Establishing Effective Border Crossing Enforcement of Drinking and Driving Laws

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Background

In Ontario, a driver suspected of having consumed more than 80mgs of alcohol has committed an offence under the Criminal Code of Canada. If the police officer merely suspects that the person has consumed alcohol, a roadside screening device may be administered. If the driver registers a “warn” (exceeds 50mgs but not the legal limit), the driver’s licence is suspended for 12 hours. If the driver registers a “fail”, an arrest ensues followed by breath-testing, typically at a police station. If the BAC exceeds 80mgs, the driver faces an administrative driver licence suspension (A.D.L.S.) of 90 days as well as criminal charges. Convicted drivers face assessment, treatment or education as well as ignition interlock installation and payment of fees as prerequisites to reinstatement.

Prior to May 2000, Canada Border Services Agency¹ 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 areas² in Ontario had to be notified to investigate. Federal legislative changes³ were made to allow designated customs officers⁴ to arrest without a warrant for any criminal offence, including drinking and driving-related offences. The amendments also vested designated customs officers with the power to administer the roadside-screening device to drivers. An enhanced detection and enforcement opportunity was perceived as customs officers interacted with millions of drivers entering Canada. Existing surveys on the number of drinking drivers and border crossing volumes were used to calculate potential detection or investigation numbers.

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. In Windsor, the busiest border crossing in Ontario,⁵ it was determined that the driver would be transported to the police station for further investigation, including breath testing as applicable, as customs officers would not be designated as qualified breath technicians. At all other sites, including Niagara Region and Sarnia, breath-testing equipment was installed in customs facilities for use by qualified breath technicians (police) attending at the site.

Objectives

To determine if detection and investigation rates at sample border crossings have increased over the initial post-implementation experience. To compare data from three border crossing sites to determine differences, if any. To determine the consequences to or outcomes for drivers apprehended at border crossings.

¹ Previously known as the Canada Customs and Revenue Agency.
² As some border crossings are in close geographic proximity, the reference here is to the total number of locations where one can cross the border with the United States. Throughout the paper, border crossings are also referred to as “sites”.
³ Amendments to the Customs Act and the Criminal Code of Canada were proclaimed in effect May 1, 2000.
⁴ Generally speaking, almost all full-time customs officers at the border crossings are trained and designated.
⁵ The Ambassador Bridge. Total crossings at the bridge and tunnel were just over 10.7 million per annum in 2000.
Methodology:
Information on arrests, for 2002, at all sites\(^6\) in the Niagara Region as well in the Village of Point Edward (Sarnia)\(^7\) was obtained. These sites, which implemented at the same time, were considered representative of large and relatively smaller volume border sites.\(^8\) Criminal and driver licence records were retrieved, at the beginning of 2004, and reviewed to determine the outcome.\(^9\) Information on investigations at Windsor for three-years post-implementation was analysed for further comparison to determine whether the operational differences impacted the outcome and whether the results were consistent.

The 1999 Quebec Roadside Survey (Dussault et al, 2002) as used to project volumes of drinking drivers at the border crossing sites. The survey is the closest in proximity to the region under study and provides the lowest available indicators of both drinking drivers and drivers who are over the legal limit of 80mgs. The survey indicates that the percent of passenger vehicles where the driver had been drinking (BAC > .01) was 3.75%. Where the driver was over the legal limit (BAC>.08), it was .08%.\(^10\) Historical data on crossings in both locations was obtained and used to calculate projected incidents of drinking drivers over the legal limit.\(^11\) For Niagara Region, the yearly passenger vehicle crossing volume was just over 7.5 million per annum in 2000.\(^12\) 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 2 million\(^13\) 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. Next, varying arrest rates were applied to the estimated number of drivers over the legal limit. In Niagara Region, this resulted in a low estimate of 603 drivers (1% arrest rate) to 6,032 drivers (10% arrest rate) arrested per annum. In the Village of Point Edward, the result was a low estimate of 165 drivers (1% arrest rate) to 1,653 drivers (10% arrest rate) arrested per annum.

Results and Analysis
In 2002, a total of 183 drivers were detected at the border crossings in the Niagara Region, almost equally divided between Canadian and American residents. Thirty-four drivers had no criminal record on file and twenty of the drivers had no provincial driver licence record. Forty-eight drivers were released with 12-hour provincial driver licence suspensions.\(^14\) Of the 132 drivers charged, 125 had an A.D.L.S., with one driver (unlicenced) having two separate A.D.L.S. on the same day. Twenty drivers are wanted on the outstanding criminal charges, as they failed to attend court as required, and 8 drivers are still awaiting trial. Of the 148 drivers with record information, 16 had prior related criminal convictions (one with six previous convictions). A review of either the criminal or provincial record indicated that 69 drivers had been convicted of the 2002 charges. Seven drivers were convicted of careless driving, a provincial offence, in lieu of the criminal charges. Thirteen drivers had the criminal charges withdrawn or dismissed at trial. Of the 69 convicted drivers, 39 (56%) drivers who qualified to be reinstated remained

\(^{6}\) One of the four border crossing locations within the Region was closed for security renovations post September 11, 2001.
\(^{7}\) The total crossings at the Blue Water Bridge in 2000 were 2million.
\(^{8}\) December 1, 2000.
\(^{9}\) Although there is reciprocal enforcement of driving-related criminal convictions in effect between Ontario and New York State and Michigan, American driver records were not reviewed.
\(^{10}\) Not a typographical error, but a coincidence that the legal limit under the Criminal Code of Canada is the same as the percentage.
\(^{11}\) Commercial vehicle operators were statistically insignificant in the Quebec Roadside Survey and those crossings are eliminated.
\(^{12}\) Some reports put the volume as high as 15 million passenger vehicles.
\(^{13}\) Some reports put the volume as high as 4 million passenger vehicles.
\(^{14}\) No record is kept by the Registrar of Motor Vehicles of the 12-hour suspension. Hence, there is no consequence.
under suspension for failing to complete the remedial measures program,\textsuperscript{15} almost equally divided as between Ontario and American residents.

Of the 126 drivers for whom breath readings were available,\textsuperscript{16} and who were charged, 46 (36\%) were at 160mgs.\textsuperscript{17} or higher, 16 were at 200mgs. or greater, including one driver between 280mgs. and 300mgs. Of the 46 drivers, 28 (61\%) were convicted (did not attend court as required), 9 are wanted (did not attend court as required), 3 are awaiting trial, 2 were convicted of the provincial offence of careless driving and 2 had their charges withdrawn. Sixteen of the 28 convicted drivers qualify for reinstatement but remain under suspension for failure to complete the mandatory remedial measures program. Of those drivers, 69\% are Ontario residents.

In 2002, 38 drivers were investigated as a result of detection at the border crossing in Sarnia. Records were available for 36 of those drivers, a higher number than in Niagara. Twenty-six (68\%) of the 36 drivers were American residents, with 21 of those from Michigan. Twelve drivers (32\%) received a 12-hour driver licence suspension, with one of those drivers subsequently charged, four months later, with driving over the legal limit. In contrast to the initial post-implementation experience, all but one of the charged drivers had an ADLS on their driver record. Twenty-one (58\%) of the 36 drivers were charged with driving over the legal limit and/or impaired.\textsuperscript{18} Fifteen drivers had been convicted at the time of the record search with three drivers awaiting trial. In contrast to Niagara and Windsor, no charges were withdrawn or dismissed at trial. Two drivers had corresponding convictions for careless driving, a provincial offence, in lieu of a disposition on the criminal charge. Four American residents are wanted and three drivers are awaiting trial. Eight of the convicted drivers (53\%) who qualified for reinstatement remained under suspension for failing to comply with the remedial measures requirement. In contrast with Niagara, only two are Ontario residents.

Of the 21 drivers for whom breath test readings were available and who were charged, 7 (33\%) were between 160mgs. and 300mgs. One driver was involved in a rear end collision at the primary booth. One driver failed the roadside-screening device only to have a test result of 270mg. and remains under suspension for failing to complete the remedial measures program along with one other driver. A driver who is still awaiting trial has two priors and post-2002 charges outstanding. Two are under suspension for failing to complete the remedial measures program.

In Windsor, 54 drivers were detected in 2002. Records were available for 48 of those drivers. It is not known how many of these were American residents or how many received 12-hour suspensions. Three charged drivers had no A.D.L.S. on the provincial driver record and 24 drivers had an A.D.L.S. on the record and no other entries. Some drivers had an A.D.L.S. on the provincial record in conjunction with a charge of impaired driving, an offence for which A.D.L.S. is not available. Some of the A.D.L.S. were not served on the drivers. Eighteen drivers (38\%) were convicted of the customs-related charges. Seven drivers (15\%) had the charges either withdrawn or dismissed at trial, with an additional two drivers having a conviction for only one of the multiple but distinct charges laid. Two of the drivers were convicted of the provincial offence of careless driving in lieu of the criminal charges. Of the 18 drivers who qualified to be licenced as of the search date, 15 (83\%) had not completed the remedial measures program. Eight of the 48 drivers had extensive driving records related to driving while suspended or prohibited and drinking and driving-related convictions. Two of the drivers had a gap of at

\textsuperscript{15} One additional driver had not completed the program from a previous conviction.
\textsuperscript{16} Eight drivers were charged with refusing to provide a sample.
\textsuperscript{17} The law provides that a reading over 160mgs. is an aggravating factor on sentencing as it is twice the legal limit of 80mgs.
\textsuperscript{18} Four drivers were charged with refusing to provide a sample.
least ten years between the customs-related incident and the last conviction for drinking and driving. Overall, the total number of drivers arrested in Windsor in the three years was 207. Of these, there were no criminal or provincial records for 68%. In 2003, there were 65% fewer drivers detected and arrested than in 2001. An increase in the number of women arrested was noted in 2003, with 25% of the drivers being women. The number of drivers convicted in 2003 dropped to a low of 18% as compared to 33% in 2002 and 50% in 2001.

**Discussion**
In Niagara and Sarnia, the number of drivers investigated in 2002 was well below any estimate. In Niagara, the lowest number of drivers detected per year was estimated at 603 (lowest available estimate of legally impaired drivers x 1% arrest rate). Instead, 182 drivers, or 30% of the lowest estimate, were investigated in 2002. Compared to the estimated 336 drivers investigated in the first year of implementation, the activity in 2002 represents a decline of 54%. In Point Edward, the number of drivers detected in 2002 was 63% less than the estimated 60 drivers detected in the first year post-implementation. It was estimated that a low of 165 drivers a year should be detected (lowest available estimate of the number of legally impaired drivers x 1% arrest rate). Instead, 38 drivers, or 23% of that estimate, were detected in 2002. The results at both locations are consistent, or better than, the experience in Windsor. Although the same calculations were not made, the number of drivers investigated was available. In the first full year (2001), 113 drivers were detected. In 2002, this declined by 48% to 54 drivers. A further decline was reported in 2003, with 40 drivers detected, or 26% fewer than the previous year and 65% fewer than in 2001.

It appears that limiting factors have resulted in an inordinately low number of drivers being detected and investigated. The number of drivers investigated is not positively impacted by experience. Even though by mid-2003, total border crossings into Canada had declined by 15%, due to the war in Iraq and the outbreak of Severe Acute Respiratory Syndrome (SARS), there continues to be a considerable discrepancy between projected and actual numbers. There are a number of factors that might negatively impact detection. Customs officers reportedly did not see a change in either classification or compensation despite the new responsibilities. The initiative is incidental to primary customs activity. Customs officers do not carry firearms and may feel under-resourced or poorly prepared to address issues that can arise when apprehending an impaired driver. Training issues could undermine confidence in executing roadside screening and investigations, including testifying in court. The level or quality of training can create uncertainty in identifying the drinking driver or lead to mistakes in processing the driver. It should be noted that if any mistakes are made, it is unlikely that the incident or occurrence would appear on the records for the police service, however a 12-hour suspension could still be issued even if no charges result. Negative outcomes (i.e. dismissals at trial) could discourage individual officers.

Reportedly the level of drinking and driving in conjunction with border crossing activity has decreased substantially in recent years. Congestion at vehicle border crossings coupled with the mandatory documentation requirements has virtually eliminated so-called spontaneous crossings. It is difficult to conclude, however, that the inordinately low volume of drivers investigated is due to reductions in so-called “cross-border drinking”. Drivers crossing at border sites may perceive a greater risk of detection and take steps to minimize detection, such as having a designated driver or lower consumption. The number of drinking drivers detected might fall rather than rise when the random detection factor inherent with traditional police enforcement is removed. The flow of vehicles is not

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19 Tourism Research Indicators. Ontario Ministry of Tourism and Recreation.
constant at border crossings, with peak flow potentially negatively impacting ability to detect. Due to congestion, people are able to switch drivers in the vehicle while waiting in line. Other limiting factors unique to border locations that may negatively impact detection include drive-aways from both the primary and secondary check points; 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. It is possible that there is a difference between the number of times designated customs officers contacted the police and the subsequent attendance by police at the sites as the number of breath technicians is limited. 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 estimate. 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 border crossing sites continues to highlight provincial driver and criminal record issues (Stewart et al, 2000, 2002). Residents in Michigan and New York do not appear to be deterred by the reciprocal enforcement agreements in place with Ontario. A disproportionate number of American residents did not appear in court and are wanted on the outstanding criminal charges. Of particular concern is the relatively large percentage of drivers with a high BAC and the number of drivers who have demonstrated a lack of interest in remaining within the driver licencing regime by failing to comply with a mandatory condition of driver licence reinstatement – remedial measures.

Conclusion
Enacting laws to ensure that designated customs officers can administer roadside screening devices, investigate and arrest drivers who have been drinking has resulted in a negligible impact on the number of drivers detected. When the drivers are American residents, there is little, if any, real or perceived consequence. There is minimal compliance with the mandatory post-conviction treatment program in Ontario and ongoing issues related to record keeping impacts the ability to adequately identify the repeat driver. Further study should be undertaken to determine future enforcement and opportunities for improving the initiative and strengthening outcomes. Follow through on reciprocal enforcement and drivers with high breath-test readings is critical.

Possible Next Steps
The implementation of this initiative should be tracked for operational or procedural changes and subsequent data obtained to measure the impact of any such changes. Data on apprehensions at all three sites could be analyzed in future years to assess the long-term outcome, including recidivism, if any, in the drivers proximate to the border crossings. Results could be compared to more recent Canadian roadside survey if available. Designated customs officers could be surveyed to determine actual and perceived barriers to the exercise of the officer’s powers.

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So-called arrest rate.
References

