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National Survey of Crown Attorneys and Defence Counsel on Impaired Driving

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Presentation to CACP Traffic Seminar
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Overview

- Review project background and work completed to date.
- Share some key findings from the survey. *Note that findings are confidential.*
- Identify next steps in completing the report.



History

- Comprehensive survey of front-line police officers completed by Transport Canada in 1997.
- Purpose was to identify problems in the detection, apprehension and charging of impaired drivers.



History

- Pressure to obtain similar information from lawyers and judges.
- Underscored by the success of the TIRF study in the U.S.



History

- Transport let a contract to study the concerns of lawyers a few years ago.
- Goal was to identify problems in the legal system for dealing with impaired driving – from their perspective
- Identify what factors impede the efficiency and effectiveness of the legal process.
- Link these findings to those from the earlier survey of frontline police officers to enrich understanding of problems in the system.



History

- Prime contractor conducted a number of focus groups with lawyers to help identify issues and refine contents of national surveys (different for Crown and Defence).
- Difficulty in securing cooperation from Crown Prosecutors or Defence Counsel so survey never conducted.
- Contract expired due to limited progress.
- TIRF contracted in 2005 to complete work.



Survey status – 1035 received

Jurisdiction	Crown: Number Received (765)	Defence: Number received (270)
British Columbia	140	4
Alberta	34	24
Saskatchewan	39	1
Manitoba	13	4
Ontario	235	114
Quebec	180	93
Nova Scotia	28	0
New Brunswick	36	2
Newfoundland/Labrador	16	12
Prince Edward Island	4	0
Yukon	6	0
North West Territories	4	0
Nunavut	5	1
Not specified	25	15

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Findings -- Demographics

	Crown	Defence
Percent male	60%	80%
Average age	41	45
English language	75%	66%
Average yrs in criminal law	12.5	16.6
Avg. yrs as Crown /defence lawyer	9	16

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Findings -- Caseload

	Crown	Defence
Number criminal cases per year	480	114
Percent; number involving impaired driving	25% (120)	25% (29)
Percent involving repeat offenders	35%	29%



Findings -- Caseload

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❁ Caseload makes it difficult to adequately prepare for impaired driving cases:

❁ 53% of Crowns agree/strongly agree

❁ 15% of Defence agree/strongly agree



Findings: Trial preparation & court time

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

* Figures represent number of hours per case



Findings -- Type of case

Cases	Crown	Defence
Simple impaired/ over 80 mg% – 253(a,b)	81%	81%
Refusal to provide a sample 245(5)	14%	14%
Impaired causing death/injury – 255 (2,3)	5%	5%



Findings -- BAC levels

- Crowns and Defence agree the majority of cases have BACs in excess of 120 mg%.
- Contrary to the concerns of some, both Crown and Defence do handle "some or a few" cases in the 81-100 mg% range.
 - 45% of Crowns
 - 64% of Defence



Findings -- Proceedings

Case proceedings	Crown	Defence
Summary conviction	90%	90%
Indictable	10%	10%



Findings -- Proceedings

Case outcome	Crown	Defence
Plea guilty as charged	39%	28%
Reach plea agreement	16%	20%
Plea not guilty and go to trial	40%	43%
Charges withdrawn/stayed	5%	9%

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Findings -- Proceedings

Type of cases going to trial	Crown	Defence
Impaired /over 80mg%; no injury	70%	72%
Refusal	51%	50%
Injury/death	68%	54%

* Occurs often or almost always

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Findings -- Evidence

Most compelling evidence at trial	Crown	Defence
Police testimony	55%	55%
Eyewitness testimony	58%	35%
Expert testimony	20%	27%
Video evidence	36%	38%



Findings -- Evidence

Influence of video on case outcomes	Crown	Defence
Guilty plea	49%	52%
Conviction at trial	45%	44%
Acquittal	32%	14%

* Occurs often or almost always

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Findings -- Evidence

Availability of video evidence	Crown	Defence
At roadside	93%	94%
During breath test	55%	70%
At booking	65%	74%

* Occurs rarely or almost never

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Findings -- Trial outcomes

	Crown	Defence
Convicted	52%	33%
Acquitted	48%	66%



Findings – Trial outcomes

Defences resulting in acquittal	Crown	Defence
2 drink or Carter defence	69%	60%
Charter issues (RPG, sections 8, 9, 10b)	58%	56%
Last drink defence	27%	22%

* Occurs often or almost always

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Findings -- Time to resolve

	Crown	Defence
For negotiated plea agreement	5.4 mo.	5.9 mo.
A summary conviction trial	10.5 mo.	11.0 mo.
An indictable trial	13.7 mo.	14.5 mo.
Time to resolve cases increased since began in job	73%	69%



Findings -- Conviction rate

■ Do the math:

- 35% plead guilty
- 40% go to trial
- About half of those are convicted at trial (20%).
- How does this compare with past performance?



Findings -- trends in trial issues

■ Technical and evidential issues:

- 1987, major problem
- 2006, minor issue

■ Charter issues:

- 1987, cited as a problem by 4% of Crowns
- 2006, cited as a major problem by 58% of Crowns (RPG, search/seizure, arbitrary detention, retain counsel)

■ Evidence to the contrary:

- 1987, not cited as an issue
- 2006, cited as a major problem



Issue – why are so many cases going to trial?

- About 40% of Crowns report repeat offenders seek trial more often than first offenders; 34% of Defence.
- However, an equal percent believe repeat offenders and first offenders seek trial equally often. So, this is an issue across the board.
- This suggests that something has changed in the DWI culture.
 - Most obvious change is in the penalty structure -- punishments are more severe, extensive and varied.
 - More is at stake if you are found guilty – “fighting” the case is worthwhile.



Findings -- ways to reduce impaired driving

Measure	Crown	Defence
More enforcement	62%	44%
More police training in enforcement	85%	55%
More training for police on testifying	88%	47%
Lower the BAC limit	40%	10%
Interlocks used to reduce mandatory suspension	46%	21%
Public education programs are effective	57%	60%

*Percent strongly agree or agree

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A few general conclusions

- Conviction rate for cases going to trial is surprisingly low.
- More defendants are going to trial – a 50% conviction rate makes it worthwhile.
- The system is swamped and sluggish.
- Why are more people being acquitted – innocence, weak evidence, Charter issues, evidence to the contrary?
- Will increasing the number of arrests or lowering the BAC limit be effective?

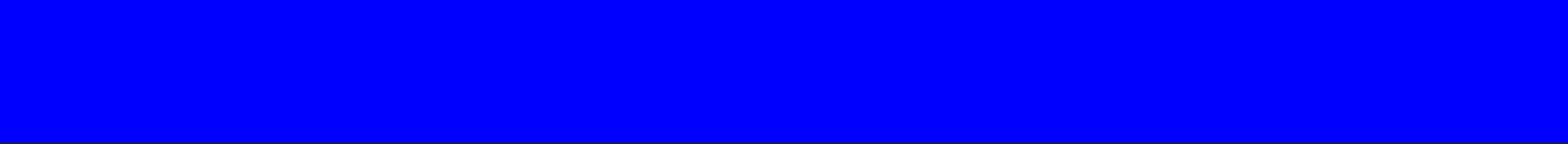


Next steps

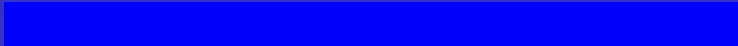
- Conduct multivariate analyses to examine specific variables in greater detail.
- Produce report -- Crown and Defence counsel with considerable expertise have been recruited to assist in reviewing the report.



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Comments or questions?



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