

STRID STRATEGY TO ADDRESS LOWER BAC DRINKING DRIVERS

Prepared for:

**CCMTA's STRID 2010 Task Force and
Standing Committee on Road Safety Research & Policies**

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KEY POINTS:

- STRID 2010 is CCMTA's vehicle for managing impaired driving.
- Progress on reducing the alcohol crash problem has plateaued.
- Maintaining the status quo for managing driving at lower BAC's is unacceptable.
- This new strategy to address lower BAC drinking drivers is a visionary step to re-energize STRID 2010 and towards achieving its RSV sub-target.
- Some police are issuing BAC sanctions in place of CCC charges.
- Drinking and driving at lower BAC's has been shown to pose a significant risk.
- This is a comprehensive strategy using public education, short-term suspensions, rehabilitation and technological solutions.

Approach

- Staged implementation reflecting jurisdictional flexibility
- No time limits for implementation
- While consistency is desirable, the strategy key elements can be adapted to meet jurisdictional needs.
- Evaluation is key. TC to fund/lead this effort in partnership with jurisdictions.
- The proposed strategy is visionary and in the spirit of RSV 2010.

INTRODUCTION

Canada's Road Safety Vision 2010 includes a number of ambitious targets to help achieve our collective goal of the safest roads in the world by 2010. The Strategy to Reduce Impaired Driving 2010 (STRID 2010) calls for a 40% reduction in the percentage of deaths and serious injuries related to impaired driving collisions. During the 1980s there was a substantial improvement related to impaired driving. However, since that time the pace of improvement has slowed and perhaps plateaued. In order to achieve these goals, new and innovative programs need to be examined to make further reductions in the number of people killed and seriously injured in collisions involving an impaired driver. STRID 2010 details target groups and recommended options for pursuing our vision and pursuing further improvements related to impaired driving.

STRID 2010 has identified four specific target groups, the hard-core drinker, first time offenders, young/new drivers and social drinkers. The latter three groups have a number of elements in common. It is expected that they will have little or no experience with legal system as it relates to impaired driving. Consequently, how their first interaction with the legal system progresses may impact their subsequent behaviour. The message should be that impaired driving is a serious offence; even at lower BAC levels and that the consequence of engaging in these behaviours are serious.

One of the key policy and legislation initiatives contained in STRID 2010 is a recommendation for Canadian jurisdictions to record and track roadside short-term license suspensions on the driver record as a safety management tool. The primary motivation for this recommendation is a need to revise the way multiple offenders are defined and identified for appropriate remedial measures.

It has been noted that because of resource constraints, enforcement agencies in many Canadian jurisdictions may be substituting short-term 12 or 24-hr administrative licence suspensions for the more rigorous and serious criminal processing of drinking and driving offenders. In many jurisdictions these suspensions are not tracked and no follow-up action is associated with them. Under this scenario, an offender may accumulate several suspensions and will never be identified as a repeat offender. This approach potentially leads to a sub-optimal intervention strategy since persons who could be multiple offenders get identified as such much later than they should have been and therefore are not subjected to the prescribed remedial action in a timely fashion. In addition, this sends an inconsistent message to the offender, that low BAC level infractions are not taken seriously.

Currently there is no national consistency regarding roadside short-term suspensions. Not all jurisdictions have programs, and those that do range from suspension of 12-24 hours for a first offence. Most of these programs do not record the suspension or escalate the suspension for subsequent infractions.

The STRID 2010 recommendation on short-term suspensions is a reflection of the view that keeping the status quo will be inadequate for achieving the goals of Vision 2010. The purpose of this project is to develop a proposed roadside suspension program which addresses this situation. The proposed strategy is intended to be visionary and in the spirit of Vision 2010. Its intent is to provide guidance for change in the way short-term suspensions are currently handled to drive us towards the goals of vision 2010 for impaired driving.

In the proposed strategy, the short-term suspension is significant enough to be seen as serious and escalates for repeat infractions within a specified time period. An effort has been made such that a first suspension is not so long as to create undue hardship but does send the message that this is a serious issue which must be addressed.

It is understood that many jurisdictions have existing programs for roadside suspensions. Any changes to existing legislation are likely to take place over a period of time and must interface with existing programs and legislation in each jurisdiction. The elements in the strategy are proposed for consideration when the existing program is being renewed or a new program is being designed.

STRID WORKING GROUP ON SHORT-TERM SUSPENSIONS

Background

A number of countries have established a tiered blood-alcohol concentration (BAC) system, which provides increased sanctions as the BAC level rises. For example, Sweden (0.02% BAC), Finland (0.05% BAC) and Greece (0.05% BAC) all increase their sanctions as the offender's BAC rises. In Canada, the *Criminal Code* sanctions are largely based on whether the offender has had one or more previous offences¹. Thus, unlike many countries, Canada does not have a comprehensive, tiered BAC system.

The current federal and provincial BAC limits convey the erroneous message that it is safe to drink and then drive, unless your BAC exceeds 0.08%. The public needs to understand that impairment begins with one's first drink and that key driving-related skills are significantly impaired at BAC levels below 0.05%. Even if an individual is not exhibiting any behavioural signs of intoxication, his or her ability to drive may be impaired.

The adverse affects of modest amounts of alcohol on driving skills are reflected in the research on the relative risk of fatal collisions at low to moderate BAC levels. The Traffic Injury Research Foundation has stated

¹ Under s. 255.1, driving with a BAC above .16% is deemed to be an aggravating circumstance that the judges must consider in sentencing under s.718.2(a).

that drivers with BACs in the 0.051% to 0.08% range are 7.2 times more likely to be involved in a fatal crash than drivers with a 0.00% BAC². Both Canadian and American studies indicate that these relative risks are much higher among young drivers³.

While research has established the impairing effects and increased crash risks of small amounts of alcohol, determining the best response is a social and political task. Each country tries to balance the competing goals of reducing risks and permitting relative freedom of behaviour. This balance varies from country to country, and evolves over time. In recent years, the trend in most countries has been to reduce the permissible BAC limits in response to the consistent body of empirical evidence and the public intolerance of impaired driving.

Authority For Provinces to Expand and Enforce their Administrative Roadside Suspensions

In Canada, no single level of government has complete authority over the impaired driving issue. The Constitution Act, 1867⁴ grants the federal government exclusive power to enact legislation in relation to criminal law and procedure. It is this power that provides the basis for the federal impaired driving offences, penalties and driving prohibitions. The federal

² Traffic Injury Research Foundation, The Hard Core Drinking Driver (Ottawa: Traffic Injury Research Foundation, 1996)

³ D. Mayhew and H. Simpson, Youth and Road Crashes: Reducing the Risks from Inexperience, Immaturity and Alcohol (Ottawa: Traffic Injury Research Foundation, 1999); and P. Zador, S. Krawchuk and R. Voas, "Alcohol-Related Relative Risk of Driver Fatalities and Driver Involvement in Fatal Crashes in Relation to Driver Age and Gender: An Update Using 1996 Data" (2000), 61 J. Study Alcohol 387 at 392.

⁴ (U.K.), 30 & 31 Vict., c. 3, s. 91 (27)

government has no authority to regulate driving and licensing⁵, and could not impose administrative licence suspensions on drinking drivers.

It is well established that the provinces' constitutional authority over property and civil rights⁶ and matters of a merely local or private nature⁷ gives them broad authority to regulate driving within their territory⁸. For example, in Paganelli v. Ontario (Registrar of Motor Vehicles)⁹, the court stated: The responsibility for the regulation of highway traffic, including authority to prescribe the conditions and manner of the use of motor vehicles on highways and the licensing system in relation thereto is a provincial matter. The authority to issue such licences carries with it the authority to suspend or cancel them upon conditions.

The provinces also have constitutional authority to create offences and impose penalties, but only for the purposes of enforcing otherwise valid provincial law¹⁰. Thus, the provinces can create offences relating to all aspects of licensing and traffic safety, including impaired driving¹¹. However, the provinces do not have the constitutional authority to create crimes.

⁵ See R. v. Boggs, [1981] 1 S.C.R. 49.

⁶ Constitutional Act, 1867 *supra* note 4, s. 92 (13).

⁷ *Ibid.*, s. 92 (16).

⁸ Prince Edward Island (Provincial Secretary) v. Egan, [1941] S.C.R. 396; O'Grady v. Sparling, [1960] S.C.R. 804; Mann v. R. [1966] S.C.R. 238; and Ross v. Canada (Registrar of Motor Vehicles), [1975] 1 S.C.R. 5.

⁹ (1987), 6 M.V.R. (2d) 252 (Ont. Div. Ct.).

¹⁰ Constitution Act, 1867, *supra* note 4, s. 92 (15).

¹¹ See O'Grady, *supra* note 8; Mann, *supra* note 8; and Stephens v. R., [1960] S.C.R. 823.

The provinces' current short-term (4 to 24 hour) roadside suspensions, 90-day (0.08%) suspensions and lengthy suspensions for federal impaired driving offences are all based on the provinces' broad administrative authority over licensing and driving. There are no legal obstacles preventing the provinces from enacting new 0.05% BAC administrative licence suspensions to complement their existing short-term, 90-day and lengthy administrative licence suspensions.

Canada's BAC Levels

There are several approaches to developing a tiered BAC strategy in Canada. As indicated, the current *Criminal Code* limit, which was introduced in 1969, is 0.08%. However, most police officers will not lay criminal charges unless a driver's BAC is 0.10% or higher. There is growing concern that the *Criminal Code* limit is too high, given research evidence on impairment of driving-related skills and the relative risk of fatal crashes at moderate levels of alcohol consumption. This evidence, coupled with the traffic safety benefits achieved by other countries that have lowered their BAC limits, have led to calls to reduce the current *Criminal Code* limit¹².

¹² See R. Mann *et.al.*, "The Effects of Introducing or Lowering Legal Per Se Blood Alcohol Limits for Driving: An International Review" (2001), 33 *Accident Analysis and Prevention* 569; E. Chamberlain and R. Solomon, "The Case for a 0.05% Criminal Law Blood Alcohol Concentration Limit for Driving" (September, 2002), 8 (Supp. III) *Injury Prevention*, iii 1; and J. Fell and R. Voas, [the Effectiveness of Reducing Illegal Blood Alcohol Concentration \(BAC\) Limits for Driving: Evidence for Lowering the Limit to .05% BAC in Canada](#) (Calverton, Maryland: Pacific Institute for Research and Evaluation, 2003).

More recently, MADD Canada has proposed introducing a new *Criminal Code* BAC offence at the 0.05% level¹³. The new offence would carry less onerous sanctions than those for the current offences under s. 253(a) or (b). One of the benefits of a federal 0.05% offence is that it would bring into force a single standard across the country. Moreover, this offence would reinforce the critically important message that drinking immoderately and driving is dangerous and consequently a serious matter that warrants criminal sanction. It is recognized that resorting to the *Criminal Code* is not without its own drawbacks. A *Criminal Code* 0.05% BAC offence must be enforced and presented through the criminal justice system, which is slow, cumbersome and subject to various legal challenges. In order to address the problems, the proposed 0.05% offence would incorporate streamlined procedures including ticketing and other features.

The *Criminal Code* option has been sketched out solely for background information purposes. The current mandate of the CCMTA task group is limited to exploring provincial approaches to addressing drivers with BACs in the 0.05% to 0.08% range.

Thus, our major goal is to provide a strategic provincial/territorial 0.05% BAC approach. As indicated, the provinces have very broad authority over driving and could adopt either an administrative or an offence-based response. Indeed, it has been suggested that the provinces adopt the latter approach and simply create a 0.05% BAC offence under their highway traffic legislation. In our view, this is not a viable option for several reasons.

¹³ R. Solomon, S. Usprich and G. Dingle, The Section 253(c) Proposal: The Case for a Criminal Code 0.05% BAC Offence (Mississauga: MADD Canada, 2004).

First, an offence-based approach is far slower and more costly in terms of police and prosecutorial resources. Second, these charges would contribute to the already busy dockets of the criminal courts. Third, even in the case of provincial offences, an accused is entitled to a broad range of evidentiary, procedural, appeal, and Charter protections that are not available in administrative proceedings.

Consequently, we strongly recommend that the provinces create a new administrative licence suspension sanction for drivers in the 0.05% to 0.08% BAC range. The length of the suspension should be considerably longer than the current 4 to 24-hour suspensions to better reflect the seriousness of such conduct and the risks that it creates. The longer sanction will also increase the willingness of the police to apprehend and process such drivers. These suspensions should be recorded and tied into the provinces' remedial programs. This will assist in the early identification and treatment of drivers with alcohol problems.

The advantages of a provincial administrative approach is that it is quick and efficient, avoiding the costs and delays of the criminal justice system. However, it is important to recognize some of the drawbacks in the current administrative licence suspension systems.

First, the current system has created a complex patchwork, with varying BAC limits, sanctions, recording provisions, licensing consequences, and remedial measures. For example, while the first short-term roadside licence suspension program was introduced over 25 years ago, Quebec still does not have a program. Similarly, the duration of the suspensions range from 4 to 24-hours, and the BAC limits range from 0.04% to 0.06%.

Moreover, several provinces do not tie the suspension to a BAC limit, but frame the issue in terms of the officer's belief that the driver's ability to drive is adversely affected by alcohol. The driver can then demand a breath test and have the suspension cancelled if his or her BAC is below 0.05% or, in Alberta, 0.08%. Finally, only some provinces keep records of these infractions, provide additional sanctions for repeat violations, and require those with repeat violations to participate in their remedial programs.

There needs to be far greater consistency and public education. If CCMTA wishes to adopt a provincial administrative strategy for addressing BACs in the 0.05% to 0.08% range, it must emphasize the need for consistency and public education.

Second, the relatively minor sanctions attached to the current 0.05% BAC suspensions may be undermining the important message that drinking immoderately and then driving creates significant risks. This is more of a problem in provinces that fail to record infractions, provide heavier sanctions for repeated violations, or tie repeat violations into the jurisdiction's remedial programs. Moreover, in many jurisdictions, the police are using the provincial 0.05% BAC suspension as an alternative to the criminal prosecution of drivers with BACs above 0.08%.

The CCMTA needs to encourage provinces to use the strategy 0.05% BAC suspensions for their intended purpose and not as a means of, in effect, decriminalizing impaired driving. In our view, it is important to address the existing problems in the *Criminal Code's* impaired driving provisions, rather than resorting to the provincial laws as an expedient way of avoiding these issues.

Drug Impairment and Roadside Suspensions

The current proposal does not address the issue of roadside suspensions for drivers who are impaired by drugs. The proposed *Criminal Code* drug-impaired driving provisions have not yet been enacted and it may be some time before their impact is known. This proposed legislation should be assessed before recommending the introduction of a comprehensive scheme of provincial roadside suspensions for drug impairment.

In the interim, it is suggested that the provinces give police authority to suspend, at roadside, the licence of any driver for 24 hours, if they have reason to suspect that his or her ability to drive is impaired by drugs. Indeed, police already have this authority in a number of jurisdictions. This measure will allow the police to address the immediate traffic safety risks posed by such drivers.

Current Best Practices for Short-Term Administrative Licence Suspensions in Canada

1. The Northwest Territories has a 30-day licence suspension for the second occurrence.
2. Saskatchewan has a 0.04% BAC limit.
3. Saskatchewan imposes a 90-day licence suspension for the third occurrence within five years.

4. Manitoba requires the driver on a second occurrence within three years to take the provincial remedial program.
5. Manitoba has legislation that allows a peace officer to suspend a driver's licence for 24 hours at the roadside for gross impairment. As well, any person who fails or refuses a field sobriety test in Manitoba will also receive a 24 hour roadside suspension. In addition, drivers who refuse to take a field sobriety test are also subject to a 3 month administrative driver's licence suspension.
6. British Columbia authorizes the police to impose a 24-hour suspension if they have reasonable grounds to believe that the driver is unfit to drive for any reason, such as drugs, fatigue, etc.
7. Newfoundland has a \$100 reinstatement fee. Newfoundland also increases the suspension for a third, fourth or fifth occurrence within two years to 60, 120 and 180 days respectively.

Key Components of a Strategy to Address Lower BAC Drinking

Drivers

In several jurisdictions, the short-term roadside suspensions were viewed solely as a means of temporarily removing at-risk drivers from the roads. Current research establishes that many of those who drive with BACs of 0.05% and above have ongoing alcohol problems. The proposed strategy recognizes that a comprehensive, integrated and tiered BAC system can contribute to traffic safety.

The proposed strategy is a key component of such a system. In addition to taking drinking drivers off of the road, it sends a clear message that driving with a BAC of 0.05% or more is a serious matter. The proposed 7-14 day suspension better reflects the risks posed by such conduct than a 4 to 24-hour suspension, and may provide a greater deterrent. The proposed range of sanctions are designed to have an impact on the driver's behaviour, but without being so onerous as to alienate the public and elected officials. The recording of the infraction will assist in identifying potentially at-risk drivers, before they commit a federal impaired driving offence or have a crash. The proposal also attempts to ensure that those with a drinking problem get assessed and referred to an appropriate remedial program as soon as possible.

We have outlined below, the key elements of the proposed 0.05% short-term licence suspension strategy.

1. An immediate roadside suspension of 7-14 days if the driver registers a BAC of 0.05% or more on an approved screening device or instrument. A similar sanction would apply if a driver's blood or urine sample indicated that his or her BAC was 0.05% or higher. The suspension would be imposed when the tests are returned.
2. The police must request the surrender the driver's licence, and forward it to the Registrar of Motor Vehicles. This will make it more risky for these individuals to drive during the suspension.

3. If a driver incurs a second, third or subsequent 0.05% infraction within three years, his or her licence will be suspended for 30, 45, and 60 days, respectively. These proposed suspension periods are in line with current practices in the North West Territories, Saskatchewan and Newfoundland.
4. Drivers who receive two or more suspensions for driving over 0.05% or for failure or refusal of a field sobriety test within 3 years are required to provide an impaired driver's assessment from a recognized agency.
5. Drivers who receive three or more 0.05% suspensions within three years will be required to install, at their own expense, an alcohol interlock on their vehicle for six months as a condition of licence reinstatement.
6. The Registrar must be informed of all 0.05% suspensions and record them on the driver's record, and will print them on all driver abstracts for a period of 10 years from the date of suspension.
7. A driver who receives a 0.05% suspension should be required to pay a licence reinstatement fee in the \$150 to \$300 range. Drivers who incur a second, third or subsequent 0.05% suspensions within three years should be required to pay increased licence reinstatement fees. While it may be appropriate to subsidize the true costs of apprehending, testing and processing first-time violators of the 0.05% law, repeat violators should bear an increasing share of the full costs.

When you consider the costs of the police service, and transport ministry, a reinstatement fee based on a full cost recovery basis is likely to be substantial.

8. There must be an ongoing education campaign to inform the public about the new 7 to 14 day 0.05% licence suspension program.
9. The approved screening devices (ASDs) in most provinces are already calibrated to register a “warn” at the 0.05% BAC level. If a driver blows a “warn”, the police should immediately seize his or her licence. The driver should be served with a notice that his or her licence is suspended for 7-14 days.

The police should have a duty to inform the driver that he or she may challenge the results of the ASD test by submitting, without delay, to a test on an approved evidentiary breath-testing instrument. If the approved instrument indicates that the driver’s BAC was below 0.05% at the time of driving, the driver’s licence should be returned.

However, the driver should be warned that if he or she registers a BAC of of 0.08% or higher *Criminal Code* and/or a 90-day administrative licence suspension may be imposed.

Drivers should also be given the right to apply in writing to have the 7-14 day ALS reviewed by the Registrar of Motor Vehicles. The grounds for review should be limited to whether the driver’s BAC reading was below 0.05% at the time of driving. While it is unlikely that the appeal will be received and processed prior to the

suspension's termination, a successful appeal should result in the infraction being removed from the driver's record.

***Table 1 - Current Grounds for the Short-Term Administrative Licence**

Suspensions in Canada

Province/Territory	Grounds for Suspension	Other Grounds for Suspension	Right to Challenge Suspension
Newfoundland & Labrador	BAC 0.05% or higher	No	Yes
Prince Edward Island	BAC 0.05% or higher	No	Yes
New Brunswick	BAC 0.05% or higher	No	Yes
Nova Scotia	BAC 0.05% or higher	No	Yes
Québec	N/A	N/A	N/A
Ontario	BAC 0.05% or higher	No	Yes
Manitoba	BAC 0.05% or higher	Yes – refusing the breathalyzer, failing an SFST, and gross impairment **	Yes – only the ASD can be challenged. The offender must submit to a breathalyzer to refuse the results of the ASD**
Saskatchewan	BAC 0.04% or higher	No	Yes
Alberta	Suspect that a driver's ability to operate a motor vehicle is adversely affected by alcohol	Yes – suspect that a driver's ability to operate a motor vehicle is adversely affected by a drug	Yes – if the driver requests and voluntarily submits to a breath or blood test that reveals his or her BAC did not exceed 0.08%
British Columbia	Reasonable grounds to believe driver is impaired by alcohol	Yes – reasonable grounds to believe a driver is impaired by drugs	Yes
Nunavut Territory	Reasonable grounds to believe a driver is impaired by alcohol	Yes – reasonable grounds to believe a driver is impaired by drugs or fatigue	Yes– if the driver requests and voluntarily submits to a breath or blood test that reveals his or her BAC did not exceed 0.06%
Northwest Territories	Reasonable grounds to believe a driver is impaired by alcohol	Yes – reasonable grounds to believe a driver is impaired by drugs or fatigue	Yes– if the driver requests and voluntarily submits to a breath or blood test that reveals his or her BAC did not exceed 0.06%
Yukon Territory	Reasonable grounds to believe a driver is impaired by alcohol	Yes – reasonable grounds to believe a driver is impaired by drugs or fatigue	No

*As of December 31, 2002. "Rating the Provinces 2003"

** Updated information provided by MB in February 2007

***Table 2 - The Duration of the Current Short-Term Administrative
Licence Suspensions in Canada**

Province/Territory	Length of Suspension 1st Occurrence	Length of Suspension 2nd Occurrence	Length of Suspension 3rd Occurrence	Length of Suspension 4th Occurrence or more
Newfoundland & Labrador	24 hours	24 hours	60 days (2 year timeframe)	120 days (2 year timeframe)
Prince Edward Island	24 hours	24 hours	24 hours	24 hours
New Brunswick	24 hours	24 hours	24 hours	24 hours
Nova Scotia	24 hours	24 hours	24 hours	24 hours
Québec	N/A	N/A	N/A	N/A
Ontario	12 hours	12 hours	12 hours	12 hours
Manitoba	24 hours	24 hours	24 hours	24 hours
Saskatchewan	24 hours	24 hours	90 days (5-year timeframe)	90 days (5-year timeframe)
Alberta	24 hours	24 hours	24 hours	24 hours
British Columbia	24 hours	24 hours	24 hours	24 hours
Nunavut Territory	4 to 24 hours	4 to 24 hours	4 to 24 hours	4 to 24 hours
Northwest Territories	4 to 24 hours	**30 Days	**30 Days	**30 Days
Yukon Territory	24 hours	24 hours	24 hours	24 hours

*As of December 31, 2002. "Rating the Provinces 2003".

**New legislation as of April 2004

*** Table 3 – Other Features of the Short-Term Administrative Licence
Suspensions in Canada**

Province/Territory	Records Kept	Registrar Informed	Reinstatement Fees	Requirement of Remedial Programs
Newfoundland & Labrador	Yes	Yes	\$100	Yes on 3 rd occurrence within 2 years
Prince Edward Island	Yes	Yes	No	No
New Brunswick	Yes	No	No	No
Nova Scotia	Yes	Yes	No	No
Québec	N/A	N/A	N/A	N/A
Ontario	Yes	No	No	No
Manitoba	Yes	Yes	\$50**	Yes on 2 nd occurrence within 2 years
Saskatchewan	Yes	Yes	No	Yes on 2 nd occurrence within 2 years
Alberta	Yes	No	No	No
British Columbia	Yes	Yes – ICBC	No	No
Nunavut Territory	Yes	Yes – but does not become part of the driver's record	No	No
Northwest Territories	Yes	Yes – but does not become part of the driver's record – p.7	No	No
Yukon Territory	Yes	Yes – in practice only	No	No

*As of December 31, 2002. "Rating the Provinces 2003".

** Updated information provided by MB in February 2007