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Brian Jonah - Senior
Researcher

ADMINISTRATIVE LAWS FOR DRUGS AND DRIVING INSIDE AND OUTSIDE CANADA

Internal Report for CCMTA Government Members Only

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Executive Summary

The purpose of this discussion paper is to review the current drugs and driving administrative laws in effect inside and outside Canada and to identify some additional key elements which may be beneficial if incorporated into Canadian laws.

Currently, ten Canadian jurisdictions (i.e., British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut, and Yukon) have administrative laws whereby a driver's licence is immediately suspended at the roadside. Typically a driver's licence is suspended for 24 hours if he or she fails a roadside physical coordination test, usually the Standardized Field Sobriety Test (SFST). However, in Newfoundland and Labrador and Prince Edward Island, the driver's licence can be suspended for 7 days. Police in British Columbia and Alberta are authorized to impound the driver's vehicle as well. In the U.S., no states have administrative laws dealing with drug-impaired drivers; rather, drivers charged with drug-impaired driving must appear in court to face charges. In Europe, only Belgium has administrative roadside sanctions (i.e., a six-hour roadside suspension). In Australia, most states will issue an immediate roadside licence suspension of 12-24 hours if a driver fails a roadside oral fluid screening test for drugs. However, these drivers are subsequently charged if lab tests show the presence of certain drugs and may have to appear in court.

The twelve items listed below are elements of administrative drugs and driving laws that could be incorporated into existing Canadian laws within the next 1-2 years (if they are not already). They are based on current practices inside and/or outside of Canada. They are intended to be analogous to the provisions of the jurisdictional administrative laws which address driving with a Blood-Alcohol Content (BAC) of 50-80mg/dL.

1. The SFST should be the standard measure of drug-impaired driving used by the police at the roadside.
2. Drivers who refuse a roadside test of their physical coordination (i.e., SFST), refuse to be tested by a Drug Recognition Evaluator (DRE), or refuse to provide a body fluid sample for laboratory testing (i.e., urine, blood, saliva) should have their licence suspended for 90 days.
3. Drivers who are charged under the *Canadian Criminal Code (CCC)* for drug-impaired driving should have their licence suspended for 90 days.
4. An immediate roadside suspension of 3-7 days should be given the first time that a driver refuses to take or fails the SFST at the roadside.
5. The police should request the surrender of the driver's licence and either retain it for the suspension period or forward it to the Registrar of Motor Vehicles.
6. Drivers failing or refusing to take the SFST a second time should have their vehicle impounded for a period of 3 days.
7. If a driver fails or refuses to take the SFST a second, third, or subsequent time within three years, their licence should be suspended for 30, 45, and 60 days, respectively.

8. Drivers who receive two or more administrative licence suspensions within three years for failing the SFST or refusing to take it should be required to complete a substance abuse assessment from a recognized agency. Drivers who have a substance abuse problem should be required to participate in a rehabilitation program. Those that do not have such a problem should be required to take an educational program.
9. The Registrar of Motor Vehicles should be informed of all administrative sanctions for drug-impaired driving, and they should record them on all driver abstracts for a period of 10 years from the date of suspension, as was suggested by the Canadian Council of Motor Transport Administrators' (CCMTA) *Strategy to Address Lower BAC Drinking Drivers*.
10. Drivers who receive an administrative sanction for drug-impaired driving should be required to pay a licence reinstatement fee of \$150 to \$300. These fees could cover the administrative costs of processing these sanctions. Drivers who incur a second, third, or subsequent suspension within three years should be required to pay increased licence reinstatement fees.
11. There should be an ongoing education campaign to inform the public about the administrative sanctions for drug-impaired drivers.
12. Novice drivers participating in a Graduated Driver Licensing program should be prohibited from driving under the influence of any amount of specified drugs (e.g., cannabis, cocaine, ecstasy, oxycodone, etc.).

It should be noted that while some of these elements are already included in jurisdictional administrative laws on drugs and driving in Canada, their effectiveness has not been evaluated.

Future considerations are also addressed in the paper including the use of roadside oral fluid drug testing, establishing legal limits for drug impairment, police training, and raising the public's awareness of administrative laws on drugs and driving.

1.0 Introduction

In May 2012, the Board of Directors of the Canadian Council of Motor Transport Administrators (CCMTA) approved a Drugs and Driving Framework, and agreed to a number of activities that the CCMTA Secretariat should pursue during the 2012-2013 fiscal year. The identification of key elements of administrative laws on drugs and driving is one of these activities.

Administrative laws are laws passed by provinces and territories that do not require the driver to appear in court. These laws are administered by the police or the licensing authority (e.g., licence suspensions). In some jurisdictions, administrative licence suspensions are given to drivers who have been charged with drug-impaired driving under the *Criminal Code of Canada* (CCC) with drug impaired driving to get them off the road for a period of time (e.g., 90 days) while they await their court appearance. Other licence suspensions are applied by the police at the roadside to remove a drug impaired driver from the road for a short period of time without any CCC charges being laid. It is these shorter-term licence suspensions authorized by the provincial and territorial governments that are the focus of this paper.

The purpose of this discussion paper is to review the current drugs and driving administrative laws in effect inside and outside Canada and to identify some additional key elements which may be beneficial if they were incorporated into Canadian laws. The paper focuses on what jurisdictions could do over the next 1-2 years to address drugs and driving in the context of the Road Safety Strategy 2015.

2.0 Prevalence of Drug-impaired Driving in Canada

The term 'drugs' refers to illicit drugs such as cannabis, cocaine, and methamphetamine, as well as to both prescription and non-prescription (i.e., over-the-counter) medicinal drugs.

Beasley, et al. (2011) analyzed Canadian coroner data for the years 2000-2007 and compared the percentage of fatally injured drivers with alcohol present to the percentage of these drivers with other drugs present. They found that among those drivers who were tested for alcohol and other drugs, 37% had some alcohol in their bodies, while 33% tested positive for one or more of seven classes of psychoactive drugs. The most frequently detected drugs alone were Central Nervous System (CNS) depressants (35.6%), cannabis (25.8%), and CNS stimulants (19%). About 60% of drivers with drugs present had only one drug in their system, while 22% had two drugs. About 30% of the drivers had blood alcohol concentrations (BAC) of 81mg/100mL or higher (i.e., over the legal limit in CCC). For the 46% of drivers who were tested for both alcohol and other drugs, it was found that 45% had no alcohol or other drugs present, 19% tested positive for a drug but were negative for alcohol, 22% tested positive for alcohol but were negative for drugs, and 14% were positive for both alcohol and one or more other drugs. The drugs combined most often with alcohol were cannabis (36%), stimulants (27%), and depressants (26%).

A more recent study by Beasley and Beirness (2011) extended the earlier study by adding the 2008 coroner data to the dataset. The results indicated that 41% of the fatally injured drivers

who were tested for both alcohol and other drugs were positive for alcohol and 37% were positive for other drugs. The authors noted that the percentage of fatally injured drivers testing positive for drugs has risen from about 29% in 2000 to 37% in 2008, an increase of 24%.

Beirness and Beasley (2011) conducted a night-time roadside survey during June 2010 in five communities in British Columbia (Vancouver, Abbotsford, Saanich, Prince George and Kelowna). A similar survey had been conducted in 2008 in the first three communities. The survey was conducted Wednesday to Saturday between the hours of 21:00 and 03:00 at 16 sites within each community. A sample of 2,840 drivers voluntarily provided breath samples to determine their blood alcohol concentration (BAC) and oral fluid samples were taken in order to detect the presence of other drugs. Breath samples were provided by 86% of drivers and 71% of drivers provided oral fluid samples.

The weighted results showed that 9.9% of drivers had positive BACs, and 7.2% tested positive for drugs. Of those drivers testing positive for drugs, 11% were also positive for alcohol.

The most common drugs detected in the BC survey were cannabis (4.5%), cocaine (2.3%), and opiates (1.2%). Of the drivers testing positive for cannabis, 50% had Tetrahydrocannabinol (THC) levels of 30 ng/mL or higher. About 17% of drivers that had tested positive for drug use had used more than one drug. Males were more likely to have been using cannabis and cocaine, while females were more likely to have been using opiates. There was no significant difference in the presence of drugs as a function of age, the day of the week, or the time of day (unlike the presence of alcohol). Drivers testing positive for drugs were more likely to be coming from their home (35%) or the home of a friend/relative (32%), and drivers with a same-sex passenger were more likely to test positive for drugs (11%).

In a similar survey conducted in British Columbia in June 2012 using the same methodology (Beasley and Beirness, 2012), 10.1% of drivers had been using a drug and of these drugs about 17% had been using two or more drugs. The major drugs detected included cannabis, cocaine, methamphetamine/amphetamine, and opiates. These results suggest that the prevalence of drugs and driving in B.C, as determined by roadside surveys, has not changed between 2010 and 2012. There are no similar recent surveys in other jurisdictions.

The prevalence of drugs and driving in Canada rivals that of alcohol impaired driving. Further information regarding the prevalence of drugs and driving in Canada can be found in the *CCMTA Drugs and Driving Framework* (Jonah, 2012).

3.0 Legislation on Drugs and Driving

There are essentially two types of laws currently addressing drug impaired driving: per se laws and behavioural impairment laws. Per se laws set a legal limit for a drug and if the testing, using blood, urine or oral fluid samples, indicates that the driver is over that limit, then they are charged with driving while impaired by drugs. These per se laws can be zero tolerance such that if there is any level of a drug detected by the testing, then the driver is deemed to be impaired, regardless whether or not there was any evidence of behavioural impairment. These

laws are zero tolerance mainly because, at this time, it is not known what level of a drug in the body should be considered to impair driving such that it poses an unacceptable risk. These types of laws make it easier for prosecutors to prove drug impairment in court. However, these zero tolerance laws usually apply only to some illegal drugs such as cannabis or cocaine and not to prescription or over-the-counter drugs. Concern has been raised that these zero tolerance per se laws are really drug control laws intended to deter illegal drug use and not specifically to prevent drug impaired driving.

Behavioural impairment laws, on the other hand, require a police officer to provide evidence that a driver's performance is impaired before the driver can be required to submit a sample of bodily fluid for testing. Police officers typically use the Standardized Field Sobriety Test (SFST) to screen drivers at the roadside for behavioural impairment and then if there are reasonable and probable grounds for suspecting the presence of drugs based on the SFST, a trained and certified police officer administers the Drug Evaluation and Classification assessment.

3.1 Criminal Code of Canada

As a result of amendments to the *Criminal Code of Canada* (CCC) in 2008, if a police officer suspects that the driver is impaired but the driver does not fail an approved roadside screening device for alcohol impairment and the officer has reasonable suspicion of a drug in the driver's body, the officer can issue a demand for the driver to take the SFST, a divided attention test consisting of Horizontal Gaze Nystagmus (involuntary jerking of the eyes), standing on one leg, and walking toe to heel and turning. If the pattern of behaviour exhibited on the SFST indicates some type of impairment, this provides reasonable and probable grounds for the officer to take the driver to the police station where a trained Drug Recognition Evaluator (DRE) conducts a Drug Evaluation and Classification Assessment. This assessment consists of a series of clinical (e.g., blood pressure, pulse, pupil dilation) and behavioural/divided attention measures (e.g., Romberg Balance, walk and turn). Based on these measures, if the DRE identifies that the driver is impaired by a specific class of drugs (i.e., cannabis, stimulants, depressants, etc.), then a demand can be made to the driver to provide a body fluid sample, usually urine or blood, for testing by a laboratory. If the lab finds the presence of the drug identified by the DRE, the driver can be charged for an offence of drug-impaired driving under the CCC. On conviction, the same penalties apply as those for alcohol impaired driving (i.e., 12 month CCC driving prohibition, fines, imprisonment).

3.2 Provincial and Territorial Legislation

A survey of the Canadian jurisdictions was conducted regarding drug impaired driving measures, the results of which are presented in Appendix A. It was determined that ten jurisdictions have laws permitting the application of roadside administrative sanctions to drivers suspected of drug impaired driving (British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut, and Yukon). While Ontario does not have such an administrative law addressing drug impaired drivers, the police can suspend a driver's licence for 90 days if they refuse to participate in physical coordination tests (i.e., SFST) at the roadside, refuse to be tested by a DRE, or refuse to provide a blood, urine, or oral fluid sample. The driver's vehicle may be impounded as well.

Driver licence suspensions at the roadside are typically for up to 24 hours but in Newfoundland and Labrador and Prince Edward Island, the driver's licence can be suspended for 7 days. British Columbia and Alberta permit the police officer to impound the driver's vehicle for 24 hours as well as suspend the driver's licence for 24 hours. No jurisdiction has longer licence suspensions for repeat offences, the police usually hold the suspended licence, and there are no reinstatement fees, unless the police destroy the licence, in which case the driver must pay for a new one.

Most jurisdictions have assessment and rehabilitation programs for drivers convicted of multiple low BAC offences under the CCC. British Columbia appears to be the only jurisdiction with a provision for drivers receiving multiple administrative sanctions for drugs and driving. Drivers with three 24-hour prohibitions for alcohol or drug impairment within five years are required to complete a Responsible Driver Program.

At this point in time, none of the jurisdictions have fees for driver's licence reinstatement after a suspension for driving under the influence of drugs.

There have been no evaluations conducted of these administrative sanctions for drug-impaired drivers in Canada.

4.0 International Approaches to Administrative Sanctions for Drugs and Driving

4.1 United States

Currently, 22 U.S. jurisdictions have per se drug-impaired driving laws, of which five (Nevada, Ohio, Virginia, Colorado, and Washington) have set specific legal limits for some illegal drugs (e.g., cannabis, cocaine). For example, in Ohio, the legal limit for cannabis is 10 ng/ml of Tetrahydrocannabinol (THC) in urine or 2 ng/ml of THC in blood whereas in Colorado and Washington, it is 5 ng/ml of THC in blood. However, it is not clear how these limits were established. The other states have zero tolerance per se laws whereby the presence of any amount of specified drug, typically illicit, is considered to be an offence. Most states have drugs and driving offences within their transportation or motor vehicle codes with only two states having them within their criminal code (Idaho and Texas). An attempt was made to evaluate these per se laws but it was unsuccessful due to the inability to separate charges for alcohol impaired driving from those for drug impaired driving (Lacey, et al., 2010). There are no U.S. states which permit the police to suspend drug impaired drivers' licences at the roadside based on administrative laws. All drugs and driving cases are dealt with in court.

It has been argued that some states are using zero tolerance per se laws as a means of identifying illegal drug users. In Canada, the purpose of the short-term administrative laws is specifically to remove drug impaired drivers from the road so that they do not compromise the safety of other road users.

4.2 Australia

The states of Victoria, New South Wales, South Australia, Western Australia, Queensland, and Tasmania have per se drug impaired driving laws for driving under the influence of specified illicit drugs (i.e., cannabis, methamphetamines (speed), MDMA (ecstasy)). These per se laws are zero tolerance since the presence of any level of these specified drugs is considered an offence. These states also have laws permitting random drug testing whereby police officers can stop drivers at random and require them to provide an oral fluid sample at the roadside using hand held devices. Typically, drivers are screened at the roadside for alcohol first as part of random breath testing (RBT) followed by the drug screen.

4.2.1 Victoria

In 2003, Victoria was the first state to implement roadside testing for specific illicit drugs. If a driver tests positive for any of the specified drugs during a roadside oral fluid test, then he or she must proceed to a police drug bus where a second drug test is administered. If the driver tests positive again, the sample is sent to the laboratory for testing. The driver gets to retain a portion of this second sample for independent testing. The Securetec Drug Wipe II screening device is used for the initial oral fluid test which takes about 5-10 minutes. The second test uses a Cozart device to collect the oral fluid and a Rapiscan instrument to analyze the fluid for the presence of the specified drugs and can take up to 30 minutes to complete. If the lab confirms the presence of a proscribed drug, the driver will receive a notice that they will be prosecuted in court for the offence. If convicted in court, the fine is \$423 AUD for a first offence and there may be a three-month licence suspension as well. If it is the driver's first offence in 10 years and the driver is not deemed to be impaired by the drug, a traffic infringement notice may be issued. Such a notice appears to be as administrative, and entails a \$307 fine and three demerit points. Irrespective of whether the driver receives a traffic infringement or has their oral fluid sample sent to a lab, the driver may not drive away from the roadside testing site. He or she has their licence suspended for 24 hours. If the driver is unable to provide an oral fluid sample, the driver is transported to hospital to provide a blood sample. This blood sample is submitted to the lab for testing, and if positive, the driver may be charged with drug-impaired driving.

4.2.2 South Australia

In South Australia, a breath test for alcohol is followed by a roadside screening test of oral fluid. If one of the three specified drugs is detected, the driver goes to the drug bus to provide a second oral fluid sample. If the driver fails the second test, he or she is interviewed and the sample is sent to a lab for further testing. If the lab test confirms the presence of a specified drug, the driver may receive an expiation notice, a fine of \$532, and four demerit points, comparable to a traffic infringement in Victoria. Alternatively, the driver may have to go to court to face drug charges. A first offence conviction can entail a fine of up to \$1 600, imprisonment for up to three months, a licence revocation of up to 12 months, and six demerit points.

The driver is not permitted to drive away from the testing site and may not drive for four hours after using cannabis or for 24 hours after using methamphetamine or MDMA (ecstasy). It is not clear whether the licence is taken by the police.

4.2.3 New South Wales

If a driver tests positive for a specified drug during a roadside screening test, he or she goes to a police support vehicle where a second test is administered. If this second test also returns a positive result, the remaining portion of the sample is sent to a lab for testing. If the lab test shows the presence of one of the three proscribed drugs, the driver is sent a Court Attendance Notice with the charge of driving while under the influence of an illicit drug. The penalty on conviction of a first offence is a maximum fine of \$1 100 and a licence suspension of up to six months. The driver is prohibited from driving for 24 hours after failing the roadside test, but is permitted to drive while waiting for his or her court case.

4.2.4 Western Australia

Western Australia has a law regarding driving with the presence of the same proscribed illicit drugs in the body as in the above three states. The police can conduct random stops of drivers who are breath tested (i.e., Random Breath Testing) and then subjected to a roadside oral fluid test. If one of the three specified drugs is detected, a second test is administered in a police vehicle. On failing this second test, the remainder of the oral fluid sample is sent to a lab for further testing. If a proscribed illicit drug is detected, the driver is charged and must appear in court. Conviction of a first offence entails a fine of up to \$500 and 3 demerit points. Alternatively, the driver might only receive a traffic infringement, which appears to be administrative and does not require a court appearance by the driver. Additionally, a driver may be charged with driving under the influence of a proscribed drug. A first offence conviction for this more serious offence can result in fines up to \$2,500 and a 10-month licence disqualification. There are also offences for failing to comply with a request for a bodily fluid sample or driver assessment. It is unclear whether a driver's can have his or her licence suspended at the roadside.

4.2.5 Queensland

In Queensland, police conduct random drug testing via a simple oral fluid test to detect the presence of cannabis, methamphetamine (speed/ice), and MDMA (ecstasy). Similar to the procedures of the other Australian states, there is an initial screening test at the roadside, followed by a second test. If the driver fails the second test, his or her licence is suspended for 24 hours, and the sample is sent to a lab for further testing. If the lab confirms the presence of the proscribed drugs, the driver is charged and must appear in court. A first offence entails a penalty of up to \$1,050 and a licence disqualification for up to nine months. A driver failing the roadside test may also be prosecuted for breaches of the Workplace Health and Safety Act for being negligent in his or her duties. Management, supervisors, and fellow workers may also be legally liable if they were aware that the driver was under the influence of a proscribed drug and failed to respond to the situation (e.g., send the driver home, suspend driving tasks).

4.2.6 Tasmania

According to Tasmanian state law, a person who drives a motor vehicle while a proscribed illicit drug is present in his or her blood is committing an offence. Conviction in court of the offence can result in a fine from two penalty units (similar to demerit points) up to 10 penalty units, a term of imprisonment for up to three months or both a fine. It also results in a licence disqualification from 3 to 12 months. It is not clear whether the driver's licence is suspended at the roadside.

4.3 New Zealand

A driver in New Zealand can be charged with drug-impaired driving as demonstrated by an unsatisfactory performance on the compulsory impairment test (i.e., SFST) and with lab evidence in the bloodstream of a proscribed drug (i.e., cannabis, opiates, methadone, amphetamines, antidepressants, sedatives). Alternatively, they can also be charged with a more serious offence of driving or attempting to drive while under the influence of drugs to the extent of being incapable of proper control of a motor vehicle, if there is sufficient behavioural and drug testing evidence. Drug impaired cases are tried in court and on conviction for a first or second offence not involving injuries, can result in fines of up to \$4,500, prison for up to 3 months, and a licence disqualification for at least 6 months. When injuries or fatalities are involved, the penalties can be up to 10 years in prison or a fine of up to \$20,000 and licence disqualification for at least a year. The driver's licence can be suspended at the roadside by the police for 12 hours. New Zealand has not adopted the use of roadside testing for measuring the presence of drugs because they believe that testing devices are not yet reliable enough and take too long to administer.

4.4 Europe

The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has prepared a table which summarizes the drugs and driving laws in 26 European Union countries. Of these countries, three have only non-criminal offences, six have both criminal and non-criminal offences, and the remainder have only criminal offences for drugs and driving. The laws in several European countries are summarized below.

4.4.1 Germany

Germany was the first European country to implement zero tolerance legislation, which prohibits driving under the influence of illegal drugs (i.e., cannabis, cocaine, heroin, morphine, amphetamine, MDMA (ecstasy)). Suspected drivers may be tested using an oral fluid screening device (e.g., Draeger Drug Test 5000, Securetec DrugWipe 5) and if they test positive, they are charged criminally. Conviction may result in licence suspensions of up to three months and fines up to €3,000, where the fines are scaled according to the income of the offender. The driver may also be subject to a prison sentence of up to five years. There does not appear to be any administrative law permitting roadside licence suspension of a driver suspected of drug-impaired driving.

4.4.2 France

Drivers can be tested on the basis of suspicion for illegal substances drugs (i.e., cannabis, cocaine, amphetamine, methamphetamine, opiates) and if any amount of the drug is detected,

they are charged with a criminal offence (i.e., zero tolerance). The police use roadside oral fluid screening devices (Securetec DrugWipe 5) to detect the presence of drugs. On conviction, the driver's licence is suspended for up to three years and they are fined €4,500 or €9,000 if he or she was also under the influence of alcohol. The driver may also receive a two- three-year prison sentence if he or she was also under the influence of alcohol. There does not appear to be any applicable administrative sanctions.

4.4.3 United Kingdom

Although alcohol and drug-impaired driving has constituted a criminal offence in the United Kingdom for a number of years, there are plans to make drugged driving a specific offence under the United Kingdom's criminal code. Police will have hand-held drug detection devices that can be used to perform roadside tests of a driver's saliva for several specified drugs. There will be an evidentiary test device that will be available at the police station which will determine whether the driver should be charged with drug-impaired driving. Manufacturers have been asked to submit their test devices for government approval. Offenders will be subject to a fine of up to £5 000, a prison sentence of up to six months, and a 12-month driving ban. There does not appear to be any applicable administrative sanctions as all cases are administered in court nor is there any facility for suspending the driver's licence at the roadside. Public consultation is currently under way and the legislation may be introduced later in 2013.

4.4.4 The Netherlands

Drivers in the Netherlands may be tested if they are suspected of impairment. Saliva screening tests were introduced in 2012 to detect drugged driving. If there is evidence that a driver is impaired by drugs, he or she is charged with a criminal offence. If the driver is convicted, he or she may have his or her licence suspended for up to five years. The driver may also be sentenced to three months in jail. The driver may also be sentenced to up to two years and three months in jail if they caused a collision leading to injuries, or up to 4 years and six months for causing a collision leading to death. A drug-impaired driver may also be subject to a fine of €6 700, which may rise to €16, 750 if a collision results in bodily injury, and up to €67 000 if a collision results in a fatality and the driver is found to have been reckless). There does not appear to be any applicable administrative laws permitting roadside licence suspensions.

4.4.5 Sweden

In Sweden, drivers can be tested if they are suspected of driving under the influence of drugs (i.e., zero tolerance). Drugged driving cases are prosecuted in criminal courts and upon conviction; drivers may be subject to a one- to three-year licence suspension, a two-year prison term, and various fines. There does not appear to be any facility permitting roadside licence suspensions.

4.4.6 Finland

Finland has a zero tolerance law regarding driving with the presence of illegal drugs and non-prescribed medicinal drugs in the driver's body. Police use oral fluid screening devices at the roadside and may also conduct a standardized field test for drugs.

4.4.7 Norway

Norway has set legal per se impairment limits for 20 specified drugs, as shown in Table 1. However, given the lack of accurate testing devices, the police still have to conduct behavioural assessments of drivers before proceeding to a body fluid test. Behavioural testing is also still required to determine if the driver is impaired by drugs not covered in this legislation.

Table 1: Legal Limits for 20 drugs in Norway

Drugs	Impairment limits	Limits for graded sanctions comparable to 0.05 %	Limits for graded sanctions comparable to 0.12 %
	ng/ml in whole blood		
Benzodiazepines and benzo-like			
Alprazolam	3	6	15
Clonazepam	1.3	3	8
Diazepam	57	143	342
Fenazepam	1.8	5	10
Flunitrazepam	1.6	3	8
Nitrazepam	17	42	98
Oxazepam	172	430	860
Zolpidem	31	77	184
Zopiclone	12	23	58
Cannabis			
THC	1.3	3	9
Central stimulants			
Amphetamine	41	*	*
Cocaine	24	*	*
MDMA	48	*	*
Methamphetamine	45	*	*
GHB			
GHB	10 300	30 900	123 600
Hallucinogens			
Ketamine	55	137	329

Drugs	Impairment limits	Limits for graded sanctions comparable to 0.05 %	Limits for graded sanctions comparable to 0.12 %
	ng/ml in whole blood		
LSD	1	*	*
Opioids			
Buprenorphine	0.9	*	*
Methadone	25	*	*
Morphine	9	24	61

4.4.8 Belgium

In Belgium, it is illegal to drive while under the influence of illegal drugs (i.e., cannabis, cocaine, amphetamine, methamphetamine, opiates). Belgium has a per se law that defines drug impairment. For example, if a roadside oral fluid test indicates that a driver's THC level is over 25 ng/ml, the driver is required to provide a blood test. If the blood test reveals that the driver's blood-THC content level is over 1 ng/ml, he or she is charged with an offence. Similarly, if the driver's oral fluid contains more than 20 ng/ml of cocaine, then a blood test is conducted. If the driver's blood contains more than 10 ng/ml of cocaine, then he or she is charged. The driver is usually charged with a criminal offence if the blood test shows the presence of an illegal drug over the established limit. The police can suspend a driver's licence for up to six hours if a driver tests positive for an illegal drug during a roadside oral screening.

4.4.9 Austria

Drivers in Austria may be tested if they are believed to be impaired by a specified drug. If the driver tests positive for such a drug, he or she is charged with a non-criminal offence. If the driver is convicted, he or she may receive a fine of up to €3 633 and a licence suspension of at least four weeks. There is no indication that drivers can have their licences suspended at the roadside by the police.

4.5 Summary of International Laws on Drugs and Driving

With the exception of several Australian states and Belgium, drivers suspected of drug-impaired are dealt with through the courts. In Australia and Belgium, drivers can have their licence suspended at the roadside for a short period of time if there is evidence that the driver has been using specified drugs, usually illegal drugs, in order to get them off the road. In addition, they are usually pursued through the courts if a lab test confirms the positive screening test results. No evaluations of these international laws regulating drug-impaired driving seem to be available. It is not known if these administrative laws have been challenged in court.

5.0 Key Elements of Administrative Laws to Address Drug-impaired Drivers in Canada

Administrative offences for drugs and driving are primarily intended to get drivers suspected of driving while impaired by drugs, based on the SFST, off the road immediately so that they do not risk harming themselves or others in a collision. If a police officer proceeds with a DEC conducted by a DRE and lab tests, criminal charges may follow.

The following are key elements of administrative laws for drugs and driving that could be included in jurisdictional laws in the short-term (i.e., the next 1-2 years). They are based on current practice inside and/or outside Canada. They are intended to be comparable to the jurisdictional administrative laws addressing driving with a low BAC (i.e., 50-80mg/dL).

1. The SFST should be the standard measure of drug-impaired driving used by the police at the roadside.
2. Drivers who refuse a roadside test of their physical coordination (i.e., SFST), refuse to be tested by a Drug Recognition Evaluator (DRE), or refuse to provide a body fluid sample for laboratory testing (i.e., urine, blood, saliva) should have their licence suspended for 90 days.
3. Drivers who are charged under the *Canadian Criminal Code (CCC)* for drug-impaired driving should have their licence suspended for 90 days.
4. An immediate roadside suspension of 3-7 days should be given the first time that a driver refuses to take or fails the SFST at the roadside.
5. The police should request the surrender of the driver's licence and either retain it for the suspension period or forward it to the Registrar of Motor Vehicles.
6. Drivers failing or refusing to take the SFST a second time should have their vehicle impounded for a period of 3 days.
7. If a driver fails or refuses to take the SFST a second, third, or subsequent time within three years, their licence should be suspended for 30, 45, and 60 days, respectively.
8. Drivers who receive two or more administrative licence suspensions within three years for failing the SFST or refusing to take it should be required to complete a substance abuse assessment from a recognized agency. Drivers who have a substance abuse problem should be required to participate in a rehabilitation program. Those that do not have such a problem should be required to take an educational program.
9. The Registrar of Motor Vehicles should be informed of all administrative sanctions for drug-impaired driving, and they should record them on all driver abstracts for a period of 10 years from the date of suspension, as was suggested by the Canadian Council of Motor Transport Administrators' (CCMTA) *Strategy to Address Lower BAC Drinking Drivers*.

10. Drivers who receive an administrative sanction for drug-impaired driving should be required to pay a licence reinstatement fee of \$150 to \$300. These fees could cover the administrative costs of processing these sanctions. Drivers who incur a second, third, or subsequent suspension within three years should be required to pay increased licence reinstatement fees.
11. There should be an ongoing education campaign to inform the public about the administrative sanctions for drug-impaired drivers.
12. Novice drivers participating in a Graduated Driver Licensing program should be prohibited from driving under the influence of any amount of specified drugs (e.g., cannabis, cocaine, ecstasy, oxycodone, etc.).

It should be noted that while some of these elements are already included in jurisdictional administrative laws on drugs and driving in Canada, their effectiveness has not been evaluated.

6.0 Considerations for the Future

At present, the police are relying on the results of an SFST as probable grounds to suspect a driver is impaired by drugs other than alcohol. It would be beneficial if, in addition to SFST training, front-line police officers took the Advanced Roadside Impaired Driving Enforcement (ARIDE) training program, or some equivalent, in order to increase their awareness of drug impairment, as well as improve their ability to recognize possible drug-impaired drivers based on clinical signs and symptoms. The ARIDE program is provided in most U.S. states to front-line police officers. Making an ARIDE training program available to Canadian police officers is currently under discussion.

As roadside drug screening devices become more accurate (i.e., high sensitivity and specificity) and affordable, their use should be authorized under the CCC for the roadside detection of the more common illicit drugs such as cannabis, methamphetamine, and cocaine. It may also be necessary to develop an evidentiary testing device to confirm the presence of a drug. Further research is needed to improve the accuracy of these testing devices so that the evidence derived from them and presented in court is not undermined. However, these devices will only be able to detect a limited number of drugs. Consequently, SFST and DEC assessments will still be required to detect driver impairment due to other drugs.

As knowledge about the impairing effects of drugs on driving performance and the dose-response relationship increases, per se legal limits for drug-impaired driving, at least for some drugs, could be established either in the CCC or within jurisdictional administrative laws.

A recent public opinion survey on drugs and driving determined that 58% of Canadian drivers did not know whether their jurisdiction has administrative laws on drugs and driving (Jonah et al., 2013). This finding suggests a need to inform drivers about the existence of these laws.

When drug-impaired driving laws are introduced or changed, evaluations should be conducted to determine if the changes have resulted in reduced drug-impaired driving.

7.0 References

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Appendix A

Jurisdictional Drugs and Driving Survey – May 2013													
ISSUE	BC	AB	SK	MB	ON	QC	NB	NS	PE	NL	NT	YT	NU
<p>1. Most jurisdictions have short-term (i.e., 24 or 72 hrs or a week) suspensions for drivers with BACs below the legal threshold but above an administrative limit, such as 50mg%. Is there a comparable suspension in your jurisdiction for drivers who have used drugs?</p>	<p>Yes, 24 hr Prohibition (Drugs) - If an officer has reasonable and probable grounds to believe that your driving ability is affected by alcohol and/or drugs and you had care or control of a vehicle. The Standard Field Sobriety Test (SFST) is a tool the officer may choose to administer at the roadside. In addition, the officer has discretion to impound the vehicle for a period of 24 hrs.</p>	<p>The 24 Hour Disqualifications are used when the officer reasonably suspects that the driving ability is affected by drugs or alcohol</p>	yes	yes	no	<p>Since May 4th 2013, a peace officer who, after administering the physical coordination tests, has reasonable grounds to believe that the driving ability of a person driving or having the care or control of a road vehicle is impaired shall immediately suspend the person's licence for 24 hours on behalf of the Société.</p>	no	<p>No - A person convicted under the CCC for impaired by drugs is subject to the same revocation penalties as a person who was convicted of an impaired by alcohol offence. However, there are no administrative suspensions for a person who is deemed impaired by drugs after an SFS test or DRE exam.</p>	<p>Yes - 7 days Roadside id driver fails Standard Field Sobriety Test</p> <p>Graduated Drivers - Zero Tolerance for impaired by Drugs - Fail SFST there is an immediate 24 hr followed by 90 day ADP</p>	yes	<p>Yes. As found under s.116.1(3) of the MVA, if an officer believes an individual's ability to operate a motor vehicle is adversely affected because the individual has consumed or introduced a drug into their body the officer shall suspend the driver's licence for a period of 24hrs.</p>	<p>Yes 24hr based on observation. Testing not administered</p>	

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<p>2. Most jurisdictions have administrative suspensions (e.g.: 90 days) for refusing a breath test or having a BAC >80 mg%. Is there a similar suspension for drivers in your jurisdiction who are deemed impaired by drugs after performing the Standardized Field Sobriety Test(SFST)/ Drug Recognition Expert (DRE) exam, or similarly refuse or fail to complete the DRE exam?</p>	<p>Provincial - No Administrative Prohibition Federal - Yes CCC applies</p>	<p>Yes, drivers who are charged with CCC Impaired Driving (for drugs, alcohol or a combination of drugs and alcohol) or refusal receive an immediate licence suspension, which remains in place until ALL impaired related criminal charges are resolved</p>	<p>Yes, 24- hr roadside suspension. When the SFST have been failed or driver refuses the SFST, a peace officer who has grounds to believe that a person is impaired by drugs shall issue a 24-hr suspension.</p>	<p>yes* (see note below)</p>	<p>Yes. However, unlike alcohol impaired drivers, drug impaired drivers will not receive a 90-day admin. licence suspension for failing the test. They will be subject to a 90-day ADLS if they fail or refuse to comply with the demand to perform the tests</p>	<p>No. When the SFST have been failed, a peace officer who has grounds to believe that a person is impaired by drugs shall issue a 24-hour suspension. There is a 90 day Immediate Roadside Prohibition (IRP) if driver refuses (not fail) to complete the DRE exam or refuses to participate in physical coordination tests (SFST).</p>	<p>no</p>	<p>No, same as above</p>	<p>Yes, immediate 24 hrs followed by 90 day ADP</p>	<p>yes</p>	<p>unknown</p>	<p>No. Exams are not administered</p>	

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<p>3. Most jurisdictions have some form of educational or remedial program requirement for drivers convicted of (alcohol) impaired driving. Is there a similar program available in your jurisdiction for those whose impaired driving conviction was the result of drug use?</p>	<p>Yes, The Responsible Driver Program is a remedial program for alcohol and drug-using drivers. Upon enrollment the driver goes through a structured screening assessment interview. Based on the assessment, you are directed to one of two program components:</p> <ul style="list-style-type: none"> • An 8-hour education session in a classroom setting; or • A 16-hour group counseling program, scheduled over a three-month period. A drug impaired driver is referred for the following: <ul style="list-style-type: none"> • Provincial, 3 x 24 Hour Prohibitions (alcohol or drug) within 5 years; • Federal, One drug-related impaired driving conviction under the CCC. 	<p>Our programs are designed to address both alcohol and drug related impaired driving.</p> <p>Drivers convicted of an alcohol and/or drug related impaired driving charge or for refusal must complete a remedial program prior to licence reinstatement.</p> <p><u>First Criminal Code conviction</u> within 10 years: "Planning Ahead" -- A one-day course for first-time impaired drivers with the goal of preventing impaired driving. Planning Ahead participants learn:</p> <ul style="list-style-type: none"> • How to separate drinking and other drug use from driving by making an 	yes	yes	<p>All drivers convicted of drug impaired driving must complete a remedial measures program ("Back on Track") before their licence is reinstated.</p>	<p>Yes, the Alcofrein education program and the Programme d'évaluation des conducteurs. These are the same programs offered to persons with alcohol impaired and drug impaired driving issues.</p>	no	yes	yes	yes	not at this time	No drug impaired convictions	

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		<p>action plan.</p> <ul style="list-style-type: none"> • The importance of zero tolerance for impaired driving. • How impairment by alcohol and drugs affects driving abilities. • How lifestyles centered on alcohol and other drugs leads to higher risk for impaired driving and other life problems. <p><u>Second or Subsequent Criminal Code conviction</u> within 10 years: "IMPACT" -- A weekend live-in alcohol and/or drug use assessment and pre-treatment course. IMPACT participants:</p> <p>4.</p> <ul style="list-style-type: none"> • Look at how alcohol and/or drug use has 											

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		affected their lives. • Measure the problems their alcohol and/or drug use may have caused. • Create an action plan to deal with these problems. • Receive an Assessment Summary Report with recommendations for follow-up.											
4. Can you track the number of collisions involving drug impaired driving, independent of alcohol impaired driving in your jurisdiction?	Yes, the Traffic Accident Reporting Police Procedure Manual (MV6020A) includes human contributing factors such as: • ability impaired by drugs; • drugs suspected; and • ability impaired by medication.	Impaired by drugs is option on collision form. But if impaired by both, alcohol takes precedence.	yes	yes	yes	no	no	For fatalities we at (transport. & infrastructure renewal) do track impaired by drugs, alcohol, and both. For injuries - we are able to access injury collision data from the RCMP for drug impairment. This however is only RCMP data and does not include those areas that are	yes	yes	yes	no/yes based on observation only	

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								under municipal policing.					
5. Can you track the number of convictions involving drug impaired driving, independent of alcohol impaired driving in your jurisdiction?	No, the Criminal Justice Branch cannot separate alcohol and drug impaired CCC's	No - CCC sections are not unique to ID only drugs.	yes	No - conviction is only for impaired	yes	No - CCC sections are not unique to ID only drugs	no	No -CCC sections are not unique to ID drugs only. However, our DRE Coordinator is able to track separately (manually)	yes		yes	No. We could but none are issued without testing	
6. Are there any public education/awareness efforts underway or planned to address drug-impaired driving in your jurisdiction?	planned	Yes, our efforts focus on impaired (meaning drugs and alcohol)	planned	planned	planned	In addition to information on the SAAQ's Web site, we have folders on alcohol and drug impairment. The SAAQ also has a program entitled: "The Power to Change Everything" for young drivers (secondary 5 students). This year we'll also talk about the risk associated with cannabis	no	planned	planned		We have a section regarding drug use and driving in our Basic Licence Driver's Handbook . We have a Drive Alive Program that stresses the importance of not driving while impaired by drugs or alcohol. Generally,	planned	

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						and about the risk of being caught for drug-impaired driving.					our focus is on impaired driving, which can result from drugs or alcohol.		
7. Does your jurisdiction track the number of: SFST trained officers? If so, what is the number?	Yes, currently there are 995 RCMP officers trained to administer the SFST.	Yes, currently there are 147 trained to administer the SFST.	yes	yes	216 ²	3,469	71	325 SFST Trained officers	yes	no	yes, # unknown	0	
8. Does your jurisdiction track the number of: DRE trained officers? If so, what is the number	Yes, currently there are 83 RCMP and municipal police officers trained as DRE's.	Yes, currently there are 52 trained as DREs.	30	yes	185	50	31	46 DRE trained; 37 are current, 3 lab techs trained; 10 DRE instructors and 7 trained crown prosecutors.	yes	no	yes, # unknown	1 in a rural community	
9. Does your jurisdiction track the number of: certified breath technicians? If so, what is the number?	Yes, 1,190 (Datamaster: approximately 600 RCMP and approximately 250 municipal; Intox EC/IR II: approximately 240 RCMP and approximately 100 municipal.) (Note: Officers may be trained in the Datamaster or Intox EC/IR II or both)	Yes, currently there are 800 QTs (Qualified Technicians). An additional 300 are being trained	yes	yes	840 ²	2,585	211	96 Trained on New Intox ER/IR II & 20 on old Datamaster (As of March 2011)	Yes – numbers unknown	no	yes, # unknown	20	

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<p>QC Note: The number of DRE trained officers may seem low but it is important to take into account the fact that it took a long time to have the material for the training translated in French</p> <p>NL Note: These are police coordinated</p> <p>BC Note: It is estimated that of the total number of municipal and RCMP officers trained in SFST is approximately 15% in BC.</p> <p>* There is no 90 day ALS for drug impairment or refusing a DRE test in MB, there is only a 90 day ALS for refusing an SFST.</p> <p>1. Drivers receive a 90-day suspension if they fail or refuse to comply with a police officer's demand for alcohol or drug testing (i.e. failing/refusing to provide a sample of breath, blood, oral fluid or urine, to perform physical coordination tests, or to submit to an evaluation).</p> <p>2. Only OPP certified SFST and DRE trained officers and does not include municipal police services as of Feb/12.</p>													
<p>10. Advise, if your jurisdiction has evaluated your current administrative laws on drugs and driving and/or whether you have any plans to do so in the next year or two</p>		<p>New enhancements to impaired driving penalties came into force July 1 and Sept 1, 2012. The impact of the new legislation will be monitored over the coming years.</p>	<p>planned</p>	<p>There has not been any evaluation and we are not aware of any plans for one in the near future.</p>	<p>no</p>	<p>no</p>		<p>As part of developing our provincial action plan we will be exploring the issue of drug impaired driving extensively. There may be opportunity at that time to introduce drug impaired driving legislation at the provincial level.</p>	<p>Legislation has just been introduced, an evaluation will occur in the next 2 to 3 years.</p>			<p>Reevaluation of current administrative laws on DD: Completed a brief evaluation of administrative laws on drugged driving. This is an issue being put forward within the next two years for consideration as part of possible amendments to the MVA.</p>	
<p>11. Are there longer administrative licence suspensions for repeat drugs and driving offences as is the case for the low BAC laws? YES OR NO</p>	<p>no</p>	<p>No, not for the 24 hr disqualifications. With respect to CCC our suspensions are indefinite until the outcome of all related CCC impaired driving offences has been dealt with in the courts.</p>	<p>no</p>		<p>no</p>	<p>no</p>	<p>no</p>	<p>There are no administrative suspensions for drug use</p>		<p>no</p>	<p>no</p>	<p>no</p>	

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11 a) If Yes, what is the look back period for the application of these longer drugs and driving suspensions (e.g., second offence in 5 years)?	n/a	n/a	n/a		n/a	n/a	n/a	n/a		n/a	n/a	n/a	
11 b) If yes, what are the sanctions for these repeat offences?	n/a	n/a	n/a		n/a	n/a	n/a	n/a		n/a	n/a	n/a drugs & driving suspensions are based on observation only so the sanctions imposed are max 24-hour suspensions	
12. Do the police retain the driver's licence for the drugs and driving administrative suspension period? YES OR NO	yes	Yes for administrative penalties 3 days and under. Administrative penalties more than 3 days, the police are authorized to destroy the licence	yes		yes	no	no	n/a		yes	yes	no (Registrar of Motor Vehicles does)	
13. Is there a licence reinstatement fee that must be paid in order to have your licence returned after administrative drugs and driving sanction? YES OR NO	no	No (However, if police destroy the licence, as per above, client would need to pay for replacement licence)	no		yes	no	no	n/a		yes	yes	no (\$50 if referred to Driver Control Board)	

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14. Does the jurisdiction keep track of administrative licence suspensions for drugs and driving separately from low BAC suspensions so that repeat offenders can be identified? YES OR NO	yes	Yes, starting September 1, 2012	yes		no	no	no	no		under review	no	no (all listed as a 24-hour)	
15. Is there a requirement that a driver receiving multiple administrative sanctions for drugs and driving, within a defined period has to take an assessment and education/ rehabilitation program (e.g., in BC, if a driver has three 24 hour suspensions within five years, they are directed to either an education or counseling program)? YES OR NO	Yes, referral to the Responsible Driving Program (RDP) after three 24 hr prohibitions.	No, in the case of drugs the rehabilitation course is tied to the Criminal Code Conviction rather than the administrative penalty. So in most cases, upon conviction, the driver takes a rehabilitation course.	Yes, referred for an addictions screening		no	no	no	A driver may be required to participate in a drug rehabilitation program if convicted of a CCC drug driving offence.		yes	no	no	
16. Does your jurisdiction impound the driver's vehicle as part of an administrative sanction for drugs and driving? YES OR NO. If YES, for how long?	Yes 24 hours	Police have a mandatory 24 hour seizure for 24 Hour Disqualifications. For the administrative sanctions associated with	no		Yes, 7 days	no	no	no		no	Yes if they drive while prohibited, under the CCC they can have their car seized. 30 days	Yes, 24-hour	

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		Criminal drug impairment a 3 day mandatory seizure exists for first offence, and a 7 day mandatory seizure exists for repeat offenders within a 10 year period. 24 hours/ 3 days/7 days											
17. Has your jurisdiction conducted any awareness campaigns to let people know about the administrative sanctions for drugs and driving? YES OR NO	yes	yes	no		no	A press release was published when the 24 hour suspension came into effect	no	no			no	no	
18. In 2011, how many drivers were given an admin sanction at roadside for drugs and driving, how many drivers were charged under the CCC for drugs and driving and how many drivers received an admin sanction and were charged under the CCC for drugs and driving?			CCC sections are not unique to ID only drugs			CCC sections are not unique to ID only drugs	n/a	n/a		n/a	Drugs and alcohol impaired driving fall under the same category, with 94 convictions under the CCC in 2011/2012	We don't separate drugs & driving from alcohol	

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19. Number of drivers receiving only Admin Sanction	4,459 - 24 Hour Prohibitions (Drug)	n/a for 2011 data	85 for 2011		For fail/refusal: Roadside (SFST): 81 DRE: 45	unknown	n/a	n/a		n/a	1269(2011,2012)	none	
20. Number of drivers charged under the CCC	n/a	n/a (charge info not available and the CCC conviction doesn't allow distinction between drugs and alcohol).	n/a (charge info not available and the CCC conviction doesn't allow distinction between drugs and alcohol).		6 (numbers for 2012 are not yet available)	unknown	n/a	*The current data base tracks all CCC impaired driving charges, it does not separate drug impaired charges from alcohol impaired.		n/a	249 (2011/2012)	none	
21. Number of drivers receiving Admin Sanction and charged under CCC	n/a	n/a	n/a		unknown	unknown	n/a	n/a - There are no administrative suspensions for a person who is deemed impaired by drugs after an SFS test or DRE exam. However, a person convicted under the CCC for impaired by drugs is subject to the same revocation penalties as a		n/a	unknown	none	

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								person who was convicted of an impaired by alcohol offence.					

Note for PE survey questions were pending for the Fall sitting of the Provincial Legislation