Establishing Effective Border Crossing Enforcement of Drinking and Driving Laws

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Abstract:
This paper reviews the implementation of the amendments to the Customs Act and the Criminal Code of Canada that were proclaimed in effect May 1, 2000. The implementation of the customs officer powers initiative in Ontario, at both rural and urban border crossings, is explored. Limitations on detection and enforcement activities are canvassed. Data from two locations are examined and analyzed to determine the number of detected drivers and the outcome in regards to criminal and driver records.

Introduction:
Prior to May, 2000, Canada Customs and Revenue Agency officers had no express authority to arrest persons believed to have been drinking and driving. Instead, local police agencies at each of the eight border crossing areas in Ontario had to be notified and a police investigation commenced. Legislative changes were made to allow designated customs officers to arrest without warrant for any Criminal Code offence, including drinking and driving related criminal offences. Generally speaking, almost all full-time customs officers at the border crossings are trained and designated. Not included, by policy, are the numerous students who are employed during seasonal times, such as the summer, as customs officers. The amendments also vested designated customs officers with the power to administer the roadside-screening device to drivers and to release from custody on an appearance notice under the Criminal Code of Canada.

Training on drinking and driving laws and police procedures, as well as use of force, arrest and related issues, was undertaken for designated customs officers. A committee was struck consisting of representatives from the impacted provincial ministries, the Ontario Provincial Police, the Ontario Association of Chiefs of Police and the Canada Customs and Revenue Agency management and project team. It was ultimately determined that two distinct approaches would be adopted.
The first approach, implemented at the first, and busiest, border crossing in Ontario, the Ambassador Bridge in Windsor, Ontario, (total crossings – commercial and passenger vehicles-at the bridge and tunnel were just over 10.7 million per annum at the time of implementation.) required the designated customs officers to contact the local police service to attend to the crossing to transport the driver to the local police station for further investigation, including breath testing as applicable. The second approach, which was adopted throughout the Niagara Region and at all other sites in Ontario, saw breath-testing equipment installed in customs facilities in compliance with police standards. In effect, miniature police stations were established at the actual crossing. The police (qualified breath technicians) attend at the border crossing, as required, to carry out the investigation, including breath testing and processing of the driver.

Materials and Method:
For a one-month period, at all open border crossings in the Niagara Region as well as the border crossing in the Village of Point Edward (Sarnia), information on arrests was obtained from the relevant police agencies (these areas will be treated as two crossings, Niagara and Point Edward). The two border crossings were considered representative of large and relatively small volume border crossings and both areas implemented the program on December 1, 2000. The related driver records were retrieved and reviewed to determine the outcome, including criminal charges, if any, as well as the entry, as appropriate, on the Ontario driver record. As there is no reciprocal enforcement of driving- related criminal convictions in effect between Ontario and any American jurisdiction other than New York State, American driver records were not reviewed.

The results of the 1999 Quebec Roadside Survey(1) were used to project volumes of drinking drivers at the border crossing sites due to both the currency of the survey and the fact that the survey provides the lowest available indicators of both drinking drivers and drivers who are over the legal limit of .08mgs. The survey indicates that the percent of passenger vehicles where the driver had been drinking (BAC > .01) was 3.75% and where the driver was over the legal limit (BAC>.08) was .08%, with no commercial vehicle operators in either category.

Historical data on crossings in both locations were obtained and used as a base for the calculation of projected incidents of drinking drivers, including those over the legal limit. Due to the fact that commercial vehicle operators were statistically insignificant in the Quebec Roadside Survey, commercial vehicle crossings were eliminated. For the border crossings in Niagara Region, the yearly passenger vehicle crossing volume was just over 7.5 million per annum in 2000. Applying the above-noted percentages, this would result in almost 300,000 drinking drivers per annum or 775 per day. There would be an estimated 60,000 legally impaired drivers per annum or 165 per day. Applying the above-noted percentages to the yearly crossing volume of just over two million for the Village of Point Edward would result in approximately 77,498 drinking drivers per annum or just over 212 drivers per day. There would be an estimated 16,533 legally impaired drivers per annum or approximately 45 drivers per day.
In contrast, there were approximately 1,600 and approximately 650 drinking and driving related criminal cases in the courts in Niagara Region and Sarnia respectively per annum (total 1999 annual volume of impaired, drive over .08mgs and refuse to blow charges received by the courts). Twenty of those in Niagara represent charges as a result of customs related enforcement in 1999.

Applying varying arrest rates to the estimated number of drivers over the legal limit, a low of 603 drivers (1% arrest rate) to 6,032 drivers (10% arrest rate) to a high of 30,162 drivers (50% arrest rate) could be expected to be arrested per annum in Niagara Region. In the Village of Point Edward, a low of 165 drivers (1% arrest rate) to 1,653 drivers (10% arrest rate) to a high of 8,266 drivers (50% arrest rate) could be expected to be arrested per annum.

Results:
Canadian Police Information Centre records and provincial driver records were retrieved and assessed. Three of the five drivers in the Village of Point Edward sample and eleven of the 27 drivers in the Niagara sample had no driver or criminal record on file.

The Niagara Region sample (one month of occurrences) produced 27 drivers. They consisted of one female and 26 males, ranging in age from 21 to 74 years of age. Of these, one driver was charged with both impaired and drive over the legal limit; one driver was charged with refusal to provide a sample (21 years old) and 13 drivers were charged with driving over the legal limit (.08%). Of the drivers charged with criminal offences, four had significantly high blood alcohol concentrations, with average blood alcohol concentrations of 193.75% and 194.25% on the first and second tests. The other ten drivers in the Niagara sample had an average result of 119.4% and 113.8% on the first and second test. A total of 12 drivers in the Niagara sample were released with 12-hour provincial driver licence suspensions, with 84.7% and 75.9% being the average first and second readings respectively. No record is kept by the Registrar of Motor Vehicles of the 12 hour suspension, resulting in no real consequence to the driver unless he or she is apprehended driving during this period. Three of the drivers in the sample were apprehended as a result of the R.I.D.E. program, with one being charged and two released with 12-hour provincial suspensions.

Five of the drivers charged in the Niagara sample are Americans, two from New York State, one each from Virginia, Michigan and Ohio, and are wanted on outstanding criminal charges at the time of the record search (April/02). All but one of the charged drivers – American or Canadian – have an administrative driver licence suspension on record in relation to the arrest. Two of the charged drivers have been convicted; however, four charged drivers are awaiting court dates in April, June and July of 2002 in relation to the January, 2001 charges.

The Point Edward sample (one month of occurrences) produced five drivers, one female and four male. Four of the drivers were charged with the drinking and driving related criminal offences of drive over the legal limit (.08%) and impaired driving. While one driver had a blood alcohol concentration under 120 mgs., one of the drivers was over 200mgs. and the other two drivers were over 180 mgs. on the first test. Only one of the four has an administrative licence suspension on the driver record. For the two drivers that records were available for, both were convicted. The fifth driver was released with a 12-hour provincial driver licence suspension. None of the drivers recorded as being American.
In Niagara, one driver was charged with refusing to provide a sample, with no drivers being charged with refusal in the Village of Point Edward. The nineteen year old driver charged with refuse in Niagara has a lengthy driver record pre-offence, including two demerit point accumulation suspensions and an unpaid fine. Although there is no record of the outcome of the criminal charge, there is a related administrative driver licence suspension on the driver record, along with post-offence convictions for provincial offences and a further suspension for unpaid fines that remains in effect at time of writing.

Discussion:
The introduction of this initiative offered a unique opportunity to identify changes in charges received by the courts as a direct result of legislative amendment. The number of border crossings was known as well as the lowest projected apprehension rate (.08%). Other road safety research and studies produce higher estimates of drivers over the legal limit. The percentage estimate of .08% is the lowest available estimate of drivers over the legal limit. Despite the combination of the lowest estimate of drinking drivers and a 1% arrest rate, there is considerable discrepancy between the number of drivers apprehended by designated customs officers and the number that might have been expected to be apprehended.

Based on the samples, in the Niagara Region an estimated 336 drivers would be arrested in a twelve-month period compared to the lowest possible estimate of 603 drivers. In the same period of time, Niagara Regional Police conducted 80 breath tests, including the 28 tests arising at border crossings throughout the Region. In the Village of Point Edward, only a third of the lowest possible estimate of 165 drivers would be arrested in a twelve-month period. At best, detection is approximately .05% or less of the lowest available estimate of the total number of drivers over the legal limit. This leaves hundreds or even thousands of undetected drinking drivers over the legal limit.

It is unclear whether the differential reflects flaws in the training and implementation plans or substantial discrepancies or issues related to road safety research, including roadside surveys. It is possible that there is a difference between the number of times designated customs officers contacted the police and the subsequent attendance by breath technicians at the crossing site as the number of breath technicians is limited. Perhaps the number of drinking drivers detected falls rather than rises when the random detection factor inherent with traditional police enforcement is removed. Drivers crossing at border locations may, in turn, perceive a greater risk of detection than on the roads and take steps to minimize detection, such as having a designated driver or lower consumption. Further study will need to be undertaken to determine if the low numbers are related in any way to experience. While minor deviations or concerns with any of the aforementioned factors would impact the arrest rate, a serious enforcement issue is raised when the number of detected drivers falls so far below the lowest available current estimate of the number of drivers on the road at any one time who are over the legal limit.

Limiting factors unique to border locations that may negatively impact arrest rates include available police resources, especially qualified breath technicians to respond at the crossing site; drive-aways from both the primary and secondary check points at the crossing; restricted observation of driving behaviour in the controlled environment of a border crossing, especially
with line ups; difference in observation position between police officers at roadside and customs officers in the booth and legal or evidentiary technicalities or errors affecting the ability to proceed with further investigation and arrest. The flow of vehicles is not constant at border crossings, with peak flow potentially negatively impacting ability to detect. Finally, due to congestion, people are able to switch drivers in the vehicle while waiting in line – an opportunity that does not exist elsewhere.

One answer might be the environment of the border crossing. It can be considered to impact on the observations of driving given the usual line ups and streamed approach to customs booths at most crossings. The environment also does not allow the customs officer to obtain a close up look of the driver or to detect an odour in the same way the police officer can at roadside. Training can also be an issue, giving rise to either uncertainty in identifying the drinking driver or to mistakes in dealing with the driver once identified. It should be noted that if and when mistakes are made, it is unlikely that the incident or occurrence would appear on the breath technician records for the police service, however a twelve-hour suspension could still be issued even if no charges result. The question must be asked, however, if there is some other aspect of the environment of the border crossing that is unknown but that can so dramatically impact the arrest rate.

The outcome of the charges laid as a result of detection at the border, as represented in the sample, highlights driver and criminal record and related issues(2). The outcome in Niagara appears to be negatively impacted by the lengthy time to trial as well as the apparent lack of consequence for the American drivers. Although the drivers may have forfeited any bail monies deposited with the court as a result of a judicial interim release hearing. Of concern is the fact that the worst driver charged in the Niagara sample has no record of any criminal disposition related to the arrest. Although the records were limited in the Village of Point Edward sample, disposition of the criminal charges is relatively quick, compared to Niagara, with the two convictions occurring within nine months of the arrests.

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References:
