been influential in initiating a critical examination of current drinking and driving laws. In light of this growing attention over the present legal approach, it is felt that this research would contribute toward a more comprehensive assessment of legal policy to combat drinking and driving.

#### Purpose of the Study

The fundamental purpose of this study is to explore the nature of the legal approach to drinking and driving in Canada. More specifically the primary objectives are: to evaluate the evolution of Canadian drinking and driving laws in order to identify the principles and goals of the laws as well as the forces that have influenced their development, to assess the effectiveness of the laws in terms of their ability to apprehend impaired drivers and reduce alcohol-related traffic accidents and fatalities, to investigate the full range of counter-measures available to combat drinking and driving, and finally to provide insight into the future of the laws and ways to improve the legal approach.

#### Limitations

The major limitation of this study is the lack of formal

scientific research published on drinking and driving. In particular, the absence of a thorough scientific investigation of the components of the deterrent effect in relation to the drinking and driving laws represents a problem in this research.

An additional limitation involves the problematic nature of the statistical data used in analyzing the effectiveness of law enforcement practices. Prior to 1960 data collection techniques were unreliable and, as a result, a comprehensive evaluation of enforcement trends is restricted to the years since 1962. As well traffic accident and fatality statistics do not indicate the presence of alcohol, making conclusions and generalizations about the degree of alcohol involvement difficult to make.

Assumptions

The major assumption inherent throughout this thesis is that drinking and driving is a serious social problem. As well, it is assumed that current drinking and driving laws are ineffective and in need of reform.

Definitions of Terms

Throughout the course of this thesis the researcher frequently uses the following terms.

- (1) "Drinking and driving" is a general phrase referring to the combined activities of consumption of

alcohol and the operation of a motor vehicle.

They may occur simultaneously or separately such as consuming alcohol then driving a motor vehicle.

As well the phrase does not necessarily imply that driving abilities are impaired by alcohol.

- (2) "Impaired driving" refers specifically to the operation of a motor vehicle while driving abilities are under the influence of alcohol and in a deteriorated state. The Criminal Code of Canada defines the illegal level of impairment as driving a motor vehicle with more than 80 milligrams of alcohol in 100 millilitres of blood.

- (3) "Alcohol-related traffic accidents and fatalities" refer to those accidents and deaths on roadways in which alcohol consumption was a contributing factor.

#### Methodology

Four types of research methods form the basis of this thesis. Literature reviews of material relevant to the topic were conducted at the Libraries of the University of Ottawa, the Traffic Injury Research Foundation in Ottawa and Statistics Canada in Ottawa. As well the researcher uses related material from: the Federal Departments of Justice, Transportation and the Solicitor General; the Ministry of the Attorney General,



Toronto, Ontario; the Alcohol and Drug Dependency Commission in the provinces of New Brunswick and Newfoundland; the Addiction Research Foundation, Toronto, Ontario; Mothers Against Drunk Drivers, British Columbia; and Students Against Driving Drunk, Massachusetts, United States of America. Other documents and reports found in popular magazines and newspapers are also reviewed.

To examine the enactment of drinking and driving legislation the researcher employs a historical approach. The Statutes of Canada beginning in 1892 with the establishment of the Criminal Code of Canada and the official reports of the Dominion of Canada, House of Commons Debates are reviewed. These sources will provide insight into the development of the drinking and driving laws as well as the discussions which surrounded them.

A statistical analysis of enforcement trends of drinking and driving laws and criminal negligence laws as well as traffic accident and fatality data is conducted. This analysis consists of a Linear Multiple Regression procedure to assess the degree to which drinking and driving laws apprehend impaired drivers and curtail traffic fatalities. This procedure also evaluates the effectiveness of changes in the laws over time. The most reliable sources for this analysis are the Traffic Enforcement Statistics and the Crime and Traffic

Enforcement Statistics published by Statistics Canada.

The final research method is a field survey. To gain insight into the present and future status of drinking and driving laws, a number of interviews with representatives of organizations involved with the criminal justice system, traffic safety, public health and human rights, are presented. For a list of these interview questions and the organizations surveyed see Appendix 5.

## CHAPTER TWO

### CRIMINAL LAW IN CANADIAN SOCIETY

#### Laws: Their Impact and Necessity

Laws and legal procedures play a very predominant role in all aspects of life. Everything we do is regulated, either directly or indirectly, by a widespread network of rules and legal controls. From registration at birth until disposal of state at death, laws govern our attendance at school, in sports, social activities, driving habits, business practices, employment, income, marriage, divorce and child-rearing. In this sense laws serve as agents of social control, regulating the behavior and interactions between all members of society, enabling them to live together in a safe and potentially constructive manner. As well they provide a stabilizing effect, offering all members of society a sense of structure and order in their lives.

Laws represent but one form of social control. Manners, customs, tradition, morals, religion, art, fashion, philosophy, and history, as well as various social institutions such as schools and the family unit are all methods by which members of a society are taught to conform to the values and standards of the group. Prior to modern industrialization and the development of state-governed societies, social orders relied almost exclusively on tradition, religion and forms of slavery or class

dominance to control behavior. Disputes that did arise were resolved through reconciliation or mediation between the families of both the victim and the offender, or dealt with under the strict, often harsh supervision of village elders or some other higher authority (Bittner and Platt, 1966; Vago, 1981).

The extent and complexity of legal restrictions and procedures, as we know them today, evolved out of a necessity for more sophisticated methods of effectively handling the vast changes that accompanied industrialization and state governments. Modern social systems are characterized by: a much greater focus on individual differences in needs, values and goals; less attention and attachment to kinship ties and face-to-face relationships; complicated access to material goods; much greater disparity in the distribution of wealth; and a continuous struggle for upward mobility. These features form the basis for increased conflicts and disputes within society. As a result, there is a much greater need for a widespread network of formal controls administered by the governing body or state to regulate relationships between individual people, between individual people and the state, and to control commercial transactions among business organizations.

While laws represent the ultimate resource available to society to deal with unacceptable behavior, they are being

increasingly relied upon to keep the system functioning and productive, as well as ensuring the safety and freedom of all members. The situation is most succinctly described by E. Adamson Hoebel, "The paradox...is that the more civilized man becomes, the greater is man's need for law, and the more law he creates. Law is but a response to social needs" (Vago, 1981, p. 3).

#### Nature and Types of Laws

In order to act as effective social control agents, laws have become diversified in both content and application. In terms of content a distinction can be drawn between "substantive" and "procedural" laws. Substantive laws consist of the rights, duties and prohibitions administered by the courts. They outline which behaviors are acceptable and which are not. Procedural laws comprise those rules regarding how the substantive laws are to be administered, enforced, changed and used in the resolution of disputes. Such laws regulate the laying of charges and presenting of evidence in courts.

With respect to the various types and uses of the laws, principal differences exist between "private laws" and "public laws". Private laws outline the rules that govern interactions among individuals. Such laws include: the law of "torts" or private injuries, contracts, property deeds, wills, inheritances, marriages, divorces and adoptions. Public laws govern the relationship between the individual and the state, the structure

of the government, the duties and powers of officials and the regulation of public corporations. Such laws include: constitutional law, administrative law, executive law, regulation of public utilities, and criminal law and procedures. Both private and public laws are substantive and procedural in nature.

Among the various forms of public law, criminal law bears the most immediate and direct influence on the daily lives of all members of society. It defines unacceptable behavior in terms of the negative, destructive consequences such behavior would have on other individuals, as well as, in light of the basic moral fiber of society. It also outlines the prosecution and penal treatment of offenders.

Current criminal law is derived from three basic sources: English common law, statutory law, and case law. English common law reflects the accumulation of widely shared values of acceptable and unacceptable behaviors. Over hundreds of years, ancient British tradition and custom became entrenched forming the basis of law. It was commonly understood by popular consent, that certain behaviors such as murder, rape and robbery, were definitely unacceptable. Statutory law, as opposed to English common law, is that which is enacted through government legislation. The laws prohibiting the sale and use of marijuana for example, have been introduced through state action. The third source is case law which reflects

the decisions enacted by judges through individual trial and appeal proceedings in criminal courts. These laws represent the active enforcement and interpretation of common law and statutory law. They often involve: the challenging of various legal concepts and philosophy, interpretation of the actual wording of written laws, the consideration of civil liberties and constitutional rights, and the weighing of the unique circumstances of each case. A notable observation on our present legal system is the increasing proportion of statutory law over common law. This is a result of a number of modern political developments and the use of legislation as the most appropriate and direct method of adjusting law to changing social conditions.

#### Functions of Criminal Law

The functions of criminal law are numerous and varied. Vago, (1981), in presenting the views of a number of sociologists, concluded that modern criminal law serves three basic roles: dispute settlement, social engineering and social control.

Dispute settlement involves the law as a tool of mediation between the circumstances and issues surrounding a conflict, to bring about a peaceful resolution. While civil law handles "torts" or private disputes, criminal law deals with the resolution of domestic violence for example. By settling conflicts through legal procedures, law and order are maintained.

Social engineering refers to the planning and structuring of social change which is initiated and guided by the law. As suggested earlier, laws play a very powerful role in defining what is and is not acceptable in society. In this way legislation can control and direct changes in societal norms and influence the moral structure of society. In this same context criminal law serves as an institution which promotes human growth and health. It functions to raise money for society and keep it operating in a productive manner. Finally, it serves to socialize individuals into the social system and to educate the public during times of change.

The third function of the criminal law, which was outlined previously, is social control. It defines the accepted and prohibited types of conduct as well as the sanctions imposed on those who violate those norms. It also defines and regulates the power of those officials who make, enforce and interpret the law. Through social control the law attempts to preserve social morals and ensure social order and justice while at the same time protect the civil liberties of all members of society.

In general while these various functions of law have been designed to work toward the regulation of individual lifestyles, the preservation of societies and the growth of civilization, it has been argued that the "over-legalization" of many



modern societies is suffocating them and hindering their growth. However dependent societies have become on a system of legal controls it is evident that laws form a central part of social life.

#### Fundamental Principles of Criminal Law

Criminal law has its foundations in a number of basic principles. Sutherland and Cressey (1974) suggest four such principles to be: politicality, specificity, uniformity, and penal sanction. Politicality refers to those laws which are enacted and enforced by the state or government and are thereby termed criminal. Vago (1981) maintained that although criminal acts may cause harm to individual members of society, crimes are regarded as offences against the state which represents and governs the people, collectively. They are considered as wrongs against the general public as opposed to wrongs between individual parties which would more appropriately be pursued through civil court action. In criminal law it is the state which initiates court proceedings and prosecution, assuming responsibility for the crime and its social harm and attempts to prove the accused guilty beyond a reasonable doubt. This is also an important principle of criminal law.

Specificity refers to the wording, interpretation and application of the criminal law. Although some laws such as vagrancy and disorderly conduct are quite general in nature,

criminal law typically offers a strict or refined definition of a specific act. Where no specificity exists, the judge is required to decide in favour of the accused. There is no general provision in criminal law requiring that any act which, when done with culpable intent, injures the public can be prosecuted as a punishable offence. Also, criminal law requires the verification of a number of specific features of an act in conducting a prosecution, such as the accurate identity of the actors, the intent of the perpetrator and his/her mental state.

Uniformity reflects the premise that criminal law attempts to administer justice without regard for an individual's social status, sex, age, education, religion, occupation, ethnic background and so on. It also strives to provide an accused with a fair trial where he/she is innocent until proven guilty beyond a reasonable doubt. While uniformity is a very basic principle, it is rarely followed in practice as it in itself would result in injustices. A certain amount of discretion is necessary within the administration of the law to ensure that the disposition of criminal cases accurately reflects the individual differences surrounding each case.

The fourth principle is that all offenders of criminal law will be punished or at least threatened with punishment by the state. The type of punishment may range from slight public disgrace to life imprisonment or even the death sentence. While there seems to be continuing public pressure, as can be

seen in the formation of grass-root lobby groups and heightened media attention, for more severe punishments, the criminal justice systems in western societies maintain their efforts toward education and rehabilitation of offenders, as well as on crime prevention and diversion from the legal system.

Gammage and Hemphill (1974) suggested another fundamental element of criminal law to be the relationship between the individual and the state. Based on the writings of Cesare Beccaria and the Classical School of Criminology and Criminal Law, these authors concluded that each individual member in society must give up a portion of his/her freedom to gain protection and security from the laws and enforcement agencies of society. No individual can live in a society and have absolute freedom, and at the same time have protection from the behaviors and lifestyles of others. This relationship has been termed a "social contract".<sup>1</sup>

Chamelin and Evans (1972) point out that the doctrine of responsibility plays a very important role in influencing modern legal systems. They maintained that criminal law functions on the premise that people act as they do of their own free will and are therefore responsible for their actions and may be held to account for them. These authors also

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1. The original formulations of the social contract can be found in the philosophical writings of Thomas Hobbs (1588-1679) and John Locke (1632-1704).

suggested another basic principle of criminal law to be the nature of the mental element involved. Prosecution of individuals in criminal cases relies heavily on the state's ability to determine the nature and degree of wrongful or criminal intent, "mens rea", in concurrence with the act of crime.

In classifying the types and degree of mental status, the state has drawn a number of distinctions. Intent implies the voluntary consideration and performance of a behavior, and is defined in two forms: general intent and specific intent. General intent is all that is required to be proven in the prosecution of most crimes. It can be demonstrated by convincing the jury that the accused knew what he/she was doing wrong at the time he/she committed the act. Specific intent must be proven and not assumed from the circumstances. It must be shown that the accused desired to accomplish a specific, prohibited result with his/her actions. The offence of theft is an example of a crime involving specific intent. By stealing, an individual desires to deprive another individual of his/her property. Recklessness is another form of mental status but does not involve voluntary intention. It is the performance of an act without the intent to harm, but in a way that completely disregards the lives and safety of others. Negligence is a voluntary state of mind which results in the unintended acts. There are four elements necessary to establish criminal negligence: a standard of care must exist where everyone owes everyone else

an equal amount of care such that violation of another's rights can take place, this standard must be breached by a failure to act with care and this failure must violate another person's rights, this breach must be the proximate cause of the harm, and there must be at least a slight degree of harm or injury to the person or property of another. This standard of care is asserted by the clause "What would a reasonable man, exercising ordinary caution, have done in the same circumstances" (Chamelin and Evans, 1972, p. 14).

Having briefly reviewed a number of the important, fundamental principles of criminal law, attention will now move to a discussion of criminal law in the context of Canadian society. These various principles will be reviewed in greater detail and in clearer reference to the problem of drinking and driving throughout the remainder of the thesis, specifically in regard to policy formulation.

#### Criminal Law in Canadian Society

The status of criminal law in Canadian society may perhaps best be understood by first considering the nature of Canadian culture and lifestyle in general.

When writing of Canadian society many authors begin by drawing distinctions between the American way of life and life in Canada. Michael T. Kaufman (1983) in making such a distinction described Canada as a country currently undergoing a re-examination

of its national image and values. Canada has long been a nation that has promoted a peaceful, nurturing and orderly image, one which envisages a paternalistic sense of security and a passive, non-violent approach to the resolution of conflict. Canadians, it has been said, "are more self-disciplined and more deferential to authority" (Kaufman, 1983, p. 82) than their American neighbors. They place great value on trust and loyalty to authority, regard equality as a higher virtue than individual liberty, and emphasize group consensus and well-being rather than personal needs. As Kaufman suggested Canadians see the American concern for personal freedoms as having created a culture which is permissive, in conflict, has high crime rates, always turbulent and very competitively oriented. Adherence to law and order is typically a Canadian way of life, and fosters trust in its leaders rather than distrust. Such distrust characterizes the American system of government:

These qualities, according to Kaufman, have evolved out of the historical development of Canada. Loyalty to British rule and collective participation have been the foundations of early Canada. English speaking Canadian elites have dominated the historical development of the country with its application of British law and custom. Exploration and settlement was guided by strong government and law and order. History then,

has forged such Canadian values as trust and respect for authority, concern for law and order, and equality above liberty. These have been adopted as the Canadian way of life.

Today, however, such dominance by one group of people has given way to a closer attention to the different cultures and the needs of the many ethnic populations within Canada. This re-examination, according to Kaufman is emerging partly as a result of the continuous influence of the American way of life, but also from a new focus on civil rights in Canada. Attempts to preserve ethnic cultures, regional differences, language policies and the new Canadian Charter of Rights have all provided a backdrop for a re-evaluation of the Canadian lifestyle and national image.

Criminal law has played a very important role in Canadian history. Kaufman (1983) suggested that in the United States people settled then made law, while in Canada, law preceded settlement. The Northwest Mounted Police, now the Royal Canadian Mounted Police, led the expansion and settlement of Canada. Since their origin, the Mounted Police have been a very well structured, polished organization developed to civilize the Canadian frontier and prevent the west from going wild. The Mounted Policeman or "Mountie" was actually a soldier, a member of a police force which was an extension of a strong, controlling government based on British rule and custom. As Pierre Burton,

one of Canada's foremost historians, noted "But the Mountie quickly became more than a soldier. Over the years he took his place as a father figure in a nation that adores father figures" (Berton, 1982, p. 28). The Mountie was a combination of civil servant, social worker, enforcer of the law, and keeper of peace, order and proper moral standards. He administered criminal law in a controlled, authoritarian manner, to maintain the ultimate goal of peace and security. To the Mountie, individual happiness and liberty were secondary to the pursuit of general order and security.

Berton continued on to point out that "the Mounted Police have a long tradition of bending the law when it suits their purpose - that purpose always being protection of the public, not only against violence and accidents, but also against sedition, treason, immorality and similar horrors" (Berton, 1982, p. 40). Over the past decade it is believed that the Mounted Police have forged tax returns, burglarized buildings, kidnapped witnesses, stolen dynamite, intimidated innocent people and tapped telephones. In light of such activity, Canadians appear to be quite content. It seems that the majority of Canadians feel that as the ultimate goal is protection and security of the country, such activity really isn't that bad or isn't too much to worry about. Again, as Berton pointed out "- respect for authority, the hunger for security, the yearning



for peace, order, and good, strong government, the rejection of the permissive and the "libertine" - are national qualities that unite us all" (Berton, 1982, p. 42). As can be seen from this brief historical overview of criminal law and its application in Canadian society, Canadians have traditionally placed great respect and trust in the law and those who enforce it. They have not only accepted the law, but abuses of the law as well in attempting to obtain peace, order and security.

The full extent of this current re-evaluation of national image and values suggested earlier by Michael Kaufman can be seen in the concern among Canadians over the nature and present status of Canadian criminal law. A critical eye is being cast toward a better understanding of criminal law, its purposes, scope, administration, and effectiveness. As a result of the joint efforts of the Department of Justice and the Ministry of the Solicitor General, both at the federal and provincial levels, the Criminal Law Review project was developed. It was designed to begin a comprehensive review of all substantive and procedural aspects of Canadian criminal law, in the form of over fifty programs to be completed by 1985. In a preliminary report, the Criminal Law Review (1982) outlined the philosophy, purpose, scope, effectiveness and principles of present criminal law in Canada, reviewing recommendations of the Law Reform Commission of Canada.

As reported by the Criminal Law Review the philosophical

justification of criminal law today is basically a retributive approach. This implies the use of criminal law and its various sanctions for the sake of justice being served and to ensure the denunciation for the wrong that has been committed. This emphasis on retribution does not carry with it the reliance on primitive, harsh and often inhumane punishments associated with the retributive philosophy of centuries ago, nor does it deny utilitarian concerns for rehabilitation of offenders and deterrence. Retribution, as understood today, entails the use of criminal sanctions as punishment in keeping with the concept of justice. They cannot be cruel, harsh or inhumane, but instead, be administered in proportion or degree warranted by the nature of the crime, its circumstances and consequences. Justice itself imposes limits on the extent to which punishment can be inflicted. It is also noted that modern retributive functions of criminal law may include utilitarian effects of deterrence, denunciation and reaffirmation of social values. The Criminal Law Review is careful to point out that regardless of the justification for criminal sanctions, the primary or fundamental nature of criminal law is punitive. Because criminal law is coercive and because it represents the ultimate end point on a continuum of societal responses to anti-social behavior, it should be used only as a last resort in cases where the conduct causes or threatens serious harm to individuals and society. Other methods and agencies of social control including

customs, manners, churches, schools and the family unit should be the initial responses used by society to deal with unacceptable behavior.

In stating the purpose of Canadian criminal law the Criminal Law Review suggested two basic goals: justice and security. Justice involves a concern for equity, fairness, a balance between the rights of the individual and the powers of the state, as well as the provision of an appropriate response by society for wrongdoing. Security involves the preservation of peace, prevention of crime and protection of the public. The pursuit of these two goals often creates tension and conflict within the criminal justice system and the administration of criminal law. If however, both justice and security goals are not equated with the retribution and utilitarian philosophies, respectively, then the balance between the two goals can be more easily understood. In this way both goals need not be viewed as incompatible. In summary the Criminal Law Review stated that "the purpose of the criminal law is to contribute to the maintenance of a just, peaceful and safe society through the establishment of a system of prohibitions, sanctions and procedures to deal fairly and appropriately with culpable conduct that causes or threatens serious harm to individuals or society" (Criminal Law Review, 1982, p. 5).

Historically the role of determining the overall principles

of the criminal justice system and their proper application has largely belonged to the judiciary, not the executive or the legislative components of the federal and provincial levels of government. The division of responsibilities between the two levels of government has traditionally been such that the federal government enacted the Criminal Code and other legislation having penal sanctions, as well as maintained and expanded the penitentiary system, while the provincial government established and monitored the police, courts, prisons and local jails. In general, though, relatively little attention was paid to the problem of crime and defining legal philosophy and goals. Over the years however, with the weakening of social control institutions such as schools, churches, and the family unit greater demands were placed on governments to assume more responsibility for growing social problems. As a result, the system expanded, the workload increased and governments took a more activist role in justice policy, focusing on legal policy in relation to social policy. Within the past few decades, the scope of the criminal law has broadened, accompanying the growth of the public sector involvement in the economic and social spheres.

In its present status, it has been argued that criminal law is in need of clarification on the basis that the Criminal Code is unnecessarily clogged with too many offences of an insufficiently serious nature, and that their inclusion places a heavy burden on the courts, unduly stigmatizes individuals

who don't deserve it, engenders disrespect for the system and undermines its effectiveness. The Criminal Law Review suggested that two steps are necessary for a re-evaluation of current criminal law. First, it is necessary to evaluate the appropriateness of continuing to treat as criminal, some current offences that may not seem to merit the use of criminal laws. Second, it is necessary to examine some forms of conduct such as various kinds of corporate activity, sexual harassment and wastage of energy resources, not presently dealt with as criminal, to see if they might warrant criminal action.

In terms of effectiveness of the criminal law in controlling crime and protecting the public, much controversy has grown stemming from criticism of procedural matters within the criminal justice system. The problems of incarcerating dangerous offenders, unrest in the prison system, growing crime rates, increasing fear of crime, inability to deal with emerging forms of unacceptable behavior, and concerns over meeting the needs of victims of crime, represent some of the issues confronting legislators and criminal justice officials today. Improving the administration of criminal law requires the evaluation of the preventive, investigative and prosecutorial methods employed throughout the criminal justice system. This, according to the Criminal Law Review is necessary to enhance the certainty of detection, apprehension, conviction and punishment of offenders.

Other suggestions of the Criminal Law Review focus on the issue of balance. The law must be able to strike a balance between: the liberties of the individual and powers of the state to facilitate crime prevention and control; the various subsidiary aims of the system such as denunciation, deterrence and rehabilitation; and Parliament's role in directing public opinion and acting as keeper of important, sometimes unpopular principles and Parliament's role in reflecting and responding to public concern. In addition, the Criminal Law Review (1982) also recommends: greater use of crime prevention methods such as environmental design and urban planning to reduce criminal opportunities; better education on drug and alcohol abuse and on the improper use of motor vehicles; amending certain regulatory statutes and procedures to increase the security of technology or system being regulated; decreasing the crime-generating capacity of the system and its susceptibility to misuse and fraudulent use; better training of law enforcement personnel to deal with complex, sophisticated forms of crime; more research on the effectiveness of criminal sanctions against all types of offenders; making the system more responsive to the needs of victims; increasing the accountability of the system in terms of the huge degree of discretion allotted to criminal justice officials by the laws; and finally, rewriting the laws such that they can be easily understood by all citizens in a clear, well-defined manner.

Finally, the fundamental principles of Canadian criminal law are reflective of those of law in general, outlined previously in this chapter. Canadians, as has been shown, tend to have great respect for the law and adhere to it for security and protection. They seem to have little difficulty in sacrificing a portion of their individual freedoms in the form of a social contract with the state, to receive law, order and protection. This is a valued principle of criminal law in Canada.

Another basic principle is that of criminal responsibility, or no criminal liability without fault. No criminal sanctions should be administered to those people who are not culpable or able to form some degree of intent to commit the criminal act. An exception to this are offences of strict liability where mere commission of criminal activity establishes liability. These will be discussed further in Chapter Three. This principle rests on the assumption of the rational, free-willed nature of human beings, and that in general, individuals break the law of their own personal choice, either intentionally, recklessly or negligently. This is the cornerstone of criminal law and is in need of clarification in light of the increasing emphasis on the criminal liability of organizations and individuals acting on behalf of organizations, in situations where corporate business activities cause or threaten serious harm to individuals or society. Responsibility is important in another

sense, in that the state has assumed the role of initiating the criminal law and the criminal justice system in response to anti-social behavior. The state has the burden of proving every material element of a crime beyond a reasonable doubt.

Having reviewed the nature of criminal law in Canada, attention will now be turned to a study of a specific piece of criminal legislation. The laws pertaining to the behavior of drinking and driving in Canada will serve as a case example of the application of criminal law to a major social problem.

#### Drinking and Driving: The Canadian Situation

"From 1973 to 1979, more Canadians died from drunk driving accidents - 18,000 - than were killed in action during World War II" (Chatelaine, 1982, p. 170). Chatelaine (1982) reported that in 1980 for example, alcohol was a factor in the deaths of about 2,600 Canadians. Given that roughly 169,000 drivers were charged with impaired driving in that year and that according to Dr. Alan Donelson of the Traffic Injury Research Foundation, the risk of being arrested for impaired driving runs at only one-in-two thousand, an accurate estimate of the total number of people who drove while under the influence of alcohol would appear to be overwhelming (Chatelaine, 1982, p. 174). It has been suggested that on any weekend night in Canada, two in ten drivers have been drinking and one in sixteen is legally impaired (Chatelaine, 1982, p. 170). With figures such as these, it can



be seen that drinking and driving is very much a part of the Canadian lifestyle and is a serious, widespread social problem. On a national level for example, the estimated costs for drinking and driving accidents in terms of medical bills, car repairs, and lost time from work and school for those injured in such accidents has been placed at 2.5 billion dollars or two percent of the annual Gross National Product. Added to these costs are the substantial expenses incurred by the criminal justice system in the detection, apprehension, prosecution, conviction and punishment of impaired drivers, as well as in the investigation of alcohol-related traffic accidents. Also, these costs go beyond financial expenses to include the pain, suffering and related problems of those victimized in such accidents.

Joseph Gusfield (1981) suggested that the current popular conceptualization of the drinking-driver who causes such harm is the "killer drunk". This label is seen to characterize individuals who demonstrate a severe disregard for the well-being of others as well as a lack of respect for the moral standards and controls of society. They are held to be irresponsible and unproductive, contributing nothing to the betterment of society, but driven by a selfish desire for personal pleasure at any expense. While this description draws public attention to the potentially dangerous consequences of drinking and driving, it does not adequately describe the total population of drinking-

drivers or the complexity of the problem.

The full dimension of the general drinking-driver population may be more easily understood when divided into three categories: young drinkers, social drinkers, and problem drinkers including alcoholics. The category of young people who engage in drinking and driving activity is comprised of the 16 to 24 age group. They are not only common first time drinking and driving offenders but also very frequent victims. According to Dr. R. Mayhew of the Traffic Injury Research Foundation "people under 25 represent about 21 per cent of all licenced drivers but account for about 58 per cent of the annual fatalities on Canadian roads" (The Saturday Star, March 26, 1983, p. A. 1). Furthermore, "40 percent of drunk drivers on the roads between 9 p.m. and 3 a.m., when the majority of fatal accidents occur are under 25 years of age" (The Saturday Star, March 26, 1983, p. A. 1) There is no doubt that drinking and driving plays a very important role in the deaths of many of today's youth. Their disproportionate representation in annual traffic fatality rates may be seen as a combination of inexperience in drinking, inexperience in driving and the use of a motor vehicle as an emotional outlet within this age group. As Dr. Evelyn Vinglis of the Addiction Research Foundation explained, "adolescence is a time of testing limits, of experimenting; it's hardly surprising that adolescent drinking and driving patterns often show recklessness and a lack of appreciation of consequences"

(Homemaker's Magazine, 1983, p. 14).

The category of social drinkers is comprised of a group of typically older, more mature individuals, who are experienced in drinking habits and effects of alcohol. They show no dependency on alcohol and have no history of alcohol abuse. They usually drink in moderation, but occasionally, mostly on weekends and social functions they consume enough alcohol to become dangerous drivers. While not as frequently involved in alcohol-related traffic accidents as the young and problem drinkers, this group constitutes a large proportion of the first-time offender population. In explaining why these otherwise responsible, experienced social drinkers sometimes drink and drive, the Premier's Interministry Task Force on Drinking and Driving (1983) suggested that: some often feel confident of their sobriety but are ignorant of their actual level of impairment; some know they shouldn't really drive but believe they can reach their goal through increased concentration; despite knowledge of the legal definition of impaired driving, some drink and drive based on their own assessment of personal coordination, level of awareness, and distance to be travelled; some social drinkers in rationalizing their behavior, feel confident that there is little risk of apprehension; still others reject any definition of impairment, feeling that alcohol improves their awareness and driving ability; and finally, there are those who, after consuming a few drinks of alcohol, fail to make any decision

regarding their driving ability, the morality of the behavior, or its risks.

The category of problem drinkers, like that of young drinkers, represents a small proportion of the total driving population, but are involved in a large number of alcohol-related traffic fatalities. In addition, they also constitute the vast majority of offenders convicted of more than one impaired driving offence. This group is typically characterized by individuals with various degrees of alcohol dependency who may have had a history of alcohol abuse. In this sense drinking and driving may be but a symptom of more general, established lifestyle problems. Wilson and Jonah (1983) reported "that impaired drivers are a small but socially deviant group, largely distinct from the larger group of average social drinkers. The tendency to drive while impaired may be just one manifestation of a broader constellation of high risk or irresponsible behaviors"

While these three categories are important in differentiating among the general drinking and driving population, Wilson and Jonah (1983) suggested that roadside surveys are likely to be more representative of the impaired driving population. During the spring and summer of 1981 roadside surveys were conducted by British Columbia, Saskatchewan and Quebec, between the hours of 9 p.m. and 3 a.m., from Wednesday to Saturday. In reporting the results, Lawson, Arora, Jonah, Krzyzewski, Smith, Stewart and Heatt (1981) showed that: male drivers were much more likely

to have been drinking and to be impaired, than female drivers. This was the situation in all three provinces. The youngest age group, 16 to 24, constituted 43 per cent of all impaired drivers in Saskatchewan, 38 per cent in British Columbia, and 27 per cent in Quebec. Drivers ages 25 to 39 had the highest levels of impairment. Sixty to 70 per cent of all impaired drivers were on the roads after midnight. Saturday night provided the highest proportion of all impaired drivers in British Columbia, and Thursday night provided the highest in Saskatchewan and Quebec. Blood alcohol content levels were generally higher for drivers of light trucks, making a disproportionate contribution to the impaired driving population, as trucks were far less frequent on the roads than passenger cars. Finally, blood alcohol content levels were consistently higher among those drivers who did not wear seat belts, such that 64 per cent of the impaired driving population in British Columbia and Quebec, and 40 per cent in Saskatchewan did not wear seat belts. In general, the roadside surveys may be limited in several ways. They are restricted by the number of questions that can practically be asked at the roadside and they may be biased toward frequent impaired drivers as well as those who drive at particular times.

This impaired driver profile characterizes those drivers deemed to be in a "high risk" category. Their presence on

highways and roads during early morning hours, coincides with the peak hours associated with traffic fatalities. While those who drink and drive run a higher risk of being involved in a traffic accident than those who do not drink and drive, the risk factor varies among the different age groups and in relation to the amount of alcohol consumed. Marilyn Anderson of The Saturday Star (March 26, 1983), reported that according to studies by the Traffic Injury Research Foundation the risk of a drinking-driver being killed in a traffic accident is greatest among the age 16 and 19 category. At the level of impairment defined as illegal by the Criminal Code, (80 milligrams of alcohol in 100 millilitres of blood) a driver in this age group runs a risk of being killed in a crash which is roughly 20 times greater than if he/she had not been drinking. For other age groups (20 to 24, 25 to 44, and over), the risk ranges from three to six times higher than for the non-drinker. At a higher level of impairment (100 milligrams of alcohol in 100 millilitres of blood), the risk factor for the youngest age group is 40 times greater than if he/she had not been drinking. In the other age groups the risk is 8 to 16 times greater.

In comparison to these high risk drinking-drivers, the more socially responsible drinkers and people who do not drink at all have a far less chance of being the cause of a traffic accident. This is not to imply that alcohol impairment is the sole cause of such accidents. While it must be seen as a major contributing

factor, alcohol impairment operates in conjunction with other factors such as the extent of driving experience, weather conditions, road conditions, type and condition of the vehicle, and driver impairment resulting from lack of sleep or some other distraction, to enhance the likelihood of an accident. Despite being less likely to cause an accident, responsible drinkers who drive, non-drinking-drivers, pedestrians and other innocent bystanders run the same risk of being victimized by an alcohol-related traffic accident. The impaired driver represents a threat not only to his/her own safety, but also to the well-being of others.

Concern for those victimized by traffic accidents which involve alcohol is a rapidly growing development within Canada. Public outrage in the form of grass-root lobby groups organized by angry survivors, robbed of family, friends and perhaps even their own health have been largely responsible for this heightened awareness. The most prominent of these victim advocate groups are "Mothers Against Drunk Drivers", "Citizens Against Impaired Driving", and "People to Reduce Impaired Driving Everywhere". They provide: an effective method by which individual victims can channel their anger and frustration into a constructive force; a way for victims to share their pain and suffering; a means to enhance public awareness about the extent and impact of drinking and driving and to gain widespread support for change, and finally, pressure policymakers and legislators to make drinking

and driving a top priority issue. In general these victim advocate groups form a very effective countermeasure to increase public knowledge, change societal attitudes presently in acceptance of drinking and driving behavior, and promote legislative reforms such as a higher drinking age, enhanced law enforcement, longer jail terms, heavier fines and frequent use of driver's licence suspensions.

At present, the laws governing drinking and driving in Canada are divided between federal and provincial jurisdictions. Those enacted under federal jurisdiction can be found in Sections 234, 234.1, 235 and 236 of the Criminal Code of Canada (see Appendix 1). These laws are enforced under provincial jurisdiction. Each province also has its own set of traffic regulations and highway traffic acts. Under Section 203 of the British Columbia Motor Vehicle Act, for example, a police officer is able to administer a roadside safety suspension of a driver's licence for 24 hours when he/she has reason to suspect that a driver is impaired. This enables the immediate removal from the highways of not only those drivers who are visibly drunk, but also those bordering on impairment. Also under this Motor Vehicle Act, a first conviction for impaired driving entails an automatic suspension of the driver's licence. Under the Ontario Highway Traffic Act there is a mandatory six month licence suspension and a discretionary three year loss of the driver's licence. In most cases the police officer is able to



use his/her discretion in deciding under which jurisdiction a charge will be laid. More often than not however, charges of impaired driving are laid under the Criminal Code of Canada. Because there is such a wide degree of disparity among the different provincial laws, only the federal drinking and driving legislation will be reviewed within the framework of this paper.

As can be seen from Appendix 1, Criminal Code legislation on drinking and driving is comprised of four sections. Section 234 prohibits any individual from being in care or control of a motor vehicle while his/her ability to drive is impaired, regardless of the proportion of alcohol in his/her blood. Under section 234.1 a peace officer, having reasonable suspicion that an individual who is in care or control of a motor vehicle has alcohol in his/her body, may demand that individual to provide a sample of his/her breath for immediate roadside analysis using an approved roadside screening device (e.g. The Alert Level Evaluation Roadside Tester, "A.L.E.R.T."). Refusal or failure to provide a breath sample is also a criminal offence under this section. Section 235 is a provision enabling a peace officer to demand any individual whom he/she suspects to be under the influence of alcohol while being in care or control of a motor vehicle, to provide a breath sample to determine the accurate level of intoxication in terms of blood/alcohol concentration. Again, refusal or failure to provide a sample of breath is a criminal offence under this Section. Section 236 prohibits

anyone from being in care or control of a motor vehicle with more than 80 milligrams of alcohol in 100 millilitres of blood, the illegal level of intoxication.

Both Sections 234 and 236 are designed to ensure that no individual under the influence of alcohol operates a motor vehicle. While Section 236 enables the detection and prosecution of individuals at or above a specific level of impairment, Section 234 covers those situations where someone's driving ability is impaired below the level described by the law, or by drugs, in which case such impairment would not be indicated using breathalyzer technology. Section 234.1 and 235 are designed to ensure that all individuals cooperate with law enforcement officers in attempting to determine impairment and level of intoxication. These laws prevent impaired drivers from avoiding criminal procedure and prosecution.

Individuals that are convicted of any of these drinking and driving offences are guilty of an indictable offence or an offence punishable on summary conviction, and are liable: for a first offence, to a fine not greater than two thousand dollars and not less than fifty dollars and/or to imprisonment for up to six months; for a second offence imprisonment for not more than one year and not less than fourteen days; and for each subsequent offence, imprisonment for not more than two years and not less than three months. The distinction between indictable and summary conviction procedures is primarily

that summary conviction proceedings and sanctions apply to offences which are viewed as being less severe in nature and not requiring the indepth criminal prosecution involved in such indictable offences as robbery and murder. The maximum summary conviction sanction is a fine not greater than five hundred dollars or imprisonment for six months or both. These sanctions enable offenders to avoid the stigma associated with being prosecuted and punished under indictment procedures.

As outlined earlier in this chapter, the primary objectives of criminal law in Canada are security and justice. The design of Criminal Code drinking and driving legislation serves to reflect these two objectives. This legislation is oriented toward protection of the public by apprehending those who are driving under the influence of alcohol or drugs and preventing them from causing greater potential harm in the form of injury and death from traffic accidents. With regard to the administration of sanctions, the laws are designed to reflect fairness and equity. They employ a three-stage structure of penalties that compliment the nature of the drinking and driving offences. First time offenders, for example, are differentiated from second time offenders who in turn are differentiated from offenders who commit subsequent offences. In this manner, this graded system of sanctions more adequately makes the punishment fit the nature of the crime.

Although security and justice are the primary goals of drinking and driving laws and sanctions, punishment, in a wider sense has a number of other goals such as deterrence, incapacitation, and rehabilitation. Rehabilitation has undergone much criticism and is currently viewed with much doubt and pessimism. It refers to structured attempts such as educational, vocational and therapeutic programs applied to offenders with the aim of modifying their incentives to engage in future criminal activity. Success of rehabilitation programs has typically been measured in terms of recidivism rates or the number of subsequent offences an offender commits after the treatment programs. As Ross (1981) reported, "Research concerning rehabilitation among violators of traditional criminal laws has led to the general conclusion that few if any programs produce the intended improvements and this fact may well yield pessimism with respect to the possibilities of rehabilitating drinking-drivers" (Ross, 1981, p. 5). Despite these pessimistic attitudes, rehabilitation will remain as a viable goal of criminal law.

Incapacitation is an elementary goal of criminal law and involves the restriction of an offender's ability and opportunity to commit new crimes. Imprisonment or removal of the offender from the mainstream of public life is a prime method for incapacitation. In relation to drinking and driving, suspension of driver's licence and vehicle seizures are attempts to incapacitate

these offenders.

Deterrence is a very basic goal of criminal law and rests on the premise that people will refrain from engaging in a prohibited act through a desire to avoid the negative consequences. The success of deterrence is measured in terms of a reduction in the overall violation rate for the law in question. Its effectiveness is believed to be a function of the perceived certainty, severity and celerity of punishment. Ross (1981) suggested that the greater the perceived likelihood of apprehension, prosecution, conviction, and punishment, as well as the more severe the eventual penalty and the quicker it is seen to be administered, the greater will be the effect of the legal threat. This type of "general deterrent" effect can be distinguished from a "specific deterrent" effect. Specific or individual deterrence focuses on the effect that actual or experienced punishment has on convicted offenders. In this sense punishment is administered to offenders in the hope that it will enhance their sensitivity to the threat of punishment, thereby increasing their desire to avoid further such punishment. This desire will prevent them from considering future criminal activity. According to Ross (1981) the effectiveness of this form of deterrence is presumed to depend on the type and strength of punishment as well as its consistency and swiftness of administration.

Based on the ever increasing publicity surrounding the

drinking and driving issue one has to wonder if the present laws and sanctions are being effective. Television shows, magazine articles, newspaper stories and growing pressure from victim lobby groups all point out the increasing number of traffic injuries and death involving alcohol, the disparity in sentencing of offenders as well as the outcry for much longer prison sentences. In light of these current problems it appears that the primary and subsidiary goals of criminal law are not being met and that the law may not be effective in controlling the drinking and driving problem.

If in the course of my investigation the drinking and driving laws are shown to be ineffective, a number of problems may be seen as providing a basis for this ineffectiveness. Lawmakers are presently struggling to find a proper balance between the rights and liberties of the individual and state powers deemed necessary to control or prevent drinking and driving. While there is continued outcry for tougher legislation in the form of measures that restrict the liberty and freedom of the person, there is also increasing concern from civil rights groups for the avoidance of such restrictive measures. Lawmakers are also fighting a strong public acceptance of drinking and driving. Societal attitudes reflect a tendency to view the offence as an accident, sympathizing with the offender and seeing him/her as a victim of unfortunate circumstances. These attitudes are permeated throughout the criminal

justice system. Criminal law has become an automatic response to deal with drinking and driving and other social problems. The state assumes responsibility for initiating action to control drinking and driving and then to prosecute and punish those who engage in it. In some respects, the state through the administration of criminal law has assumed the role of a parent, attempting to control behavior and make decisions that should be made by each individual member of society. The decision to drink and drive, for example, must be an individual choice which the law serves to reinforce.

In general it may be that in trying to maintain a number of objectives, criminal law may have lessened its ability to effectively cope with the drinking and driving problem. The effectiveness of the drinking and driving laws then, depends on whether or not the fundamental principles of criminal law are operational throughout the criminal justice system. The concepts of freedom, responsibility and the role of the state in controlling behavior are essential elements in understanding why the drinking and driving laws may or may not be effective. These will be dealt with in much greater detail as my investigation unfolds.

In the following two chapters the enactment and enforcement of Canadian drinking and driving laws will be reviewed to assess their orientation, purpose and effectiveness. If the laws prove to be ineffective, the objective will then be to determine where the problems lie.

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### CHAPTER THREE

#### REVIEW AND EVALUATION OF THE ENACTMENT OF DRINKING AND DRIVING LAWS IN CANADA

##### Historical Development of Drinking and Driving Legislation

Drinking and driving legislation first appeared in the Criminal Code of Canada in 1921. It represented one of many laws created by legislators during the turn of the century to regulate the use of motor vehicles and deal with problems that arose as motor vehicles gained popularity in everyday life. The origins of this legislation can be traced back to Section 253 of Canada's first Criminal Code in 1892 (see Appendix 2). Although this Section dealt with "injuring persons by furious driving", it failed to specify whether the vehicle or carriage involved was motorized and whether driving under the influence of alcohol was included in this offence. This Section was re-located under Section 285 of the Criminal Code in 1906.

With increasing familiarity and knowledge of motor vehicles, new forms of conduct were gradually outlawed. In 1909 and 1910, the term "vehicle" was clarified to mean motor vehicle, automobile or other, and theft of a motor vehicle as well as the liability of a driver for failure to stop after an accident, were added under Section 285.

Approaching the 1920's, motor vehicles became more affordable



to the general public and were being built to travel at faster speeds. With more widespread use people gradually became aware of the dangers of driving a motor vehicle while under the influence of alcohol. To control this problem legislation was passed in 1921 under Section 285 C of the Criminal Code, making it an offence to drive a motor vehicle while intoxicated (see Appendix 2). It was considered a summary conviction offence with a term of imprisonment of seven to 30 days for a first offence, between one and three months for a second offence, and between three months and one year for subsequent offences. The nature of these sanctions reflected the concern given to the problem at the time. Drinking and driving, although a growing problem was still not that prevalent and not seen as a serious situation requiring more urgent, drastic measures. The major concerns of legislators with this law were in defining the term "intoxicated" and regulating the amount of discretion left to the courts in determining the degree of intoxication considered to be illegal. The basic issue was one of specifying how many drinks would lead a person into an intoxicated state, so as to interfere with his/her ability to drive. While most legislators agreed that leaving too much discretion to the courts could be dangerous, it was concluded that the courts could quite efficiently determine whether the number of drinks a person had, made him/her intoxicated enough so as to interfere with his/her driving. In general this law was designed to cope with the extent of the

drinking and driving problem during the 1920's. Sanctions were seen appropriate in light of the danger of intoxicated driving to the general public. While public safety was a priority, some concern was voiced over the use of discretion by the courts in determining level of intoxication and subsequent guilt or innocence of the accused.

All legislation, once established and placed into practical use, undergoes a period of refinement and clarification of its purpose and its wording. This was also the case with the 1921 drinking and driving legislation which was amended in 1925. The scope of the law was broadened; first to include driving while under the influence of narcotics, and second, to encompass not only the driver but everyone who has care or control of a motor vehicle or automobile whether or not it is in motion. To sit in the driver's seat while intoxicated or under the influence of a narcotic was made an offence. While the sanctions remained the same, it was clarified that an offender was subject to a term of "imprisonment". These refinements reflected the continued attempts of legislators to make the laws more efficient in incapacitating all people who may operate or be in care of a motor vehicle in an impaired state of functioning. Again, public safety appeared to be of the utmost concern of legislators

The amendment of 1930 introduced a change to the system of punishments. Driving while intoxicated or under the influence

of any narcotic was made an offence punishable by indictment as well as summary conviction. While the summary conviction sanctions remained unchanged, indictment penalties specified a term of imprisonment between 30 days and three months for a first offence and for subsequent offences, a term between three months and one year. The only difference between the two types of sanctions was that the indictment involved only a two-stage system of penalties whereas the summary conviction involved a three-stage approach. The sanction for the first offence by indictment was the same as that for a summary conviction second offence, and both entailed the same maximum punishment for subsequent offences. The objective of this change was to stiffen the penalties for the offence. Indictment procedures were a little harsher and allowed the offender to commit the offence only once before receiving the maximum penalty. Summary conviction procedures enabled the offender to commit the offence twice prior to getting the maximum sanction, each time receiving a little stiffer penalty. This restructuring of sanctions was designed to enhance the deterrence of drinking and driving with the threat and application of stiffer punishments. As well, this stage system of penalties enabled clearer differentiation in the treatment of first time offenders and repeat offenders. In this way, punishment more adequately reflected the severity of the crime. However, Members of Parliament

criticized this amendment arguing that it contained no criteria outlining when a person would be charged and punished by indictment or summary conviction (House of Commons Debates, 1930 pp. 2741-2760). This provided room for the use and potential abuse of discretion by law enforcers and the courts. It was argued, for example, that two prosecuting attorneys dealing with similar offences on similar sets of circumstances may achieve quite different results or penalties for the accused, depending on which method of charge was followed. Despite this concern, the amendment remained on the basis that it would promote fair and equal administration of justice as indictment and summary conviction procedures would be used to accord with the nature and severity of the offence.

While it was not until 1947 that the next major amendment was introduced, three additional refinements were made to the laws between 1930 and 1947. In 1935 a provision was included to Section 285.4 which required judges to impose a term of imprisonment instead of a fine or suspended sentence. This clause was criticized by the Members of Parliament because it was felt that forcing judges to administer jail terms might make them more lenient in judging an individual's condition while driving a motor vehicle (House of Commons Debates, 1935, pp. 786-803). In 1938 it was established that anyone convicted of an offence under Section 285 could have their licence revoked by a court order for any length of time not exceeding three years. A

procedural clause introduced in 1939 supplemented this amendment by stating that a copy of the court ordered licence suspension be sent to the Registrar of Motor Vehicles for the province where the licence was first issued. In general these amendments again reflected the concern for public safety by attempting to ensure that convicted offenders did not have access to a motor vehicle for a specified period of time. As well, they were a response to the growing concern over drinking and driving and reflected a belief that harsh measures such as jail terms were necessary to atone for the seriousness of the problem.

The amendment of 1947 was designed to clarify the "care or control" clause of Section 285.4. It was established that care or control of a motor vehicle described the situation where an individual occupies the seat ordinarily occupied by the driver of the motor vehicle. It also provided an opportunity for an individual accused of having care or control of a motor vehicle while intoxicated or under the influence of any narcotic, to state why he/she entered the vehicle and sat in the driver's seat. Objections to this amendment arose along two points (House of Commons Debates, 1947, pp. 2301-2308). Some Members of Parliament argued that this change violated the essence of British Criminal Law in that it shifted the onus for proving guilt or innocence from the criminal courts to the accused. It placed the accused in the position of having to show what his/her intentions were upon entering the vehicle while impaired

and to demonstrate his/her innocence. The response to this argument was that since the means of proof lay within the individual, no injustice was being done. The second criticism by Members of Parliament was that this amendment actually improved the opportunity for intoxicated drivers to avoid apprehension. It was felt that some intoxicated drivers at least, would drive until seeing a police officer, then pull off the road claiming to "sleep off" the effects of alcohol, but then resume driving once the police officer was out of sight. However the amendment was passed by the legislators with the purpose of benefiting those individuals who in the process of driving realize their level of intoxication, pull off the roads until sober again and able to drive safely. It was maintained that individuals showing such responsible judgment should not be incriminated.

In 1951, the government responded to mounting pressure to make the laws more effective, by enacting two amendments. The first was the creation of a new offence of "driving while ability to drive is impaired by alcohol or any drug". In cases where definite proof of intoxication cannot be ascertained under Section 285.4 of the Criminal Code, a person could now be charged under Section 285.4(a). Because the state of impairment is easier to identify and establish than that of intoxication, this impaired driving offence provided law enforcement officials

with a law having a wider scope to apprehend not only intoxicated drivers but also those who are impaired but not to the point of intoxication. Such drivers, although not intoxicated, are under the influence of alcohol and a threat to public safety. The sanctions for this new offence again involved three stages of punishment. For a first offence an accused was subject to a fine between fifty and five hundred dollars, or to imprisonment for a term no longer than three months, or to both. A second offence entailed a prison term between 14 days and three months. For each subsequent offence the punishment was a prison term between three months and one year.

The second amendment was aimed at further clarifying the offence of driving while intoxicated. It attempted to incorporate into the law a means of specifying various levels of intoxication in relation to the amount of alcohol in the body. This provision enabled the use of blood, breath or urine samples to determine the body's blood-alcohol content, as admissible evidence of intoxication in the courts. There was however, no legal obligation upon the accused to provide either of these samples.

For the next 17 years not much parliamentary debate surrounded the drinking and driving legislation, then in 1968 and 1969 the sections pertaining to drinking and driving were relocated in the Criminal Code as well as the introduction of two major amendments. Under Section 234.1 a peace officer having suspected a person of committing an offence under Section 234 (driving while

impaired) within a previous two hour time period could demand that person to provide a sample of his/her breath for breathalyzer analysis to determine the person's blood-alcohol content. Under Section 235, failure or refusal to comply with this demand was a summary conviction offence involving a fine of fifty to one thousand dollars and/or imprisonment for a period of not exceeding six months. A second amendment established a new offence. With improvements in the chemical analysis of bodily substances, the driving while intoxicated law was made obsolete and replaced with Section 236. This new law made it an offence to operate or be in care or control of a motor vehicle with more than 80 milligrams of alcohol in 100 millilitres of blood. This was punishable on summary conviction and involved sanctions similar to those under Section 235. A number of other provisions were also introduced which governed when and by whom the breathalyzer test could be administered as well as the standard of equipment used.

Conflicts that arose in Parliament over these amendments were concerned with: assuring the validity of breathalyzer tests; determining what blood-alcohol contents would denote dangerous and unsafe levels of impairment; and questioning the nature of the new law and its potential to be self-incriminating (House of Commons Debates, 1968-1969). However the Supreme Court of Canada, at that time, ruled that the breathalyzer law was not self-incriminating or in violation of civil liberties.



It was maintained that no person would be subjected to the test unless there were probable and reasonable grounds for belief of impairment and that the test results would only contribute to a case, not decide it. Other physical signs of impairment would be considered as well. Members of Parliament agreed that invasion of civil liberties was not absolute and in view of the seriousness of the offence there was nothing wrong with the law (House of Commons Debates, 1968-1969). Again this legislation reflected the interests and concern for protection of the public both in terms of safety from impaired drivers and in respect for civil liberties.

The next and most recent amendments occurred in 1976. Outlined previously in Chapter Two they introduced a provision for roadside analysis of breath and increased the severity of sanctions of the drinking and driving laws. In general these amendments provided a broad network of laws refined to facilitate the apprehension of as many drivers impaired by alcohol as possible. They enabled law enforcement officials to adopt a more proactive approach in the prevention of alcohol-related traffic accidents and fatalities. The increase in severity of sanctions reflected the desire by legislators to assume a more serious stance on the problem. There have been no major amendments since 1976.

#### Overall Trends of Drinking and Driving Laws

In retrospect the evolution of Canada's drinking and driving

legislation is reflective of a more general process of legislative refinement. The initial drinking and driving legislation of 1921 provided a framework from which the legislators and the courts could refine the laws to meet the needs of a growing society. In general, amendments seem to have been made on a rather frequent basis. They occurred as public awareness of the dangers of drinking and driving grew, and when problems arose with each existing law in its practical use. Each amendment represents a legislative attempt to enhance the scope and effectiveness of the laws, in light of concern for the optimal safety of the public. This pattern is especially characteristic of the early development of the drinking and driving laws. Legislators have typically been struggling to establish the level of intoxication or impairment which interferes with driving ability as well as specify under what conditions an individual has care or control of a motor vehicle and is liable to incrimination. Basically these issues and the debates which surrounded them reflect the concern for refining and specifying the laws for greater protection of the public through the detection and conviction of as many impaired drivers as possible.

During these early stages of legislative development the primary goal was security and the protection of the general public, however concern was shown from time to time over the use of discretion by the police and the courts in apprehending and

and sentencing offenders. Towards the end of the 1960's and the early 1970's, the justice goal gained much more prominence. Fear that the laws were becoming too restrictive and encompassing, and that their application often involved violations of individual freedoms, grew rapidly. The legislators became involved in a deeper struggle to maintain the justice goal in terms of finding a balance between the rights and freedoms of the individual and the powers of the state in attempting to prevent drinking and driving. With the introduction of compulsory breath analysis, for example, came criticism concerning the issue of forcing people to submit to such testing and its possible self-incriminating nature, as well as the fears of laws placing an onus on the individual to prove his/her innocence. Since this 1969 amendment demands for stiffer penalties and longer sentences as well as more proactive laws have always been countered with outcries over potential civil liberties violations and support for the rights of the accused to fair and just procedures throughout all stages of the criminal justice system.

While security and justice goals have been the foremost concern of lawmakers and the primary objectives of the drinking and driving legislation, other functions such as deterrence, incapacitation, and rehabilitation have gradually come to play more important roles in the enactment of the laws. It has always been anticipated that an additional benefit of the laws would be to deter first time offenders from repeating their crime as

well as to inhibit the general public from engaging in the prohibited activity. In this sense, deterrence has been incorporated as a subsidiary goal of the drinking and driving laws. The wording and nature of the laws are "all-encompassing", attempting to apprehend everyone who drinks while in care or control of a motor vehicle. The use of such preventative measures as roadside screening and breathalyzer tests have been designed to make the laws more efficient in the detection of offenders, but also to enhance the public's perception of the risks of being apprehended and convicted, thereby serving a deterrent role. The three-stage system of sanctions serves as a warning system that punishments get progressively more severe and is aimed at deterrence. The use of fines and licence suspensions also represent attempts to deter people from drinking and driving.

The incapacitation function appears not to have had much influence in the creation of impaired driving legislation. While over the years legislators have made provisions requiring judges to use jail terms and from time to time have stiffened sanctions with longer jail terms, the system of penalties reflects a desire to deter as opposed to incapacitate. Much criticism about the criminal justice system today, concerns current judicial practices, especially in relation to drinking and driving offences, which employ frequent use of fines in place of jail terms, with the majority of jail terms being

relatively short or even suspended. Licence suspensions serve as an alternative form of incapacitation by removing the opportunity to operate a motor vehicle. Again, while licence suspensions are presently under provincial jurisdiction, much criticism has been directed at their infrequent use.

The rehabilitation function has only recently gained consideration with the 1976 amendments enabling treatment for alcohol or drug problems through a probation order. Traditionally, attempts to introduce provisions for rehabilitation of problem drinkers or alcoholics who drive, have met with disapproval of legislators on the basis that such treatment concerns were under the jurisdiction of the Department of Public Health, not the Department of Justice.

#### Principles of Law and The Drinking and Driving Problem

Drinking and driving offences like other traffic violations, are offences of strict liability. The legal category of strict or absolute liability foregoes a concern for the motives and intentions of the perpetrators of criminal activity but is concerned with the criminal activity itself. Proof of the commission of a crime by a specific individual or group of individuals is all that is required in establishing criminal liability. The intent of the motorist to become impaired by alcohol or drug and operate a motor vehicle need not be shown, the fact that he/she did so is enough to indicate his/her guilt.

In 1962, the Supreme Court of Canada, ruling the case of *R. versus King*, maintained that "mens rea" or the mental element of criminal activity was not an essential ingredient relating to the act of driving and to the offence of impaired driving. This court decision established that voluntary consumption of alcohol to the point where an individual becomes unaware of his/her behavior does not offer a valid excuse to escape responsibility for his/her actions. As well, an individual who becomes impaired by taking a drug or medical prescription without knowing its effect, is liable if he/she realizes the impairment prior to operating a motor vehicle.

The Supreme Court of Canada further clarified this principle with a ruling in the 1982 case of *Ford versus The Queen*. It stated that an intention to drive was not an element of the care or control offence. Care or control may be exercised without intent to drive as an individual may perform some act or series of acts and unintentionally set a motor vehicle in motion.

In general, impaired driving is a strict liability offence where voluntary alcohol consumption is not an acceptable defence against drinking and driving in a court of law. While this is a very important principle in the enactment of drinking and driving legislation, much criticism surrounds the extent to which it is operationalized in the administration of law as well as the degree to which it is supported within the general public.

Separately, both the acts, drinking and driving, form very

important and accepted aspects of social life, and they are certainly no less popular when combined. A great proportion of those who drive while under the influence of alcohol are social drinkers who, except for an occasional act of carelessness or neglect, live otherwise productive, responsible, and law-abiding lifestyles. Because they do not fit the accepted image of the typical impaired driver, they are seen by the general public as being the unfortunate victims of circumstances leading to their apprehension. Their apparent lack of intent to endanger the safety of others while driving under the influence of alcohol is seen to set them apart from the "more dangerous criminal offenders" who are believed to demonstrate such general intent. In the public eye, this absence of intent somehow makes those apprehended for drinking and driving less liable for their criminal activity and more deserving of leniency in the criminal courts. These societal attitudes are a source of contention for victim advocate groups and are well documented as the essential problem to be overcome in achieving widespread reduction and prevention of drinking and driving. As well, they have permeated throughout the criminal justice system and are reflected in the increase of criticism over the lack of attention given the drinking and driving problem by legislators and law enforcement officials and in the "lenient" approach in sentencing of offenders by the courts.

The concept of responsibility is important to the drinking

and driving problem in a number of ways. The state, at various levels of government, has taken the responsibility for confronting the problem and in doing so it employs the use of criminal laws and the criminal justice system. It assumes the role of a generalized victim of crimes committed against society and initiates the detection, apprehension, prosecution, conviction and sentencing of offenders. In this manner the onus is on the state to prove the accused guilty beyond a reasonable doubt. Given this degree of responsibility the state has come to play a very important role in: conveying socially accepted moral standards; distinguishing appropriate from inappropriate behavior and how the latter will be punished; and continuously monitoring and enforcing these standards. While this has been a valued and essential principle in the evolution of criminal law, I feel that it has had a negative effect on today's society.

Although Canadian criminal law relies heavily on the assumption that human beings are freewilled, rational decision-makers, responsible for their own behavior, the state and its system of criminal justice has not fostered the development of these concepts within members of society. The ultimate decision not to drink and drive is a personal one and requires an understanding and consideration of the full nature of the problem as well as a strong conviction to maintain the decision on a day-to-day basis. However, the state in assuming such a large



degree of responsibility seems to have displaced the importance of such individual decision-making and created an environment in which people depend on the state to make decisions regarding their behavior, decisions more appropriately made at an individual level. The state has limited the responsibility of individuals for arriving at their own decisions about drinking and driving by denouncing it, monitoring its occurrence, and punishing those who engage in it. In this respect the state has also alleviated individual victims of traffic accidents involving alcohol, of the responsibility for initiating criminal prosecution against their offenders. However the growing popularity of citizen-based pressure groups serves to demonstrate the attempt to reestablish a more influential role for each member of society. Such groups promote the importance of individual responsibility in the prevention of drinking and driving as well as stimulate legislators for change as a means of enhancing individual input into the justice system.

When discussing the enactment of drinking and driving legislation the principle of the social contract, as outlined in Chapter Two, is a crucial issue. Establishing a balance between the powers of the state to prevent drinking and driving with effective legislation and the rights of the individual to enjoy a lifestyle with minimal intrusion by the state, has always been a struggle for legislators. Historically, attempts to enact stiffer, more restrictive drinking and driving laws

for greater public safety have met with much debate and criticism. Fears that the laws might leave too much discretion to the police and the courts, that they may be self-incriminating as well as in violation of personal freedoms and civil liberties, countered many of the legislative changes especially since 1970.

This growing conflict over pressure for strict laws and concern for safeguarding individual rights and freedoms, is reflective of the relationship between the social contract and the drinking and driving issue. In order for strict drinking and driving laws to be effective in apprehending more and more impaired drivers to enhance public safety, all members of society must relinquish a larger portion of their personal freedoms. The amendment of 1968-1969, for example, which introduced compulsory breathalyzer analysis of drivers to provide a more efficient means of establishing impairment, was heavily criticized as being an infringement of individual rights and freedoms.

In light of the frequent media reports about the growing threat of drinking and driving, and the increasing fatalities resulting from traffic accidents involving alcohol, the continued concern over restrictive drinking and driving laws and enforcement efforts, and a general societal attitude which condones the activity, it seems that the social contract is a sensitive issue. People are weary of sacrificing too much of their freedom to consume alcohol when they like and to drive a motor vehicle

when and how they choose, in order to allow the state a better opportunity to protect them by preventing alcohol-related traffic accidents. However, just as the state must continue to balance between laws that are effective and yet acceptable to the general public, each member of society must evaluate his/her role in this social contract and find a suitable trade-off between individual freedoms and overall public safety.

#### Future Direction of Drinking and Driving Laws

As well as becoming an issue of widespread public concern, drinking and driving is also becoming a priority for reform among researchers and legislators. Growing public awareness of the serious threat posed by drinking and driving is fast being channeled into mounting pressure for strict legislation to increase the apprehension of impaired drivers and the punishments administered to them. Given this current atmosphere combined with the fact that the most recent amendments included provisions for longer jail terms and heavier financial sanctions, as well as enhanced detection and apprehension procedures, and that the basic nature of criminal law is punitive, it is likely that future legislation will also be punitive reflecting the stronger stance of legislators.

In February 1984 the then Minister of Justice and Attorney General of Canada, the Honourable Mark Macguigan directed the

Department of Justice to conduct an extensive review of the present Criminal Code drinking and driving legislation. They concentrated on three main areas of concern: impaired drivers who injure or kill, the penalties administered to impaired drivers, and the use of bodily substances for blood alcohol analysis.

Traditionally in situations where death or bodily injury resulted from alcohol-related traffic accidents, prosecutors have attempted to argue that the impaired drivers were criminally negligent with such negligence being the cause of the death or injury. Establishing a case of criminal negligence however is often difficult and involves the evaluation of the mental element of the crime. As part of Mr. Macguigan's Criminal Law Reform Bill, two new offences were proposed to make it easier to convict impaired drivers in situations where death or injury resulted. The first specifically outlawed impaired or dangerous driving causing death and involved a maximum penalty of life imprisonment. The second outlawed impaired or dangerous driving causing bodily harm and carried a maximum penalty of 10 years. With these proposed offences it was not necessary to determine what constituted negligence, but simply to show that the drivers were impaired and that this state of impairment resulted in the death or injury. In general these offences were designed to reflect the significance or involvement of alcohol in the crime and no longer permit impaired drivers

to escape a stricter degree of responsibility for conduct which causes death or injury.

In response to mounting pressure for stiffer punishments these proposed amendments encompassed changes to the penalties and treatment of convicted impaired drivers. Under these proposals minimum punishments for impaired driving and unreasonable refusal or failure to provide a breath sample were designated to be a fine of three hundred dollars and a mandatory three month suspension of driving licence for a first offence, fourteen days in jail and a six month licence suspension for a second offence, and ninety days in jail and a twelve month licence suspension for each subsequent offence. The maximum penalties for these proposed offences were six months in jail and/or a two hundred dollar fine if treated by summary conviction, and five years in jail and/or an unlimited fine if treated by indictment. The courts would also have the power to suspend driving licences up to three years in all cases, depending on the circumstances, and for life in more serious cases. In addition, the courts would be able to impound the cars of people convicted of driving offences for as much as one year. This would provide another means of ensuring that offenders who do not respect a prohibition from driving would at least not be able to drive their own vehicles.

With regard to further treatment of convicted impaired drivers, the Criminal Code Reform Bill proposed that the courts

be permitted to order alcohol treatment programs for offenders with drinking problems. Offenders could also be required to undergo a medical examination or even be held in custody for such testing to determine whether the individual is an alcoholic. Additional provisions in this Reform Bill included opportunities for community service orders and restitution for offenders.

The final area of concern involved the use of blood samples for blood alcohol analysis. It is often the case that under certain circumstances such as admission to a hospital for injury resulting from traffic accidents, suspected impaired drivers can avoid the law requiring them to provide a breath sample. The Reform Bill proposed that with a warrant issued by a Justice of the Peace, doctors or medical technicians would be allowed to take blood samples from drivers who are physically or mentally unable to provide breath samples. These samples would then be used in determining blood alcohol concentrations, and taken as admissible evidence in criminal courts. While warrants for these samples might be obtained by a telephone conversation with a Justice of the Peace, they would not be taken if possibly endangering the health or life of the suspect. The suspect would also be entitled to request an independent blood analysis. It was anticipated that the most frequent use of this procedure would be in cases where the motorist is unconscious.

In general these proposed amendments represented a renewed government concern and initiative over the problem of drinking

and driving. The new offences and refined sampling provisions were designed to ensure that impaired drivers do not escape liability for their crime. As well it was hoped that they would enhance the general deterrent effect of the laws. These proposals did not become law however, as following a national election in September 1984 a new federal government came into power.

Maintaining a strong emphasis on revision of the drinking and driving laws, the present Minister of Justice and Attorney General of Canada, the Honourable John Crosbie has reiterated proposals similar to those of the former Minister (see Appendix 3). These current proposals stress increased severity of sanctions such as long terms of imprisonment, heavy fines, lengthy periods of prohibition from driving, and impounding of motor vehicles. As well they incorporate a provision for the mandatory use of blood samples where breath samples cannot be obtained and new offences of impaired boating and flying. These offences have sanctions similar to those accompanying impaired driving. The Minister is careful to point out that enhanced law enforcement and changes in social attitudes must accompany these proposed amendments.

In general the direction of future drinking and driving legislation will largely depend on the success of these current proposals, once they have become established as law, and the amount of public support they receive.

## CHAPTER FOUR

### HISTORICAL REVIEW AND EVALUATION OF THE ENFORCEMENT OF CANADIAN DRINKING AND DRIVING LAWS

#### Impact of Canadian Drinking and Driving Laws

Having reviewed the enactment of drinking and driving legislation in Canada from a historical perspective, this chapter will attempt to investigate the enforcement of those laws over the years. It is hoped that this will provide some insight into the impact of the laws in terms of their practical application in everyday life.

Assessing the effectiveness of the drinking and driving laws requires a comparison between what the laws have been created to do and what in fact they do in everyday application. The primary objective of these laws is the protection of the public by ensuring safety from impaired drivers on public roads and highways. In order to be effective they are designed to remove impaired drivers from public thoroughfares by early detection and apprehension thereby reducing and preventing traffic accidents and fatalities. As a subsidiary goal, it is anticipated that the laws and their enforcement would deter the general public from drinking and driving by enhancing the perceived risks of being apprehended. Comparisons between the annual rates of drinking and driving offences and the annual rates of traffic accidents before and



after the establishment of new legislation will be conducted to study the effectiveness of these laws in fulfilling their objectives.

Prior to beginning this analysis, a number of expectations and hypotheses can be outlined. Given that the laws have been designed to protect the public by removing the threat created by impaired drivers, then it may be expected that their enforcement ought to decrease the rate of traffic accidents and fatalities, especially as they become more proactive and refined for prevention. Also, given that such refinement enables earlier detection and apprehension of impaired drivers, then it may be expected that as the laws are enforced, rates of charge under them ought to increase. In general, two basic hypotheses may be stated as follows:

- (1) If the laws are effective in protecting society by removing impaired drivers from roadways through efficient detection and apprehension methods, then as offence rates increase, traffic accident and fatality rates ought to decrease.
- (2) If the laws are effective in discouraging the general public from drinking and driving, then both the offence rates and traffic accident and fatality rates ought to decrease as the laws become more refined.

After examining the quantity and quality of statistical information recorded on the enforcement of drinking and driving laws since 1921, I have decided to use as my data base, the most comprehensive and valid data available, that of the

"Unified Crime Reporting Program" initiated in 1962. Prior to 1962, drinking and driving statistics were located in the Statistics Canada Publication, 85-201 - "Criminal Statistics". This was the first method of collecting data on criminal offences and was designed to provide information on: the number of people charged and then convicted; the age, sex, education, occupation, religion and marital status of convicted persons; and the type and length of sentence handed out. Although this publication represented a very systematic approach to the collection of detailed information, its usefulness is limited for a number of reasons. As it was discontinued in 1973, similar data were not recorded from 1974 onward. This threatened the continuity and validity of statistical trends spanning those years. A second problem is the wide variability over time with which data were collected and recorded. Some provinces such as Quebec and the Northwest Territories rarely recorded data, and there are years during the 1920's when statistics were not kept at all and the offences not even listed in the publication. Thirdly, the descriptive data such as age, occupation and education were often characterized by a large number of people who failed to report such information. In 1921 for example, of a total 48 convictions recorded, 45 people did not state their occupation. This problem seemed to be characteristic

of the data even up until the 1970's. Finally, this publication did not include information on the number of motor vehicle accidents or fatalities. Again, this presented the problem of having to resort to other publications which base their data on different population sizes, as well as use different recording methods. In general, this publication may be useful in taking only a preliminary look at enforcement of the legislation prior to 1962.

With the initiation of the "Unified Crime Reporting Program", data collection was done with much more consistency and accuracy. This system was the result of a joint effort of the Canadian Association of Chiefs of Police and Statistics Canada and was designed to enable the collection of more complete and reliable data on crime and traffic enforcement by federal, provincial and municipal police agencies. Two publications for traffic statistics were created under this system; the "Traffic Enforcement Statistics" publication - 85-206 which was updated in 1974 and became "Crime and Traffic Enforcement Statistics" - 85-205. Information from these publications provides data on: the type of offence; the actual number of offences (the total number of offences reported minus those unfounded); the number of offences cleared by charge or otherwise (e.g. pre-trial diversion programs); rates of all data based on 100,000 population of Canada, sex

of persons charged; offences by federal, provincial and municipal statutes; enforcement by type of police agency - federal, provincial, and municipal; the types of traffic accidents - fatality, injury and property damage; and the number of persons killed as well as their status - driver, passenger or pedestrian.

As these publications are the most reliable source of data, my analysis of the drinking and driving laws will be restricted to the legislation spanning 1962 to 1981. This period encompassed two significant amendments, the compulsory breath analysis legislation of 1968-69 and the 1975-76 amendment which increased the penalties for drinking and driving. It should be noted that a slight adjustment was made to the data from 1962 to 1970. During those years offence and accident rates were based on 100,000 per population of registered drivers for each year, while from 1970 on they were calculated on the basis of 100,000 per population of Canada. This difference necessitated the conversion of all data prior to 1970 to rates per 100,000 the annual population of Canada.

When reviewing the statistical data, comparisons will be made between the rates of enforcement of a number of offences and their subsequent effects on traffic accident and fatality rates. The law enforcement rates used throughout

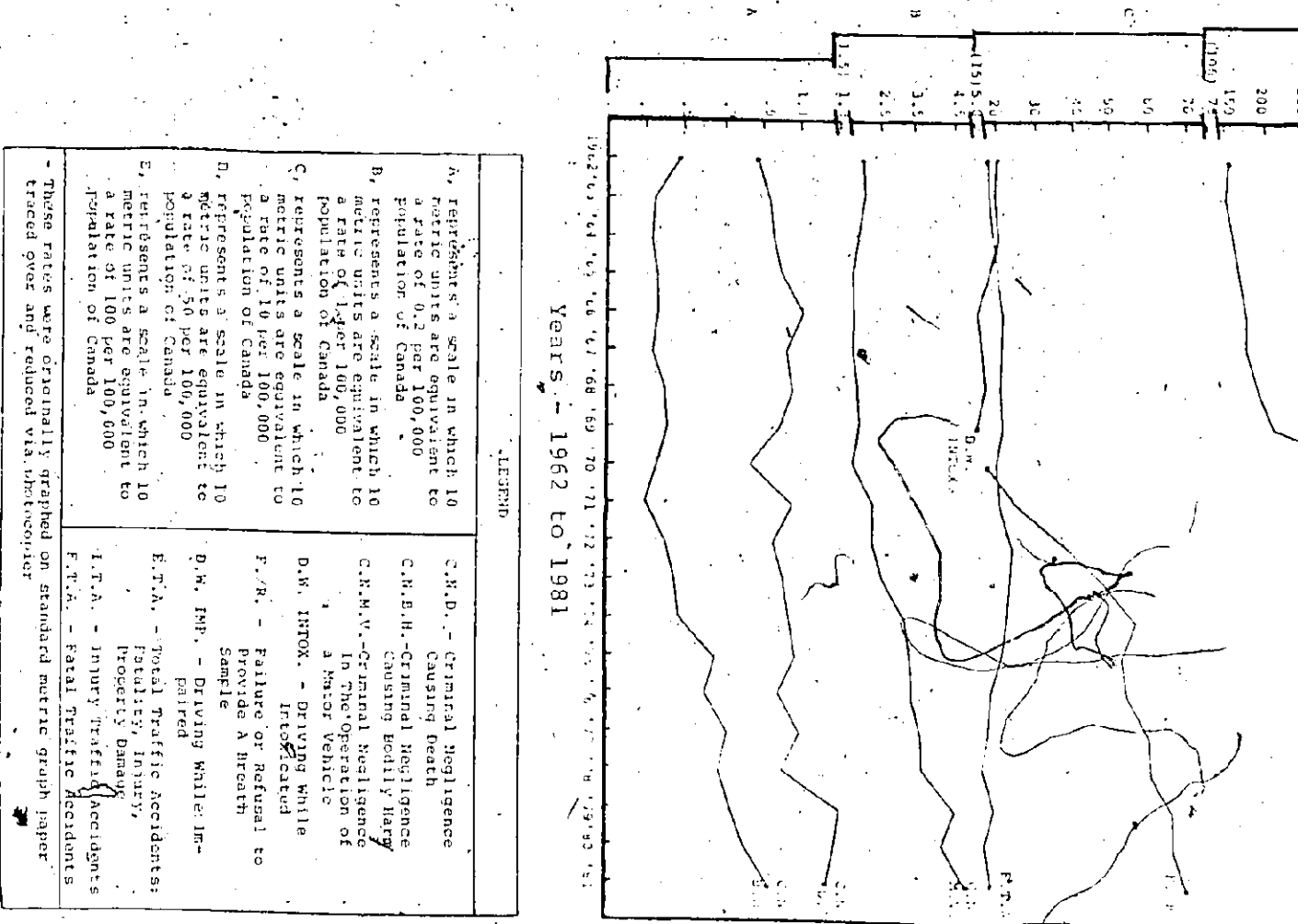
these comparisons are based on the actual number of offences reported to the police as opposed to the number of offences cleared by charges or convictions. It is felt that rates calculated on this basis would afford a more accurate indication of the overall level of enforcement of the various laws. Figure 1 presents a comprehensive picture of enforcement trends for the offences of: criminal negligence causing bodily harm; criminal negligence causing death; criminal negligence in the operation of a motor vehicle; driving while intoxicated until 1969; failure or refusal to provide a breath sample; and driving while impaired; as well as the trends in: the rates of injury accidents combining fatalities, injuries and property damage accidents (See Figure 1). Before discussing these trends it should be noted that both the criminal negligence data and the traffic accident statistics failed to specify the involvement of alcohol therefore the precise effects of this legislation and the exact rates of alcohol-related accidents cannot be readily identified.

#### Criminal Negligence Offence Data

The actual numbers of reported offences and rates per 100,000 population of Canada for the offences of criminal negligence causing death, causing bodily harm and in the operation of a motor vehicle between 1962 and 1982 are

FIGURE 1

Graphs Depicting the Rates Per 100,000 Population of Canada of the Actual Numbers of; Criminal Negligence Causing Death Offences, Criminal Negligence Causing Bodily Harm Offences, Criminal Negligence In The Operation of a Motor Vehicle Offences, Driving While Intoxicated Offences, Driving While Impaired Offences, Failure or Refusal to Provide a Breath Sample Offences, Fatal Traffic Accidents, Injury Traffic Accidents, and Total Traffic Accidents Including Property Damage reported from 1962 to 1981



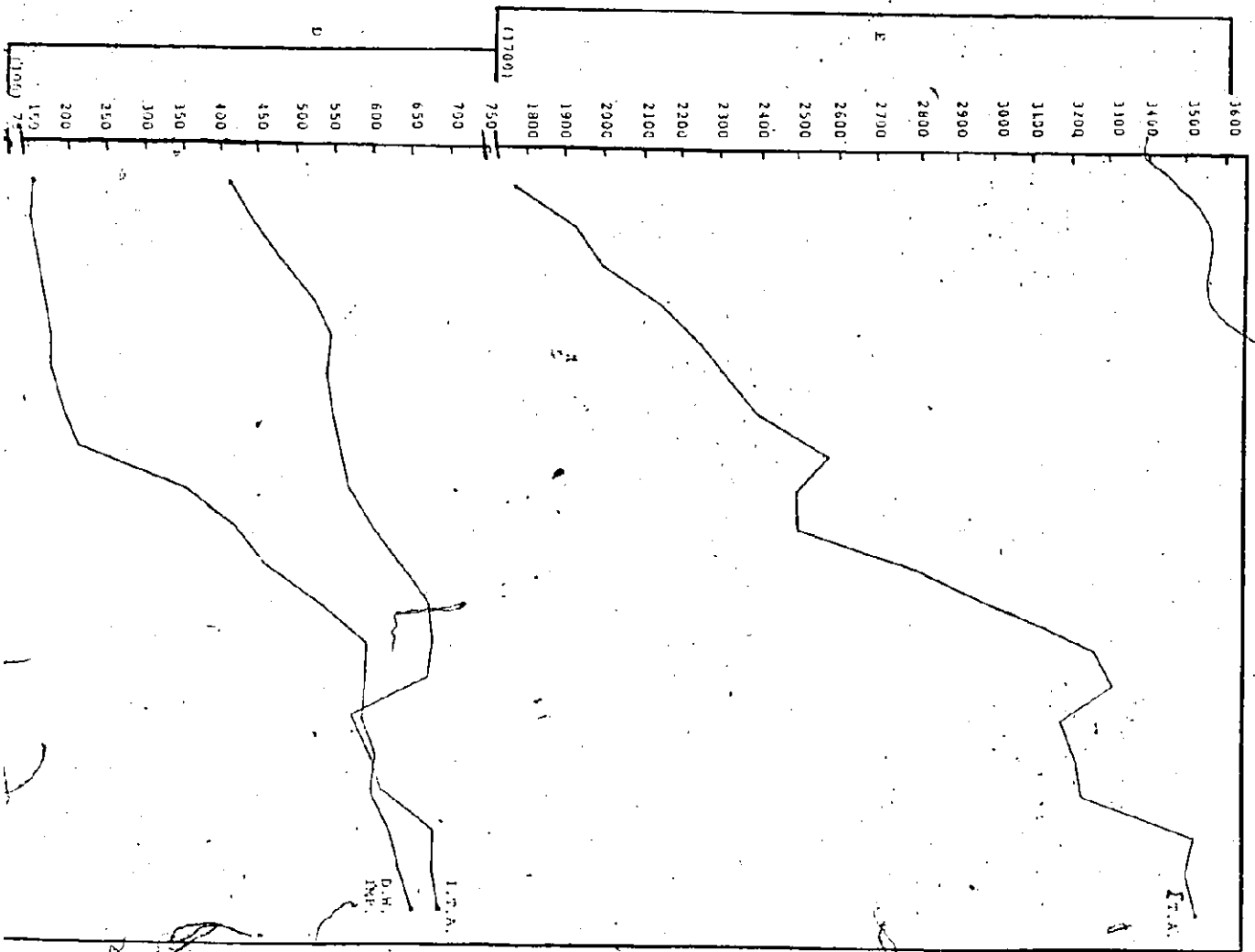
Years - 1962 to 1981

LEGEND

- A, represents a scale in which 10 metric units are equivalent to a rate of 0.2 per 100,000 population of Canada
- B, represents a scale in which 10 metric units are equivalent to a rate of 1 per 100,000 population of Canada
- C, represents a scale in which 10 metric units are equivalent to a rate of 10 per 100,000 population of Canada
- D, represents a scale in which 10 metric units are equivalent to a rate of 50 per 100,000 population of Canada
- E, represents a scale in which 10 metric units are equivalent to a rate of 100 per 100,000 population of Canada

- C.R.D. - Criminal Negligence Causing Death
- C.R.B.H. - Criminal Negligence Causing Bodily Harm
- C.R.M.V. - Criminal Negligence In The Operation of a Motor Vehicle
- D.W. INTOX. - Driving While Intoxicated
- F./R. - Failure or Refusal to Provide a Breath Sample
- D.W. IMP. - Driving While Impaired
- E.T.A. - Total Traffic Accidents: Fatality, Injury, Property Damage
- I.T.A. - Injury Traffic Accidents
- F.T.A. - Fatal Traffic Accidents

- These rates were originally graphed on standard metric graph paper traced over and reduced via photocopier



presented in Tables 1, 2, and 3 respectively and graphed in Figure 1 (See Tables 1, 2, 3 and Figure 1). These statistics are included for study as there is often a suspicion of some alcohol involvement in these offences. In general, they show an increasing trend in enforcement of each offence, especially since the 1968-69 amendment. The increased enforcement of criminal negligence laws may reflect a larger role being given to negligence factors, by the criminal justice system in assessing the causation of traffic accidents. This trend is demonstrated in a comparison between the annual traffic fatality rates and the annual offence rates of criminal negligence causing death. While fatality rates have remained relatively constant from 1962 to 1981, the rates of criminal negligence causing death offences have generally shown an increasing trend. Again, the degree of alcohol involvement in these criminal negligence offences can only be speculated. As was pointed out in Chapter Two, a charge of criminal negligence is often difficult to substantiate especially in relation to alcohol-related accidents. While criminal negligence causing death may represent the most appropriate charge in the Criminal Code for alcohol-related traffic deaths, a great deal of controversy surrounds this issue. A point of contention for many victim advocate groups such as "Mothers Against Drunk Driving" is that the impaired driver who kills receives only minimal legal sanctions such



TABLE 1  
CRIMINAL NEGLIGENCE CAUSING DEATH OFFENCES  
FROM 1962 TO 1981

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1962	162	.87
1963	176	.93
1964	185	.96
1965	197	1.00
1966	222	1.11
1967	209	1.03
1968	218	1.05
1969	208	.99
1970	178	.83
1971	226	1.04
1972	210	.96
1973	224	1.01
1974	234	1.04
1975	245	1.07
1976	228	.99
1977	256	1.10
1978	238	1.01
1979	309	1.30
1980	305	1.28
1981	300	1.24

TABLE 2  
CRIMINAL NEGLIGENCE CAUSING BODILY HARM OFFENCES  
FROM 1962 TO 1981

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1962	87	.47
1963	67	.35
1964	64	.33
1965	71	.36
1966	72	.36
1967	69	.34
1968	83	.40
1969	89	.42
1970	78	.36
1971	66	.30
1972	87	.40
1973	99	.45
1974	105	.47
1975	149	.65
1976	139	.60
1977	165	.71
1978	157	.67
1979	173	.73
1980	191	.80
1981	223	.92

TABLE 3  
CRIMINAL NEGLIGENCE IN THE OPERATION OF A MOTOR VEHICLE OFFENCES  
FROM 1962 TO 1981

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1962	389	2.09
1963	402	2.12
1964	383	1.99
1965	357	1.82
1966	370	1.85
1967	369	1.81
1968	400	1.93
1969	418	1.99
1970	387	1.81
1971	515	2.37
1972	509	2.33
1973	578	2.62
1974	716	3.20
1975	770	3.38
1976	784	3.39
1977	848	3.64
1978	884	3.76
1979	1,069	4.51
1980	1,026	4.29
1981	1,179	4.87

as a few months incarceration, as opposed to the much heavier terms of imprisonment (e.g. up to and including life) allowable by this criminal negligence offence. In fact it is widely acknowledged by legislators, policymakers and others working within the field of corrections and law enforcement that the charge of criminal negligence causing death is very much the exception rather than the rule in such incidents.<sup>1</sup>

#### Driving While Intoxicated Offence Data

The actual numbers of reported offences and rates per 100,000 population of Canada are given in Table 4A and graphed in Figure 1 (See Table 4A and Figure 1). This data seems to show a decreasing trend of enforcement up to the point where the offence was removed from the Criminal Code in 1968-69. Such a relatively low rate of enforcement may have been due to the problems associated with determining the level of intoxication of suspected impaired drivers, prior to the compulsory breath analysis law of 1968-69. Also, in comparison to the traffic accident data the law was ineffective in reducing accidents and loss of life.

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<sup>1</sup>In a series of interviews conducted in Ottawa in November, 1983, it was suggested that criminal negligence offences, especially criminal negligence causing death, are not used by the courts as much as they should be in relation to drinking and driving offences. A list of representatives of the various agencies interviewed is presented in Appendix 5.

TABLE 4A  
DRIVING WHILE INTOXICATED OFFENCES  
FROM 1962 TO 1969

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1962	3,692	19.87
1963	3,754	19.83
1964	3,888	20.15
1965	3,701	18.84
1966	3,093	15.45
1967	3,450	16.93
1968	3,664	17.70
1969	3,289	15.66

Failure or Refusal to Provide a Breath Sample Offence Data

While it appears that no statistics are being recorded for the offence of "Driving with more than 80 milligrams of alcohol in 100 millilitres of blood" established in 1968-69, data is kept on the rate of "failure or refusal to provide a sample of breath for analysis", starting in 1970. The actual number of reported offences and rates per 100,000 population of Canada are given in Table 4B and graphed in Figure 1 (See Table 4B and Figure 1). These statistics show a steady increase from 1970 to 1974, a slight drop from 1974 to 1976 and then a gradual increase up to 1981. The initial increase may reflect a period of adjustment during which the general public might have interpreted the new breathalyzer law as being self-incriminating and a possible violation of civil liberties and therefore refused to participate in it. They may have also been testing the credibility of this new law hoping to avoid a drinking and driving conviction. The slight decrease from 1974 to 1976 may represent the impact of the amendments during those years. More and more people upon realizing the increased penalties for failing or refusing to provide a breath sample may have complied with the law and taking a chance on having the crown attempt to prove its case in court. Finally, the increase up to 1981 may again be indicative of the heightened concern over potential

TABLE 4B  
FAILURE OR REFUSAL TO PROVIDE A BREATH SAMPLE OFFENCES  
FROM 1970 TO 1981

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1970	4,083	19.1
1971	5,601	25.8
1972	8,333	38.2
1973	10,774	48.8
1974	12,909	57.6
1975	12,378	54.3
1976	12,759	55.2
1977	14,300	61.4
1978	14,560	62.0
1979	16,145	68.2
1980	16,403	68.5
1981	17,405	71.9

civil liberties violations, experienced during the middle and late 1970's. In general, this trend shows a continuous increasing rate of enforcement. A similar trend can be found in the driving while impaired data. Following an Ontario Court of Appeal ruling in 1976<sup>2</sup>, it was established that a person who fails or refuses a police officer's demand for a breath sample may also be charged with the offence of driving while impaired, both arising out of the same incident.

#### Driving While Impaired Offence Data

The actual number of reported offences and rates per 100,000 population of Canada are presented in Table 5 and graphed in Figure 1 (See Table 5 and Figure 1). These show a low, gradual rate of enforcement up until 1969, followed by a sharp increase to 1974, with a slight increase up to 1981. As is evident from this trend the law of driving while ability is impaired has increasingly been used to apprehend more and more offenders. The two amendments have enabled more efficient detection and prosecution of those who drink and drive. In relation to the traffic fatality rates this enhanced enforcement appears to have had little effect in reducing the loss of life on roadways. In fact the total

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<sup>2</sup>Ontario Court of Appeal - R. vs. Schille, 1976.



TABLE 5  
DRIVING WHILE IMPAIRED OFFENCES  
FROM 1962 TO 1981

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1962	28,889	155.5
1963	28,766	151.9
1964	30,924	160.3
1965	33,878	172.4
1966	36,514	182.4
1967	37,688	184.9
1968	41,452	200.2
1969	46,918	223.4
1970	76,614	358.4
1971	91,189	420.6
1972	100,352	459.7
1973	118,096	534.5
1974	132,691	592.3
1975	134,936	591.8
1976	135,609	586.8
1977	140,731	604.2
1978	141,328	601.8
1979	148,234	626.2
1980	152,813	638.9
1981	157,977	653.0

traffic accident data continued to rise despite such enforcement. The relationship between driving while impaired and fatality rates will be analyzed later in greater detail.

#### Traffic Accident Data

Actual numbers and rates per 100,000 population of Canada for traffic accidents in general (e.g. fatality, injury and property damage), injury accidents and traffic fatalities are presented in Tables 6, 7 and 8 respectively and graphed in Figure 1 (See Tables 6, 7, 8 and Figure 1). Statistics for injury accidents and traffic accidents combined demonstrate a continuous, fast-paced increase, despite enforcement efforts. However in the years immediately preceding the legislative amendments temporary decreases in both trends are noticeable. The traffic fatality data show a much more stable or constant trend with only very slight decreases following the amendments. Again, each of these trends point to the relative ineffectiveness of law enforcement efforts to reduce traffic accidents and prevent the loss of life on roadways.

Having reviewed the rates of enforcement of the drinking and driving laws it is clear that the amendments have enabled earlier detection and apprehension of those who drink and drive. More and more impaired drivers are being removed from the public thoroughfares thus fulfilling one of the

TABLE 6  
 TRAFFIC ACCIDENTS  
 (FATALITIES, INJURY AND PROPERTY DAMAGE - \$100)  
 FROM 1962 TO 1981

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1962	329,094	1,770.9
1963	363,722	1,921.3
1964	385,590	1,998.8
1965	420,282	2,139.5
1966	449,151	2,244.1
1967	473,074	2,321.5
1968	497,056	2,401.1
1969	543,199	2,586.5
1970	536,301	2,506.8
1971	543,457	2,504.6
1972	610,836	2,802.1
1973	668,001	3,023.4
1974	729,442	3,256.4
1975	755,222	3,312.4
1976	734,840	3,179.7
1977	750,031	3,220.3
1978	759,888	3,236.1
1979	834,384	3,521.0
1980	838,634	3,506.8
1981	853,138	3,526.9

TABLE 7  
INJURY ACCIDENTS  
FROM 1962 TO 1981

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1962	77,116	414.98
1963	84,055	444.0
1964	92,374	478.85
1965	102,727	522.94
1966	108,690	543.05
1967	110,076	540.17
1968	113,214	546.9
1969	116,935	556.8
1970	122,053	571.0
1971	130,153	600.0
1972	139,825	641.0
1973	149,852	678.1
1974	152,938	681.4
1975	148,136	649.7
1976	133,543	578.1
1977	140,207	602.0
1978	144,486	615.3
1979	161,234	682.0
1980	162,849	681.4
1981	167,190	691.1

TABLE 8  
FATAL ACCIDENTS  
FROM 1962 TO 1981

YEAR	ACTUAL NUMBER OF OFFENCES	RATE (100,000 POP. OF CANADA)
1962	3,387	18.23
1963	3,619	19.12
1964	3,867	20.05
1965	4,109	20.92
1966	4,405	22.01
1967	4,488	22.02
1968	4,423	21.37
1969	4,644	22.11
1970	4,352	20.4
1971	4,656	21.5
1972	5,345	24.5
1973	5,342	24.2
1974	5,326	23.7
1975	5,149	22.6
1976	4,540	19.6
1977	4,425	19.0
1978	4,237	18.0
1979	4,944	20.8
1980	4,400	18.3
1981	4,730	19.5

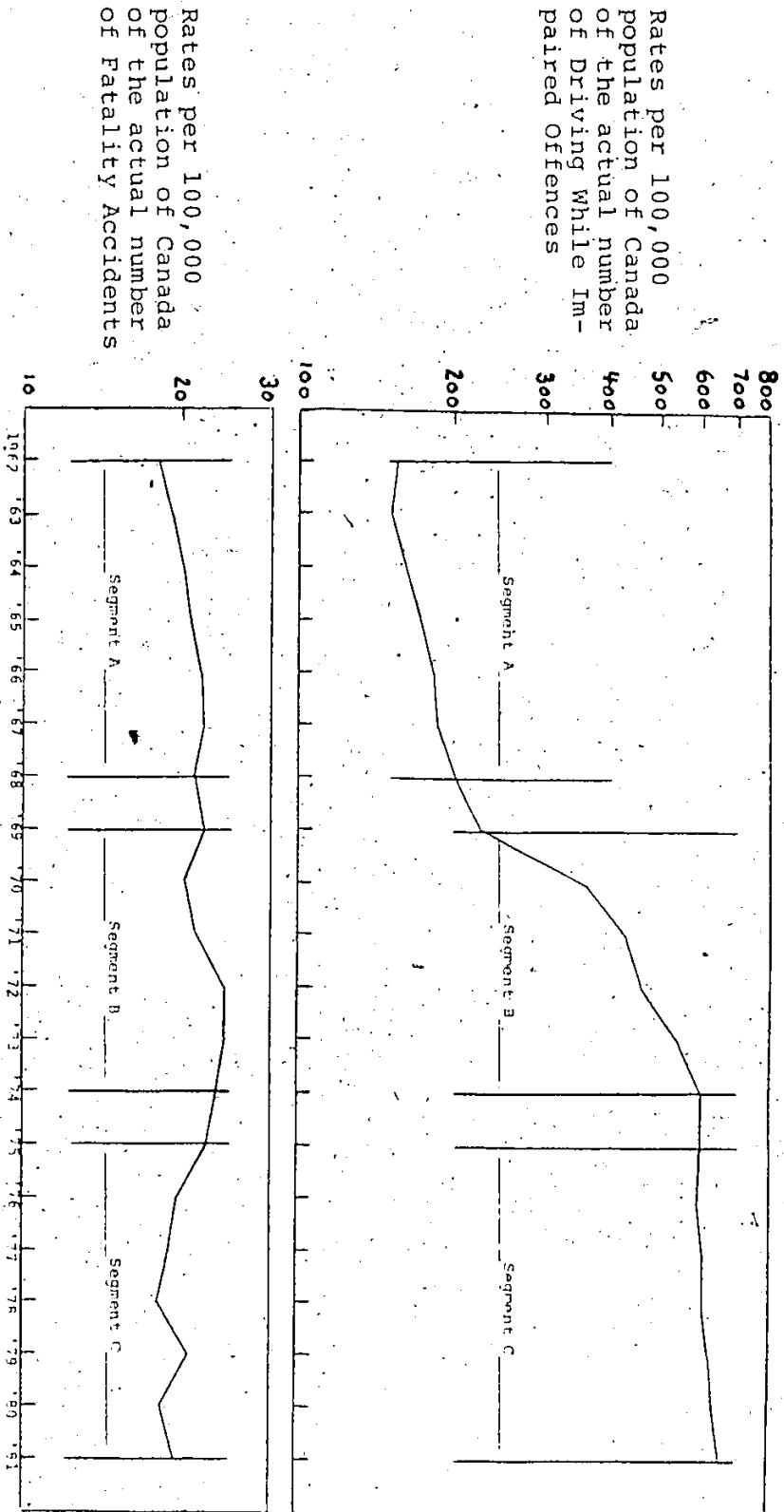
primary objectives of the legislation. However current research emphasizes the fact that in spite of such enhanced apprehension rates there is still a very minimal risk of being caught for drinking and driving. It cannot be assumed that with increasing enforcement, the serious threat to public safety will be lessened. A comparison between law enforcement rates and rates of traffic accidents up to this point appears to show a weak, inconsistent relationship. As the main goal of the legislation is to prevent or reduce injury and loss of life resulting from alcohol-related traffic accidents, a more indepth analysis of this relationship is necessary. A linear regression analysis between traffic fatality rates and rates of driving while impaired offences will serve to provide further insight into the full impact of the drinking and driving laws. The driving while impaired offence rates are used in this comparison as they represent the only consistent form of law enforcement which covered the entire 1962 to 1981 time period.

Data for the driving while impaired offence rates and the traffic fatality rates are plotted in Figure 2 (See Figure 2). Both graphs are divided into three time frames or segments to enable a more detailed regression analysis.

Segment A compares the driving while impaired offence rates and traffic fatality rates between 1962 and 1968. A

Graphs Showing a Detailed Comparison Between the Rates Per 100,000 Population of Canada of the Actual Number of Driving While Impaired Offences and Traffic Fatalities Reported from 1962 to 1981

FIGURE 2



NOTE: These rates were originally graphed on G-61 semi-logarithmic (2 cycle x 70 to the inches) graph paper, traced over and reduced via photocopier.

TABLE 9  
 LINEAR REGRESSION EQUATION AND TEST STATISTIC  
 FOR FIGURE 3

Linear regression equation	$Y' = .07x + 8.45$
Regression coefficient or slope	.07
Intercept	8.45
Correlation coefficient - Pearson r	.83
$r^2$	.69 (69%)
Test statistic - T. test	3.34 (significant at $\alpha = .025$ )

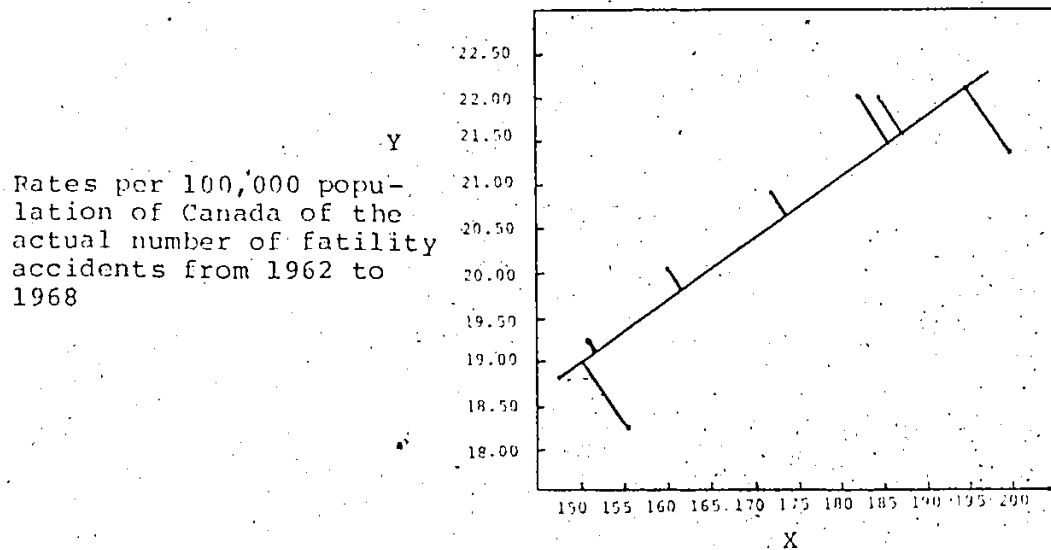
regression equation is presented in Table 9 and a scattergram is plotted in Figure 3 (See Table 9 and Figure 3).

A scattergram is a graphical description of the relationship between two factors. It describes the type of relationship in terms of a "line of best fit" for both factors. If for example the plotted points of two factors fall together forming a straight diagonal line extending in an upward trend from the bottom left corner of the graph to the top right corner, then their line of best fit would be a perfectly straight line describing a positive linear relationship. In other words, for every one-point increase in one factor, the second factor would increase by one point. The exact nature of this point increase is shown in the computation of a regression equation.



FIGURE 3

Scattergram Showing the Line of Best Fit for the Rates Per 100,000 Population of Canada of the Actual Number of Traffic Fatalities and Driving While Impaired Offences reported from 1962 to 1968 (See Figure 2 - Segment A)



Rates per 100,000 population of Canada of the actual number of fatality accidents from 1962 to 1968

Rates per 100,000 population of Canada of the actual number of driving while impaired offences from 1962 to 1968

- NOTE:
- X has a scale in which 10 metric units are equivalent to a rate of 5 per 100,000 population of Canada.
  - Y has a scale in which 10 metric units are equivalent to a rate of 0.5 per 100,000 population of Canada.
  - The Scattergram was originally graphed on standard metric graph paper, traced over and reduced via photocopier.

The scattergram for segment A denotes a fairly close positive relationship between driving while impaired offence rates (x) and fatality rates (y). The plotted points of both rates gather closely around a line of best fit which extends in an upward, increasing direction. The regression equation shows a slope of .07 meaning that for every one-point increase in the driving while impaired offence rates, fatality rates increase by .07 of a point. This is evident in that during the 1962 to 1968 time period, driving while impaired offence rates grew at a faster pace than did fatalities. A correlation coefficient (r) indicates the direction and strength of the relationship. In the case of segment A, r is .83 showing a strong positive linear relationship. A "test statistic" also presented in Table 9 demonstrates that this correlation coefficient is statistically significant ( $t = 3.34$   $t_{.025} = 2.571$ ). Finally, when the correlation coefficient is squared ( $r^2$ ) it indicates the amount of variability in the y factor which may be accounted for by the linear regression of y on the x factor. In this present relationship  $r^2$  is .69, meaning that the driving while impaired offence rates account for 69 percent of the total variability in the fatality rates. Essentially, the level of enforcement of this drinking and driving law played a large role in explaining the increase in fatality

rates during the 1962 to 1968 time period. The remaining 31 percent may be accounted for by any number of other factors such as the use of seat belts and the number of drivers in Canada at that time.

In conclusion a linear regression analysis on the rates of driving while impaired offences and traffic fatalities from 1962 to 1968, demonstrates that the increasing law enforcement during this period was accompanied by a very gradual, but steady rise in fatality rates. In other words, despite increasing enforcement the law was ineffective in reducing fatalities. It should be noted however, that although on an increasing trend, enforcement rates were still at a relatively low level. A clearer interpretation of this relationship may be that enforcement increased toward the late 1960's in an attempt to counter the increasing fatality rates. Despite this enhanced enforcement, fatality rates continued to rise prompting legislators to initiate new laws in an attempt to reduce the loss of life on public roads. The effects of these 1968-69 amendments will be reviewed in Segment B of this analysis.

Segment B compares the rates of driving while impaired offences and traffic fatalities from 1969 to 1974. A regression equation is given in Table 10 and a scattergram is graphed in Figure 4 (See Table 10 and Figure 4). The

TABLE 10  
 LINEAR REGRESSION EQUATION AND TEST STATISTIC  
 FOR FIGURE 4.

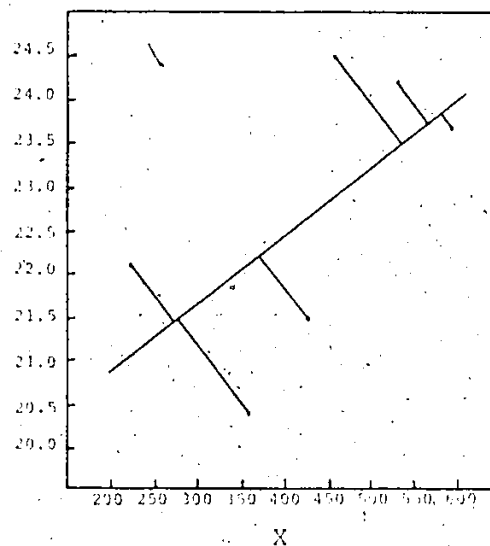
Linear regression equation	$Y' = .01x + 19.37$
Regression coefficient or Slope	.37
Intercept	19.37
Correlation coefficient - Pearson r	.62
$r^2$	.39 - (39%)
Test statistic - T test	1.589 (significant at $\alpha = .1$ )

scattergram shows a high degree of variability among the plotted points of both rates. Although it does indicate a positive linear relationship between driving while impaired offence rates and fatality rates, their points do not gather that closely around the line of best-fit. The regression equation shows a slope of .01. For every one-point increase in driving while impaired offence rates then, fatality rates increase by .01 of a point. This is indeed a very weak and negligible relationship. The correlation coefficient is .62 indicating a relatively strong positive linear relationship. However a test statistic also given in Table 10 shows that this correlation coefficient is statistically significant at only a .1 percent level of significance meaning that there is

FIGURE 4

Scattergram Showing the Line of Best Fit for the Rates Per 100,000 Population of Canada of the Actual Number of Traffic Fatalities and Driving While Impaired Offences reported from 1969 to 1974 (See Figure 2 - Segment B)

Y  
Rates per 100,000 population  
of Canada of the actual number  
of fatality accidents reported  
from 1969 to 1974



X  
Rates per 100,000 population  
of Canada of the actual number  
of driving while impaired  
offences reported from 1969  
to 1974

- NOTE:
- X has a scale in which 10 metric units are equivalent to a rate of .50 per 100,000 population of Canada.
  - Y has a scale in which 10 metric units are equivalent to a rate of 0.5 per 100,000 population of Canada.
  - The Scattergram was originally graphed on standard metric graph paper, traced over and reduced via photocopier.

a 10 percent chance of being inaccurate ( $t = 1.589$   $t_{.1} = 1.533$ ). The validity of such a result is indeed questionable. The  $r^2$  is .39 meaning that 39 percent of the total variability in the fatality rates may be accounted for by the effect of driving while impaired enforcement, during the 1969 to 1974 time period. Again, 61 percent of total variability in fatality rates may be accounted for by other factors.

In conclusion this linear regression analysis shows that from 1969 to 1974, enforcement of the driving while impaired law was greatly enhanced by the amendments of 1968-69. Such increased enforcement rates were accompanied by a very gradual and slight increase in the traffic fatality rates. However, when looking at Figure 2, a slight dip in fatality rates is noticeable between 1969 and 1970 when an upward trend quickly brings the rates to a peak high in 1972. This may have been due to an immediate, short-lived impact of the amendments. In terms of a causal relationship it may be suggested that legislators in responding to the apparent ineffectiveness of the driving while impaired law to reduce the fatality rates, enacted another set of amendments. The impact of these 1975-76 amendments will be the subject of a regression analysis in segment C.

Segment C compares the rates of driving while impaired offences and traffic fatalities from 1975 to 1981. A

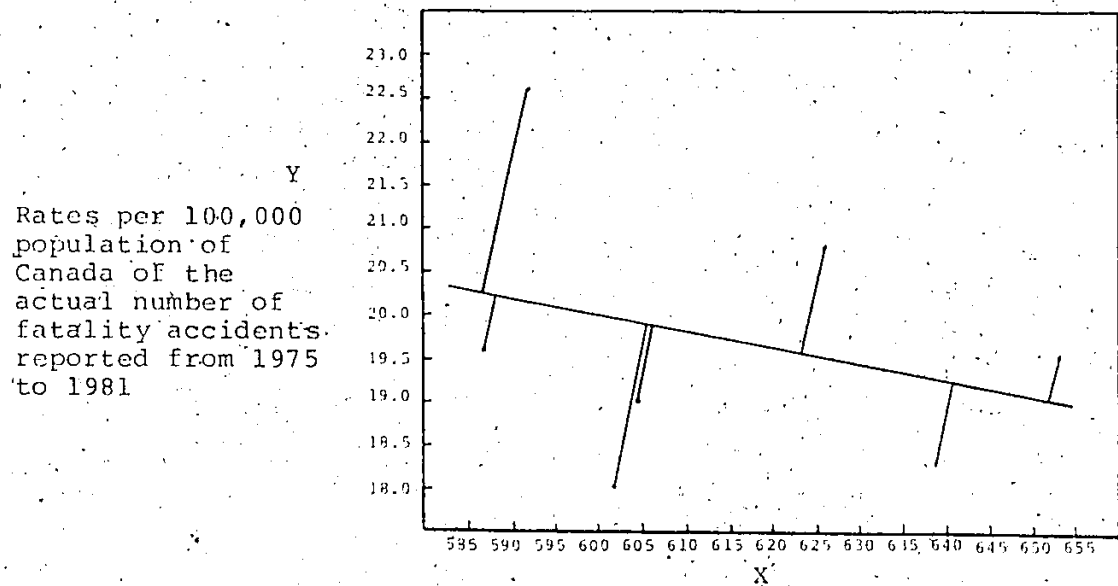
TABLE 11  
 LINEAR REGRESSION EQUATION AND TEST STATISTIC  
 FOR FIGURE 5

Linear regression equation	$Y' = -.02x + 31.98$
Regression coefficient or Slope	-.02
Intercept	31.98
Correlation coefficient - Pearson r	-.27
$r^2$	.07 - (7%)
Test statistic - T test	0.627 (not significant)

regression analysis is given in Table 11 and a scattergram is plotted in Figure 5 (See Table 11 and Figure 5). The scattergram demonstrates a negative linear relationship between the two trends. The plotted points of both rates vary considerably around a line of best fit which extends in a decreasing manner from the left side of the graph to the right. In general this appears to indicate a very weak negative relationship, in which an increase in one factor is associated with a decrease in the other. The slope of the regression equation is  $-.02$  meaning that with every one-point increase in driving while impaired rates, fatality rates decrease by  $.02$  of a point. As a slope of  $0$  would indicate that no relationship exists, a slope of  $-.02$  represents a very weak, negligible relationship. The correlation coefficient is

FIGURE 5

Scattergram Showing the Line of Best Fit for the Rates Per 100,000 Population of Canada of the Actual Number of Traffic Fatalities and Driving While Impaired Offences reported from 1975 to 1981 (See Figure 2 - Segment C)



- NOTE: - X has a scale in which 10 metric units are equivalent to a rate of 5 per 100,000 population of Canada.
- Y has a scale in which 10 metric units are equivalent to a rate of 0.5 per 100,000 population of Canada.
- The scattergram was originally graphed on standard metric graph paper, traced over and reduced via photocopier.



-.27 again suggesting a very questionable, negative association between driving while impaired and fatality rates. A test statistic also included in Table 11 verifies that this relationship is not statistically significant ( $t = -.627$ ,  $t_{.1} = -1.476$ ). The  $r^2$  for segment C is .07 meaning that the level of driving while impaired enforcement accounted for only 7 percent of the total variability in fatality rates during the 1975 to 1981 time period. A remaining 93 percent may be explained by a combination of other factors.

In conclusion this linear regression analysis demonstrates that the increasing enforcement of the driving while impaired law experienced between 1975 and 1981 was accompanied by a decreasing trend in fatalities. However enforcement appears to have had little influence in producing the drop in fatality rates. Again, legislators are reacting to the relative ineffectiveness of the drinking and driving laws by proposing further amendments to the Criminal Code.

In summary, from 1962 to 1981 despite increasing levels of enforcement, the drinking and driving legislation appears to have had very little effect in reducing and preventing traffic accidents and deaths. This observation fails to support the initial hypotheses outlined earlier in this chapter. While it is true that the laws, having been designed to enhance the detection and apprehension of offenders have

been successful in that regard, they have not fulfilled the other objectives of such legislation such as deterrence and protection of society. Enforcement rates have continued to increase and fatality rates have remained steady or decreased only slightly, demonstrating the inability of the law to prevent loss of life or deter the general public from drinking and driving. It must be remembered however that the traffic accident and fatality data did not distinguish between those accidents which involved alcohol and those which did not so the precise effects of the legislation on alcohol-related accidents can only be inferred.

In explaining the trends in enforcement and traffic fatalities reviewed in this analysis, a number of factors can be suggested. Important to the understanding of the drinking and driving problem is whether or not enforcement practices are enabling enhanced apprehension of a relatively stable drinking and driving population or whether the drinking and driving population is increasing making more impaired drivers available for detection. In this regard the steady increase in impaired driving enforcement rates from 1962 to 1981 may have been due to: an increase in the size and influence of public awareness sparked largely by victim advocate groups which have been pressuring for more enforcement

as a means of greater public safety on highways; the amendments themselves have made detection and apprehension much easier; and a greater opportunity for more drinking and driving over the years as the number of cars and population of drivers may have increased. The initial increase in traffic fatality rates from 1962 to 1968 may have resulted from: a movement towards faster sports cars; an increase in the availability of motor vehicle; high traffic speeds on highways; general unsafe driving habits; unsafe driving conditions (e.g. poor road surfaces); lack of concern about the use of seat belts by the general public; and an increase in the frequency of drinking and driving. The slight decrease in fatality rates from 1972 to 1981 may have been the result of: the short-lived impact of the drinking and driving legislation; the gradual introduction of mandatory seat belt legislation from province to province within Canada throughout the 1970's; lower traffic speeds on highways; an increase in safe driving education programs; improved road surfaces and highway designs (e.g. divided highways); more precise or effective licencing tests; stiffer insurance policies to deter unsafe driving habits; improved driving habits influenced by a greater public awareness about the dangers of drinking and driving; enhanced enforcement of the drinking and driving legislation (while not apparent in the reduction

of accidents and fatalities may have played an important role in the prevention of even higher fatality rates); and implementation of such assistance programs for impaired drivers as subsidized taxi and bus services from drinking establishments may have helped to keep impaired drivers off the roads thereby reducing fatalities.

Understanding why the laws are ineffective is essential to developing more effective legal policies to confront the drinking and driving problem in a successful manner. As noted earlier, a basic argument of victim advocate groups is that the penalties for drinking and driving are neither heavy enough nor enforced to their full potential and therefore fail to deter people from engaging in that behavior. Another criticism is that the length of time and police manpower involved in enforcement of the laws restricts the number of people that can possibly be apprehended. The enforcement procedure may often require a couple of hours starting with the initial roadside breath testing, then the more precise breathalyzer analysis and finally, the necessary paperwork to substantiate a possible court case. This lengthy procedure tends to keep police off the streets thus preventing the detection of more impaired drivers. Finally, a fundamental problem underlying this drinking and driving issue is its social acceptability.

Individually each behavior is an essential and regular part of social life engaged in by practically everyone. The combination of both behaviors is also no less unaccepted. Impaired drivers are often viewed as unfortunate victims of law enforcement as opposed to criminal offenders and a serious threat to public safety. Drinking and driving is itself seen as a harmless act, something engaged in by even the most respected citizens. This general public attitude deeply entrenched in society is unfortunately reflected in the lack of concern and organization traditionally shown in the recording of statistical data on drinking and driving offences. While these factors will be dealt with in a more comprehensive manner later in this chapter, more insight may be gained in understanding the ineffectiveness of this legal approach by reviewing the drinking and driving legislation of other countries.

#### Drinking and Driving: The International Experience

A survey of the drinking and driving legislation of other countries reveals a system of laws similar to those in Canada, based on a combination of statutory blood-alcohol content (B.A.C.) levels, fines, jail sentences and licence suspensions. Appendix 4 summarizes the range of legal sanctions implemented by the various countries (See Appendix 4). This system of laws comprises a legal approach to drinking and driving which

H. Laurence Ross (1981) has termed the "Scandinavian Model".

This model originated in Norway in 1936 and Sweden in 1941. It grew as a result of a strong moralistic temperance movement which pressured legislators to seek a more effective solution to the problem of alcohol-related automobile accidents and fatalities. The "Classical Model" which predated the Scandinavian Model, was limited by a number of problems. Firstly, punishments often tended to be mild. In a vast majority of countries, legislators and courts avoided handing out terms of imprisonment for traffic offences, including drinking and driving, especially when no immediate harm had been done. Secondly, these laws were characterized by such vague terminology as "intoxication" and "under the influence" which made impairment by alcohol at a level which might interfere with driving ability difficult to establish. In such cases, guilt or innocence relied heavily on the subjective judgment of the police officer, with the benefit of the doubt going to the accused. Finally, with heavy court loads and bureaucratic administration of traffic offences, charges of drinking and driving often involved a lengthy time lag before a court appearance. This certainly disrupted the continuity or celerity of prosecution. The Scandinavian approach provided a redefinition of the drinking and driving offences in terms of: operating a motor vehicle with a blood-alcohol content which exceeded

a specific level representing impairment; more severe penalties including fines, jail terms and licencing restrictions; and enhanced law enforcement strategies. Ross points out that these features more closely approximate the theoretical model of deterrence, with prompt administration of the law and certain, more severe punishments, than does the Classical Model.

As knowledge of blood-alcohol testing and levels of impairment accumulated and frustration with the Classical Model grew, more countries gradually adopted the Scandinavian approach (See Appendix 4). Each of these countries have tried various combinations of different blood-alcohol concentration levels, fines, jail terms and licencing suspensions. While a majority have set the level of impairment at 80 milligrams of alcohol in 100 millilitres of blood, others have established a level of 50 mg/100 ml, and still others have implemented a two-tier level of violation patterned after the early Swedish legislation. In Sweden, degrees of seriousness of impaired driving were classified in terms of two levels of blood-alcohol concentration: between 50 and 149 mg/100 ml, and 150 mg/100 ml and over. Each level was characterized with progressively severer punishments.

Although these "per se" laws, as they have often been referred to (Ross, 1981; Jonah and Wilson, 1983), have been

accepted as the most effective and widely used form of law enforcement, much recent attention has been focused on realistically assessing their effectiveness as a deterrent to drinking and driving. H. Laurence Ross has surveyed international drinking and driving legislation extensively and suggests that the evidence held to be in support of the effectiveness of the Scandinavian laws is inconclusive, unscientific and must be dismissed. Such claims tend to be based on: unsystematic, anecdotal observations reported by residents and visitors to the Scandinavian countries that people when driving abstain from alcohol; unfounded generalizations stemming from a relatively stable rate of recorded drinking and driving offences over time in the face of increasing traffic; more restrictions on drivers and greater alcohol consumption; the unsupported impression that alcohol is less often found in the blood of fatally injured drivers in Scandinavian countries than anywhere else; the inference that the laws must deter the "average" citizen because of the high frequency of personal and social pathology sometimes found among those convicted of drinking and driving; a high degree of public knowledge and support for the laws which is said to reflect their effectiveness; and correlational data which suffer from serious methodological flaws and fail to confront the question of whether these laws provide greater



deterrence than would the classical laws. In general, Ross maintains that "there is no adequate proof for the proposition that the Scandinavian per se laws deter people from drinking and driving" (Ross, 1981, p. 23).

The results of Ross's international survey of application of the Scandinavian per se laws around the world demonstrate that at best these laws produce only a short-lived reduction in impaired driving and alcohol-related traffic accidents and fatalities. After their brief recession these rates quickly return to their initial levels. This is a well documented effect and is again replicated by the Canadian law enforcement situation.

Ross explains the ineffectiveness of the laws to produce any lasting deterrent effect as the result of the discrepancy between the perceived risk and the actual risks of apprehension created by the laws. The introduction of the new legislation and its progressive enforcement strategies sparked much controversy and heightened media publicity. This served to enhance the driver's perceived risk of being apprehended and prosecuted thus acting as a deterrent reducing impaired driving convictions and traffic fatalities. However as the general public began to realize that their initial perceptions were exaggerated and that the actual risk of being caught remained minimal, drinking and driving increased

followed shortly by increased traffic accidents and fatality rates. This explanation points to a significant problem in the Scandinavian laws. They fail to operationalize an important feature of the deterrence theory, that of certainty of apprehension and punishment. Again this seems to be the case in all countries which have implemented the Scandinavian system of laws.

In conclusion the results of Ross's evaluation point to the necessity of maintaining a high degree of public awareness that the laws are actually being enforced and that the perceived likelihood of apprehension is indeed high, in order to create and sustain a deterrent effect over time. As Jonah and Wilson (1983, p. 3) suggest, "D.W.I. (Driving While Impaired) legislation which is not both enforced and publicized seems to be little better than no legislation at all". This understanding has led to the development of new enforcement programs aimed at making the laws more effective.

Law enforcement campaigns termed "blitzes" have frequently been used in a number of countries to enhance the effectiveness of the drinking and driving laws. They are programs of heightened police efforts to detect impaired drivers, concentrated within brief periodic time spans. They represent a saturation approach making use of random spot checks, special

police patrols and roadblocks to conduct extensive, concerted random night-time breath testing of drivers. Their effectiveness relies heavily on high visibility and public awareness brought about by media publicity to enhance the public's perception of the risk of apprehension.

Jonah and Wilson (1983) reviewed analysis of various blitz programs established in England, Australia, New Zealand and the United States. In July, 1975 the Cheshire county police department in England conducted a one-week blitz program testing the breath of all drivers involved in traffic accidents or committing moving traffic violations between 2200 and 0200 hours. This type of enforcement resembled random breath testing as there was no discretion used in deciding when to administer the test and, in turn, breath testing increased tenfold and driving while impaired charges, threefold. In September, 1975 this program was expanded to one month of breath testing between 2100 and 0400 hours. In a comparison between the changes in the total number of traffic accidents during the main drinking hours (2200 - 0400 hours) and the changes during other hours, it was noted that accident rates dropped significantly between 2200 hours and 0400 hours. This effect was evident only during the September blitz and lasted for five months. The absence of any effect for the July experience was explained in terms of

the high level of publicity and controversy that surrounded the September program. With the start of the month-long blitz program, legislators and the public viewed the breath testing strategy as random testing which Parliament had specifically eliminated from the Road Safety Act. This controversy received considerable media coverage which appears to have enhanced public awareness about the drinking and driving laws as well as the perceived likelihood of apprehension. In general this study demonstrated the short-term effectiveness of the blitz approach.

In 1977, the city of Melbourne, Australia conducted two intensified week-long blitz programs with one sector of the city being covered each week. Roadblock patrol hours increased to 32 hours a week. This type of random breath testing, permitted in the State of Victoria since 1976, required that all drivers regardless of suspicion of drinking provide a sample of breath. Comparisons made between the two weeks of the blitz and the following week indicated the success of the blitz approach in reducing night-time alcohol-related accidents by 39 percent and serious casualty accidents by 36 percent. These results led to a more extensive blitz program during October and December, 1978. Random breath testing was conducted in roadblocks which rotated through four sectors of Melbourne. Patrol hours for the roadblocks

increased to 100 hours a week. A comparison was made between night-time fatalities and serious casualties occurring during the random breath testing and the subsequent two weeks, and those which occurred during the same time period in the previous year. This data were then contrasted with similar information for sectors of the city that were designated as controls and did not experience the blitz. The results showed a 59 percent decrease in fatalities and a 39 percent decrease in serious casualties. Analysis of the blood-alcohol concentrations of night-time single vehicle accident casualties indicated a 31 percent drop in the proportion of drivers who were legally impaired above the 50 mg/100 ml level. Finally surveys measuring perception of the risk of apprehension during the 1977 and 1978 blitz programs showed that perception was enhanced. Publicity surrounding the increase in penalties occurred simultaneously with the 1978 campaign. Again, this study showed the success of random breath testing, blitz programs in reducing alcohol-related accidents and deaths, at least in the short run.

The country of New Zealand implemented a nationwide blitz campaign during July, 1978 and again in December of that year. The July blitz was initiated with a week of mass media publicity and continued for 17 days with enhanced police

enforcement and media advertising. Although it employed a random breath testing procedure, administration of the test was contingent on whether there was probable cause to suspect alcohol consumption. However, breath testing quadrupled during this blitz. The December blitz was conducted over one month and aimed to reach the late teen and early twenty age group. Like the July experience it was preceded by a week of heavy media coverage compounded with the publicity generated by concern that the random checks were done under the pretext of vehicle equipment checks, as well as the introduction of changes to the legislation. The legal limit was lowered from 100 mg/100 ml to 80 mg/100 ml, the maximum fine was increased from \$400.00 to \$1,500.00 and evidential (roadside) testing was introduced. Although the rate of breath testing doubled it was not as high as in the first blitz. While both blitzes appear to have reduced alcohol consumption in taverns and the number of cars in tavern parking lots suggesting a deterrent effect, reductions in night-time injuries and accident compensation claims support the success of the blitzes. When using night-time fatalities as the most appropriate measure of driving while impaired, the first blitz did not influence fatalities while the second one resulted in a four month reduction. The effectiveness of this second blitz has been

attributed to a number of reasons: a longer period of enforcement; a possible summative effect of both campaigns; the new legislative changes making detection easier; and an increase in media attention. Again, however, the success of the blitz enforcement strategy has been demonstrated.

In the early 1970's the United States Department of Transportation launched 35 Alcohol Safety Action Projects (ASAP's) across the United States. One such program in Phoenix, Arizona, employed a team of 10 motorcycle police officers trained in the detection of impaired drivers to work together in special enforcement strategies to reduce the drinking and driving problem. These increased enforcement efforts were concentrated between 1900 hours and 0200 hours Tuesday through Saturday from 1972 to 1976. The results showed that arrest rates for driving while impaired were doubled while the perception of the risk of apprehension (as determined by household surveys) increased during the first year but decreased in subsequent years. No apparent effect on alcohol-related accidents was reported. It was concluded that doubling the objective risk of apprehension was not enough to enhance the public's subjective perception of the risk so as to alter their decision to drink and drive. However, initial evaluations of these projects have been of poor quality and of questionable use.

In conclusion the various blitz enforcement programs

described above demonstrate that increased police enforcement can reduce the incidence of driving while impaired, although reductions tend to be short-lived. Essential components of these programs appear to be: high level of media publicity and public awareness of the drinking and driving laws and the enforcement programs; the extensive screening nature of the programs to detect impaired drivers; the unpredictability of the enforcement schedule; the focus of enforcement efforts during the main (night-time) drinking hours; and the certainty with which breath testing is conducted and violations are prosecuted. Also it may be noted that successive blitzes may be more fruitful in maintaining a strong deterrent effect than a one shot blitz enforcement program.

#### Canadian Enforcement Programs

The inefficiency of the Canadian enforcement efforts to control drinking and driving has been explained by Vingilis (1983) in terms of a number of practical problems relating to the organization and functioning of law enforcement agencies. The problem of drinking and driving has typically been a low priority issue for police management. It has not received the attention given to such crimes as murder, robbery and rape. This is reflected in the relative absence of progressive initiatives in enforcement policy: In



conjunction with this, there is a serious lack of specialized police training in the detection of signs of impairment and use of breath testing equipment in some police agencies. While most officers can detect the grossly impaired drivers many are not able to detect the less obvious signs of impairment. Vingilis suggests that this leads many police officers to develop a distorted view of the relationship between blood-alcohol concentrations and impairment, because they see only cases where such concentrations are abnormally high. Another problem concerns a general lack of police manpower on night patrols and special enforcement programs during the main drinking hours. Such patrols are usually assigned to the peak traffic hours, not to the peak late night drinking and driving hours. As suggested earlier a very big problem which hinders fast and efficient enforcement is the amount of time required to apprehend and charge even one impaired driver. This removes the police officer from the streets limiting his/her ability to apprehend more impaired drivers and deter others.

Another problem area is that of police motivation. There are few incentives to enhance enforcement on a crime that draws as much negative publicity as impaired driving. Active enforcement does very little to develop positive police-community relations. In addition, the amount of time required

of each officer prevents him/her from building strong monthly personal statistics. Very often the long hours and extensive paperwork are not rewarded as some impairment cases do not stand up in court or penalties are weak and allow the offender to avoid heavy prosecution. All of these factors combine to limit the individual officer's desire to actively enforce drinking and driving laws. Also there is sometimes a tendency for police officers to empathize with suspected impaired drivers who were almost home before being apprehended or those who depend on the use of a motor vehicle for their livelihood and as a result abstain from laying a charge.

In general, these problems in conjunction with two more very basic problems: the inadequate threat of apprehension described previously by H. Laurence Ross and the widespread societal acceptance of this behavior, serve to hinder effective enforcement. Specialized enforcement programs have been designed and implemented in Canada to deal with some of these problems and make drinking and driving a higher priority issue.

In most provinces in Canada police agencies have power to conduct random roadside checks for inspection of driver licences and motor vehicle equipment. These checks facilitate random breath testing as police officers take the

opportunity to look for any signs of impairment such as the smell of alcohol or slurred speech. Upon establishing suspicion of alcohol consumption officers may require drivers to provide a sample of breath for analysis. While such systematic concerted enforcement programs as blitzes are relatively few in Canada, many police departments have in recent years engaged in enhanced seasonal enforcement in the nature of roadblock screening for impaired drivers before and during the Christmas and New Year season.

In all, three specific blitz enforcement programs that have been established in Canada can be identified. In October 1973, the province of Alberta implemented a blitz program referred to as "Check-Stop". It involved periodic roadside breath testing with an emphasis on public awareness. The program also embodied a compulsory one-day alcohol education course for all persons convicted of impaired driving. The results tended to be inconclusive but it was felt that the program did enhance public awareness. Transport Canada concluded that the education course was not effective in reducing recidivism rates.

British Columbia established a province-wide systems oriented approach to confront drinking and driving in May, 1977. The program, termed "Counterattack", encompassed the combined efforts of public education and information

campaigns, school programs, community programs from the business, labour and social perspectives of the community, law reform recommendations and law enforcement strategies to increase the real and perceived risk of apprehension as well as develop new enforcement techniques. The enforcement component consisted of a team of vans termed "Mobile Breath Alcohol Test Units" (BAT mobiles) which were used in highway patrol to enhance the detection and processing of suspected impaired drivers. The vans were equipped with breathalyzers and were able to conduct immediate breath analysis on the roadways. From 1978 to 1979 the vans were involved in about 500,000 vehicle checks of which .6 percent of the drivers were tested and only .4 percent charged with driving while impaired. The results of a time-series analysis indicated that there were 20 percent fewer alcohol-related casualties than initially expected for 1977, however in 1978 and 1979 these casualties returned to pre-program levels. Although it seems that the Counterattack program may have reduced alcohol-related casualties, the data collection and evaluation procedures were questionable and unreliable. Success appears to have been based on the fact that alcohol-related accidents and fatalities were less than projected for that year. However the actual number of alcohol-related accidents increased in numbers (Premier's Interministry Task Force on

Drinking and Driving, 1983 p. 19).

One of the best documented and publicized enforcement programs attempted in Canada was "Reduce Impaired Driving in Etobicoke" (R.I.D.I.). It was a blitz program designed by the Addiction Research Foundation and the Metropolitan Toronto Police in the fall of 1977 and relied on special teams of police officers working together in a system of rotating spot-checks at high frequency drinking and driving locations. It received heavy media publicity and included a public education program to inform drivers of the hazards of drinking and driving. Jonah and Wilson (1983) report that during its first year of operation 132,550 cars were stopped, of which 1.2 percent of the drivers received roadside breath tests and only .3 percent failed the test. Given that spot checks were conducted 16 hours a day and that drinking and driving is relatively infrequent during the day-time hours, it is not surprising that these results appear to be small. A telephone survey throughout parts of Toronto showed that Etobicoke residents were the most likely population to have enhanced awareness about the R.I.D.E. program, the drinking and driving situation in general and a higher perception of the risk of apprehension when impaired. Accident data also showed a significant reduction in the injury accidents involving alcohol, in Etobicoke. An 18-month

follow-up failed to support any lasting effect of the program.

In general, the results of the program showed a positive, but temporary effect on the perceived risk of getting caught and the number of alcohol-related injury accidents. However a noticeable problem with the program was the very small percentage of drivers tested. As Jonah (1982, p. 15) suggested, "If random breath tests were allowed as now is the case in Britain, the risk of apprehension would have remained high and DWI would have been reduced".

In 1979 the R.I.D.E. program was expanded to all of Toronto and has been in operation since that time. Its most aggressive assault on drinking and driving has typically been around the month of December. Vingilis, Chung and Adolf (1982) quoted in Jonah and Wilson (1983) have been unable to find any effect on either the knowledge and subjective probability of apprehension or alcohol involvement in traffic accidents, the Metropolitan Toronto Police remain convinced of its positive impact on the drinking and driving problem. Police are in support of the program feeling that it has helped promote organized citizen advocate groups as well as positive police-community relations.

In summary Canadian blitz enforcement efforts reflect a conclusion similar to that of the blitz programs attempted

in other countries. Combined with heavy media publicity and public awareness this type of enforcement strategy can produce at least short-term increases in the number of people apprehended for impaired driving, heightened public perception of the risk of detection as well as reductions in alcohol-related accidents and fatalities.

Improving the efficiency of these specialized enforcement efforts to maximize their reported short-term effects involves a number of basic points. Jonah and Wilson (1983) recommend that successful special enforcement programs should: make use of a system of random spot checks, special patrols or roadblocks combined with some form of breath testing either random (via legislation enabling police to demand a breath sample regardless of suspicion of alcohol consumption) or quasi-random (in conjunction with accidents or traffic violations); operate during the main drinking and driving hours, usually night-time and early morning through the weekends; concentrate efforts in locations where drinking and driving is very prevalent such as roads near taverns, or routes which connect drinking establishments and residential areas; be set up at locations which permit the greatest possible visibility to enhance any general deterrent effect; be unpredictable both in schedule and location, moving from each location every two or three hours; and be conducted every

three to six months in order to maintain the program's effects with booster shots. It should be emphasized that the unpredictability of these blitzes is an important feature as a blitz that is operated one day a week every couple of months may be as effective as a program that operates on a full-time schedule. Periodic blitzes may work to maintain a stable level of deterrence.

#### A More Comprehensive Approach to Confront the Drinking and Driving Problem

Traditionally the majority of research efforts have focused on enhancing the efficiency of legal policy and improving its ability to reduce the magnitude of the drinking and driving problem in the long-term. However researchers and legislators alike, are now beginning to recognize that any long-term countermeasures, to really affect the situation must involve a much more comprehensive approach. Such an approach would necessitate the integration of different perspectives from various institutions within society. In 1983, for example, the Premier of Ontario initiated an interministry task force on drinking and driving entitled, "Drinking and Driving: A Discussion of Countermeasures and Consequences." It consisted of input from: the Provincial Secretariat for Justice, the Ministry of the Attorney General, the Ontario Police Commission, the Ministry of Corrections,



the Centre of Forensic Sciences, the Ministry of Transportation and Communication, the Ministry of Consumer and Commercial Relations, the Ministry of Education, the Ministry of Health, and the Ministry of Municipal Affairs and Housing. Each of these Departments contributed their own views on the impact of drinking and driving as well as their recommendations for social policy. Again this integrated approach provides for a conclusive assessment of the drinking and driving problem and offers a wider scope of alternatives towards a long-term solution.

The forthcoming chapter will review various drinking and driving programs operating within Canada which incorporate a variety of different approaches. Strategies implemented by other sectors of society such as automobile manufacturers and drinking establishments, will also be presented.

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## CHAPTER FIVE

### DRINKING AND DRIVING COUNTERMEASURES: AN INTEGRATED APPROACH

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#### Drinking and Driving: A Shared Responsibility

Researchers and legislators are now beginning to develop policy to confront the drinking and driving problem from a number of different perspectives. Mann, Leigh, Vingilis and de Genova (1983) suggest that countermeasure attempts have been classified into three modes of intervention: primary, secondary and tertiary. Primary intervention reflects a general deterrent role through the use of education and enhanced public awareness. Policy of this nature often employs the use of media campaigns, school education and public seminars to inform the general population of the dangers of drinking and driving in order to prevent the development of potential drinking and driving habits. Secondary intervention involves the detection and removal of those who drink and drive from public thoroughfares. This type of intervention typically centers around a legal approach. It reflects a concern for protection of the public as well as a general deterrent role by instilling a threat of punitive legal action resulting from apprehension and conviction for driving while impaired. Tertiary intervention refers to attempts

to reduce recidivism by administering to the offender a sentence such as a fine or term of incarceration with a licence suspension or some form of rehabilitation program. Such rehabilitation efforts attempt to educate about drinking and driving, and treat problem drinking habits. The aim is to get the offender to examine and alter his/her use of alcohol as well as any other lifestyle problems. Although the major role of this type of intervention is specific deterrence, it is also anticipated that the use of fines, jail terms and licence suspensions on individual offenders will serve as a general deterrent to potential drinking drivers. Until recently most countermeasures have been oriented around secondary and tertiary interventions. The rehabilitative role in tertiary intervention, however, has received only minimal consideration. Even less attention has been afforded to primary intervention efforts.

The current array of countermeasures to deal with the drinking and driving problem is expanding beyond the traditional legal approach to encompass other perspectives such as health and education. Professionals within these fields and others are combining their efforts to enhance the resources available to attack the problem. Other strategies developed by private sector industries such as automobile manufacturers, alcohol distilleries and breweries, and

drinking establishments also contribute to this approach. This chapter will review present Canadian countermeasures which utilize this multifaceted approach in confronting the complex issues surrounding the control and prevention of drinking and driving.

#### Public Information and Education in Canada

An integral part of any countermeasure is its ability to educate the public and promote a general awareness of the drinking and driving problem. This educative component serves as a vehicle to: inform the public of the impact of drinking and driving, provide information on the laws and their enforcement, effect changes in basic societal attitudes and facilitate various forms of safer driving habits. The secondary and tertiary interventions employed by the criminal justice system for example serve an indirect educative function. The punitiveness of the laws and the certainty and celerity of punishment attempts to instill a strong deterrent effect by educating the public regarding the high risks of detection and apprehension when drinking and driving.

Research is now being directed toward exploring the full potential of the educational approach. Such strategies range from media campaigns to well structured education programs.

Public information campaigns promoted by the media

typically serve to complement other forms of countermeasures. The heavy media coverage which surrounds such blitz enforcement programs as "Reduce Impaired Driving in Etobicoke" in 1977 is designed to facilitate: enhanced public sensitivity to the drinking and driving problem; widespread knowledge of the laws and enforcement programs; heightened perception of the risk of apprehension; and interest and participation in the program by all sectors of the community. The Presidential Commission on Drunk Driving (1982) also suggested that such campaigns can encourage people to intervene in drinking and driving situations they encounter as well as foster better health and safety habits. The commission also recommended that publication in newspapers of the names and addresses of people arrested and/or convicted of driving under the influences, as well as those who have had their licence revoked or suspended, could act as a deterrent. In general, as these campaigns are oriented towards the creation of a general public awareness, they are directed at the population of moderate, social drinkers and teenage drivers which account for a large proportion of the drinking and driving problem. While these groups are the most likely to be affected by public information campaigns, heavy "problem" drinkers such as alcoholics may require more indepth treatment. "Little effect may be expected in general from safety campaigns

directed at particular problem groups such as alcoholics... these individuals have already demonstrated such a considerable resistance against the pressures exerted by their immediate environment, medical intervention, as well as from society in general that mild and general educational approaches such as used in safety campaigns cannot have any substantial effect." (Premier's Interministry Task Force on Drinking and Driving, 1983, pp. 78-79)

The sole use of public information media campaigns as countermeasures in themselves is quite infrequent, however Vingilis (1983) reports of two such campaigns conducted in Canada. In December, 1972, the City of Edmonton, Alberta carried out a media campaign using Calgary, Alberta as a control city. The results indicated a trend towards reduced blood alcohol levels among Edmonton drivers which was concluded to be the result of the campaign. In 1973, another media campaign was conducted in nine towns throughout Ontario using nine other towns as control areas. It was concluded that the campaign resulted in increased public awareness and changes in public opinion. A lack of adequate evaluation prevented any conclusion concerning the effectiveness of the program on traffic accidents involving alcohol impairment. The ultimate goal of these public information campaigns is to reduce alcohol-related traffic accidents and deaths by altering societal attitudes which condone drinking and driving.

However these campaigns are very difficult to evaluate as they are so often only one feature of a multifaceted countermeasure. Other variables such as changes in laws, changes in the type and level of enforcement, or modifications in the traffic environment make it difficult to assess these individual components. Research to date concludes that public information campaigns in themselves, do not change drinking and driving habits, but play a major role in determining the effectiveness of legislative or enforcement programs. They serve an important role in enhancing public awareness of the drinking and driving problem and reinforcing the positive effects of other countermeasures.

#### General Public Education Programs in Canada

Public education programs are well structured countermeasures designed to complement public information campaigns by attempting to achieve long-term changes in attitudes and behavior. They entail a comprehensive curriculum comprised of information on health, safety, the law and personal habits in relation to alcohol. These programs are tailored to meet the specific needs and characteristics of different target populations. Some important populations to be considered for these educational programs include: professionals within the criminal justice system (e.g. legislators, judges, crown prosecutors, defense lawyers, and law enforcement personnel),

school administrators, students and teachers, administrators of driver education programs, church leaders, medical associations, physicians, nurses, community medical clinics, community organizations (e.g. senior citizen groups, youth groups such as Boy Scouts, Girl Guides and Allied Youth programs), social service agencies, and sports and recreation centers, civic councils and elected officials, Department of Motor Vehicle Registration, representatives of the business community (e.g. insurance agencies, department stores, restaurant owners, tavern and night club owners and managers, waiters, waitresses, bartenders, and beer, wine and liquor sales personnel), the media (e.g. newspapers, television, and radio), and individual families focusing on the role of parents as educators. Each of these populations represent potential resources which when coordinated effectively may provide a comprehensive network approach to the development of a responsible societal attitude toward the prevention of drinking and driving.

The use of this general educational approach is relatively new on the Canadian scene and has largely been focused on the extent of alcohol use among teenagers. Such programs have typically been activated within the formal school system and approached drinking and driving as a health issue. As education is under provincial jurisdiction such initiatives are developed within the Department of Education of each of



the provincial governments. Consequently the regional nature of this approach makes it difficult to gather a complete up-to-date account of the educational programs in existence across Canada. This in turn hinders a unified nationwide approach to the development of advanced education strategies.

The "Counterattack" program reviewed in the previous chapter, was initiated in 1977 by the province of British Columbia and entailed a number of components to enhance enforcement of the drinking and driving laws as well as evoke long-term preventative attitudes within British Columbia. Aside from a blitz enforcement strategy, a public information campaign, enhanced cooperation among private sector groups (e.g. business, labour and social organizations) and a law review board, the program incorporated a school-based curriculum to encourage the development of mature, responsible decision-making practices regarding alcohol among today's youth. However, as the daily operations of the program were eventually assumed by the Insurance Corporation of British Columbia, activities soon focused on general traffic safety as opposed to specific drinking and driving efforts. Consequently the educational project was never operationalized. It remains a model pilot project yet to be implemented.

In general, the course content focused on a careful evaluation of: both federal and provincial drinking and

driving legislation; the role of the police, defense lawyers, crown prosecutors and judges; the nature of detection and court prosecution procedures; alcohol and its effect on the body, rates of consumption in relation to body size and level of impairment; alcoholism, its detection and treatment; the impact of alcohol-related traffic accidents and deaths (including a vivid description of an accident scene); the effects of alcohol advertising on freedom of choice; attitudes towards drinking and driving; peer pressure and individual and societal responsibilities; and personal health and safety habits. This program requires the input of resource people from all sectors of community life. It promotes a very youthful, community oriented approach to the development of attitudes and behaviors about drinking and driving based on fact, awareness and positive reinforcement as opposed to fear, ignorance and negative peer pressure.

The provincial government of Ontario through its Department of Education, encourages alcohol education as part of the curriculum throughout the school system starting in kindergarten with the greatest emphasis occurring during high school. At the primary and junior levels of school attention is given to studying the types and effects of alcohol and nurturing positive attitudes toward alcohol and nutrition, health and the law. In grades 7 and 8 emphasis is placed on

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providing factual information on alcohol abuse and an introduction to attitudes toward alcohol consumption. Other issues included for discussion are defining what constitutes responsible drinking and the roles of decision-making, peer pressure and self-concept in decisions relating to alcohol use. The emphasis on these factors continues throughout grades 9 and 10 with heightened focus on values, peer pressure, decision-making and responsible driving. During the senior high school grades greater use of dialogue and group discussion is advocated. This enables enhanced interaction and feedback on the use, misuse and abuse of alcohol and drugs based on legal, medical and pharmacological information studied in earlier grades. These efforts are complemented by similar initiatives of the Department of Health. This ministry provides funding for television commercials, theatrical performances, alcohol education kits and workbook projects promoting alcohol and general health issues. Live theatrical performances using pantomime techniques, puppets, and musical vignettes, are designed to help children between the ages of 7 and 12 form positive ideas about healthful lifestyles. The alcohol education kits are prepared for grades 7 and 8 students. Teachers are given the materials to assist the students in making their own decisions, developing their own values and clarifying positive and healthy ways to handle peer pressures. Emphasis is placed

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on responsible drinking. Finally, a "Health Crest Family Workbook" is part of a broader, "Health Begins at Home" program designed by the Department of Health. Children and their families work towards obtaining health crests for their workbook by completing projects relating to healthy lifestyles. This workbook follows a comic book style with factual information and suggested activities.

Another general educational approach with greater potential application in the instruction of people on the issues surrounding alcohol and drinking and driving, is the use of driver training programs. These programs provide an excellent opportunity to educate drivers within high risk categories. Young males, for example, tend to be in a high risk accident category and as they are at a point where their driving habits are still in formation, they may be influenced by education. While a vast majority of driver training programs tend to be regional in nature, the "Young Drivers of Canada" program operates across Canada, from coast to coast. The content of this program focuses on the development of an attitude of respect and understanding of the role of the automobile in society as well as safe, defensive driving habits. It also emphasizes safe handling of cars in hazardous situations, car care, insurance coverage and the dangers of impaired driving. The session on the impaired driver is a brief review of the

action of alcohol on the body, the relationship between body weight, alcohol consumption and levels of impairment, and the general dangers of driving while under the influence of alcohol.

In summary then, while this is not meant to be a comprehensive review of all general educational programs in Canada, it does show that efforts thus far appear to be focused on education of the youth of society. Prevention of drinking and driving must begin with education of the future drinkers and future drivers of society. These efforts will be enhanced by incorporating other target populations for education to reinforce a change in societal attitudes towards alcohol and use of the automobile.

#### Rehabilitation of Drinking and Driving Offenders

Efforts to deal with those convicted of impaired driving represent a tertiary form of intervention aimed at preventing the recurrence of their drinking and driving behavior. Traditionally these intervention strategies have been restricted to those sanctions outlined by criminal law such as fines, jail terms and licence suspensions. However with the onset of the 1970's more attention was given to the development of alternative forms of sentencing and probationary options. These innovations were aimed at enhancing the rehabilitative potential of legal sanctions. The basic philosophy was that rehabilitation would make convicted offenders more aware of

the dangers of drinking and driving which in turn would serve to deter them from repeating their crime. In addition rehabilitative initiatives would focus on individual examination of personal lifestyle habits, the diagnosis and treatment of acute alcohol problems such as alcoholism. As well, rehabilitative sentencing alternatives would alleviate the pressure on the already crowded prisons.

The effectiveness of the rehabilitative approach necessitates the joint efforts of both the health field and the education field. Through their combined resources, desired attitudinal and behavioral changes may be achieved with the proper application of punishments, education and treatment designed for each individual offender. Input from the public health field involves: case diagnosis of offenders who need treatment, identification of the nature of the drinking and driving problem, referral to the appropriate rehabilitation facilities and rehabilitative strategies designed for each individual, ranging from lectures to hospitalization. Contributions of the criminal justice system include: enactment of drinking and driving legislation, law enforcement, determination of guilt or innocence through judicial prosecution, and administration of legal sanctions.

As Vingilis (1983) suggested rehabilitation encompasses both educational and treatment programs. The goal of education is to provide information about drinking and driving and the

dangers of alcohol abuse. Although no deliberate attempt is made to change individual lifestyle habits, it is hoped that such awareness will lead each individual to personally examine the role that alcohol serves in his/her life. Treatment programs are designed to closely assess the nature of the problems underlying alcohol abuse and to set up a treatment plan to confront such serious alcohol dependency problems as alcoholism.

#### Education Programs for Drinking and Driving Offenders

Education programs for impaired drivers are beginning to enjoy increasing popularity as a supplement to legal punishment. They often accompany such sanctions as fines and licence suspensions and their attendance is a provision of court-ordered probation. Also, as their design and administration tends to be a provincial concern, there is a high degree of disparity in the structure, content and duration of these educational programs among the provinces.

The Province of Saskatchewan through its Department of Education, established a "Driving Without Impairment" program in 1979. It is designed to encourage attitudinal and behavioral changes in those individuals referred to the program by the courts for a conviction of impaired driving. With a capacity of seven to 12 participants the course operates over eight sessions, a total of 16 hours. It employs the use of

audio-visual aids, factual pamphlets and local resource people and promotes a very informal atmosphere conducive to group discussion and interaction. The instructors are qualified in the skills of guiding group interactions and interpersonal relationships and are knowledgeable in the issues surrounding alcohol and its abuse, specifically drinking and driving. Each instructor must complete the "Driving Without Impairment" instructor's course. The objectives of the course are to stimulate participants: to separate the acts of drinking and driving in their lives, to examine their lifestyles and self-concept in relation to personal use of alcohol, to acquire the principles and techniques of safe, defensive driving, to understand the effects of alcohol consumption on the body, human functioning and the driving task, to comprehend the legal, social and moral consequences of impaired driving, to understand the symptoms of alcoholism and other drug addictions, to develop positive attitudes toward law enforcement and, to become aware of community resources available for help with drinking and driving problems. In general the goal is to initiate responsible drinking patterns, distinctive from responsible driving habits. In the absence of any data on the evaluation of this program, conclusions regarding its effectiveness cannot be presented.

The Ontario Ministry of Correctional Services in 1979



established a three-phase education program for convicted impaired drivers in Ottawa, Ontario, called "R.I.D.O." (Reduce Impaired Driving in Ottawa). The objectives of the program are: to provide participants with information pertaining to the health and social consequences of driving while impaired, to encourage participants to examine their reasons for drinking and driving, to stimulate participants to develop constructive alternatives to drinking and driving, and to reduce recidivism among convicted impaired drivers in the Ottawa-Carleton region. As an added benefit the program lessens the caseload of probation officers by offering a structured probation alternative. The duration of the program is three months consisting of 13 sessions conducted over three phases. Prior to the first phase offenders entering the program receive an additional information kit containing reading material on the objectives and structure of the R.I.D.O. program and pamphlets for the specific sessions. As well, a list of community resources which deal with addictions is included. The first phase presents a review of alcohol use in Canada, its abuse and the consequences from a health and social perspective. The second phase covers the issues surrounding the problem of impaired driving and its consequences at a personal and societal level. It confronts the question of personal responsibility and provides factual information about impaired

driving, the law and insurance policies. Finally, the third phase concerns driver re-education, development of safe defensive driving habits among the participants. Audio-visual aids, films, demonstrations, pamphlets, group discussion and resource people form the basis of educational techniques employed. After each phase the participants give their feedback on special questionnaires. Upon completion of all sessions there is a final group discussion and questionnaire to summarize the course. Graduates of the program receive a certificate of completion which is given to the sentencing judge. This entitles the participant to have his/her terms of probation reconsidered (e.g. reducing a one year probation term to the three months spent in the course).

The program is operated by three chairpersons selected on the basis of their professional qualifications, group leadership and communication skills as well as familiarity with the criminal justice and addictions fields. Twelve consultants also provide specialized input into the various course topics. These consultants are also selected on the basis of their special qualifications, knowledge of session material and their demonstrated ability to communicate in an effective manner with program participants.

Admission to the "R.I.D.O." program is based on a number of criteria. Participants must have one or more impaired driving convictions in the Ottawa-Carleton county region.

They must have a desire to participate and change personal habits involving alcohol, specifically drinking and driving. Finally, there must be vacancies in the program as well as the permission of the court to take part. In the 32 months of operation between 1979 and 1982, an assessment of the type of R.I.D.O. students reveals that most tended to be males at the age of 35 or 36 with a secondary education or more. Twenty percent held managerial/supervisory positions. All were motivated to change their drinking and driving behavior being concerned about the effects of alcohol on their health, family relationships, their jobs and relationships with the law. They all viewed alcohol as a contributing factor in their life problems. They typically exhibited a pattern of regular to heavy drinking, representing a high risk category of impaired drivers. Finally, they were usually convicted of their second impaired driving offence. In general they deviated from the "typical" description of the drunk driver perpetuated throughout the literature on drinking and driving. They appeared to be better educated, less mobile and with a stable employment record. Wolfson, Ponee and Gaum (1982) attributed this effect to the program's location. Ottawa, being the nation's capital, is characterized by higher employment rates, higher incomes, greater education and training opportunities and more health and social services than many

other Canadian cities.

A preliminary evaluation of the program's impact indicates a positive effect in reducing the recidivism rate of convicted impaired driving offenders. Since 1979 a total of 101 impaired drivers have participated in 10 R.I.D.O. programs. An analysis of the effects of the program, as determined through questionnaires administered before and after each program, showed that program participation produced small but positive effects on participants' knowledge and attitudes concerning drinking and driving. Participant evaluation of the program, also determined through questionnaires and a telephone survey conducted a few months after each program concluded, showed that generally participant response was enthusiastic. While 62 percent said that they decreased regular consumption of alcohol to some extent, 13.9 percent indicated total abstinence from alcohol since program participation. Computer checks of 100 R.I.D.O. participants conducted within a few months of graduation, by the Ottawa Police Department showed that only 12 had reappeared on police files: three as "suspects" in other offences, four charged with other offences and five charged with impaired driving. In conclusion, coordinators of the R.I.D.O. program are pleased with its impact to date and its ability to enhance awareness about drinking and driving and reduce recidivism. They do suggest however that the

program is in need of greater evaluation.

The Justice Intervention Division of the Alcoholism and Drug Dependency Commission in New Brunswick has designed a "Driving while Impaired" program. It is a short-term, high impact education program for those convicted of drinking and driving offences and operates in Moncton, Fredericton and Bathurst. Its structure was derived from a "D.W.I. Counter-attack" program published by the American Automobile Association and the "Phoenix D.W.I." course at Arizona State University. The main goals of the New Brunswick program are: to determine who the drinking drivers are (e.g. characteristics and why they drink and drive), to increase the participant's knowledge about the consequences of drinking and driving and to bring about a basic change in behavior of participants such that they avoid further drinking and driving. The program is conducted in classes of 20 students all of whom have been convicted of their first drinking and driving offence under Sections 234, 235 or 236 of the Criminal Code of Canada and referred to the course as a condition of their probation. Attendance is mandatory and absence without a valid reason is a violation of probation. Course format is a 2 1/2 hour lecture on the dangers of drinking and driving with emphasis on assessing personal drinking behavior. Those first-time offenders with more serious alcohol abuse are directed toward in-depth rehabilitation. In general the design and organization

of this program makes it an attractive model for fast implementation and delivery of the educational approach.

The joint efforts of the Alcohol and Drug Dependency Commission of Newfoundland and Labrador and the Adult Corrections Branch - Department of Justice of Newfoundland and Labrador, produced the "Impaired Driver's Program" of 1978. At that time it was established in St. John's, but soon expanded to other centers of Newfoundland and Labrador. In St. John's the program was held on 16 different occasions and consisted of six, three-hour sessions, with sessions usually being held two nights per week. However during the last two courses the material was condensed and presented in a day-long session. This format continues today. In total approximately 300 court referrals have participated in the program. The application, structure and duration of this program has changed over time. In fact the program which currently operates in Corner Brook, Newfoundland follows a short-term, high impact program based on the New Brunswick model.

The working manual for this Impaired Driver's Program identifies the main objectives to be: to enhance the convicted impaired driver's awareness of the social, physical, financial and legal effects of drinking and driving, with the hope of creating an attitudinal change to prevent further drinking and driving, to detect alcoholics and refer them for indepth

treatment, and to heighten general public awareness of the drinking and driving situation as well as promote involvement and support in finding a solution to the problem. The structure of the program centers around the use of lectures, group discussions, films and presentations by a variety of community professionals including the Alcohol and Drug Addiction Foundation, the Newfoundland Safety Council, the Newfoundland Association of Insurance Brokers, medical doctors, the Royal Newfoundland Constabulary, the Royal Canadian Mounted Police, the Registry of Motor Vehicles, the Magistrate's Association and the Probation Department. Although the manual suggests that this information be presented in eight, two-hour sessions this has varied from six, three-hour sessions to a one day-long, condensed package. The program is guided by moderators possessing good interpersonal skills and knowledge of the drinking and driving problem. In general the moderators must ensure the efficient operation of the program. Participants in the program are referred by the Courts to a probation officer who outlines the conditions of probation and the nature of the Impaired Driver's Program as well as the importance of regular attendance and abstinence from alcohol while in the course. Participants must also have had at least one prior impaired driving conviction and no previous experience in the Impaired Driver's Program.

In general the focus of the program is on the dangers of combining the acts of drinking and driving. No attempt is made to be critical of either activity alone, but to provide information on the available organizations which can assist those wishing to seek help. It is hoped that students will evaluate their personal drinking behavior and its repercussions. It must be stressed that the format and application of this program has been revised since 1978 and an evaluation is currently being conducted by the Alcohol and Drug Dependency Commission. The Commission is also reviewing the present nature of the drinking and driving situation in Newfoundland and researching ways to develop a consistent provincial educational program.

In conclusion, this brief review of some of the education programs in Canada for impaired drivers reveals that although such efforts vary from province to province they are gaining support as a promising countermeasure in the prevention of drinking and driving. Wolfson, Ponee and Gaum (1982) point out four essential features of effective offender oriented education programs. Firstly, such programs must be of significant duration so as to gain the interest and commitment of all participants. In order to cover all the course material and stimulate personal examination of drinking and driving habits all participants must be motivated to learn. Secondly,



they should be educational in nature as opposed to treatment oriented. Efforts should not be directed at purposely changing lifestyle habits and attitudes, but at informing offenders of the dangers of drinking and driving thereby evoking self-evaluation of personal use of alcohol. The appropriate course format should promote an informal group discussion within a well structured session outline. Thirdly, these programs should also incorporate a method of program evaluation. Fourthly, proper selection of course participants is critical. Above all, individuals accepted to the programs must be amenable to the course content and objectives as well as motivated to re-evaluate their drinking and driving behavior. Another important feature of the educational approach is its use of a variety of community resources for input throughout the course format. It must be emphasized that while these educational countermeasures show potential in the rehabilitation of impaired driving offenders, greater evaluation of their design and impact is a necessary step in enhancing their long-term effectiveness.

#### Treatment Programs for Drinking and Driving Offenders

The education approaches to rehabilitation described thus far have been designed to stimulate awareness and evoke attitudinal and behavioral changes in moderate, "social" drinkers and in teenage drinkers who drive. Efforts to rehabilitate

heavier, "problem" drinkers and alcoholics who drive focus more on a clinical treatment approach. This population of drinking drivers is most often characterized by repeat offenders in which alcoholism and lesser degrees of alcohol dependency are seen as symptoms of underlying lifestyle problems. Attention is focused at dealing with these lifestyle problems, as opposed to specifically altering the drinking and driving behavior itself.

This clinical approach involves the diagnosis of the degree of alcohol dependency, assessment of the nature of each individual's lifestyle and the problems that cause alcohol abuse, and the development of an appropriate treatment plan. The range of treatment techniques which are often employed include individual and/or group counselling, structured behavior modification programs, involvement in self-help groups and hospitalization. Again, the aim of treatment is the re-examination of personal lifestyle problems, identification of ineffective or inadequate coping strategies such as alcohol dependency and creation of more efficient problem-solving abilities. Such treatment is expected to affect all alcohol-related behaviors including a reduction in drinking and driving.

The availability and variety of alcohol treatment facilities across Canada varies greatly from province to

province. While some provinces have numerous facilities others have very few. The structure and operation of these programs is often a joint effort of the public health departments of the various provinces, the hospitals, drug addiction clinics, private treatment agencies and self-help groups such as the national "Alcoholics Anonymous" organization. A review of specific treatment programs currently in existence in Canada is not within the scope of this present research, as most of them do not focus on the specific issues surrounding drinking and driving and its reduction. However insight into the criminal justice system's incorporation of alcohol treatment programs can be gained by looking at the efforts of the Ministry of Correctional Services in Ontario.

A number of provincial correctional institutes in Ontario make alcohol treatment available to inmates. The Ontario Correctional Institute and the Elgin-Middlesex Detention Center enable Alcoholics Anonymous groups to hold two weekly sessions while the Ottawa-Carleton Detention Center provides one Alcoholics Anonymous session per week. The Rideau Correctional Center, the Vanier Center for Women, the Millbrook Correctional Center and the Kenora Jail offer individual and group counselling as well as weekly Alcoholics Anonymous sessions. The Monteith Correctional Center provides Alcoholics Anonymous sessions and an alcohol education program under the direction of a nurse and a classification officer, two hours

a week. The Hamilton-Wentworth Detention Center enables an Alcoholics Anonymous group on each of the three floors in the Center per week, a four week "Alcohol Program" for selected inmates at the Chedoke Hospital and individual assessment and counselling with alcohol awareness lectures provided by the Addiction Research Foundation. Finally, in line with weekly Alcoholics Anonymous meetings, the Quinte Detention Center provides a "Drug and Alcohol Counselling Program" once a week under the supervision of a physician and a social worker. The Center also offers a weekly assertive training program with individual counselling by two psychologists and a "Life Skills Program" partly dealing with alcoholism through a contract with the Loyalist College. These and other correctional centers throughout the Country recognize the extensive role played by alcohol in the lives and destructive behaviors of the majority of criminal offenders. As a result alcohol treatment programs within the prison system are gaining support as a viable strategy in offender rehabilitation.

In conclusion, education and treatment form the basis of the rehabilitative approach to deal with drinking and driving offenders. Educational programs serve only to provide information to participants regarding drinking and driving, not to focus on changing their particular habits. This may occur as

they become more aware and motivated. Both the moderate, social drinker and the teenage drinker form the target population of the educational approach. Treatment programs are directed at the heavier problem drinker and designed to evaluate lifestyle problems including drinking and driving and bring about change. Whereas education programs are employed in situations where drinking and driving is the specific problem to be confronted, treatment programs are employed when drinking and driving is the symptom of chronic alcohol dependency.

Mann, Leigh, Vingilis and de Genova (1983) in attempting to assess the effectiveness of rehabilitation countermeasures, reviewed the drinking and driving rehabilitation literature from 1970 to 1982. Their analysis showed that the literature is methodologically weak in research strategies, assessments and follow-ups. Although these problems made definite conclusions on overall program effectiveness difficult to outline, the researchers suggested that both education and treatment programs do produce a beneficial effect on driving while impaired offenders and their subsequent drinking and driving behavior. Education programs appeared to enhance knowledge about and attitudes towards drinking and driving but had minimal effects on personal alcohol consumption and actual drinking and driving behavior. While evaluations of quasi-experimental studies suggested a positive impact on impaired

driving recidivism and other dangerous driving behaviors, experimental studies showed mixed reports. Again, while knowledge and attitudes concerning drinking and driving appeared to be influenced by treatment programs, behavioral changes appeared to be much more difficult to obtain. However only a few studies examining the effects of treatment on lifestyle habits were available for evaluation. Mann et al. concluded that more evaluation of driving while impaired rehabilitation programs is needed and must employ rigorous designs to permit identification of effective programs, program components and individuals who will receive the most benefit from those programs.

Although somewhat tentative, education and treatment seems to demonstrate a positive effect on the drinking and driving problem. It is important to remember that these rehabilitative efforts should supplement rather than replace other countermeasures such as legal sanctions, enforcement strategies and public information campaigns. Rehabilitation may indeed be most effective as a component in this multifaceted approach rather than a panacea for the drinking and driving problem.

#### Alternative Strategies

Major efforts to deal with the drinking and driving problem have centered on legislation, law enforcement, public education and awareness, and rehabilitation. However the list of

countermeasures under investigation goes beyond those initiated by government through the criminal justice, education and health systems. More and more, other sectors of society are sharing in the responsibility of understanding the causes and impact of drinking and driving and providing input towards its reduction. Specifically, members of private sector organizations such as automobile manufacturers and owners of drinking establishments are realizing their potential role in preventing the impaired individual from driving an automobile. Their efforts have been stimulated by a growing body of research literature that points to the many different perspectives by which the drinking and driving problem can be approached. Current research maintains that long-term prevention lies in an integrated approach based on a societal consensus that all members of society share a role in the general acceptance of drinking and driving and are therefore responsible in affecting its prevention.

The wide variety of alternative strategies currently being developed may be classified as additional government responses, private sector initiatives and individual responses. Each of these categories is comprised of activities which may best be described as supportive in nature. They are designed to supplement major existing countermeasures and offer preventative strategies outside the realm of

criminal law enforcement.

Additional government responses include the regulatory activities and supplementary legislation initiated by governments at both the federal and provincial levels. Numerous government departments and branches exist to monitor the activities of private sector organizations. Research done by the automobile industry to develop mechanical devices to prevent an impaired driver from operating an automobile is monitored by various traffic safety councils, transportation departments and better business bureaus to ensure that such technology meets government standards of safety and efficiency. Provincial liquor licencing boards and provisions regarding the sale of alcohol, regulate the operating hours of drinking establishments. Also government departments concerned with consumer affairs and control of media advertising assess the nature of advertising of alcoholic beverages with regard to the targeted population (e.g. young people) and how they are presented (e.g. alcohol consumption often related to travel, fun and good times at social gatherings).

Government legislation regarding both the drinking age and the driving age is enacted under provincial jurisdiction. Much concern has been directed at increasing the legal drinking age to 21. Provincial "Liquor Control Laws" govern the



sale and use of alcoholic beverages as well as the legal age of drinking: Depending on the province the legal age varies between 18 and 19 years. The pressure to raise this age is based on statistics which indicate that a very high proportion of young people, mostly males, are killed in alcohol-related crashes. It has been suggested that at such a young age the driving skills are still developing and may be easily influenced by any type of impairment. Raising the drinking age then, would allow the driving skills to develop to a higher level of efficiency enabling more experienced drivers to compensate for any slight impairment. However much more investigation of this issue is needed to assess the degree of public support for it and the likelihood of a continued high rate of underage drinking. Similar attention has been given to increasing the driving age. Again matters concerning the issuing of licences is the responsibility of the provincial governments through provincial traffic laws. The legal driving age varies across Canada, typically between 16 and 17 years. As with the drinking age, raising the driving age is a sensitive matter and it is questionable as to how much public support it would receive. In general both of these issues show potential as supportive legislation but require much more investigation.

Another area of possible government intervention is in the licencing and control of motor vehicles. This is the

responsibility of the transportation departments of the various provinces. As well as legislation in many provinces which currently permits the temporary suspension of driver licences of those individuals convicted of impaired driving, a number of other licencing alternatives may be outlined. The Premier's Interministry Task Force on Drinking and Driving (1983) suggested: the implementation of a special screening process by the transportation department to identify problem drinkers at the initial driving test or at the time of licence reinstatement, compulsory driver/alcohol education before licence reinstatement, a special driver/alcohol section in the driving test, possible compulsory driver training, enforcement of curfews on newly-licenced drivers (e.g. driving restricted during high risk accident or drinking hours), the imposition of travel restrictions on newly-licenced drivers (e.g. within a certain radius of home or work), a substantial fee for licence reinstatement, and improved keeping of and access to driver records to facilitate sentencing. The Task Force also recommended the use of blood/alcohol content restrictions for young or new drivers both as a general deterrent and as a means of removing inexperienced drivers from public thoroughfares at a lower level of impairment. As well Vingilis (1983) reviewed a time restriction on driving such that technological devices for monitoring speed and hours of driving could

determine the driving speeds and hours of travel thus regulating the impaired driver's use of a motor vehicle.

A final consideration for government action involves the operation of public forms of transportation. It has often been observed that public bus services complete their daily operating schedules before the closing hours of many drinking establishments. This situation results in a large number of people drinking and then having to drive their own vehicles late at night. The opportunity exists for greater government action in providing improved public transportation services.

Private sector initiatives focus on the roles that the automobile industry, the owners, managers and staff of drinking establishments, insurance companies, driver education programs and privately owned transportation services (e.g. taxicab companies) may play in confronting the drinking and driving problem.

Leading the field in research on alcohol abuse, among the automobile manufacturers is the General Motors Corporation of Detroit, Michigan in the United States.

In search of a solution to the drinking and driving problem General Motors has invested a significant amount of research over the past 10 years on developing vehicle-borne hardware to detect impaired drivers and prevent the operation of a motor vehicle or signal other drivers when a driver is impaired. To date the most effective device designed is the

"Critical Tracking Task" (C.T.T.) which is an electronic test to measure the driver's reaction time. It was originally developed by the National Aeronautic and Space Administration to evaluate the effects of environmental stress on human performance and was modified by General Motors for automobile application. The device consists of a display meter installed on a car's instrument panel. When the car's ignition is turned on a needle on the meter fluctuates at progressively wider swings. The driver's task is to attempt to keep the needle within a narrow band or region in the center of the meter. The position of the needle is controlled by slight movements of the steering wheel and as the needle swings at a wider range the driver is required to make quicker adjustments with the steering wheel to keep the needle within the narrow band. This test takes only 10 seconds. If the driver's actions are impaired the needle swings back and forth outside the narrow band and a red "reset" button lights up indicating test failure. The driver then gets two more chances after pressing the reset button. Repeated failure activates a "Drunk-Driver Warning System" which would allow the impaired driver to start his/her car but would cause lights to flash at speeds less than 10 miles per hour and the horn to sound intermittently at speeds above 10 miles per hour. General Motors is presently experimenting with a "drowsiness detector"

to the system that would operate during actual driving. The system would monitor the driver's steering action over a period of time and then signal the driver when steering habits fluctuate greatly, indicating drowsiness or other forms of impairment. Pretesting of an early C.T.T. prototype showed that it detected 78 percent of the test subjects when they were above the .10 percent blood/alcohol content level, yet allowed all of them to pass when sober. Further testing of the present C.T.T. model is being conducted in California using 10 cars operated by second time impaired driving offenders. The results are not conclusive but do appear promising. This device offers a viable support countermeasure to drinking and driving because: it is directly sensitive to behavioral or psychomotor impairment as opposed to more indirect measures such as blood/alcohol content, it can warn of impairment prior to starting the car and driving thereby preventing the behavior, it is sensitive to all forms of impairment not only alcohol induced, it is more durable and tamper-resistant in comparison to the chemical analysis of breath samples, with refinement it could be based on new microcomputer technology to control task dynamics, allow repeated attempts and prevent a driver from having someone else take the test for him/her, it can be easily performed in a short period of time, it can be integrated into the instrument.

panel of the vehicle quite easily, it can be quite affordable, especially if insurance companies offer incentives to customers who have one installed in their vehicles, and it is a task which is highly correlated with actual driving skills. Although the Critical Tracking Task shows great potential, researchers at General Motors feel that it is unlikely that it would ever be marketable as standard equipment. Public reaction would likely be strong and negative and its use would involve legal concerns such as possible civil liberties violations. In addition to this work by General Motors, the Corporation has contributed to public education on the dangers of drinking and driving with the production and distribution of a film documentary entitled "Until I Get Caught".

Owners, managers and staff of drinking establishments and other facilities that serve alcoholic beverages are also in a position to prevent the impaired individual from operating a motor vehicle. As stated before each province has its own set of regulations or acts governing the sale and use of alcohol. Although varied among the provinces such legislation generally outlines the responsibility and liability of owners of licenced drinking establishments to ensure the safety of their patrons and as well, prohibits the sale of alcoholic beverages to individuals in an intoxicated state. In some provinces such as Ontario, when impaired drivers have caused harm to themselves

or others or damage to property, owners of the drinking establishments which served the alcohol may be held liable and have to compensate for the harm or damage done. Given this degree of responsibility a number of options are open for consideration. One possibility could be decreased operating hours for drinking establishments thereby limiting the amount of alcohol sold and consumed as well as enabling patrons to make increased use of public transportation rather than driving on their own. To date this has not received strong consideration. Another policy that should be implemented would be to ask patrons, who have been drinking heavily to give their car keys to the bartender and then assist them in arranging other safer means of transportation. Owners of drinking establishments could actively support campaigns against drinking and driving on their premises (e.g. posters). The common practice of announcing a "last round call" before closing hours to enable people to order one last drink could either be discontinued or altered such that the final drink might be coffee or some other nonalcoholic beverage free of charge. As well, the "Happy Hour Practices" where patrons may buy two alcoholic drinks for the price of one could be discontinued. Another idea which has received some attention is the installation of breathtesting equipment in drinking establishments. Calvert-Boyanowsky and Boyanowsky (1980) in a report to the Ontario Ministry of Transport, conducted a study

involving the installation of breathtesting equipment in six public drinking establishments in the Greater Vancouver area during the months of November, December and January. The results of their study indicated that the availability of breathtesting equipment did not appear to deter tavern patrons from driving after drinking. It produced a large number of people who were better able to estimate their blood/alcohol content by number of drinks. Their conclusion was that although universally available breathtesting services would be popular and well used by a substantial number of people who could be considered to represent a risk on the road, its safety benefit in deterring impaired driving is minimal. Unfortunately it seems that many people who know their blood/alcohol content level are just as willing to run the risk of detection. It has also been argued that in providing such mass breathtesting we may be encouraging people who normally drink only a small amount to drink to the maximum below the legal limit.

The potential for insurance companies to penalize convicted impaired drivers with high insurance rates or as suggested previously, offer incentives to those who take measures to reduce drinking and driving are among other options open to the private sector. Also, greater emphasis on alcohol impairment and driving ability is well within the scope of driver education schools. Finally, privately owned transportation services such



as taxicab companies have the opportunity to reduce impaired driving by offering a specialized service for individuals leaving drinking establishments late at night. This type of service could take the form of a contractual agreement between the taxicab companies and the owners of the drinking establishments.

The category of individual responsibilities refers to the role that each individual member of society could play in preventing drinking and driving. From time to time we all find ourselves in situations where we can prevent drinking and driving. As the host or hostess of a party or some other social gathering we do our best to entertain and serve food and alcoholic beverages to our friends. However another responsibility inherent in this situation is to ensure the safety of our friends especially when they consume alcohol to the point of impairment. In this regard we have a responsibility to prevent impaired individuals from endangering their lives and the lives of others when they attempt to drive a motor vehicle. A host or hostess aware of the dangers of drinking and driving may: arrange for an alternative, safer mode of transportation for those friends who are impaired, arrange a place for impaired friends to stay for the night or until sober enough to drive, or restrict the availability of alcohol such that friends cannot become impaired. As a

passenger in a motor vehicle operated by an impaired driver we can refuse to travel in the same car or we can drive the car ourselves. The aim is to avoid drinking and driving situations at all costs. This applies to those situations when we encounter a stranger who may be intent on operating a motor vehicle in an impaired state. If the individual cannot be talked out of driving then under Section 449(1)(b)(i) of the Criminal Code of Canada we are entitled to arrest the individual and bring him/her to the police, or we can inform the police to enable them to apprehend the impaired driver.

Other measures to promote a sense of individual responsibility focus on each individual's ability to regulate his/her own drinking behavior and to avoid an impaired driving situation. In line with the previously described tavern breathtesting notion Vingilis (1983) reviewed the development of individual "self-testers". These are low-cost, pocket-size, disposable devices to enable drivers to test their own breaths and assess their blood/alcohol content levels in relation to levels of impairment. Again their effectiveness in reducing impaired driving is as much in doubt as is the tavern breathtesting idea. Another innovation as outlined by Vingilis (1983) is the chemical control of the effects of alcohol on the body. Three types of "sober pills" have been

studied. The first assists the body to metabolize alcohol more rapidly. The second reduces or blocks the effect of alcohol on the central nervous system. Finally, the third type works to limit absorption by the body of alcohol from the stomach and intestines. These sober pills are in an experimental stage only and as of yet there is no drug which can safely counteract all the impairing effects of alcohol.

In general, all of these alternative strategies reviewed, provide evidence of a growing community-wide concern for the drinking and driving problem. Indeed such efforts are to be encouraged and considered as valuable input toward a solution. However all countermeasures thus far have been directed at separating the acts of drinking and driving such that impaired drivers do not operate a motor vehicle. A different approach to the problem is to make vehicles and roadways safer for impaired drivers to use.

H. Laurence Ross (1981) suggested that efforts to affect the drinking and driving problem may be more productive if approached from an accident reduction perspective rather than an attempt to prevent drinking and driving. Alcohol impairment is but one factor associated with the causation of traffic accidents and the creation of safer motor vehicles and roadways will reduce traffic accidents of all causes. Vehicles and roads which are safer for the impaired driver will also be

safer for the driver who is tired, suffers a heart attack or is distracted for some reason. Such safety devices as air bags that inflate upon impact to protect the driver and passengers, and seatbelts, reflect some of the efforts being researched by the automobile industry. The removal or modification of fixed road hazards such as road signs and steel guardrails offer other possibilities to reduce serious traffic accidents.

#### The Integrated Approach: Its Objective and Potential

Public information campaigns, general education programs and rehabilitation interventions consisting of education and treatment of drinking and driving offenders represent effective and important components in an integrated approach to combating drinking and driving. They serve to supplement Criminal Code legislation and law enforcement strategies. Together, all of these efforts present a system of comprehensive countermeasures to confront both the immediate and long-term dimensions of the drinking and driving problem. Also activities of the private sector and additional government responses support these major countermeasures.

While enhanced law enforcement appears to be the most efficient method of achieving the reduction and control of the current drinking and driving situation, long-term prevention may best be reached through increased public awareness

and education. The true potential of this integrated approach requires: the development of well structured awareness and education programs directed at the general public as well as aimed specifically at the teenage population who are the future drinkers and future drivers of society; continued education of impaired driving offenders and treatment of those with more serious alcohol abuse problems, extensive commitment in time, energy and resources, the support of police, legislators, citizen groups and the research community; and constant feedback in an ongoing process of program evaluation and refinement.

The basic objective of this integrated approach is to bring about a change in the existing societal attitude which condones drinking and driving. This can be done by providing the general public with information regarding the extent and nature of drinking and driving as well as the measures being taken to prevent it. In such an informative atmosphere people can make mature, responsible decisions about drinking and driving which will be reinforced by peer pressure condemning the behavior. This will lead to the development of a community-wide sense of shared responsibility in that we all have a role to play in preventing drinking and driving.

The next chapter will review the plight of those who suffer as a result of alcohol-related traffic accidents. In

light of the growing concern for the victimization experience and the subsequent needs of victims of crime, attention must be given to what some have called "socially accepted murder" (Chatelaine, 1982 p. 170) - alcohol-related traffic accidents.

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## CHAPTER SIX

### DRINKING AND DRIVING: THE VICTIM'S EXPERIENCE

#### The Victims of Crime: A Rediscovery

Over the past 10 years the criminal justice system has experienced a growing concern for those who suffer as a result of criminal activity. The trauma, losses and injustices felt by victims of crime have been echoed throughout all segments of society. Researchers, policy makers and victim advocate groups maintain that the rights and needs of victims have been ignored, most painfully by the legal system itself. This has not always been the case however as legal systems throughout history have shown some concern for individuals aggrieved by crime. The "Code of Hammurabi", the Greek "Iliad", biblical laws and the "King's Peace Law" of British monarchs during the Middle Ages all entailed some means of compensating the victim.

Today the Criminal Code of Canada incorporates provisions regarding restitution by offenders to victims. Section 653 requires an offender to pay a victim an amount that compensates for loss or damage to the victim's property involved in the commission of an offence. Section 654 requires an offender to pay an innocent purchaser of the stolen property an amount that the purchaser originally paid. Section 655 orders the

courts to return property held as evidence of the commission of an offence, to the victim. While greater use of these sections is currently being made by various provinces, their effectiveness is limited for a number of reasons. Firstly, restitution is possible only when offenders are apprehended and convicted and this occurs in less than 20 percent of most property crimes. Secondly, it is often the case that offenders do not have sufficient resources to repay their victims. Thirdly, offenders sent to prison rarely have the opportunity or ability to make restitution. Fourthly, there are often long delays in the return of property to the victims by the courts. Finally, restitution by offenders does not resolve the mental anguish or trauma of victimization. Despite these provisions however concern for the victim's experiences and needs has typically remained minimal.

As outlined in Chapter One the focus of our present system of criminal law and justice is on the apprehension and prosecution of those individuals who engage in wrongs against society. Although the particular case of each individual victim is seen as a tragedy and is pitied, it is the state which assumes the perspective of a general victim. It bears the responsibility for bringing the offender to justice and punishing him/her for causing public harm and threatening the moral fiber of society. The amount of attention given to the



offender by the criminal justice system is reflected in the increasing costs and research focused on enhancing the detection and apprehension of those who break the laws, adjudication and disposition of court cases and incarceration and subsequent rehabilitation of convicted offenders. Further efforts to reform the system emphasize the protection of the rights of the accused and humanizing the treatment of offenders. It is this attention on the offender which has relegated the plight of the victim to one of very limited concern.

As suggested earlier the status of the victim is growing. A number of factors combine to underly the current increase in awareness of the problems accompanying criminal victimization. Firstly, society today is characterized by an increasing number of pressure groups formed by active citizens speaking out on behalf of the various populations which have been neglected by government policy and at a disadvantage in society. Pressure groups advocating the needs, rights and services of women, native Canadians, the physically disabled, mentally handicapped and the elderly are only some of the major movements within society. They have provided an atmosphere for greater vocalization of disadvantaged groups as well as a focus on specific issues such as women and crime (e.g. rape victims, wife battering victims). Secondly, the Canadian Council on

Social Development (1981) reported that over the past decade crime victimization rates for offences such as break and enter, robbery, theft and assault have doubled. "The number of crimes against persons and property in 1980 exceeded 1.4 million, or more than one offence for every six Canadian households" (Canadian Council on Social Development, 1981, p.3). This expanding rate of victimization means increased loss and suffering among more and more people as well as heavy financial burdens on society and widespread growth of fear of crime within the general population. This is indeed a matter of growing concern for researchers, policymakers and legislators alike. Thirdly, national "victimization surveys" conducted in recent years to investigate the extent of crime in Canada, also examined the financial costs of victimization. These surveys initiated a field of research focused on determining the impact of becoming a victim of crime (e.g. financial, physical and psychological). Fourthly, researchers in the field of criminology and professionals throughout the criminal justice system are turning their attention to a number of new and emerging issues including alternatives to incarceration, law enforcement techniques, crime prevention strategies, fear of crime and assistance to victims of crime. Fifthly, these developments have led to a closer, critical analysis of the criminal justice system and its preoccupation with the rights and well-being of criminal offenders. This

has brought into question a fundamental concept of a balanced system of justice and equal consideration of the aggrieved party. Finally, aside from these considerations and the fact that victims suffer a very deep, long-lasting experience more attention should be given to victims as they serve an essential role within the criminal justice system. They provide the fuel to initiate the criminal justice process by reporting the crime, identifying offenders, providing evidence and testifying as a witness. In general their personal injuries and losses form the basis of the state's case against the offenders.

Research into determining the impact of victimization has until recently concentrated on the financial costs to both the individual victim and society in general. However it is often the case that victims suffer two forms of injustice; one as a result of the criminal attack, the other as a result of their subsequent contacts with the criminal justice system. The direct effects of victimization concern: the loss of money and property, physical injury and disability, and emotional trauma and distress. The financial problems resulting from crime are the loss of valuable or irreplaceable possessions (either in cost or sentimental value), which may or may not be insured, and loss of money. The extent of physical injury ranges from temporary sickness (e.g. nausea, headaches) and

broken bones to prolonged illness or hospitalization (e.g. ulcers, heartattacks) and permanent disability. These of course entail medical expenses which place extra financial burdens on victims especially if no insurance is carried. The psychological effects of crime include immediate shock and disorientation, with prolonged anxiety, depression, fear and trauma. Not only is there a sense of personal violation and loss of control in one's life, but also problems in social interaction. Both a fear of trusting other people, and other people not knowing how to deal with the victimization interfere with effective social relationships. A second form of injustice experienced by victims is the discomfort, inconvenience, discourtesy and humiliation often associated with their subsequent contacts with the criminal justice system. In general victims receive little assistance to overcome their experience. They receive little or no financial compensation or counselling of psychological needs. They are required to provide evidence in court but are not consulted on decisions pertaining to the scheduling of the case or on appropriate sentencing. They are often left in the dark with regards to the status of the case; whether the offender has been apprehended and detained, and whether their stolen property has been found and in what condition it is. They often experience long delays in the case reaching

court and as well may lose income and time from work while appearing. There are also long delays in the return of property held as evidence by the courts. Such treatment of victims compounds their frustration and does very little to encourage their cooperation and willing participation. The full extent of these injustices on each individual victim depends on many factors: The type and severity of the crime as well as the age of the victim, his/her physical health and stature, his/her mental health and coping abilities, the extent of a support network of friends and relatives and their reaction to the victimization, the amount of financial resources available and the nature of subsequent contacts with the criminal justice system all determine the true impact of the victimization experience.

Efforts to meet the needs of victims and help reduce their personal trauma are gradually beginning to evolve. The first step in these efforts is outlining three basic rights for victims of crime. Firstly, the right to protection from criminal acts involves: providing information on general crime prevention methods, programs and social policies, the right to preventive law enforcement strategies, and the right to freedom from fear of being victimized. Secondly, the right to redress for pain, loss and injury resulting from crime involves: the right to practical assistance and professional help to deal with emotional

trauma, the right to receive financial compensation for such distress, the right to privacy from the media, the right to dignity and respect by the helping services, the right to receive financial coverage of medical expenses as well as quality health care, the right to legally enforced offender restitution for expenses and property loss, and the right to legal aid and the pursuit of civil action. Thirdly, the right to dignity, respect and a fair deal from the criminal justice agencies includes: the right to information about procedures and practices of the criminal justice system, the right to be informed of the progress and status of the offender and the court case, the right to present views and participate in each stage of the process, the right to legal advice with privacy and dignity, the right to a speedy disposition of the case, the right to advanced notice and consideration in the scheduling of court appearances, the right to have property returned when recovered, the right to compensation for income lost during court appearances, and the right to protection from threats and harm during the court proceedings.

Many services are now developing to complement the wide variety of victim rights. These can be classified as increased financial aid, improvements to the criminal justice system and creation of social assistance programs.

Aside from the Criminal Code provisions for offender

restitution outlined previously, many of the provinces and the territories have established compensation programs to provide financial assistance to victims. Although these programs compensate victims who suffer physical injuries as a result of violent crimes, no assistance is available for mental suffering and disorders, property damage or loss. Other problems are that the programs pay much less than awards for injuries in civil actions, they are not widely known and to some victims such as the elderly they appear highly bureaucratic and another potential source of confusion. Another option for crime victims is private litigation through civil courts. Unfortunately suing offenders is typically not feasible as they are sometimes not apprehended and even when they are, they most often have limited financial resources. As well civil action is often a long and expensive procedure. A more practical alternative may be the use of third-party litigation or suing an organization or individual that may have contributed to the crime. Leger (1982) reported a case in the United States where a woman raped in a hotel sued the hotel on the grounds that the hotel management did not provide enough security to prevent the crime. In addition to being able to pay enough compensation to victims such third-party civil action may prompt both private sector organizations and government agencies to enhance crime prevention efforts.

Private insurance offers yet another form of financial aid to victims. Such insurance may be purchased by an individual to provide security against loss of wages, property damage and personal injury. However some people do not have or cannot afford private insurance and in some cases because they live in a high risk crime area insurance companies will not provide coverage. Aside from these personal insurance policies a wide variety of income security programs are available in Canada to meet the financial needs of victims. Funding is typically a joint federal-provincial cost-sharing scheme. Medicare provides coverage of emergency medical attention and hospitalization and is available to all Canadians, regardless of their financial situation. Canada and Quebec Pension Plans may assist victims and their families with disability and surviving spouse provisions. The Canadian Assistance Plan provides services to people "in need" or "likely to become in need". This federal-provincial-municipal funding arrangement provides support crisis intervention services, rape crisis centers, transition houses for battered wives and information and referral services. Old age pensions, widow allowances, family allowances and unemployment insurance plans offer other sources of income security. The benefits of these programs to crime victims are limited as general eligibility requirements and processing



of applications make it difficult for victims to receive the emergency assistance required at the time of victimization. As well many victims are not aware of how to apply for such help and fear that application procedures will involve further frustration. A final method of minimizing the financial impact of crime on the victims is through the use of "fine schemes". Leger (1982) reported that in the United States, Pennsylvania and Florida have enacted legislation permitting courts to impose an additional \$10 fine against persons convicted of certain kinds of offences. These fines are then deposited in the state's general fund specifically assigned for victim compensation. Such a system, if established in Canada, could help offset the costs of government funded compensation programs. In essence compensation would become more a responsibility of the offender than the taxpayer.

Improvements to the criminal justice system involve the consideration of the victim in both police and court procedures. A reorientation of police services toward the victims has stimulated a focus on promoting community involvement in crime prevention. While such police-based programs as "Neighbourhood Watch" and "Operation Identification" are designed to prevent victimization they are not being implemented in all communities and have problems in maintaining a

high level of citizen motivation. Police departments in conjunction with social service agencies are now providing crisis intervention programs to enable immediate intervention in family disputes and other crisis situations. Such intervention is followed by short-term counselling and referral to other support agencies. In some communities these programs are the full responsibility of the police department, while in other areas the police work closely with established crisis intervention centers. The effectiveness of this type of service is based on the proper education of police recruits regarding crisis intervention techniques, sensitivity in communicating with victims and an understanding of the various types of victims and their needs. Again, this approach is gradually gaining credibility as a top police priority. An additional police service is the "Victim Assistance Unit". These are beginning to develop in police departments across the country and provide a follow-up service to victims. They keep victims informed on progress in their case (e.g. apprehension of offenders, recovery of stolen property, court dates), speed up the return of stolen property to the victims, provide guidance about criminal justice procedures from police activity to court procedure, offer information on public crime prevention strategies and connect victims to other social services (e.g. compensation

boards, social assistance, sexual assault centers and counselling services). The inclusion of a number of practices or considerations can lessen the frustration experienced by victims in their contacts with the judicial system. Such changes include: advanced notification to victims and witnesses of court dates, times and locations, court reception centers separated from the waiting areas designated for offenders, escorts to and from court to lessen transportation costs, childcare services to alleviate the baby-sitting costs incurred by victims and witnesses while appearing in court, increased witness fees to compensate victims and witnesses who are required to take time off from work to go to court, subsidized legal aid to enable victims some guidance throughout the court process, and greater victim input in the sentencing process. In addition to these police and court oriented changes, government funded victim-offender reconciliation programs are being established in some provinces. These enable face-to-face meetings between the victim and the offender which are mediated by a social worker or probation officer. They allow both parties to meet, get to know each other, work out a productive compensation agreement and avoid a court confrontation. However beneficial these programs appear to be they are limited in that violent crimes such as rape and murder are not suited to this arrangement, they can

only be applied when the offender is apprehended and both parties must agree to the meeting.

The creation of various social assistance programs involves those services that deal with the immediate social, emotional and practical needs of crime victims. The types of services include: transportation, emergency medical care, shelter, psychological assessment and counselling, physical protection, information, and referral. These services may be available through a wide variety of community agencies such as hospitals, police departments, community health clinics, community counselling services, churches, community recreation centers and crisis telephone hot lines. While these are general services that may be available in all communities they require the coordination of a central referral agency for easy access by victims. Such coordination is certainly not the case in all communities across Canada. More and more police-based victim assistance units, however, are beginning to offer this coordinated service. Another problem with these facilities is that they are not designed to meet the specific needs of the different types of victims. Such services as sexual assault and rape crisis centers, transition homes for victims of family violence (e.g. battered wives, abused children) and victim advocate groups oriented around specific crimes are gradually expanding across the

country. However they suffer from insufficient funding and are typically only available in large urban centers.

In general all of these services reflect the growing concern being given to crime victims. While such efforts are essential one important step towards ensuring rights for victims and their consideration within the criminal justice system is the recognition of such rights as part of a charter of rights for all Canadians. Such a constitutional change is a long-term objective which may result with the continued cooperation of governments at the federal, provincial and municipal levels, private sector agencies, voluntary organizations and the general public. A united approach in coordinating and supporting existing community services as well as developing new ones may eventually lead to the creation of a more victim oriented justice system.

#### Alcohol-Related Traffic Accidents and Their Victims

In the context of the current victim movement drinking and driving offences have no real victims. It is the nature of these offences to prevent impaired drivers from endangering their lives and the lives of others by removing them from public thoroughfares prior to becoming involved in traffic accidents. The real victims, then, are not victims of impaired driving offences but of traffic accidents caused by impaired driving. As suggested in Chapter Three proposed Criminal Code amendments entail the creation of a new offence

aimed specifically at impaired drivers who kill or cause bodily harm.

The nature of victimization depends not only on the different victim characteristics but also on the type of traffic accident. The impact of alcohol-related traffic accidents may be felt not only physically, psychologically and financially but also in terms of subsequent contacts with criminal justice agencies and a general lifestyle inconvenience. The extent of this impact increases with the severity of the accident and whether it is characterized by property damage only, bodily injuries or fatalities.

Although victims of alcohol-related traffic accidents involving only property damage do not suffer physical harm they are perhaps hit hardest by the related financial costs. Such costs vary of course depending on where the accident takes place, whether the impaired driver has insurance coverage and the financial resources of the victims. The basic cost is associated with the repair of the damaged property and replacement of personal belongings lost or destroyed in the accident. Typically the damaged property are the motor vehicles owned by the victims and such repairs can be very costly, especially if the impaired driver left the scene and cannot be traced or he/she has no insurance coverage. Accompanying this financial burden is the necessity of the victims to rent another motor vehicle while theirs is

undergoing repairs or until the offender's insurance company is able to provide some compensation for the loss of the vehicle. These costs are again magnified if victims are travelling away from their homes. Not only must their vehicles be repaired but they might incur other costs such as hotel accommodations, food, clothing and the use of another motor vehicle while awaiting repairs in an unfamiliar town or city. Also if the vehicle is totally destroyed then the victims must afford alternative transportation back to their homes.

The psychological impact of this type of traffic accident largely depends on whether the victims were occupying their vehicles at the time of the accident. If directly involved in the accident, victims may suffer an initial shock and disorientation followed by occasional dreams or flashbacks reliving the experience. These soon disappear and are replaced by a prolonged frustration over the lifestyle inconvenience resulting from the accident.

These lifestyle inconveniences concern the interruptions in daily living habits and planned activities which create confusion, anxiety and a sense of uncertainty among victims. Traffic accidents may necessitate: immediate arrangements to have vehicle repairs made, the replacement of personal possessions, the extended use of a rented motor vehicle, a sudden

change in scheduled travel plans, repeated meetings with insurance companies, possible pursuit of civil action, and continued interaction with the criminal justice system.

The extent of contact with the criminal justice system for victims is typically limited to the initial reporting of the accidents. Victims must be prepared however to appear as witnesses for the crown in prosecuting impaired drivers. As outlined previously these subsequent contacts with criminal justice agencies tend to be a source of secondary injury and confusion for victims.

Victims of alcohol-related traffic accidents involving bodily injuries may include not only occupants of other motor vehicles but also pedestrians struck down by impaired drivers. The amount of physical harm can range from minor cuts, bruises, concussions and broken bones to loss of limbs and long-term or even permanent disabilities arising out of spinal injuries.

While the basic financial costs such as property repair and replacement, emergency food, shelter, clothing and transportation still exist, the burden is further increased by the costs associated with physical injuries. Depending on the extent of the injuries hospitalization may be either short-term or long-term thus varying the hospital expenses. As well as medical bills for continued medication and drug



treatment, costs may be incurred for rehabilitation and physiotherapy. The costs of home-based nursing services and portable medical equipment can be expensive if required for prolonged medical care. Long-term illnesses or permanent disabilities may require structural changes to living accommodations which again can be costly depending on the type of injury. Also learning to live with a disability may require some victims to enroll in educational programs such as schools for visually impaired individuals. These costs, compounded by the subsequent loss of wages from employment, may be of a short duration as victims recover from the accident or may be a permanent loss of salary due to a long-term disability. In addition victims incur legal fees if forced to seek compensation through civil action against offenders.

The psychological impact of this type of traffic accident is heightened not only by the initial shock of victimization but also by the trauma of physical injury. Aside from the immediate shock and disorientation which accompanies such an unpredictable, violent and chaotic event, victims experience a period of uncertainty, fear, insecurity, and anxiety. It is a time of disbelief and questioning as to how and why the accident occurred and could something have been done to avoid it. The abrupt realization of a permanent injury or illness again heightens the traumatic experience

making the accident all that more senseless. A continued loss of sleep and flashbacks reliving the crisis moments perpetuate the stress and inability to get beyond this stress period resulting in prolonged depression. As victims gradually begin to recover from the experience they attempt to reorganize their lives and come to terms with any long-term or permanent injuries. This places added pressure on victims to adapt to such injuries and modify traditional lifestyle habits. Also the financial costs associated with the accident and subsequent contact with criminal justice agencies continue to be a source of stress for victims. The presence of physical injuries also adds to the number of general inconveniences by requiring victims to leave their employment either temporarily or permanently and to modify lifestyle and living accommodations to adjust to any disabilities.

In addition to the problems and expenses associated with alcohol-related traffic accidents reviewed thus far, those accidents which involve fatalities have the most severe and widespread impacts. The victims are the family and friends of those who die as a result of this violent experience. Financially the costs are enhanced by: sudden unexpected funeral expenses, the costs of transporting the deceased home for burial, if death occurred away from home, various medical costs, if death is not an immediate result of the accident,

the costs associated with the pursuit of civil law action against the impaired driver, long-term costs of support for any dependants of the deceased, and the costs involved in professional counselling which may be required for surviving family members.

Psychologically the impact of violent crime and tragic death has been described as a four stage mourning process. Mothers Against Drunk Driving in a "Victim Information Pamphlet" suggest that this process reflects the expected response to tragic death experienced by most all who survive the loss of a loved one. The duration of each stage is determined by the individual circumstances surrounding each tragedy. While the typical grieving process is 18 to 24 months, in situations where the death is a particularly violent one such as a young child killed by an impaired driver the process may take much longer. The first stage is one of "shock and numbness" and is prominent during the first two weeks following the tragedy. Typical emotional reactions include: confusion, disbelief, denial of the loss, anger towards the impaired driver, and guilt about not being able to prevent the accident. Behavioral responses range from crying, searching, sighing, nausea, loss of appetite, sleeplessness, lack of concentration to an inability to make decisions. The second stage is a period of "searching and yearning" and extends anywhere from two weeks to four months.

The feelings experienced may include: guilt, despair at both the personal loss and at the societal acceptance of the impaired driving behavior, depression and apathy arising from a feeling of helplessness, self doubt and anger again directed at this societal acceptance and at the criminal justice system's apparent lack of concern over the problem. Behavioral responses again include: a lack of concentration, poor memory, restlessness, loneliness, crying, and a loss of energy. The third stage is one of "disorientation" and usually peaks between four to seven months. It is characterized by feelings of continued guilt, disorganization, depression, irritability, and a feeling that grieving is a disease. Behaviors include: restlessness, an urge to live as if the event hadn't taken place, a resistance to reaching out or sharing with others, a low compliance with orders of physicians, and a change in weight (e.g. gain or loss of more than 10 pounds). The fourth stage is "reorganization" of lifestyle and habits. This period takes roughly 18 to 24 months to stabilize and may be typified by feelings of renewed hope and optimism regarding the planning of future goals as well as a gradual accommodation to the loss. Behaviors show a relief from previous physical symptoms, a willingness to relate to others, and a desire to actively participate in planning for the future. Various features of these stages

such as depression, guilt and anger peak again on special dates (e.g. birthdays, anniversaries, graduations) associated with the deceased. In this sense while those who mourn such a tragic death gradually recover from the initial experience and trauma, they are continuously reminded of the pain and loss throughout their lives.

The impact of the criminal justice system is felt not only in the frustration resulting from a general lack of concern toward all crime victims but more in terms of the system's apparent ineffectiveness in dealing with the specific problem of drinking and driving and the leniency in sentencing of impaired drivers. This perpetuates a sense of helplessness among the survivors and that justice has not been served. The physical side-effects of this type of traffic accident include: nausea, headaches, and loss of sleep experienced by survivors throughout the mourning process.

As has been shown then those individuals victimized by traffic accidents involving alcohol suffer in a variety of different ways. Their needs may be classified as immediate and long-term. Depending on the nature and extent of the accident these immediate needs may include: emergency transportation from the chaotic scene to a more secure, stable environment for medical care and psychological counselling; immediate lodging, food and clothing; financial aid for car

repair, transportation costs and replacement of belongings; and the support of the police in dealing with the initial crisis, notification of death, identification of the body of the deceased and referral to other support agencies for continued guidance. With the gradual satisfaction of many of these basic needs other long-term needs relating to the financial, psychological and physical impact of the accident as well as general lifestyle inconveniences and criminal justice procedures, must be met. This requires the coordination of existing general services available to all victims of crime and the development of specialized services for those victimized by traffic accidents involving alcohol.

#### Services for Those Victimized by Alcohol-Related Traffic Accidents

As reported earlier a wide variety of general services are available in Canada for victims of crime. With effective coordination various institutions and organizations fundamental to community life such as police, hospitals, churches, social assistance agencies, legal aid services and counselling centers have the potential to provide relief for the many needs of these victims. However their usefulness is limited largely by the absence of community agencies to coordinate them into a cohesive organized network of services easily accessible to victims. Although widely available, without

proper coordination victims are either unaware that such services can offer any assistance or feel too confused, helpless and humiliated to make use of them.

The emergence of agencies to guide victims through their experience and the criminal justice process, to integrate existing community facilities, and provide a referral service is only a recent development in Canada. Much concern has been given to determining which type of agency could fulfill this responsibility. While some people argue that it is within the scope of the criminal justice system, others maintain that private social service agencies such as the Salvation Army and the John Howard Society could more adequately perform this role. The major issue is whether those organizations which are oriented toward serving offenders can also afford equal attention to the needs of crime victims. Despite this concern regarding a potential conflict of interest both public and private agencies are exploring possibilities of greater cooperation in the provision of victim services.

To date efforts have been directed at providing victim services within the framework of existing programs and services or redeploying existing resources to accept these new responsibilities. As a result services are administered directly through agencies of the criminal justice system

including the police and the courts, and indirectly by contracting the task out to private social services.

Three approaches to police-based services have been developed. The first is the creation of specialized victim service units within police departments. Examples of these can be seen in the police forces in Edmonton, Calgary and Kitchener-Waterloo. In 1979 the Edmonton Police Department established a separate victim services unit as part of their Community Services Section. It is operated by a staff of six police officers which direct 70 volunteer victim advocates trained to provide assistance to victims on an individual basis. The services provided include: immediate crisis intervention, emergency property repair, assistance in making any necessary funeral arrangements, guidance in applying for restitution and compensation, help in filing insurance claims, referrals to other community agencies, continuous feedback on the status of the case, prompt return of property once it has been identified, tagged and photographed with the owner, guidance on all stages of criminal justice procedure, and information on crime prevention. Initially these services were available to victims of break-and-enter crimes but was later expanded to include victims of robbery, assault and accident-related injuries. In 1983 the Calgary Police Department created a Victim Crisis Unit consisting of a service



component with a staff of six and a crisis component with a staff of five. This Unit operates under a Community Services Section and is supported by a trained corps of volunteers. The service component offers information on case status, help in pursuing insurance and compensation and tips of crime prevention, while the crisis component assists police officers in dealing with emotionally charged situations. Although assistance is available to victims of both property and person-related offences, particular attention is given to special groups of victims like the elderly. The Kitchener-Waterloo program was started in 1982 under the Community Relations section of the Kitchener-Waterloo Police Department. It is operated by a small civilian staff reinforced with 12 trained volunteers manning an information desk at the courts. The range of services offered include: information on case status, crime prevention material, guidance through the courts, assistance in completing insurance claims and compensation procedures, emotional support and referral to other agencies. Victim service workers make efforts to telephone victims of person-related crimes such as homicide, attempted homicide, sexual assault, and assault causing bodily harm. Victims of property offences are informed about these services either through the mail or by the investigating officer and are encouraged to inquire about case status and crime prevention.

The second approach to police-based services is to integrate the services of a victim assistance unit with those of an existing section such as the Crime Prevention Section or the Community Relations Section. This is being done in the Regina Police Department where senior personnel are recommending that a Victim Services Unit be established within the Operational Services Division. This proposal suggests that the Unit will be managed by police personnel but operated by civilians. The distinguishing feature of this program is that in addition to their involvement in crime prevention activities, the police officers must also assume victim assistance responsibilities. This enables them to directly benefit crime victims through both resources. The services provided by this type of victim assistance agency include: support and assistance to witnesses of crime, help for victims in dealing with the effects of criminal victimization, and comprehensive guidance for victims 65 years and older. The target population is victims of both violent crimes and residential break-and-enter offences. A proposal similar to this one is being considered by the St. John Police Department.

A holistic approach represents the third format in police-based victim assistance. This involves an attempt to revise the routine operating procedures of an entire police department

to encompass services to both victims and witnesses of crime. In other words instead of having only a few police officers specialized in victim services, all members of a police force would be responsible for such services as part of their normal duties. This type of initiative has been operationalized by a large number of Royal Canadian Mounted Police detachments across Canada. Victim services inherent in the police constables' job include: crisis intervention, escort and/or referral to social agencies, shelter, food, medical care, protection from threats and harm, information on the status and disposition of cases and assistance in dealing with the legal system. Services to witnesses of crime involve: preparation for testimony, filing for witness fees, transportation to court, information on the legal system, and accommodations and protection. The delivery of these services vary considerably among detachments with the personal and health care services being more characteristic of rural detachments. Again, as these functions are seen as part of a typical police officer's training little attention is being given to developing a formal victim/witness services branch or participation in community-based planning and coordination of support agencies.

Court-based services are concerned primarily with the needs and welfare of witnesses and improving the efficiency

of the court process. The strategies implemented may involve improved case management or the provision of such services as transportation, babysitting and information. The Attorney General of Alberta implemented a "Witness Central Unit" in both Edmonton and Calgary in 1980. This system serves to: coordinate court scheduling and procedures for notifying civilian and police witnesses, provide a 24-hour telephone information service, make any special arrangements such as contacting an interpreter, and maintain emergency transportation and accommodations for witnesses. It also distributes information on court procedures. Similar proposals are being reviewed in other provinces across Canada.

Another approach being considered in the administration of services is a combined victims/witnesses program. This involves the coordination of police-based services and court-based services for witnesses. Such a program was established in Winnipeg in 1981. The "Winnipeg Victim/Witness Assistance Programme" operates in the Provincial Court and involves four full-time staff and volunteers who work through an advisory board composed of representatives from the police, crown counsel, the judiciary, probation, and community agencies. Services provided are: an information brochure outlining court procedures which is distributed with subpoenas, witness fees, and restitution programs. A special witness alert and court cancellation procedure is also being developed to avoid

unnecessary witness appearances.

In general criminal justice agencies provide services directly to victims and witnesses to meet their needs and minimize inconveniences associated with their subsequent contact with the criminal justice system. Secondary benefits include: improved police/community relations, increased citizen involvement especially in the reporting of crime, cooperation with the investigation and prosecution process, prevention of future victimization, enhanced public awareness and greater use of community services.

In addition to these programs based within the criminal justice system, private/social service agencies have been active in developing programs for victims and witnesses. The "Salvation Army Victims Assistance Programme" has been operating in Ottawa under the supervision of the Ottawa Police Department since 1981. It is staffed by members of the Salvation Army and the police and utilizes a corps of over 40 volunteers on a 24 hour service basis. Upon completion of their initial investigation, police officers inform the victim of the services available and provide him/her with a printed business card containing information on the program and how to contact it. Once notified by either the police or the victim the program dispatches a team to interview the victim and assess the nature of services required. The range

of services offered include: crisis counselling, physical repairs to the victim's property, contacting friends and relatives, babysitting, assistance in applying for compensation and insurance claims, referrals to other support agencies, intervention on the victim's behalf to employers, and guidance through the criminal justice system. Victims include those who suffer as a result of both property and person-related offences. The "Integrated Victim Assistance Programme" of Hochelaga-Maisonneuve, Montreal is a project designed to assess the needs of victims, how they can be served and promote the takeover of these services by existing community agencies. The project is directed by the University of Montreal and services are provided by criminology students and other community volunteers. A police officer informs the project coordinator on a daily basis of victims during the previous day. The victims are then contacted by letter, phone or personal visit and offered such services as: information on the case, emergency intervention and counselling, assistance in filing insurance and compensation claims and the creation of self-help groups. Although services are available to all victims, priority is given to victims of violent crime. Programs similar to these are gaining support throughout Canada and can provide valuable assistance to victims of alcohol-related traffic accidents. While such programs demonstrate potential in meeting victim's needs, their growth is hindered

by a lack of financial resources and government support, and they are often only available to victims of crime in large urban areas.

Aside from the concern for the provision of general services for all crime victims, there is currently a focus on providing services for specific types of victims such as transition homes for victims of family violence and sexual assault support centers for rape victims. However the number of programs and agencies which deal with the specific needs of those who suffer as a result of alcohol-related traffic accidents is extremely limited. In fact the only such services in existence today are provided by various citizen-based pressure groups. The development of these grass-root organizations which are formed by the unity of citizens sharing a common experience, that of suffering, injury or death of a loved one as a result of such accidents, has become a fast growing countermeasure to the drinking and driving problem. They provide a vehicle by which the unfortunate "experts" on the consequences of drinking and driving can unite and channel their anger and frustration into a constructive force. A force which places pressure on legislators, policy makers and fellow citizens to enhance public awareness and stimulate social change.

Influenced largely by "Mothers Against Drunk Drivers"

(M.A.D.D.), the first of these lobby groups established in California of the United States in 1980, a number of similar groups have sprung up across Canada. Mothers Against Drunk Drivers has expanded to British Columbia, "People Against Impaired Driving" (P.A.I.D.) is based in Alberta, "Citizens Against Impaired Driving" (C.A.I.D.) is located in Manitoba, and "People to Reduce Impaired Driving Everywhere" (P.R.I.D.E.) is located in Ontario.

Like its affiliated chapters in the United States, M.A.D.D. in British Columbia attempts to perform a dual purpose. Its primary concern is the reduction in the number of injuries and deaths caused by drunk drivers through heightened public awareness and education, general victim advocacy, and continuous research into the drinking and driving problem. In addition it offers emotional support and services to those victimized by traffic accidents involving alcohol. In achieving these goals M.A.D.D. provides a variety of service programs.

The victim assistance program is designed to aid victims in a progressive process of understanding their feelings and taking constructive action. It includes: peer counselling available by phone, mail and in person; bereavement and growth groups where victims meet to offer mutual emotional support; education and resource groups to help victims find inner personal strength, learn about their experience, in an



educational setting and how to take action effectively; adjudication advocacy in the form of printed material or personal guidance to assist victims through all stages of the criminal proceedings as well as intervene and work with members of the criminal justice system; and information about and referrals to existing support organizations.

The prevention program focuses on enhancing general community awareness of the seriousness of the drinking and driving problem as well as re-education of people regarding their social and moral responsibilities not to engage in the activity. It includes: a speakers' bureau providing guest speakers for a range of community organizations and clubs to give speeches on drinking and driving, and the plight of victims; community awareness campaigns ranging from writing letters to the media, distributing literature to driver programs and medical facilities, working with other organizations such as schools and churches, and awareness campaigns concentrated on specific issues such as responsible decision making; and student involvement and education which makes use of positive peer pressure in group discussions so that students can explore the issues and learn from each other.

The research and development efforts keep the M.A.D.D. organization abreast of the drinking and driving problem as well as determine the needs for and delivery of services.

The activities include: a court monitoring system where trained volunteers attend court and observe drinking and driving cases to determine if prosecutors and judges, prosecute and sentence to the full extent of the law, and whether the interests of victims are considered in case dispositions; a victim information service researching the problems of victimization; and research into possible solutions and improvements to the criminal justice agencies.

In general all of these activities are supported by a strong volunteer service. The growth and success of M.A.D.D. relies heavily on the energy and emotion of victims, survivors and concerned citizens for positive action. Maintaining that if you are not part of the solution then you are part of the problem, M.A.D.D. continues to expand making more and more people aware of the problem and stimulating citizen activism.

Citizens Against Impaired Driving, the first of the Canadian-based lobby groups was formed in Manitoba in 1981. It has since received inquiries from both Saskatchewan and New Brunswick. With a present membership of approximately 250, C.A.I.D. is expanding inviting the support of victims, survivors and concerned citizens. The membership fees are \$5 for each single member and \$10 for a family. These fees cover the costs of occasional newsletters, membership cards and organizational expenses. To date, C.A.I.D. has been

successful in stimulating public outrage against a 30 month sentence given to an impaired driver with 14 prior driving convictions who had killed three people. With the resulting public pressure the Crown appealed and the sentence was increased to six years. In addition C.A.I.D. has presented a brief with 5,000 signatures to Manitoba's Attorney General asking for a reassessment of the drinking and driving laws, with tougher penalties, especially for repeat offenders.

People to Reduce Impaired Driving Everywhere is another very prominent Canadian lobby group established in 1982. Originally it was founded as an Ontario chapter of C.A.I.D., but was renamed P.R.I.D.E. after its founder received help from the coordinator of the Metro Toronto Police R.I.D.E. program in arranging publicity and interviews with the Toronto Star. It presently has a membership of approximately 500 members and while based in Toronto is spread throughout Ontario. The membership fees are similar to those of C.A.I.D. and cover the same expenses. The success of P.R.I.D.E. includes an informal agreement with Metro Toronto Council by which beer sales are prohibited after the start of the ninth inning at Toronto Exhibition Stadium. As well, the group has been effective in pressuring Ontario's Attorney General for a task force to investigate Ontario's drinking and driving problem.

While not much information was available regarding the

P.A.I.D. group of Alberta, it also signifies the increasing awareness and motivation among the general public to stop the drinking and driving problem.

Although not as refined as M.A.D.D. in terms of offering structured programs and services for individual victims, C.A.I.D., P.R.I.D.E. and P.A.I.D. serve a very therapeutic function. They provide an opportunity for victims to ventilate their anguish, counsel each other, unite their energies, and work together for a common cause. It is through this process that victims, survivors of victims and concerned citizens help each other. The formal or primary objective of these groups is more one of general victim advocacy than offering specific services for individual victims. Relying on the strength and pressure of large, active memberships, C.A.I.D., P.R.I.D.E. and P.A.I.D. lobby for a number of changes including: an increase in the legal drinking age to 21, a reduction in the impairment level from 80 milligrams of alcohol in 100 milliliters of blood to 50 milligrams, enhanced police surveillance with the use of blitz enforcement programs, the use of roadside screening devices in all traffic patrol cars for immediate apprehension of impaired drivers, the introduction of stiffer fines and jail terms for alcohol-related traffic offences, greater use of the total range of existing laws and penalties such as criminal

negligence causing death for impaired drivers who kill, and a change in the public attitudes towards drinking and driving through greater awareness and intolerance of the behavior.

These groups campaign actively to initiate these changes at both the federal and provincial levels. However since the administration of criminal law, the prosecution of traffic offences, the enactment of Highway Traffic Acts which supplement Criminal Code legislation, and matters of health and education are under provincial jurisdiction, applying pressure to provincial legislators, policy makers and criminal justice officials offers the best opportunity to gain widespread support for these proposals. In general, these groups feel that the best strategy to produce long-term, national change is by affecting such change in their own immediate environment.

As suggested earlier Canadian-based lobby groups have been influenced largely by groups originating first in the United States. Another grass-root organization based in the United States which is gaining support and popularity throughout both the United States and Canada is "Students Against Driving Drunk" (S.A.D.D.).

In response to a growing awareness of teenage alcohol abuse and drinking and driving the students of Wayland High School in Massachusetts founded S.A.D.D. in 1981. The school's

health education director Mr. Robert Anastas initiated this student movement with a series of 15 programs on alcohol, its use and abuse in a mandatory health education course for students at the age to acquire their driving licences. The course integrated a community approach in which the full dimensions of the teenage drinking and driving problem were outlined by guest speakers from the law, health and insurance professions as well as traffic accident victims and representatives of M.A.D.D. This stimulated a sense of responsibility among students to assume the challenge of changing the problem themselves. The S.A.D.D. organization then reflects the united efforts of teenagers working together to build a school-based lobby movement as an effective force to combat drinking and driving.

Students Against Driving Drunk is not a lobby group which is organized around general victim advocacy or the administration of individual victim services. Instead it is a grass-root educational movement relying on positive peer pressure to: educate fellow students about the drinking and driving problem, develop peer counselling among students about alcohol abuse, and increase public awareness and prevention. It attempts to instill a sense of realism among the high school, teenage population, that alcohol abuse and impaired driving are serious problems which can radically alter or end their

lives. Personalizing the threat of this behavior enhances student awareness that they are a part of the overall problem and share in the responsibility for its prevention.

A distinguishing feature of S.A.D.D. which sets it apart from other lobby groups is its progressive prevention efforts. In recognizing the importance of parent participation and support in halting teenage drinking and driving, S.A.D.D. developed a "Drinking-Driver Contract Between Parent and Teenager". This contract is not intended to condone drinking among teenagers but instead it confronts the reality of the problem, that a very high percentage of young people under the legal drinking age do consume alcohol and then drive a motor vehicle. In the contract both the young person and his/her parents sign a written agreement to call the other and provide transportation home if they feel they have had too much to drink. If the parents cannot pick the young person up they also agree to pay for a taxi or make some other arrangement. The contract also stipulates that neither the parents nor the young person will ask questions at the time they are notified. They must wait until both parties are sober and/or in a calm state of mind before discussing the situation. In this manner the contract also recognizes that adults share a role in the prevention of alcohol-related traffic accidents. In addition, the contract has had the

added benefit of opening lines of communication within the family. As Robert Anastas suggests, parents and teenagers are being brought closer together in the discussion of other difficult adolescent decisions besides those of drinking and driving.

Other S.A.D.D. efforts include "S.A.D.D. DAYS" in those high schools with chapters and "Community Awareness Programs". Each new S.A.D.D. chapter is initiated with a 15 day awareness program followed by a S.A.D.D. DAY. During this period prominent community leaders are urged to be honorary chairpersons to give credit to the movement, and local newspapers, radio and television stations are approached for media coverage. As well other schools are invited to send student leaders to these S.A.D.D. DAYS to participate in awareness campaigns and distribution of information against drinking and driving. This is an effective method of expanding S.A.D.D.'s membership with the creation of new chapters. Community Awareness Programs require students to pass out literature on alcohol and driving in shopping centers and supermarkets. Also S.A.D.D. sponsors a "Junior Prom Alcohol Awareness Program" where young people chaperon their own dances and hold small in-school discussion groups with counsellors on how to arouse full student participation in the supervision of activities before and after the dance.



In general S.A.D.D. represents a very effective, fast growing public awareness and education program developed at the grass-roots level. It gets at the very essence of the teenage drinking and driving problem by stimulating a sense of hope, pride and responsibility among individual students which is then translated into a constructive, unified drinking and driving countermeasure.

#### Priorities and Process in Working for Reform

As has been shown the specialized victim lobby groups such as M.A.D.D., C.A.I.D., P.R.I.D.E., and P.A.I.D. serve an important general victim advocacy function. They support a mandate of legislative changes and improvements to criminal justice agencies designed to enhance the detection, apprehension and prosecution of those who drink and drive. Moreover they are perhaps most effective in bringing the experiences and problems of those victimized by alcohol-related traffic accidents to the forefront of public awareness. In all, these groups provide an important source of pressure to stimulate change and offer the only form of specialized service to those who suffer injury or loss of a loved one as a result of such an accident. Thus a major priority for reform is the continued support and funding of these grass-root organizations from both the public and private sectors.

Other priority considerations in the recognition of

alcohol-related traffic accident victims and subsequent provision of victim services include: more effective coordination of general community facilities and services, legislative changes, and improvements throughout the criminal justice system. The development of agencies concerned solely with the problems and needs of crime victims offer valuable assistance in terms of effective coordination of general community services for easy referral and access as well as support and advice throughout criminal justice procedures. These coordinating agencies then must receive increased funding and support if they are to continue these valuable services to those victimized by drinking and driving. Legislative changes are necessary to ensure: that the needs of victims are considered throughout all stages of criminal justice procedure especially in the sentencing of offenders, sufficient compensation for all victims as well as restitution by offenders wherever possible, and finally, the recognition of special rights for all crime victims in a constitutional format under the Canadian Charter of Rights. Improvements to criminal justice agencies involves the reorientation of police services and judicial procedures to consider the needs of victims. Such routine activities as notification of next-of-kin, return of property held as evidence, referral to other support agencies, legal aid, guidance throughout the court

process and scheduling of court cases are just a few of the areas which require more consideration in improving the way victims are dealt with by the police and the courts.

By and large victim advocate groups in working for these changes, follow a very structured approach. Gladstone (1980) described this approach as consisting of three phases: rational-empirical, normative-re-educative, and power-coercive. The rational-empirical phase necessitates a thorough investigation of the issue to establish a clear understanding of the extent of drinking and driving, enforcement strategies and other countermeasures, and the impact of victimization. This information must then be integrated and communicated to the general public via pamphlets, seminars, and the media. The rational-empirical phase is essential in the development of policies for reform and enhancing public support. The normative-re-educative phase focuses on creating a wide communication network between victims, concerned citizens, police officials, educators, church leaders and other community members. The larger this network, the more unified and influential the movement for change becomes. Developing this network requires well publicized public meetings and workshops where the drinking and driving issues can be discussed with the aim of promoting a solid commitment toward concrete action among the public. Finally, the power-coercive phase concerns applying pressure on political

leaders and policy makers to motivate them to implement proposed reforms. Aside from creating pressure by a wide communication network, Gladstone suggests that efforts may be more effective if government is approached from a "systems of interest" perspective. During an election period political figures may use the drinking and driving problem as a means of gaining public favour while at the same time helping to bring about legislative reforms. Also other activities such as assisting on political campaigns and gaining membership on government task forces may provide avenues of applying pressure and stimulating change.

In general each of these phases represent the process of organizing and coordinating influential public pressure. Each one forms the basis for the next. A solid understanding of the full extent of the problem is necessary before public concern and commitment can be established. Having gained such community-based support, pressure can then be focused on legislators to implement reforms. In working toward reform for the drinking and driving problem and to those victimized by it, special attention must be focused on the normative-re-educative phase. As one of the largest obstacles to reducing drinking and driving is the general societal acceptance of this behavior, extra effort must be exerted to enhance public awareness and ensure public support for the

proposed reforms. This has been one of the primary objectives of M.A.D.D., C.A.I.D., P.R.I.D.E. and P.A.I.D.

#### Final Considerations of the Victim Movement

As the victim movement continues to evolve its impact will be felt in a number of ways. It will draw attention to the senselessness of the drinking and driving crime and the widespread societal acceptance of it, as well as make the extent and impact of drinking and driving seem a more immediate threat to personal safety. This in turn will motivate public concern and support for change with a focus on stimulating a sense of individual responsibility in the prevention of drinking and driving. This will lay a foundation for greater community-based action and volunteer services for victims and their families. As well victim advocacy will pressure legislators for reforms and provide valuable input into criminal justice policies and procedures. This will orient the criminal justice system toward meeting the full scope of the drinking and driving problem and its impact. Finally as well as bringing into question the philosophy upon which Canadian criminal justice is based, the victim movement will have a civilizing effect on criminal law. It will incorporate greater use of restitution and mediation between both parties involved in the criminal act, thus enabling a closer relationship between individual victimization and

subsequent criminal prosecution.

While this input may eventually provide a more balanced system of justice, legislators and researchers are weary of an overemphasis on the victims' initiative. They fear that such concern may overshadow other objectives of the criminal justice system or backlash against the rights and treatment of offenders. Solicitor General of Canada Robert Kaplan in an article entitled, "Should We Civilize Our Criminal Law?", in *Liaison*, 1983, stated that the concepts of "Punishment, incarceration, rehabilitation and treatment...in dealing with offenders are still included in the ideal of justice" (*Liaison*, 1983, p. 18). Ezzat Fattah of the Department of Criminology at Simon Fraser University, in the same article suggested "that although the initiative to support victims is noble, it should not be encouraged at the expense of offenders' rights" (*Liaison*, 1983, p. 19). He noted that the victim movement might "turn into "offender'bashing campaigns" where offenders become targets for suppressed vengeful impulses of victims; increase anxiety within the general public over time and heighten fears of victimization especially among women and the elderly who tend to see themselves as prime targets for criminal acts; and finally, divert attention away from activities such as white collar crime, victimless crimes, violations of health and safety codes, and

abuses of political and economic power which cause general social harm as opposed to more individualized criminal violence. Guided by careful research and documentation of the range of victimization experiences and subsequent needs, the rights and services to victims of crime must be integrated gradually into the justice system to avoid these dangers.

## CHAPTER SEVEN

### DRINKING AND DRIVING AND POLICY FORMULATION

#### Alcohol and Social Policy

Policy formulation is an essential aspect of any attempt to deal with widespread social problems. It represents a process of identifying and conceptualizing a problem, outlining the measures necessary to confront it, and describing how such measures are to be implemented. It is then, a process which provides for a comprehensive, organized policy statement or plan of action to deal with a problem.

The nature or type of policy statement depends largely on the agency or agencies that assume ownership of a particular problem. They form the dominant sources of influence which direct the research surrounding a problem and create the knowledge base necessary to develop a specific policy approach. The research and policy they generate often becomes the accepted body of public knowledge serving to perpetuate their particular conceptions of a problem. In this manner they define for the general public, the "reality" of a problem and the appropriate societal responses to it.

According to Moore and Gerstein (1981) many popular conceptualizations and related policy approaches often take the form of historical programs or movements. In reviewing



the history of alcohol in the United States, these authors suggested that five such movements have been influential in the development of alcohol policy. Each is a reflection of the different conceptions of alcohol and alcohol-related problems, as maintained by various organizations which from time to time have dominated attempts to deal with such problems.

The first movement describes that early part of American History termed the "Colonial" period. It lasted roughly 150 years beginning in the 17th century with the union of the 13 British colonies forming the United States of America. While alcohol consumption was a widespread and valued social custom, its use was opposed on religious grounds. The churches played the major role in condemning habitual drunkenness as a sinful waste of moral energies, energies that should be devoted to prayer and God's work. The problem was conceptualized as being one of a weak moral character of the individual rather than of the nature of alcohol itself. Social policy took the form of attempts to discipline the weak individual through public disgrace and shame as delivered from the church pulpit, or in the public stocks or other corporal punishments.

This religious condemnation carried over into the "temperance" movement and was reflected in the active lobbying

of the temperance pledge societies between 1830 and 1930. While somewhat evangelic in tone these societies assumed ownership of the alcohol situation and drew upon religious, medical and political resources for support. Their opposition to alcohol was founded in the belief that it was not a healthful or benign substance, but rather an addictive, destructive evil which controlled people and transformed them into a state of violence and degradation. Their primary objective was to restrict the availability and use of alcohol and as a result they worked to gain political power to exert their influence. Laws prohibiting the distillation of alcohol, experienced in the early 1900's throughout the United States, provide evidence of the policy advocated by these temperance pledge societies. In the 1930's, as the ineffectiveness of the prohibition laws became apparent, the main thrust of the temperance movement dissipated as did its policy based on radical legal controls over the supply of alcohol.

The third movement had its basis in the "disease model" of alcohol which gained popularity in the 1940's. Research conducted within the medical profession and universities shifted attention toward the potential disease-causing nature of alcohol. These organizations promoted a view of alcohol-related problems as being the result of a detrimental chemical

reaction to alcohol consumption. It was maintained that for a majority of people alcohol consumption had no ill effects; however, for a minority of otherwise healthy people alcohol use resulted in a chemical reaction predisposing such people to alcohol abuse and alcoholism. Individuals with this disease were described as having a heavy dependency on, and craving for alcohol, as well as being in a state of confusion and social collapse. The policy approach held by these organizations centered on treatment of this disease through total abstinence from alcohol. This was seen to be the full responsibility of each individual drinker and his/her family and friends, rather than a matter of broad social concern.

The fourth movement gained strength during the repeal of prohibition and conveyed a policy of "alcohol control". It was influenced heavily by a business-based alliance, the Association Against the Prohibition Amendment, which held that the problem was neither the alcohol nor the drinker, but the ruthless and often criminal way in which alcohol commerce was developed. This Association lobbied for increased government legislation to: eliminate illegal commerce including moonshining, bootlegging and smuggling; and regulate the legitimate market through controls over the buyers, sellers, conditions of sale, production, warehousing, transportation, advertising, price control, taxation, and licencing.

The fifth and most recent movement views alcohol as a

"public health" problem, worthy of concern for all members of society. Ownership of this approach is assumed largely by various government agencies such as health and welfare, public safety, transportation and communication, and the criminal justice system, but is also supported by research carried out in universities and the medical field. Attention is centered on the health consequences of abusive drinking and on general social drinking habits. Support for this movement lies in: an increasing awareness of the large role played by alcohol in disease (e.g. cirrhosis) and traumatic deaths (e.g. traffic fatalities); a growing concern for greater, more widespread public health, safety and physical fitness; a continued emphasis within society for the preservation of life; and a belief that the more alcohol consumption there is among the general public, the greater the number of people who will be dependent on alcohol, and the greater the extent of serious alcohol-related health problems. Policies promoted by this approach rely not only on government regulation of the availability and use of alcohol but also on furthering public awareness and education of the general health problems associated with alcohol.

Moore and Gerstein (1981) maintained that the three most popular conceptions or "governing ideas" have been the colonial view, the temperance movement and the disease model. They have

managed widespread interest and appeal because of their compatibility with common social values, individual experiences and the interest of organized groups concerned with alcohol. In general they reflected policies based on the treatment of specific groups of individuals (e.g. with weak moral characters or detrimental chemical reactions to alcohol) with alcohol problems, or in the total prohibition of alcohol as a means to reduce existing alcohol abuse. Their influences can be felt in contemporary public policy. The colonial condemnation of alcohol abuse is evident in present criminal laws regarding alcohol consumption in public and public drunkenness. While the temperance movement dissipated with the failure of prohibition, its influence has continued in the form of increased government control over alcohol commerce. A number of government agencies regulate the distillation, packaging, advertising and sale of alcoholic beverages. The disease model of alcohol has been most influential in perpetuating a view of alcohol problems as being confined to a small, specific group of individuals in society. It has reinforced a policy based largely on the treatment of these diseased people. Widespread support of this view has initiated government-based research and funding for treatment programs and clinics.

Unlike the three governing ideas, neither the alcohol

control view nor the public health movement has been able to capture the full acceptance and support of the general public. As a result Moore and Gerstein (1981) have termed these two approaches "minority conceptions". The restrictive measures of the alcohol control view and the general strategy of the public health movement promote a public policy aimed largely at preventing alcohol problems rather than treating them. They require the cooperation of all members of society, many of whom do not see themselves as part of the alcohol problem and view such policies as being unnecessary infringements on their lifestyles. Despite the reluctance of many individuals to cooperate with these approaches, each reflects the increasing role played by government in the ownership of alcohol and related problems.

In assuming such responsibility much of government's initiative has been concentrated on the development of a preventative approach to enhance the overall safety and well-being of the general population. In this manner current public policy is attempting to alter societal drinking attitudes and practices by manipulating conditions that influence either the drinking patterns, or the consequences that can be expected to result from any given drinking pattern. It does not seek to establish major personality or lifestyle changes but operates in a nonpersonalized way to prevent potential alcohol abuse

and reach people with widely varying drinking habits. The full range of prevention policies may be more clearly understood when divided into three categories. The first involves those policies which aim to shape alcohol consumption over time and location by regulating the terms of commercial availability. Imposing restrictions on the number of outlets (e.g. liquor stores, taverns, restaurants), hours of sale, prices, kinds and quantities of alcohol sold, and special taxes represent some of the methods employed in this policy approach. The second category includes policies which attempt to directly influence drinking practices by suggesting which practices may give rise to alcohol problems. The strategies implemented by this approach vary in terms of the degree of force used. Policies written in the form of criminal laws, for example, rely on the threat of punitive sanctions to create fear and compliance with those laws. The threat serves as a coercive means to establish general deterrence. Policies conveyed through public awareness campaigns and education programs however, are directed at the responsible decision-maker, informing him/her of the dangers of alcohol abuse. No coercive attempt is made to change drinking behavior but rather, a rational appeal promoting a balance between the harms of alcohol and the pleasures of its moderate usage. Finally the third category is comprised of policies designed

to make the external environment safer for those individuals who engage in abusive drinking behavior. These involve changes to both the physical and social environment, ranging from collapsible traffic signs and safer motor vehicles, to improved emergency medical services and increased police sensitivity to situations involving alcohol.

Drinking and Driving: The Nature of Current Social Policy

Drinking and driving is indeed one of society's most serious alcohol problems. Because it occurs with such a high frequency among a vast majority of people from all segments of society, it requires a large scale policy approach. Current policy ideas are initiated and developed by the government. Acting on behalf of society, the government has assumed responsibility for defining the basic parameters of the drinking and driving problem as well as establishing social policy to confront it.

Under government ownership drinking and driving has not typically been considered a serious problem requiring any specific type of major social policy. Absence of such attention reflects, to a large extent, a long history of societal acceptance of drinking and driving as part of a normal lifestyle. It is seen only as a problem when it is involved in traffic accidents and fatalities. In such cases, general



public opinion maintains that the impaired drivers are killer drunks, easily distinguishable from those drinkers who manage to drive without damaging property or person. These "lucky" drinking-drivers are held to be respectable, law-abiding citizens who did not really do anything wrong because no harm was done and they do not drink and drive that often anyway. Even if apprehended they are considered "unlucky victims" of law enforcement rather than criminals and a serious threat to life. Killer drunks, however, are viewed as destructive and reckless individuals, characterized by heavy alcohol abuse and a complete disregard for the safety of others. Gusfield (1981) suggested that this popular conception of killer drunks is a myth which: reinforces the deviant status of drinking-drivers thereby relieving social drinkers who drive of the stigma and responsibility for being part of the problem; provides a cognitive and moral label around which knowledge can be organized to make sense out of the incidence of traffic accidents and fatalities; and singles out a specific group of people as the cause of the drinking and driving problem and the appropriate target for punishment by the criminal justice system. This prevailing view of the drinking and driving situation is the cumulative result of past ownerships and is perpetuated by present government research and policy. The colonial view and the disease model, while having

encouraged the acceptance of drinking and driving among "respectable" citizens, have placed the blame for its dangers and destruction on those individuals with drinking problems. The temperance movement and the alcohol control policy have been influential in establishing the use of government regulations and laws as the main source of social policy to deal with alcohol problems in general.

Given that criminal law is founded on the basis of individual liability for behavior and that drinking and driving and alcohol-related traffic accidents have been conceptualized as problems of poor driving and irresponsible behavior on the part of certain individuals, it is understandable that the criminal justice system would be an essential element in any comprehensive social policy. Because it is such an established system of control and offers the most immediate, widespread response to social problems, it has become the government's front-line resource in confronting the drinking and driving situation. Government funds are continually being funnelled into the system supporting research and the development of strategies to apprehend more and more drinking-drivers. The objective of this social or legal policy is the prevention of drinking and driving and traffic accidents involving alcohol by employing a theory of deterrence based on criminal law enforcement and network of punitive sanctions.

Throughout the course of this thesis the effectiveness of legal policy has been questioned. The historical evaluation of Canadian drinking and driving laws revealed that while having been enacted to prevent alcohol-related traffic accidents and deaths, the law enforcement procedures and punitive sanctions employed, have not provided an effective deterrent and have consequently been unsuccessful in preventing such adversity. In an attempt to gain a clearer understanding of the present and future status of the drinking and driving laws, a series of 19 interviews were conducted with people from different professions within the criminal justice system and other fields associated with the drinking and driving issue. A list of the interview questions as well as the various organizations from which interviews were obtained are presented in Appendix 5.

Drinking and driving was seen by all those interviewed as a very serious social problem with more immediate consequences than other problems such as high unemployment, acid rain, and nuclear war. While being a top priority issue for research and policy, it was also described as being more a cause for community concern and action rather than the widespread or global attention demanded by these other problems. In identifying the roles or functions of the present laws, it was commonly agreed that the primary role is general

deterrence to prevent drinking and driving and enhance the protection of society. Specific deterrence, incapacitation, retribution, rehabilitation and education were also acknowledged as important aspects of the drinking and driving laws. It was also suggested however, that the laws are not successful in performing any of these roles effectively. One interviewee reported that the laws are not a deterrent, only an inconvenience.

A number of reasons were cited for the ineffectiveness of the laws. Inadequate law enforcement strategies and resources, complicated detection procedures, loopholes in the breathalyzer legislation, lack of uniformity in judicial sentencing practices, plea bargaining which reduces the severity of sanctions, and a lack of public awareness of the laws and the drinking and driving problem in general, were seen as factors which suppress the deterrent effect. They interact with components of the deterrence model to: reduce the certainty that drinking and driving will be apprehended or punished; decrease the severity of the punishments; and reduce the celerity with which the laws are enforced and the offenders punished. These problems combine to generate a public perception that drinking and driving is not a serious crime and carries little or no legal threat. Ross (1981) demonstrated that a public perception which views the laws as

being heavily enforced and that apprehension, prosecution and punishment are a certainty, is an essential ingredient to effective general deterrence.

With regard to improving legal policy and deterrence most interviewed persons advocated enhancing law enforcement resources with more frequent use of spot checks and road-blocks, as well as greater use of heavier fines and licence suspensions. Other suggestions included: increased reliance on behavioral clues of impairment by the courts, to avoid problems with the breathalyzer legislation; the introduction of third party liability legislation to increase a sense of broad social responsibility in the prevention of drinking and driving; and more education and treatment options for first-time offenders, with stiffer punitive sanctions for repeat offenders. In general these suggestions focus on enhancing the punitive aspects of legal policy. They are attempts aimed at creating a stronger legal threat by strengthening law enforcement efforts and sanctions which use fear as an agent of general deterrence.

When asked about the probable direction of legal policy in future legislation all interview subjects reported the introduction of: heavier fines; longer jail terms; increased use of longer, even life-long, licence suspensions; and a reduction in the breathalyzer level of impairment from a blood alcohol concentration of .08 percent to .05 percent.

Mandatory education and treatment programs were also mentioned by some subjects. Given that it is the basic nature of criminal law to be ~~punitive~~, such measures can indeed be expected. There are, however, a number of problems associated with increasing the scope and influence of this policy approach.

"The effectiveness of laws is, in large part, based on society's moral acceptance and support of them" (Premier's Interministry Task Force on Drinking and Driving, 1983, p. 65). Because drinking and driving laws reflect a punitive, fear-based policy, their stiff penalties and enforcement procedures have not received societal acceptance. They have, in fact, become the object of much resentment and criticism, with people challenging law enforcement efforts, often boasting of escaping detection or receiving only a small fine as punishment. Civil liberty groups are becoming more outspoken and active in opposing legislation designed to curtail individual behavior for greater protection of the general public. This unfavorable societal attitude has also helped to create an environment which does not stimulate responsible decision-making and community participation in the prevention of drinking and driving.

In their current status the drinking and driving laws have assumed the role of a panacea providing the main source

of policy to deal with the full dimensions of the problem. Such dimensions include the different categories of drinking-drivers and the many factors which combine with alcohol consumption to produce impairment. The legal approach has not adequately dealt with these parameters in that it has employed a single system of punitive measures to confront them in the same way. As outlined previously the total population of drinking-drivers is comprised of social drinkers, young drinkers and problem drinkers who drive. Each group has a particular set of characteristics and reasons for engaging in this activity, yet stiff law enforcement and penalties have been implemented with the aim of producing the same deterrent effect on all groups. While such measures may deter the young and the social drinker groups, those individuals with severe alcohol dependencies are not likely to be deterred and require extensive rehabilitation. Even within the young and social groups there are individuals who are not deterred by the laws. Policy efforts aimed at drinking-drivers in general, are limited in scope and potential, they must deal with the problem on a more specific level. As well, the legal approach has perpetuated a view of impairment by alcohol as the cause of traffic accidents and fatalities. However researchers emphasize that alcohol consumption creates only one of many types of impairment

conditions and other factors such as the type and condition of the vehicle, road and weather conditions, driver's experience, and time of day may all play a part in the occurrence of a traffic accident. By focusing such attention on the alcohol factor the importance of these other factors is neglected and countermeasures based exclusively on the control of drinking and driving are developed. The growing demand for enhanced enforcement programs provide an example of expensive strategies based on unrealistic expectations of accident reduction, as again, only one of the accident factors is being attended to.

Finally, another major problem to be considered when proposing to strengthen current legal policy is that increasing the severity of law enforcement and penalties may reduce the certainty of their application. This inverse relationship may negate any general deterrent effect. Increasing severity may encourage deformations in the criminal justice system, such as police leniency or corruption, plea bargaining, and heavy court schedules. Police officers will be required to spend more time in case preparation and making court appearances, which may influence their decision not to arrest a drinking-driver. Defendants will be more likely to plead innocent, hire a lawyer and demand jury trials. Prosecutors will also have to spend more time in preparing cases



possibly making them more willing to accept plea bargaining. The courts are likely to be backlogged with cases and more likely to accept plea bargaining. As well, they will be less likely to convict or impose a sentence even if mandatory. Indeed much more research is needed to investigate the interaction between the components of the deterrence model and determine an optimal balance to maintain effective general deterrence.

In conclusion the dominant government response to drinking and driving is a punitive legal policy which employs reactive, fear-based law enforcement measures and sanctions oriented toward prevention through general deterrence. However, this policy has been shown to be ineffective in this regard. As a general deterrent the effects have only been temporary, involving enhanced enforcement at a great cost. Such enforcement has also not received wide public support. Attempts to strengthen or reinforce this policy may prove to be a questionable, even futile, venture unless first based on thorough research and planning. H. Laurence Ross suggested "that the imprisonment of thousands of people for many weeks on the basis of a scientifically unfounded belief should be considered dubious social policy, and that humanitarian as well as scientific considerations would be served by careful and controlled experimentation aimed at determining the costs

and benefits of changes in the existing laws" (Ross, 1981, p. 24). Legal policy then, should not be viewed as a panacea for the drinking and driving problem. Its resources can only be stretched so far and attention must be afforded to more proactive policy alternatives, such as driver education programs, to complement the legal approach.

#### A New Approach to Legal Policy

Increasing frustration with legal policy and realization of its limitations have prompted researchers, legislators and policy makers to explore an alternative approach to combat drinking and driving. While maintaining a strong punitive legal policy the federal government is also emphasizing a very community-oriented approach. The Honourable John Crosbie, in introducing his proposed amendments, states that "The responsibility to reduce impaired driving is shared by all sectors of society, including community groups" (Ministry of Justice, 1984, p. 3). As well as initiating new legislation, the Minister intends to distribute a community resource kit containing information and materials on impaired driving. It will also include an instruction manual for community groups to organize local campaigns against impaired driving. It is anticipated that initiatives such as this will afford a sense of shared responsibility among all citizens and promote responsible individual decision-making regarding the

safe and proper use of alcohol and motor vehicles.

This relatively new approach by government may, in part, reflect its changing role in dealing with social problems. It is becoming a facilitator and coordinator of community resources and energy rather than an agency based primarily on the provision of ready-made services to the public. In relation to drinking and driving, this approach enables government to confront the problem at all levels and touch all personalities which comprise the drinking-driving population.

While this new form of government policy offers the most promising countermeasure for long-term prevention, the importance of maintaining a strong criminal justice system and drinking and driving laws which reflect this current movement must not be overlooked. The laws must incorporate a more educational approach to complement other government and community-based initiatives. At first this notion may appear to conflict with the fundamental punitive nature of criminal law. However Andenaes (1974) suggested that while general deterrence is the most prominent effect of the threat of punishment, other effects are habit formation and moral education. In general, then, although legal policy employs a fear-based punitive strategy, it incorporates educational components as well. Such components have not typically

received full consideration in the development of legal policy to confront the drinking and driving problem.

The educative effects of criminal law take a variety of different forms. As a socializing agent the law attempts to establish conformity among all citizens to social rules and standards as well as instill respect for the authorities who enforce the law. Law as a moral educator outlines unacceptable behavior, denouncing it as dangerous to the safety of the general public. In this manner the law reflects the accepted social values and code of conduct, and creates public awareness regarding the dangers and immorality of certain behaviors. Finally legal punishments are authoritative statements about the seriousness of wrongdoings. The severity of punishment is held to demonstrate the seriousness of unacceptable behavior and the degree of social disapproval attached to it. Ross (1981) reported that the educative consequences of the threat to legal punishment are expected to result from long-term exposure to such threat. The initial fear response which is manifested as general deterrence, is eventually converted to acceptance and conformity to the law. This is gradually internalized by each member of society, becoming part of his/her value system and conscience.

In relation to the drinking and driving issue this internalization process appears not to have taken place. The

drinking and driving laws have not been successful in socializing people to respect and conform to the laws, nor have they effectively educated people about the dangers of such activity. They have also failed to create a social atmosphere of disapproval and peer pressure against driving while under the influence of alcohol. Despite these problems the potential of these laws to fulfill an educative role should not be neglected. As Andenaes (1974) concluded, "Our society could hardly function without a system of criminal law, one that does not work solely on fear, but exerts influence on human thought and behavior in varied more subtle ways" (Andenaes, 1974, p. 126).

More deliberate, structured attempts to evoke attitudinal and behavioral changes through education within the framework of the drinking and driving legislation, are only recent developments. As is evident from the historical review of the enactment of this legislation, past efforts have focused on establishing provisions for the treatment of offenders with heavy drinking problems and alcoholism. Although such efforts have traditionally met with objection from legislators, support is growing for greater use of rehabilitation programs to supplement punitive sanctions. In the series of interviews described earlier, a number of people advocated a more rehabilitative approach. While suggesting punitive

measures as a means to improve present laws, they largely supported more education programs for offenders as the direction they would like future legislation to take.

A review of offender rehabilitation programs in Chapter Five indicates that to date, the majority of rehabilitative initiatives are treatment oriented. The structure of these treatment programs ranges from medical care and hospitalization for withdrawal from chronic alcohol dependency, to indepth counselling and therapy on serious lifestyle problems which underly excessive alcoholic use. Education programs for offenders, while not as prevalent as treatment programs, are gaining popularity. They focus on providing information about the dangers of drinking and driving to encourage self-evaluation and attitude change.

The effectiveness of this present rehabilitative approach is restricted in a number of ways. As it is a relatively new movement these programs experience financial limitations and are not available as a sentencing option in many judicial regions throughout Canada. Where they are in operation their design, content and duration is under provincial jurisdiction. As a result variations can be seen in the structure and overall nature of rehabilitation programs across Canada. This is especially true of the various education programs in existence. Many programs fail to incorporate measures for program

evaluation. This, coupled with the differences between these programs, makes a systematic analysis of effectiveness and general conclusions difficult to form. Since the use of rehabilitation programs is not mandatory, referrals are made at the discretion of the courts. As individual courts vary in their emphasis on the use of rehabilitation, disparity exists in the types and numbers of drivers referred. While some courts refer only those drivers with prior convictions, others do not make use of these rehabilitative options at all. Finally because education programs often differ in their target populations confusion and uncertainty surround their anticipated effectiveness. Some programs focus on drivers experiencing their first conviction while others attend to those with previous convictions. However drivers with previous convictions are believed to be more representative of problem drinkers and alcoholics requiring in-depth, personalized treatment rather than education. Reed (1981) concluded that problem drinkers are much less responsive to education programs than social drinkers who comprise the majority of drivers with their first offence. Attempts to provide rehabilitation must consider this issue when designing specific programs.

It is the contention of this author that education programs represent a promising approach toward achieving

long-term prevention of drinking and driving, and are worthy of much more consideration within the scope of legal policy. They not only afford a measure of specific deterrence, but also in an indirect manner offer a potential general deterrent effect. By stimulating attitude change and awareness among program participants, an atmosphere of enhanced understanding, concern and shared responsibility may gradually spill over into the general public. This may eventually result in a social environment where responsible, informed citizens condemn drinking and driving and participate in its prevention.

In order to secure a more formal position for education programs within the criminal justice system they must become part of a more standardized sentencing practice. This proposal suggests a national program of mandatory education for all drivers convicted of their first offence. Such a program would complement other criminal sanctions and be integrated into the structure of existing legislation. For a first offence all offenders would receive a fine, lose their licence, to drive a motor vehicle for a specified period of time, and automatically enroll in an impaired drivers education course with a requirement to abstain from alcohol consumption while in attendance. While the length of the licence suspensions may vary depending on the nature of each particular



offence, they would correspond with the duration of the program. The amount of fine would depend on the costs of the education program and serve as tuition by offenders to offset these costs. In general, at this stage the emphasis would be on the educative component, with the punitive measures assuming a supportive role. Efforts would also be made to screen out those offenders with serious alcohol dependency and refer them for more extensive treatment. With subsequent convictions, more punitive measures including incarceration, and treatment programs would take precedence. By recidivating, offenders will have demonstrated a serious dependency on alcohol as well as an inability to understand the impact and dangers of drinking and driving, and a failure to take responsibility for their behavior. These offenders, not having been deterred by the educational approach, may benefit more from punishment and/or indepth therapeutic treatment.

In reference to the series of interviews described earlier in this chapter this policy approach received enthusiastic support. The majority of people interviewed agreed with greater, widespread use of an impaired driver education course as suggested in this thesis. While specific features such as goals, structure, content and duration of this course are to be determined through more detailed research,

some suggestions based on these interviews and existing education programs, can be presented. The primary goal would be to inhibit recidivism among drivers convicted of their first drinking and driving offence, and thereby greatly reduce the number of traffic accidents involving alcohol. In attempting to achieve this, other objectives include developing a long-term understanding and respect for the drinking and driving laws, as well as healthy drinking habits and safe driving practices.

An essential point to consider when determining the content and structure of this course is that it must be relatively easy, convenient and unembarrassing for people to attend and learn to control their behavior. The content must reflect a concentrated, high impact program of information concerning: the physiological and psychological effects of alcohol consumption and the nature of impairment; alcohol abuse, the development of drinking problems and alcoholism; the incidence of drinking and driving as well as its impact from a number of perspectives (e.g., personal, social, legal, financial and medical); basic societal attitudes and different categories of drinking-drivers as explanations for its persistence; the roles of government, the community, the private sector and each individual in taking responsibility for the prevention of drinking and

driving; the importance of developing safe drinking habits and knowing one's own limits, practicing defensive driving skills, being a rational decision-maker, effectively dealing with peer pressure and playing a greater role in the social contract, as ways of accepting more personal responsibility; and finally, a variety of simple behavior modification strategies for those who through self-evaluation, decide to alter their attitudes and behaviors.

As this is a very comprehensive course the method of presentation will, to a large extent, determine its overall effectiveness. While informative it must also be entertaining so as to maintain the interest of program participants and promote a relaxed, enjoyable learning experience. With this in mind the structure of the course may best take the form of small group discussions supplemented by lectures, films and guest speakers. The primary consideration would be to stimulate an open exchange of opinions and feelings among participants more so than a focus on the distribution of material about alcohol and the law. Such information can be given to all subjects at the start of the course in packaged form. Again the optimal size for effective group discussions, the specific course format and the duration of the course would be refined through further research.

While these various suggestions provide useful information

toward the development of this education course, success ultimately relies on the type of agency which assumes this responsibility. As it is anticipated that this course would be established on a national level it is recommended that a task force involving both the federal and provincial governments be set up to design the course and study the feasibility of its implementation. Such a task force would be comprised of various departments involving justice and the administration of criminal law, health and welfare, education, communication and transportation at both levels of government. It would not only be responsible for dealing with the drinking and driving issue but also, on a much larger scale, it would investigate the full nature of alcohol abuse highlighting the many problems resulting from it. In this way the task force would provide a thorough, well-rounded picture of the extent and nature of alcohol abuse in Canadian society as well as how to best deal with specific problems such as teenage alcoholism, impaired driving, alcohol use during pregnancy, and family violence involving alcohol.

From this task force a coordinating agency would evolve to oversee the development of various countermeasures. It would assume the responsibility of clearly defining specific alcohol-related problems, outlining the most effective system of countermeasures, and determining the roles each government

department could most effectively play in these counter-measures. In reference to the drinking and driving problem this agency would administer public awareness and education campaigns, school education programs and impaired driving courses for offenders. The advantages of this approach are many. It confronts the total alcohol picture, exploring all alcohol-related problems. It enables equal contribution or input from the different government departments to afford a more balanced conceptualization of alcohol problems. It provides for a more consistent approach to research and program implementation across the country. Finally, it promotes cooperation among the various departments and levels of government in order that many political and economic barriers such as cost sharing and the administration of programs, can be dealt with in an effective manner.

Support for this proposal can be found in a recent publication by Health and Welfare Canada. Having conducted a thorough evaluation of alcohol use in Canada, the Working Group on Alcohol Statistics pointed out that an "Emphasis on impaired driving further offers the opportunity for creative and effective cooperation among all levels of government, several departments of government, voluntary organizations, private citizens, and even the alcohol beverage industry." (Working Group on Alcohol Statistics, 1984, p. 83).

## CHAPTER EIGHT

### CONCLUSION

The primary aim of this thesis was to present a thorough evaluation of the legal approach to drinking and driving in Canada. The following conclusion will first briefly summarize the format of this thesis and then outline the major findings and recommendations.

#### SUMMARY

The groundwork for this research was provided in the second chapter which presented an overview of the fundamental principles and concepts of law. More specifically it explored the origins and necessity of law as well as its various types, while focusing on criminal law and its functions and principles. The study of criminal law was then set within the context of Canadian culture and lifestyle, evaluating its role both historically and at present. This, in turn, facilitated the review of drinking and driving legislation as an example of criminal law at work in Canadian society. The final section of this chapter explored the nature of the drinking and driving problem in Canada. It investigated the prevalence of drinking and driving, the characteristics of those who engage in it, its impact on society and victims, and finally the structure and objectives of the current laws.

The third chapter began with a comprehensive review of the enactment of Canadian drinking and driving legislation, starting with their inception in 1921. This historical approach facilitated an understanding of: the general legislative process of enactment and refinement of laws, the important issues and concerns that have arisen during debates of the drinking and driving laws over time, the various functions and principles which have been paramount in their refinement, the different groups and individuals that were influential in their development, and finally, the possible direction of the drinking and driving legislation in the future.

Chapter four attempted to assess the effectiveness of the Canadian drinking and driving laws by first identifying their objectives and then examining their ability to fulfill them. This was accomplished by comparing the trends in enforcement of various laws involving impaired driving and criminal negligence with the trends in traffic accidents and fatalities. These comparisons were stated in the form of two hypotheses: "If the laws are effective in protecting society by removing impaired drivers from roadways through efficient detection and apprehension methods, then as official offence rates increase, traffic accident and fatality rates ought to decrease"; and "If the laws are effective in discouraging the general public from drinking and driving, then both the offence

rates and traffic accident and fatality rates ought to decrease as the laws become more refined." A more detailed analysis of enforcement trends versus trends in traffic fatalities from 1962 to 1981 was conducted. This time frame offered the most consistent period of data collection. As well as enabling an evaluation of these trends both within and between each other over time, this period also permitted an evaluation of the effects of legislative amendments introduced to the drinking and driving laws in 1968-1969 and in 1975-1976. The trends were divided into three segments (1962 to 1968, 1969-1974, 1975 to 1981) and a linear regression analysis was performed. This chapter continued on to review the nature of drinking and driving laws and various enforcement programs of other countries as well as similar programs in Canada.

Chapter five outlined the range of drinking and driving countermeasures in terms of their type of intervention. While characterizing the enactment and enforcement of drinking and driving legislation as secondary intervention aimed at protecting society by removing impaired drivers from the roads, chapter five explored the nature of primary and tertiary forms of prevention. In this regard various public information campaigns and education programs in Canada were reviewed. They were representative of primary intervention



aimed at general deterrence. A number of rehabilitation programs varying from education of offenders to more concentrated treatment approaches were also reviewed. They were more representative of tertiary intervention aimed at specific deterrence. This chapter also studied a variety of alternative strategies involving other government responses, private sector initiatives and individual responsibilities to combat drinking and driving.

In light of the growing concern for those victimized by criminal activity, chapter six presented an overview of the victim movement. It reviewed the origins and support for this movement, as well as the plight of victimization, specific rights and needs of victims, and services available to meet those needs. Attention was then focused on the specific experiences, problems and needs of the victims of alcohol-related traffic accidents. The existing services and agencies set up to help meet the needs arising from the immediate crisis situation and in the long-term were surveyed to afford a clear perspective of the direction and potential impact of the victim movement in relation to the drinking and driving problem. This chapter concluded with a summary of the issues that should take priority in working for reform and the process such reform should take.

Chapter Seven began with a historical review of

the various types of social policy that have characterized the use and control of alcohol in the past. This provided insight into the way alcohol problems have been conceptualized and how these conceptualizations have influenced the current policy approach. The nature of present social policy regarding drinking and driving was assessed with the aid of a series of personal interviews. The interviews were conducted with a number of individuals consisting of lawyers, policy makers, researchers, educators and law enforcement personnel. They afforded information about the functions of the laws, their perceived effectiveness and possible direction of future legislation. The conclusion of this chapter offered recommendations concerning a new approach to the present legal policy.

#### Major Findings

The following is an outline of the major findings of this thesis as set out in each chapter.

#### Chapter Two

The current practice of drinking and driving is both widespread and socially acceptable in Canada. Its impact is far reaching and can be felt psychologically, physically, financially, legally and socially at a personal and national level. Contrary to popular public belief, drinking and driving and the damage it causes is not restricted to one class or category of people. While the high risk groups tend to be

young drivers ages 16 to 24, and problem drinkers and alcoholics who drive, the larger proportion of the drinking driver population is comprised of social drinkers. As well, social drinkers and young drinking-drivers typically make up the first-time offender population, while drivers with serious alcohol abuse problems constitute the majority of second and third-time offenders.

The laws pertaining to drinking and driving in Canada are found at both the provincial and federal levels. At the provincial level such legislation is typically enacted under the Highway Traffic Acts of the various provinces. While there is disparity between the provinces regarding these laws, they generally deal with the suspension of driving privileges for varying lengths of time. Federal drinking and driving laws consist of a network of four sections in the Criminal Code of Canada and include provisions to prevent any individual who is under the influence of alcohol or who has a specified level of alcohol in his blood from operating a motor vehicle on the roads. As well they prohibit refusal to submit to roadside testing of breath or further scientific analysis via breathalyzer technology. Penalties for offences committed under these drinking and driving laws involve a system of sanctions which attempt to more adequately make the punishment fit the nature of the crime. First-time offenders are typically not dealt

with as severely as those who commit their second offence while offenders with three or more offences receive still more severe punishment. In general these laws reflect the basic nature of criminal law in Canada. Their primary goal is security and protection of society. As well they incorporate safeguards to ensure their fair and just administration and to monitor the powers of the state. They are punitive in approach and include subsidiary goals of general and specific deterrence, incapacitation of offenders and rehabilitation initiatives.

### Chapter Three

The enactment of drinking and driving legislation is reflective of a more general process of legislative refinement. Evolving out of a growing familiarity with motorized vehicles and subsequent necessity to regulate their use the laws have undergone frequent amendments. During the early stages of their development, up until the late 1960's, refinement to enhance the security goal was the primary concern. However as fear grew over the restrictive nature of the laws and the increasing powers of the state, legislators attempted to strike a balance between both the security and justice goals. This historical review also indicated that deterrence has long been a more prominent concern than the other subsidiary goals of incapacitation and rehabilitation.

In relation to the fundamental principles of criminal law, drinking and driving offences are offences of strict liability. The intent of the driver is not an important issue in the court of law, as the fact that he/she operated a motor vehicle after consuming alcohol is sufficient evidence for a conviction of guilt. However in the eyes of the public intent appears to be important. Social drinkers who drive tend to be seen as victims of law enforcement methods and without any intent to cause harm, whereas the "killer drunk" intends to endanger society. These views appear to have permeated the criminal justice system to some degree. Responsibility for one's behaviour, another basic principle, has a dubious role in the drinking-driving situation. The state in assuming the role of a generalized victim has not fostered an environment which promotes responsible, individual decision-making about drinking and driving. Finally, while Canadians have historically placed great value in the concept of the social contract, they appear to be unwilling to recognize the danger posed by drinking and driving and to adhere to strict laws for the protection of society.

Based on past trends and present influences future drinking and driving laws are likely to reflect a delicate balance between the justice and security goals. The most recent proposals to amend the laws continue to reinforce a punitive approach and attempt to strengthen a deterrent effect. As

well they place a renewed emphasis on the seriousness of drinking and driving and increase individual liability for the specific harm it creates.

#### Chapter Four

Enforcement of the drinking and driving laws has not been effective in preventing or reducing the rate of traffic accidents and fatalities involving alcohol. As well, given the ever-increasing trend in law enforcement, it appears that the public have not been deterred from drinking and driving. While enforcement trends increased from 1962 to 1981, accident and fatality rates remained steady until 1975 and decreased slightly from 1975 to 1981. This decrease has been attributed to a combination of factors such as reduced speed limits and the introduction of mandatory seatbelt laws. The most noticeable effects of the drinking and driving laws occurred after the introduction of the amendments of 1968-1969 and 1975-1976. While traffic accident and fatality rates dropped somewhat the effects were short-lived as they returned to their pre-amendment levels within a year. This pattern resembles the enforcement trends of similar drinking and driving laws of other countries and has been attributed to the heightened public awareness surrounding the introduction of the amendments. Increased publicity served to enhance the public's perceived risk of being apprehended and prosecuted

for drinking and driving and thus deterring such activity. However as the public realized that the actual risk of detection remained minimal, drinking and driving again increased as did traffic accident and fatality rates.

Intensified enforcement accompanied by heightened publicity appears to be crucial in order to maintain a deterrent effect. As a result current law enforcement practices both in Canada and in other countries are focused on a blitz enforcement approach. Such programs typically last anywhere from a couple of weeks to a month and involve special police patrols, random spot checks and roadblocks in a concentrated and highly advertised format.

#### Chapter Five.

Researchers, policy makers and legislators are now recognizing that any long-term approach to reducing the drinking and driving problem must incorporate a more integrated system of countermeasures. While secondary intervention in the form of law enforcement has long been the primary approach support is growing for other forms of intervention. The use of media campaigns, public seminars, general education programs, school programs and driver training courses represent forms of primary intervention. They are aimed at general deterrence and the prevention of drinking and driving behavior. As well they attempt to stimulate a change in societal attitudes.

Rehabilitation programs represent tertiary intervention strategies. They are aimed toward specific deterrence of offenders and are gaining popularity as a supplement to other more punitive sanctions. Education programs for offenders are designed to provide information in the hope that offenders will evaluate, on their own, their drinking habits and driving abilities. Treatment programs are more clinically oriented and actively attempt to alter the behavior and attitude of offenders with serious drinking problems. Evidence suggests that both education and treatment have a positive influence on knowledge and attitudes about drinking and driving. Behavioral changes appear to be more difficult to achieve.

This integrated approach involves a number of other initiatives. Supplementary legislation regarding the drinking age or the driving age, as well as the numerous regulatory laws of various government departments and agencies represent other government activities. Private sector involvement as demonstrated by research from automobile manufacturers, policies of insurance companies and practices by night-club and bar owners to curtail excessive drinking reflect a growing mood of shared responsibility. These activities and an increasing sense among the general public of the responsibilities of each member of society to prevent drinking and driving, form the basis of this integrated approach.



## Chapter Six

Growing concern for those victimized by alcohol-related traffic accidents adds a new dimension to an understanding of the drinking and driving problem. As well it offers valuable input into the criminal justice system, affording a more balanced conceptualization of justice. The experiences and needs of victims are given equal time with those of offenders.

The nature and extent of this type of victimization depends not only on the many different victim characteristics but also on the type of traffic accident. Those involving property damage only are characterized chiefly by financial costs and related inconveniences. The impact of traffic accidents involving bodily harm and fatalities, entail varying degrees of psychological trauma, physical suffering, and financial problems. The psychological trauma may take the form of shock during the immediate crisis and longer term experiences such as prolonged disorganization, flashbacks, continued grieving and lifestyle adjustments. The frustration and inconvenience often associated with the criminal justice system is well documented as a source of secondary victimization. This is based on a limited awareness and sensitivity to the plight of those who suffer as a result of alcohol-related traffic accidents.

Such grass-root victim advocate groups as "Mothers Against Drunk Drivers" and others have fast been gaining popularity in the United States and Canada. They serve to enhance public awareness about the specific experiences and needs of these victims, to bring important issues for reform to the forefront of legislative debate, and to provide specialized services directly to victims. Aside from these groups very few specialized agencies exist. Other more general helping agencies and services often lack coordination to assist these victims in an organized manner. However the increasing availability of Victim Assistance Units either police-based or in the private sector, are also beginning to meet the needs of the victims in general. Continued support for victim advocate groups, changes to the criminal justice system and more effective coordination of existing services represent the primary issues of reform.

#### Chapter Seven

Historically alcohol policy has been influenced by five major trends. The colonial movement, prominent in the 17th century had its foundation in the various church organizations. They condemned habitual drunkenness as a sinful waste of moral energies better spent in prayer. Present laws regarding public drunkenness and drinking in public reflect a similar theme. The temperance movement, 1830-1930, was promoted by

the evangelically oriented temperance pledge societies. They condemned alcohol as an evil, addictive substance victimizing responsible citizens. Their influence can be seen in the degree of government control over alcohol commerce. In the 1940's the disease model was popularized by medical research. It maintained that alcohol problems were restricted to a specific minority of people who suffered a detrimental chemical reaction to alcohol consumption. This model reflected a clinical treatment approach. The alcohol control model, was founded in an alliance of Business associations. They held that neither the individual nor the alcohol was at fault, but rather the ruthless way alcohol commerce has evolved. Present influence is seen in greater government control of alcohol production. Finally, the public health view is the most recent conceptualization involving an integration of various government agencies. It promotes a concern over the health consequences of abusive drinking. This view continues to gain support and is aimed at the prevention of future alcohol problems.

Present ownership of policy to deal with alcohol problems is largely governmental and policy initiatives reflect a preventative approach. In relation to drinking and driving the predominant approach has been a punitive legal policy. Such a policy is based on a theory of deterrence relying on the legal threat of law enforcement, prosecution and punishment. While it is important that criminal law be a component

of any policy approach, this punitive policy has become a front-line resource in dealing with drinking and driving. As well indications are that this fear-based policy will continue to gain support and adopt more restrictive, punitive measures in future legislative amendments.

In retrospect this thesis has demonstrated the ineffectiveness of a punitive legal policy as a deterrent to drinking and driving. While successful in apprehending drinking-drivers it has not reduced accidents and fatalities nor has it reduced drinking and driving. A number of factors may be cited for this ineffectiveness. A social environment which accepts drinking and driving and is generally unsupportive of law enforcement strategies to combat it, is perhaps the foremost problem. As well it has encouraged leniency in dealing with impaired drivers. Secondly, the current system of laws has not afforded an environment for responsible decision-making about drinking and driving. In the absence of such an environment, individual responsibility for, and societal condemnation of drinking and driving has not been encouraged. From a more technical standpoint, present laws entail lengthy detection procedures, many police hours and resources that often limit their potential to be effective. Another major problem with legal policy involves an inadequate understanding of the specific components of the deterrent effect, and their interaction. The optimal relationship

between the severity of sanctions, the certainty of their application and celerity of enforcement has not been given much attention by policy makers. Finally, the laws do not distinguish between the different categories or types of drinking-drivers. The same enforcement strategies and sanctions are expected to have the same effect on all types of offenders. Again more research is needed in this area.

#### Recommendations


While the community oriented educational approach offers the most promising method of achieving general deterrence in the long term, punitive criminal law remains as the primary agent for specific deterrence. It is felt however that the educational approach has potential in attempting to prevent recidivism and is therefore worthy of a much greater role in the sentencing of offenders. The basic educative functions of law involve: informing the public what constitutes unacceptable behaviour, reflecting the seriousness of such behaviour in the sanctions administered to violators, and outlining the moral fiber and values of society. It is anticipated that these functions become internalized over time and eventually result in respect and conformity to the law. In relation to the drinking and driving problem it appears that this internalization process has not taken place thus requiring a much more deliberate and structured attempt to facilitate the

the educational component.

The primary recommendation of this thesis then is that a national education program for offenders convicted of their first impaired driving offence be introduced as a mandatory sanction. This program would be administered in conjunction with such other sanctions as the suspension of driving privileges and a fine in an amount to contribute toward the operational costs of the program. The basic focus would be on the education of those groups most likely to be influenced by these initiatives, namely young drivers and social drinkers. It is anticipated that the provision of information about alcohol, law and the drinking and driving problem would facilitate self-evaluation of personal lifestyle and drinking habits. No direct attempt would be made to alter personal lifestyles. In dealing with offenders who have committed their second and subsequent offences a more punitive approach would be taken. These offenders, having shown to be unaffected by educational measures, would require heavier fines or terms of incarceration. As well, concern for treatment of serious alcohol abuse problems would receive special attention in sentencing practices.

In order to design the specific structure, content and optimal duration of the offender education program further research will be required. To facilitate this it is further recommended that a task force comprised of various government

departments and agencies at both the federal and provincial levels be established. Such a task force would not only investigate the drinking and driving problem, but on a larger scale, conduct a comprehensive study of alcohol and its related problems in Canada. It is anticipated that an agency would evolve from this to oversee research and coordinate the development of programs to confront specific problems. This agency would be responsible for refining the offender education program proposed in this thesis.



BIBLIOGRAPHY . . .



## BIBLIOGRAPHY

## I. RESEARCH PUBLICATIONS

- Allaby, C., DeCoursey, A. and Doucet, A. (1981) Driving While Impaired: A Short High Impact Program, Instructor's Manual. New Brunswick; Justice Intervention Division of the Alcoholism and Drug Dependency Commission.
- Andenaes, J. (1974) Punishment and Deterrence. Ann Arbor, Michigan: University of Michigan Press.
- Anderson, M. (1982) 'Half the drivers who die are drunk'. The Saturday Star, March 26.
- Berton, P. (1982) Why We Act Like Canadians. Toronto, Ontario: McClelland and Stewart.
- Bittner, E. and Platt, A. M. (1966) The Meaning of Punishment. Issues in Criminology, 2 #1, 79-99.
- Brown, C. (1982) "Keep Killer Drunks Off The Road". Chatelaine, December.
- Calvert-Boyanowsky, J. and Boyanowsky, E. O. (1980) Tavern Breathtesting As An Alcohol Countermeasure. Ottawa, Ontario: A Report to the Ministry of Transport, Government of Canada.
- Canadian Council on Social Development (1981) Rights and Services for Crime Victims. Ottawa, Ontario
- Chamelin, N. C. and Evans, K. R. (1972) Handbook of Criminal Law. Englewood Cliffs, New Jersey: Prentice-Hall Inc.
- Department of Education (1981) Driving Without Impairment - Curriculum Guide. Saskatchewan: Government of Saskatchewan.
- Department of Justice (1984) Federal Justice Minister Introduces Major Criminal Law Reform Bill. News Release, Ottawa, Canada: Government of Canada.
- Gammage, A. Z. and Hemphill, C. F. Jr. (1974) Basic Criminal Law. New York: McGraw-Hill
- General Motors Corporation (1982) Statement to the Presidential Commission on Drunk Driving. Detroit, Michigan

- General Motors Corporation (1982) Curbing the Drunk Driver: An Electronic Test, Public Affairs Newsletter. Detroit, Michigan.
- General Motors of Canada Ltd. (1983) Update - G.M. Develops Device to Halt Drunk Drivers. New Times. 1 #15, April.
- Gladstone, F. J. (1980) Coordinating Crime Prevention Efforts. London: H.M.S.O.
- Greenspan, E. L. (Editor) (1984) Martin's Annual Criminal Code. Aurora, Ontario: Canada Law Book Ltd.
- Gusfield, J. R. (1976) The Prevention of Drinking Problems in W. J. Filstead, J. J. Ross; and M. Keller, Alcohol and Alcohol Problems: New Thinking and New Directions. Cambridge, Massachusetts: Ballinger Publishing Company, 267-289.
- Gusfield, J. R. (1981) The Culture of Public Problems. Chicago: University of Chicago Press.
- Hawkins, G. (1972) Punishment as a Moral Educator. In R. J. Gerber and P. D. McAnany, Contemporary Punishment: Views, Explanations and Justifications. Notre Dame, Indiana: University of Notre Dame Press, 120-128.
- Interim Report to the Nation from the Presidential Commission on Drunk Driving (1982). Washington, D.C., United States.
- Jonah, B. (1982) Driver Behavior, Legislation and Enforcement. Ottawa, Ontario: Ministry of Transport, Government of Canada.
- Jonah, B. and Wilson, R. J. (1983) Improving the Effectiveness of D.W.I. Enforcement Through Increased Efficiency. Ottawa, Ontario: Ministry of Transport, Government of Canada.
- Kaufman, M. T. (1983) "Canada - An American Discovers Its Difference". The New York Times Magazine, May 15, 61
- Kieran, S. (1983) "Oh my God, I've hit someone!" Homemakers, 18 #3, 10-24

- Korm, R. R. and McCorkle, L. W. (1959) Criminology and Penology. USA: Holt, Rinehart and Winston Inc.
- Law Reform Commission (1974) Working Paper No. 3 - the principles of sentencing and dispositions. Ottawa, Ontario: Law Reform Commission of Canada, Government of Canada.
- Law Reform Commission (1983) REPORT 21 - Investigative Tests - alcohol, drugs and driving offences. Ottawa, Ontario: Law Reform Commission of Canada, Government of Canada.
- Lawson, J. J., Arora, R., Jonah, B. A., Krzyzewski, J. W., Smith, G. W., Stewart, D. E. and Hieatt, D. J. (1981) Night-time surveys of drivers; alcohol use. American Association of Automotive Medicine, 26th Proceedings, Ottawa, Ontario, 1982.
- Leger, G. J. (1982) The Victim of Crime. Impact, 1, 32-37
- Lowther, W. (1983) A new family compact, MacLean's, 96 #9
- Mann, R. E., Leigh, G., Vingilis, E., de Genove, K. (1983) Are D.W.I. (Driving While Intoxicated) Rehabilitation Programs of Any Value? A Critical Review of the Effectiveness of D.W.I. Rehabilitation Programs. Toronto, Ontario: Alcoholism and Drug Addiction Research Foundation, Internal Document No. 6.
- Marshall, J. (Editor) (1982) Law in a Cynical Society. Liaison, 8 #11, 2-20.
- Marshall, J. (Editor) (1984) The Enemy Is Us - Campaigns against Impaired Driving, Liaison, 10 #2, 10-17
- Mendenhall, W., McClave, J. T. and Ramey, W. (1977) Statistics for Psychology. Belmont, California: Duxbury Press-Wadsworth Publishing Company Inc.
- Mills, K. C., Neal, E. M. and Peed-Neal, I. (1983) Handbook For Alcohol Education - The Community Approach. Cambridge, Massachusetts: Ballinger Publishing Company.
- Ministry of the Attorney General (1977) Drinking and Driving - Counterattack. Vancouver, British Columbia: Government of British Columbia.

- Ministry of the Attorney General (1983) Premier's Inter-ministry Task Force on Drinking and Driving, Drinking and Driving: A Discussion of Countermeasures and Consequences. Toronto, Ontario: Government of Ontario.
- Ministry of Health and Welfare (1984) Alcohol in Canada - A National Perspective. Ottawa, Ontario: Government of Canada.
- Ministry of Justice (1982) The Criminal Law in Canadian Society. Ottawa, Ontario: Government of Canada.
- Ministry of the Solicitor General (1983) Justice For Victims of Crime: Highlights. Ottawa, Ontario: Government of Canada.
- Ministry of Transport (1979) Smashed. Ottawa, Ontario:
- Montgomery County Government (1982) Report of the AD HOC Task Force on Drinking and Driving, Office of the County Executive, Rockville, Maryland.
- Moore, M. H. and Gerstein, D. R. (1981) Alcohol and Public Policy: Beyond the Shadow of Prohibition. Washington, D.C.: National Academy Press.
- Mothers Against Drunk Drivers Information Package, Richmond, British Columbia.
- National Association of Professional Insurance Agents (1983) "Your Life Is On The Line" - What every consumer should know about drinking and driving. Media Relations and Consumer Affairs Department, Virginia, United States.
- Norquay, G. and Weiler, R. (1981) Services to Victims and Witnesses of Crime in Canada. Ottawa, Ontario: Ministry of the Solicitor General, Government of Canada.
- Ross, H. L. (1981) Deterrence of the Drinking Driver: An International Survey. Washington D.C., USA: U.S.A. Department of Transportation, National Highway Traffic & Safety Administration, Government of the United States.
- Sallot, J. (1983) "Ottawa proposes tougher penalties for drunk drivers" Globe and Mail, December 20.

- Scotten, L. (1982) "Killers behind the wheel: it's everyone's problem". The Saturday Star, March 26.
- Sexton, M. and Ryan, L. (1978) Working Manual for Newfoundland's Impaired Driver's Course. St. John's, Newfoundland: Alcohol and Drug Dependency Commission.
- Students Against Driving Drunk Information Package, Massachusetts, United States.
- Supreme Court of Canada (1962) R. vs. King. Supreme Court Reports, 746, Ottawa, Ontario: Government of Canada.
- Supreme Court of Canada (1982) Ford vs. The Queen. Supreme Court Reports, 1, 231, Ottawa, Ontario; Government of Canada.
- Sutherland, E. H. and Cressèy, D. R. (1974) Criminology. USA: J. P. Lippincott Company.
- Vago, S. (1981) Law and Society. Englewood Cliffs, New Jersey: Prentice-Hall Inc.
- Vingilis, E. (1983) Drinking Driving Countermeasures, Theory, Practice, Results. Toronto, Ontario: Alcoholism and Drug Addiction Research Foundation.
- Wilkinson, R. (1970) The Prevention of Drinking Problems - Alcohol Control and Cultural Influences. New York: Oxford University Press
- Wilson, J. R. and Jonah, B. A. (1983) The Prediction of Impaired Driving Among the General Population of Drivers. Ottawa, Ontario: Ministry of Transport, Government of Canada.
- Wolfson, G. E., Ponee, C. S. and Gaum, J. A. (1982) Impaired Driving: A Final Report on 101 Participants In A Government Sponsored Tertiary Prevention Program - R.I.D.O.: Reduce Impaired Driving in Ottawa. Toronto, Ontario: Ministry of Correctional Services, Government of Ontario.
- Young Drivers of Canada (1981) Student Workbook. Toronto, Ontario.
- Zylman, R. (1974) Comments on Alcohol Involvement in Fatal and Non-Fatal Crashes. New Brunswick, New Jersey: Rutgers University.

## II. LEGAL DOCUMENTS

- Government of Canada (1892) The Criminal Code. Statutes of Canada, c. 29, 204-205.
- Government of Canada (1906) An Act to Amend the Criminal Code. Revised Statutes of Canada, c. 146, 2493
- Government of Canada (1910) An Act to Amend the Criminal Code. Statutes of Canada, c. 11(1), 149, c. 13(2), 153.
- Government of Canada (1921) An Act to Amend the Criminal Code. Statutes of Canada, c. 25(3), 122.
- Government of Canada (1925) An Act to Amend the Criminal Code. Statutes of Canada, c. 38(5), 262.
- Government of Canada (1930) An Act to Amend the Criminal Code. Statutes of Canada, c. 11(6), 155.
- Government of Canada (1935) An Act to Amend the Criminal Code. Statutes of Canada, c. 56(4), 342.
- Government of Canada (1938) An Act to Amend the Criminal Code. Statutes of Canada, c. 44(16), 164-165.
- Government of Canada (1939) An Act to Amend the Criminal Code. Statutes of Canada, c. 30(6), 232-233.
- Government of Canada (1947) An Act to Amend the Criminal Code. Statutes of Canada, c. 55(10), 278.
- Government of Canada (1951) An Act to Amend the Criminal Code. Statutes of Canada, c. 47(14), 283-284.
- Government of Canada (1953-'54) The Criminal Code. Statutes of Canada, c. 51, 439-440.
- Government of Canada (1959) An Act to Amend the Criminal Code. Statutes of Canada, c. 41(15) (16), 255-256.
- Government of Canada (1968-'69) Criminal Law Amendment Act. Statutes of Canada, c. 38(16) (17), 880-886.
- Government of Canada (1972) Criminal Law Amendment Act. Statutes of Canada, c. 13(18), 127-129.

Government of Canada (1974-'75-'76) Criminal Law Amendment Act. Statutes of Canada, c. 93(14)(15)(16)(17)(18)(19), 1871-1878.

### III. HOUSE OF COMMONS DEBATES

Government of Canada (1921) House of Commons Debates. 5th Session, 13th Parliament, IV, 3911.

Government of Canada (1925) House of Commons Debates. 4th Session, 14th Parliament, IV, 3997, V.

Government of Canada (1930) House of Commons Debates. 4th Session, 16th Parliament, I, 59, 271, 273, 569, III, 2741-2760, 2942.

Government of Canada (1935) House of Commons Debates. 6th Session, 16th Parliament, I, 786-803, III, 2996, 3163-3169.

Government of Canada (1938) House of Commons Debates. 3rd Session, 18th Parliament, I, 535, 550.

Government of Canada (1947) House of Commons Debates. 3rd 20th Parliament, III, 2301-2308.

Government of Canada (1950) House of Commons Debates. 2nd Session, 21st Parliament, II, 1847, 2054, III, 2119, 2959-2964, IV, 4113, 4254, 4400-4409.

Government of Canada (1951) House of Commons Debates. 4th Session, 21st Parliament, IV, 3028, V, 4666-4676.

Government of Canada (1953-'54) House of Commons Debates. 1st Session, 22nd Parliament, III, 2451-2455, 2463-2471, 2475, IV, 3560-3577.

Government of Canada (1959) House of Commons Debates. 2nd Session, 24th Parliament, III, 3326.

Government of Canada (1968-'69) House of Commons Debates. 1st Session, 28th Parliament, V, 4719-4721, 4732, 4759, 4786, 4795, 4834, 4859-4861, 4868-4870, 5379-5380, 5389-5393, 5402, 5474-5475, 5481-5482, 5501, VI, 5921, 5927-5929, 5948, 5956, VII, 7758-7759, VIII, 8579-8580, 8654-8655, IX, 10239

Government of Canada (1969-'70) House of Commons Debates.  
2nd Session, 28th Parliament, III, 2248, 2464-2466,  
2631, 2936, IV, 3991, 4198-4202, VI, 5485-5488,  
5516-5517, 5563-5565, VIII, 8559, 8646-8647.

Government of Canada (1972) House of Commons Debates. 4th  
Session, 28th Parliament, II, 1705-1706, 1726, 1775,  
III, 2758, IV, 3693, 3728.

Government of Canada (1974-'75-'76) House of Commons Debates.  
1st Session, 13th Parliament, IX, 9203, 9205, 9209,  
9213, 9222-9223, 9244, 9254-9256, X, 10045-10046,  
10353-10356, 10359, 10361-10363, 10420-10421.

#### IV. STATISTICAL PUBLICATIONS

Statistics Canada (1962) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1963) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1964) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1965) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1966) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1967) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1968) Traffic Enforcement Statistics -  
Publication No. 85-206. Ottawa, Ontario: Government  
of Canada.



Statistics Canada (1969) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1970) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1971) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1972) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government,  
of Canada.

Statistics Canada (1973) Traffic Enforcement Statistics -  
Publication No. 85-206, Ottawa, Ontario: Government  
of Canada.

Statistics Canada (1974) Crime and Traffic Enforcement  
Statistics - Publication No. 85-205, Ottawa, Ontario:  
Government of Canada.

Statistics Canada (1975) Crime and Traffic Enforcement  
Statistics - Publication No. 85-205, Ottawa, Ontario:  
Government of Canada.

Statistics Canada (1976) Crime and Traffic Enforcement  
Statistics - Publication No. 85-205. Ottawa, Ontario:  
Government of Canada.

Statistics Canada (1977) Crime and Traffic Enforcement  
Statistics - Publication No. 85-205, Ottawa, Ontario:  
Government of Canada.

Statistics Canada (1978) Crime and Traffic Enforcement  
Statistics - Publication No. 85-205, Ottawa, Ontario:  
Government of Canada.

Statistics Canada (1979) Crime and Traffic Enforcement  
Statistics - Publication No. 85-205, Ottawa, Ontario:  
Government of Canada.

Statistics Canada (1980) Crime and Traffic Enforcement  
Statistics - Publication No. 85-205, Ottawa, Ontario:  
Government of Canada.

Statistics Canada (1981) Crime and Traffic Enforcement  
Statistics - Publication No. 85-205, Ottawa, Ontario:  
Government of Canada.

## APPENDIX 1

Drinking and Driving Legislation Under the Criminal Code  
of Canada: Sections 234, 234.1, 235, 236

## APPENDIX 1

SECTION 234: DRIVING WHILE ABILITY TO DRIVE IS IMPAIRED

DRIVING WHILE ABILITY TO DRIVE IS IMPAIRED - Conditional and absolute discharge.

234. (1) Every one who, while his ability to drive a motor vehicle is impaired by alcohol or a drug, drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, is guilty of an indictable offence or an offence punishable on summary conviction and is liable

- (a) for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;
- (b) for a second offence, to imprisonment for not more than one year and not less than fourteen days; and
- (c) for each subsequent offence, to imprisonment for not more than two years and not less than three months. 1968-69, c.38, s. 16; 1974-75-76, c. 93, s. 14(1).

(2) Notwithstanding subsection 662.1(1), where an accused pleads guilty to or is found guilty of an offence under subsection (1), the court before which he appears may, after hearing medical or other evidence, if it considers that the accused is in need of curative treatment in relation to his consumption of alcohol or drugs and that it would not be contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged upon conditions prescribed in a probation order, including a condition respecting his attendance for curative treatment in relation to his consumption of alcohol or drugs, and the provision of subsections 662.1(2) to (4) apply mutatis mutandis. 1974-75-76, c. 93, s. 14(2).

SECTION 234.1: ROAD-SIDE TESTING

ROAD-SIDE TESTING - failure or refusal to provide sample - Person deemed to have care or control of vehicle - "Approved road-side screening device" defined.

234.1 (1) Where a peace officer reasonably suspects that a person who is driving a motor vehicle or who has the care or control of a motor vehicle, whether it is in motion or not, has alcohol in his body, he may, by demand made to that person, require him to provide forthwith such a sample of his breath as in the opinion of the peace officer is necessary to enable a proper analysis of his breath to be made by means of an approved road-side screening device and, where necessary, to accompany the peace officer for the purpose of enabling such a sample of his breath to be taken.

(2) Every one who, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer under subsection (1) is guilty of an indictable offence or an offence punishable on summary conviction and is liable

- (a) for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;
- (b) for a second offence, to imprisonment for not more than one year and not less than fourteen days; and
- (c) for each subsequent offence, to imprisonment for not more than two years and not less than three months.

(3) In proceedings under this section, where it is proved that the accused occupied the seat ordinarily occupied by the driver of a motor vehicle, he shall be deemed to have had the care or control of the vehicle unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion.

(4) In this section, "approved road-side screening device" means a device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is approved for the purpose of this section by order of the Attorney General of Canada 1974-75-76, c.93, s. 15.

NOTE: This section has been proclaimed in force in Alberta and Ontario, September 15, 1976; in New Brunswick, Newfoundland, Northwest Territories, Nova Scotia and Yukon Territory, November 1, 1976;

SECTION 235: SAMPLES OF BREATH WHERE REASONABLE BELIEF OF  
COMMISSION OF OFFENCE UNDER S. 234 OR 236

SAMPLES OF BREATH WHERE REASONABLE BELIEF OF COMMISSION OF OFFENCE UNDER S. 234 OR 236 - Failure or refusal to provide sample.

235. (1) Where a peace officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, an offence under section as soon as practicable, require him to provide then or as soon thereafter as is practicable such samples of his breath as in the opinion of a qualified technician referred to in subsection 237(6) are necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in his blood, and to accompany the peace officer for the purpose of enabling such samples to be taken.

(2) Every one who, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer under subsection (1) is guilty of an indictable offence or an offence punishable on summary conviction and is liable

- (a) for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;
- (b) for a second offence, to imprisonment for not more than one year and not less than fourteen days; and
- (c) for each subsequent offence, to imprisonment for not more than two years and not less than three months. 1968-69, c. 38, s. 16; 1974-75-76, c. 93, s. 16.

SECTION 236: DRIVING WITH MORE THAN 80 MG OF ALCOHOL IN BLOOD

DRIVING WITH MORE THAN 80 MGS. OF ALCOHOL IN BLOOD - Conditional and absolute discharge.

236. (1) Every one who drives a motor vehicle or has the care or control of a motor vehicle, whether it is in motion or not, having consumed alcohol in such a quantity that the proportion thereof in his blood exceeds 80 milligrams of alcohol in 100 millilitres of blood, is guilty of an indictable offence or an offence punishable on summary conviction and is liable

- (a) for a first offence, to a fine of not more than two thousand dollars and not less than fifty dollars or to imprisonment for six months or to both;
- (b) for a second offence, to imprisonment for not more than one year and not less than fourteen days; and
- (c) for each subsequent offence, to imprisonment for not more than two years and not less than three months.

(2) Notwithstanding subsection 662.1 (1), where an accused pleads guilty to or is found guilty of an offence under subsection (1), the court before which he appears may, after hearing medical or other evidence, if it considers that the accused is in need of curative treatment in relation to his consumption of alcohol and that it would not be contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged upon conditions prescribed in a probation order, including a condition respecting his attendance for curative treatment in relation to his consumption of alcohol, and the provisions of subsections 662.1 (2) to (4) apply mutatis mutandis. 1959, c. 41, s. 15; 1968-69, c. 38, s. 16; 1974-75-76, c. 93, s. 17.

SOURCE: Greenspan, E. L. (1984) MARTIN'S ANNUAL CRIMINAL CODE  
Aurora, Ontario: Canada Law Book Inc.

APPENDIX 2

Historical Sequence in the Development of Drinking and Driving  
Laws



<u>YEAR</u>	<u>SECTION</u>	<u>OFFENCE</u>
1882 - First Criminal Code of Canada	S. 253	"Injuring persons by furious driving"
1906 - Revision of the Criminal Code	S. 253 is changed to S. 285	
1909 - Amendments	S. 285 A	"Theft of a motor vehicle"
1910	S. 285 B	"Liability of a driver of a motor vehicle for failure to stop after an accident"
1921 - Amendment	S. 285 C	"Driving a motor vehicle while intoxicated made an offence"
1925 - Amendment	S. 285 C	"Driving a motor vehicle while intoxicated"
		- inclusion of a provision for driving under the influence of narcotics
		- addition of the phrase "drives any motor vehicle or automobile or has care or control of a motor vehicle or automobile"
1930 - Amendment	S. 285 C is made S. 284.4	"Driving while intoxicated or under the influence of any narcotic" - punishments are made indictable as well as summary conviction
1935 - Amendment	S. 285.4	A provision forcing judges to impose a jail term instead of fine or suspended sentence
1938 - Amendment	S. 285.4	A provision for suspension of driving licence by a Court Order for a period not exceeding three years

58	<u>YEAR</u>	<u>SECTION</u>	<u>OFFENCE</u>
	1939 - Amendment	S. 285.4	A provision requiring a copy of the Court ordered licence suspension be sent to the Registrar of motor vehicles for the Province where the licence was first issued
	1947 - Amendment	S. 285.4	A provision enabling an accused the opportunity to explain why he/she entered a vehicle in an intoxicated state
	1951 - Amendment	S. 285.4	Addition of a section - "Driving while ability is impaired". Addition of a clause on chemical analysis of blood, breath or urine on a voluntary basis. Inclusion of three-stage system of sanctions.
	1954 - Revision of the Criminal Code 1955	S. 285.4 became Sections 222 to 225	S. 222 - Driving while intoxicated S. 223 - Driving while ability to drive is impaired S. 224 - Conviction under S. 223 when charged with an offence under S. 222 S. 225 - Order prohibiting driving
	1959 - Amendment	S. 224	Additional clause making the certificate of breath analysis prima facie evidence
	1968 - Amendment 1969	S. 222 to S. 225 became S. 234 to S. 237	S. 234 - Driving while ability is impaired S. 234.1 - Making a breathalyzer test compulsory within a two hour time span of committing offence under S. 234 - Breathalyzer Demand S. 235 - Failure or refusal to provide a breath sample made an offence with summary conviction sanctions. S. 236 - Driving with more than 80 milligrams of alcohol in 100 millilitres of blood, made an offence. This replaced the old offence under S. 222 of driving while intoxicated. S. 237 - Order prohibiting driving

## APPENDIX 2 cont'd

<u>YEAR</u>	<u>SECTION</u>	<u>OFFENCE</u>
1972 - Amendment	S. 237	A provision enabling judges to prohibit driving by an offender at all times and places as may be specified on the Order.
1975 - Amendments 1976	S. 234 to S. 238	<p>S. 234(1) - Driving while ability to drive is impaired</p> <p>S. 234(2) - Conditional and absolute discharges for offenders deemed in need of rehabilitation for alcohol or drug problems</p> <p>S. 234.1(1) - Demand for roadside screening of breath</p> <p>S. 234.1(2) - Failure or refusal to comply with the demand, made an offence</p> <p>S. 235(1) - Demand for sample of breath for breath sample is made an offence</p> <p>S. 235(2) - Failure or refusal to provide a breath sample is made an offence</p> <p>S. 236(1) - Driving with more than 80 milligrams of alcohol in 100 millilitres of blood</p> <p>S. 236(2) - Conditional and absolute discharges for rehabilitation</p> <p>S. 236.1 - Where previously convicted under Sections 234, 234.1, 235 or 236, these convictions shall be seen, for the purpose of punishment, as a first or second offence, as the case may be</p> <p>S. 237 - A number of provisions regulating the administration and quality of breathalyzer testing</p>

YEARSECTION

APPENDIX 2 cont'd

OFFENCE

S. 238(3) - Driving while disqualified.  
Section 238 subsections (1) and  
(2), regarding prohibiting of an  
offender's driving licence, are  
repealed and removed from the  
Criminal Code

Punishments for first, second and each subsequent offence under Sections 234(1), 234.1(2), 235(2), and 236(1) are stiffened to the same degree with longer jail terms and heavier fines.

## APPENDIX 3

The Proposed New Legal Regime for Dealing with Impaired  
or Dangerous Driving Offenders, Initiated by the Honourable  
John Crosbie, Minister of Justice and Attorney General of  
Canada

OFFENCE	PENALTIES
Manslaughter	Maximum life imprisonment Maximum life prohibition from driving.
Criminal negligence causing death	Maximum life imprisonment Maximum life prohibition from driving.
Criminal negligence causing bodily harm	Maximum 10 years imprisonment Maximum 10 years prohibition from driving
Dangerous or impaired driving causing death (new offences)	Maximum 14 years imprisonment Maximum 10 years prohibition from driving
Dangerous or impaired driving causing bodily harm (new offences)	Maximum 10 years imprisonment Maximum 10 years prohibition from driving
Dangerous driving	Maximum 5 years imprisonment Maximum 3 years prohibition from driving
<p>Impaired driving * and "over .08" driving** - These offences can be prosecuted in one of two ways: relatively minor cases by summary conviction; the more serious case by indictment.</p> <p>*driving while one's ability to do so is impaired by alcohol or drugs</p> <p>**driving with a blood-alcohol concentration exceeding 80mg. in 100 ml. of blood</p>	<p>Minimum</p> <p>a) 1st offence: fine of \$300; 3 months prohibition from driving</p> <p>b) 2nd offence: 14 days imprisonment; 6 months prohibition from driving</p> <p>c) each subsequent offence: 90 days imprisonment; 1 year prohibition from driving</p> <p>MAXIMUM</p> <p>a) on summary conviction: 6 months imprisonment and/or \$2,000 fine</p> <p>b) on indictment: 5 years imprisonment; unlimited fine</p> <p>c) 3 years prohibition from driving</p>

OFFENCE	PENALTIES
Failure or refusal, without reasonable excuse, to provide a breath sample	Same as for impaired driving and "over .08" driving
Failure or refusal, without reasonable excuse, to provide a blood sample (new offence - only where a breath sample is unobtainable)	Same as for impaired driving and "over .08" driving
Driving a motor vehicle while prohibited by the court or while one's licence is suspended (new offence)	Maximum 2 years imprisonment Maximum 3 years prohibition from driving
Failing to stop at scene of accident	Maximum 2 years imprisonment Maximum 3 years prohibition from driving

Vehicle immobilization orders may be imposed in addition to the above penalties.

SOURCE: Minister of Justice and Attorney General of Canada, news release, Federal Justice Minister introduces major Criminal Law Reform Bill, Ottawa, Ontario: Government of Canada, December 19, 1984.

APPENDIX 4

A Comparison of Drinking and Driving Laws of Various Countries



## APPENDIX 4

COUNTRY	BLOOD-ALCOHOL CONTENT LEVELS	FINES	JAIL SUSPENSIONS	LICENCE SUSPENSIONS
AUSTRALIA (Victoria State only) (in 1966)	50 m.g.%	(Low $\approx$ \$100	?	12 months for a refusal to provide a breath sample
AUSTRIA (in 1961)	80 m.g.%	\$350-\$2,100 Canadian Dollars	?	6 months for first offence
BELGIUM	80 m.g.%	\$3-\$30 Canadian Dollars	15 days to 6 months	8 days to 5 years
CANADA (in 1969)	80 m.g.%	\$50 to \$200	14 days to 2 years	2 months to 3 years
CHILE	?	?	61 to 541 days Minimum 18 month for injury accidents	?
DENMARK (in 1976)	80 m.g.-120 m.g.%	1 months net income	?	1½ - 2½ years
GREAT BRITIAN (1967)	80 m.g.%	up to \$1,800	6 months	1 year, up to life time suspension
FINLAND (in 1977)	50 to 150 m.g.%	Mean Income of 34 days	1st offence - maximum of 4 yrs but usually 2 to 4 months. Fatal- ity accident is 8 years maximum.	1st offence - maximum of 2 years. 2nd offence a permanent loss of licence
FRANCE (in 1978)	80 - 120 m.g.%	Min. \$180 Max. \$7,200 Canadian Dollars	Min. 1 month Max. 4 years	Min. 15 days Max. 6 years

cont'd ...2

COUNTRY	BLOOD-ALCOHOL CONTENT LEVELS	FINES	JAIL SENTENCES	LICENCE SUSPENSIONS
GERMANY	80 - 130 m.g. %	\$1,530 in Canadian Dollars	Max. 1 year	3 months to 5 years
INDIA	?	\$112.00 in Canadian Dollars	6 months	?
ISRAEL	?	?	2 years	?
JAPAN	50 m.g. %	Max. \$250 Canadian Dollars	Max. 2 years	Max. 3 years
NETHERLANDS (in 1974)	50 m.g. %	\$4,600 Canadian Dollars	Max. 3 months Max. 2 yr for injury accidents	8 hr. suspension at police discretion. 1st. offence maximum 5 years but usually 6 to 9 months, 2nd offence - max. 10 years
NEW ZEALAND (1969)	100 m.g. %	\$50 to \$400 Canadian Dollars	?	Min. 6 months
NORWAY (in 1936)	50 m.g. %	Scaled to income	21 days min.	1st. offence - 2 yrs. 2nd offence within 5 years, a possible life time suspension
SOUTH KOREA	?	\$700 Canadian Dollars	1 year	2 years
SOVIET UNION	?	?	?	1st offence - 6 months min.

COUNTRY	BLOOD-ALCOHOL CONTENT LEVELS	FINES	JAIL SENTENCES	LICENCE SUSPENSIONS
SWEDEN (in 1941)	50-149 m.g./100 ml 150 m.g./100 ml	Min. of 1/ 100 th of annual in- come	Max. 6 months	1 year for BAC > 50 m.g. & 2 yrs. = BAC > 150 m.g. &
SWITZER- LAND	80 m.g. ‰	?	Max. 6 months	Min. 2 months
UNITED KINGDOM	80 m.g. ‰	Max. \$200 Canadian Dollars	Max. 4 months	Min. 1 year
UNITED STATES	100 m.g. ‰	Min. \$0- \$124. Max. \$620 to \$1,240 Canadian Dollars	Generally 1 year	Generally 1 year

SOURCES:

- (1) MOTHERS AGAINST DRUNK DRIVING, DRUNK DRIVING PENALTIES IN OTHER COUNTRIES, NATIONAL NEWSLETTER, VOL. 2, #1, p. 7, 1983.
- (2) GOVERNMENT OF ONTARIO, ATTORNEY GENERAL'S DEPARTMENT, PREMIER'S INTERMINISTRY TASK FORCE ON DRINKING AND DRIVING, DRINKING AND DRIVING: A DISCUSSION OF COUNTER-MEASURES AND CONSEQUENCES, 1983.
- (3) ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT ROAD RESEARCH GROUP, NEW RESEARCH ON THE ROLE OF ALCOHOL AND DRUGS IN ROAD ACCIDENTS, PARIS, 1978.
- (4) ROSS, H. LAURENCE, DETERRENCE OF THE DRINKING DRIVER: AN INTERNATIONAL SURVEY, PREPARED FOR NATIONAL HIGHWAY TRAFFIC SAFETY, U.S. DEPARTMENT OF TRANSPORTATION, WASHINGTON, D.C. 20590, 1981.

NOTE: These sanctions, unless otherwise stated apply to first offences. Penalties increase in severity for second and subsequent offences.

APPENDIX 5

Interview Questions: Interviews Conducted in Ottawa, 1983

## APPENDIX 5

INTERVIEW QUESTIONS:

- (1) From among a list of various social problems such as high unemployment, acid rain, and nuclear weapons, how serious an issue do you view drinking and driving?
- (2) Do you feel the current laws are effective in dealing with the drinking and driving problem - why or why not?
- (3) What role or roles do the present laws serve - i.e. deterrence, rehabilitation, punishment, incapacitation?
- (4) What problems confront and perhaps hinder legislation from being more efficient?
- (5) Based on their present structure, what probable direction will the laws take in the future?
- (6) What direction would you personally like to see them take in the future?
- (7) How can the laws be made more effective - i.e. use of stiffer fines, longer jail terms and licence suspensions?
- (8) Are the various victim advocate groups an effective force to change legislation, and in what ways?
- (9) What factors do you view as important in the development of the legislation?
- (10) Would you support a national program of education for drivers convicted of their first drinking and driving offence? Such a program would be made mandatory, accompanying the loss of licence to operate a motor vehicle for an extended period of time, as well as a fine to cover expenses of the program.

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These interview questions formed the basis of a series of interviews conducted with selected members of:

- 1- The Crime Prevention Unit of the Ottawa Police Department
- 1- The Victim Assistance Unit of the Ottawa Police Department
- 1- Probation and Parole Services - Ottawa

## APPENDIX 5 cont'd

- 2- Department of Criminology, University of Ottawa
  - 1- Policy Analyst - Solicitor General of Canada
  - 2- Policy Planning and Criminal Law Amendments - Department of Justice, Canada
  - 1- Occupational Health Services - Ottawa
  - 1- Human Rights Institute of Canada - Ottawa
  - 1- Young Drivers of Canada - Ottawa
  - 1- Traffic Injury Research Foundation of Canada, Ottawa
  - 1- Road Safety Directorate - Transport Canada, Ottawa
  - 2- The Co-operators Insurance Company, Ottawa
  - 1- Assistant Crown Prosecutor - Ottawa
  - 1- Defense Counsel - Ottawa
  - 1- Member of Parliament - Progressive Conservative Justice Critic
  - 1- Member of Parliament - Progressive Conservative Employment Critic
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- 19-Total Number of Representatives Interviewed