Police Officers’ Perceptions and Attitudes About Impaired Driving Law Enforcement in Canada

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ABSTRACT

A national survey of front line police officers’ perceptions and attitudes regarding detection and processing of driving while impaired (DWI) charges, the criminal court proceedings, and DWI sanctions was conducted. A sample of 1545 officers representative of all jurisdictions across the country, different types of services (i.e., national, provincial, municipal) and types of policing (i.e., traffic, general duty) were surveyed by mail. Issues addressed in the questionnaire included, number of charges laid, methods of detection, use of discretion, court process, (i.e., elapsed time, plea bargaining, evidence, conviction rates), perceived effectiveness of sanctions and importance of DWI compared to other criminal offences, and attitudes toward alternative measures to deal with impaired drivers. The results indicate that DWI charges are time consuming, mainly because of breath testing, paperwork and court time, thereby reducing capability to answer calls for service. Many officers use less formal means of dealing with impaired drivers and the courts use plea bargaining to avoid lengthy trials. DWI appears to have increased as a priority for officers yet they do not believe that they have adequate resources to deal with it. Officers appear to support further administrative rather than criminal law changes.

INTRODUCTION

In Canada during the 1980’s, considerable progress was achieved in reducing driving while impaired (DWI) through enforcement and public education programs resulting in the percentage of fatally injured drivers with BAC’s above the legal limit (80 mg%) declining
30% between 1980 and 1990. At the same time, public opinion changed such that the majority of Canadians consider impaired driving to be socially unacceptable and that it ought to be dealt with severely by the courts. Beginning in the early 1990’s, DWI started to rise again but has leveled off since 1994. Between 1990 and 1994, impaired driving charges declined by 22%, suggesting that the increase in impaired driving may be attributable, at least in part, to less enforcement activity. Indeed, there is anecdotal evidence that the police are having difficulties with the enforcement of impaired driving laws because of the inordinate amount of time it takes to process a suspect and the accused getting off impaired charges on what appear to be technicalities.

In 1982, Vingilis et al. (1984) conducted a study of police officers in Ontario and identified a number of problems that police were having with the enforcement of impaired driving laws including lack of human resources, lack of breath testing equipment, length of time to process a charge, length of court time, and excessive paperwork. Failure to photograph and fingerprint drivers charged with impaired driving were cited as major reasons why drivers were not being sentenced as repeat offenders (i.e., Crown could not prove the accused was same person previously convicted for impaired driving).

Since Vingilis et al.’s study, the legal system, as it pertains to impaired driving, has become considerably more complicated. Canadian Criminal Code (CCC) amendments in 1985 created new offences resulting in jail terms of up to 14 years and 10 years for drivers convicted of impaired driving causing death or bodily harm. Consequently, the stakes are now higher for drivers charged with these offences, so that greater efforts on the part of defence attorneys are made to cast doubt on the Crown Attorney’s (CA) evidence. Furthermore, with the passage of The Charter of Rights and Freedoms in 1982, the judiciary and defence lawyers, are much more vigilant in protecting the rights of the accused. Consequently, case law has been building over the intervening 15 years which appears to have made it more difficult for CA’s to obtain convictions. This case law has also resulted in changes to police procedures to prevent the accused being acquitted on a technicality. In addition, the community approach to policing has been recently adopted in Canada, whereby the police and their communities partner in the identification and resolution of social order/public safety concerns. This approach, which is supported by front line generalist officers, has often led to the elimination of traffic enforcement divisions and the subsequent reduction in focus on DWI enforcement.
The Canadian Association of Chiefs of Police (CACP), recognizing the possibility of problems with DWI enforcement, approached Transport Canada to collaborate on a national survey of front line police officers to identify current problems with enforcing impaired driving laws, the reasons for these problems, and potential solutions that might be implemented to resolve them.

SURVEY METHODOLOGY

Sampling:
The most efficient method of obtaining information from police officers about enforcing the impaired driving laws was to carry out a mail survey. A multi-stage stratified sampling strategy was adopted. The first strata was province/territory and then within each province, a number of communities representing four population sizes were selected. A list of the 660 police services that are members of the CACP was obtained, representing about 90% of Canada’s police population. Within each province/territory, a number of police services were randomly selected from each community size strata, thereby ensuring the inclusion of large metropolitan police services, as well as smaller municipal services, and provincial services which police more rural communities. The chiefs of police/detachment heads (N=175) were requested to provide a list of at least 20% of their front line police officers (i.e., traffic officers, general duty officers, breath technicians). Responses were obtained from 166 services representing a 95% response rate. Once the lists of officers were compiled, a random sample of 2311 officers were sent questionnaires for completion in the workplace.

Survey Questionnaire:
A questionnaire was developed and pre-tested to gather information about DWI detection (e.g., number of DWI arrests, method of detection, behavioural signs used to determine suspicion of drinking, videotaping of drivers, use of short-term licence suspensions and discretion in laying charges); breath testing (e.g., problems using roadside screening test results as evidence, adequacy of breath testing equipment); difficulties in obtaining blood samples from injured drivers; processing of charges (e.g., time to process charges, forms completed, photographs and fingerprints, adequacy of resources); court process (e.g., use of plea bargaining, preparation of CA’s, time for DWI cases to clear court, number of court appearances, time spent testifying; weight given to the evidence provided by police officers
and defence experts; percentage of charges resulting in a DWI conviction, guilty pleas to lesser offences or acquittals; penalties (e.g., belief in adequacy of current penalties, major deterrers to impaired driving); priority of DWI (e.g., importance of DWI enforcement relative to other offences, management's and officers' commitment to deal with DWI); agreement with measures such as administrative licence suspension, vehicle impoundment, rehabilitation/treatment for drivers with drinking problems, longer licence suspensions to deter DWI. Officer characteristics (e.g., traffic division, general duty, breath technician, experience, training, gender and age, type of police service -municipal, provincial, RCMP) were also collected.

RESULTS AND DISCUSSION

A total of 1545 officers returned completed questionnaires yielding a response rate of 67%. The unweighted data was analyzed for differences as a function of type of police service, type of police work, number of DWI charges, age of officers, and size of community, using Chi-square tests of difference (p<.05).

Detection and Testing:

On average, 9.4 DWI charges were laid by each officer during the previous 12 months, being higher among traffic and older officers. Charges resulted mainly from observing erratic driving (46.3%) and collisions (23.3%), but rarely from spot checks (11.5%), the latter being reported more by traffic officers. The most useful driver behaviours indicative of DWI were weaving (97.3%), straddling lanes (95.2%), and driving too slow (92.7%). Major signs of reasonable suspicion to demand breath samples were smell of alcohol and admission of drinking (83.0% and 40.7%). Few officers (15.0%) experienced court problems with screening tests. Only 12% of officers videotape the driver's behaviour but 64.5% indicated that it would increase guilty pleas and convictions a great deal. Driver's condition once stopped was the most important grounds for the evidentiary breath test (45.7%), followed by driving behaviour (32.6%) and the roadside screening test (21.9%). Although the legal limit is 80 mg% in Canada, 73.0% of officers laid DWI charges only if the BAC was greater than 100 mg%. Officers agreed that breath tests take too long (43.6%), particularly in smaller communities and among general duty officers, and 62.8% believe that mobile evidentiary breath tests would increase the effectiveness of enforcement, with 70.6% thinking that they
would be feasible. Only 35.3% of the officers had made a demand for a blood test in the last year and of these 63.3% never or rarely had problems obtaining them. In those jurisdictions with short-term (6-24 hours) licence suspensions, which are intended for drivers with BAC's in the 40-60mg% range, 42.4% of officers reported personally using these suspensions sometimes or frequently rather than laying DWI charges, mainly because DWI charges take too long (44.1%) and there are too few personnel (40.3%). Also, 33.1% indicated that they sometimes or frequently used discretion in laying charges, particularly in larger communities, by arranging a taxi or ride (74.2%) or having a sober passenger drive (65.8%). These results suggest that police officers lay most charges as a result of routine activity and that officers are using discretion in charging impaired drivers (e.g., short term suspensions) to avoid lengthy time expenditure on DWI charges.

**Processing Charges:**
On average, it required 2.6 hours to process a DWI charge (i.e., determining cause, transportation to station, waiting for lawyer and breath technician, completing two breath tests and requisite forms) which is longer than the 2 hours reported by Vingilis et al. Completing an average of 8 forms was the most time consuming step in the process (53.7 minutes). Only 67.2% of officers always fingerprinted and photographed the accused which required on average another 17.2 minutes. About a third of officers reported that errors in forms sometimes or frequently resulted in dismissal of cases, particularly in larger communities and 75.8% thought that their breath testing equipment was fairly or very efficient, particularly among older officers. Processing time has increased since Vingilis et al.; paperwork is still a major problem. A third of officers still do not routinely fingerprint and photograph the accused.

**Court Process:**
Officers appeared in court 1.8 times per case. The accused pleaded guilty to DWI in 56.8% of cases, particularly if the officer was older and working in a smaller community. In 3.9% of cases, the accused pleaded guilty to a highway traffic offence. For a guilty plea, it took 15.9 weeks for the case to clear the court compared to 35.5 weeks if the accused pleaded not guilty. A trial required 4.5 hours, including travel, with the officer being on the witness stand for about 36 minutes. Only 41.6% of officers agreed that the CA’s were adequately prepared to plead their cases, fewer among traffic officers. The main reasons for lack of preparation
was perceived to be that the CA’s have too many cases and too little time (81.5%) so that they do not read the case file before the court appearance (63.8%). A third of officers felt that judges give more credibility to the defence’s expert witnesses than to their evidence, particularly among traffic officers and those who lay more DWI charges. Plea bargaining occurs sometimes or frequently (69.3%), particularly according to traffic officers, older officers, and those in larger communities, mainly to speed up the court process (58.8%). For cases going to trial (21.6%), 81.6% resulted in a guilty verdict which means overall about 74% of DWI charges resulted in a guilty verdict. Most officers (78.6%) felt that impaired drivers sometimes or frequently escape conviction because of legal technicalities, particularly traffic and younger officers. Penalties were perceived to be too lenient by 64.1% of officers, particularly those in traffic, younger and those laying more charges. The most effective penalty was perceived to be jail (mean rank of 2.1 out of 6), then licence suspension (2.7), vehicle seizure (3.0) and fine (3.9). Since DWI trials consume considerable time, the courts appear to be coping through plea bargaining. Many officers do not believe that CA’s are adequately prepared but they do believe that plea bargaining is used to reduce court time, feel they are perceived as less credible than defence witnesses by judges, and that many offenders get off on legal technicalities. Penalties are perceived to be too lenient and they believe that jail would be most effective.

**Priority of DWI:**
Among 15 criminal and traffic offences, impaired driving was rated by officers as fifth in priority after murder, sexual assault, kidnapping and robbery, compared to eighth in Vingilis et al.’s 1982 study, suggesting DWI has become a higher priority in recent years. Almost 40% of officers felt police management considers DWI enforcement to be very much a priority and 54.9% felt it was very much a personal priority for them. Yet only 49.3% believed that the human resources allocated to DWI enforcement are adequate. About half of the officers believe that community policing has had no impact on DWI enforcement yet pressure to do other police work was perceived to limit DWI enforcement a great deal by 42.8% of officers.

**Measures to Deter DWI:**
Officers agreed most with the following DWI measures: administrative licence suspension (84.9%), impounding vehicles of suspended drivers (83.6%), public education programs showing the consequences of DWI (75.5%), and increasing license suspension from 1 to 2
years for first offence (67.7%). Officers agreed least with removing DWI from the CCC if there is no collision (6.9%), lowering the legal BAC limit to 50 mg% (36.6%), more police training (52.9%), and random breath testing (55.9%). Police officers appear to support administrative measures over further changes to the CCC.

RÉFÉRENCES