The Alcohol Industry: Friend or Foe in the Fight Against Impaired Driving: ‘A MADD Perspective’

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Introduction
Mothers Against Drunk Driving (MADD) Canada is a charitable, grassroots organization that has over 70 chapters throughout Canada. It is committed to two equally important goals. The first is to assist victims of impaired driving and their families. The second is to minimize the incidence of impaired driving and related deaths and injuries. It is the second goal that is most relevant for the purposes of this paper.

Contrary to what its critics have alleged, MADD Canada is not a prohibitionist or neo-prohibitionist organization. Its position has always been that drinking is a private matter, but that drinking and driving is not. Nevertheless, MADD Canada will not ignore general alcohol policies that can contribute to reducing impaired driving. The organization’s commitment to preventing impaired driving requires it to address these broader issues. MADD Canada will collaborate with any organization that is working to minimize impaired driving.

During the late 1980s and early 1990s, when MADD Canada’s activities were largely limited to victims services, sentencing issues and general anti-impaired driving messages, cooperation with the alcohol industry was possible. In the ensuing years, the relationship between MADD Canada and the alcohol industry has become confrontational. Several factors have led to what we believe were inevitable clashes. These include MADD Canada’s emergence as a financially independent and national grassroots organization, its increasing credibility among federal and provincial politicians, and its establishment of an independent research capacity. However, in our view, the most important factor has been MADD Canada’s advocacy of specific impaired driving countermeasures, such as the introduction of a Criminal Code 0.05% blood-alcohol concentration (BAC) offence.

We begin by providing some background information on the alcohol industry and its efforts in shaping alcohol policy. We then discuss MADD Canada’s and the alcohol industry’s conflicting positions on two specific issues, namely, the nature of Canada’s impaired driving problem and the need for a Criminal Code 0.05% BAC offence.

The Alcohol Industry
The role of the alcohol industry in influencing alcohol policies in Canada and abroad is firmly established. The industry’s size, concentration and resources give it enormous financial and political influence. The industry uses its power to shape public perceptions of alcohol problems, while attempting to maintain a positive corporate image.1-2 For example, the industry has established and funded numerous organizations that address social aspects of alcohol consumption. While these organizations appear to be focused on research, awareness, education, and/or prevention, they exist to further the industry’s...
commercial interests. They manage potentially sensitive issues, and challenge research and policies that are perceived to be threatening.\textsuperscript{3-4}

The industry promotes so-called “responsible drinking” campaigns. Despite their technical sophistication and attractive packaging, these programs contain no information on safe levels of consumption or the risks associated with various consumption patterns.\textsuperscript{5} Interestingly, research indicates that nearly 80\% of alcohol consumption in the United States occurs in hazardous or at-risk situations (defined respectively as 5 or more drinks, and 3-4 drinks on a single occasion).\textsuperscript{6} Given the similarities in Canadian and American consumption patterns,\textsuperscript{7} the situation in Canada is likely comparable.

The industry also creates partnerships with health organizations, medical associations, law enforcement groups, educational institutions, and government departments.\textsuperscript{8} No doubt, some of these arrangements have contributed to the public good. However, that does not justify insulating the industry’s position on traffic safety issues from critical scrutiny.

Moreover, the industry funds “alcohol education” programs for secondary and post-secondary school students. The printing, graphics and technological elements are of the highest quality, and the programs are offered free of charge. These initiatives are problematic for several reasons. First, despite the bells and whistles, there is little mention of the unique vulnerability of youth to the risks of alcohol-related death and injury, or to the problems of binge drinking (5 or more drinks in a sitting). Second, the programs ignore underage drinking, and implicitly endorse existing patterns of hazardous consumption as part of an acceptable lifestyle. Third, research indicates that such initiatives have little impact on reducing impaired driving and other alcohol problems.\textsuperscript{9} Fourth, these industry programs monopolize the field, discouraging the development of more accurate and relevant educational initiatives.

\section*{The Nature of Canada’s Impaired Driving Problem}

In recent years, the alcohol industry and others have tried to draw a sharp distinction between so-called “social drinkers” and “hard-core” drinking drivers. We are led to believe that great progress has been made among social drinkers over the last 20 years, and that this extremely large group invariably drinks “moderately” or “responsibly”. In contrast, little progress has been made among the tiny fraction of drivers who make up the hard-core drinking driver population. We are urged to “crack down” on this dangerous minority with tougher penalties, particularly for repeat offenders.\textsuperscript{8, 10}

Part of the hard-core stereotype’s allure can be attributed to its malleable terminology. The term “hard-core” drinking driver is often used to describe three different, albeit overlapping, groups of drivers. It is sometimes used to refer to those who routinely or “persistently” drive after drinking. Other times, it refers to repeat impaired driving offenders. However, the term appears to be used most often in reference to drivers with BACs of 0.15\% or more. While concern with high-BAC drivers is warranted, it is important to appreciate that, for the last 15 years, approximately 40\% of the fatally-injured drinking drivers in Canada had BACs below 0.15\%.\textsuperscript{11} Regardless of which definition is used, a brief survey of the literature indicates that high-risk drinking and driving is not limited to a tiny fraction of the population, and is far more prevalent than the promoters of the hard-core stereotype would lead us to believe.\textsuperscript{10}

In particular, the dichotomy between hard-core and social drinkers ignores people who usually drink moderately, but occasionally drink to excess. These people are not alcoholics, and would not generally view themselves or be viewed by others as hard-core drinkers. For example, as the following chart indicates, a significant percentage of
Canadian youth, especially males, go through a period of episodic heavy drinking. Notably, this same constituency is a prime target of many alcohol industry marketing initiatives. Similar consumption patterns are evident in the United States, Australia and the United Kingdom.

Chart 1: Reported Binge Drinking in Last 12 Months Among Canadian Drinkers, 2000/01

Despite the progress that may have been made among so-called social drinkers, millions of Canadians continue to drink and drive. In a 2002 national poll, 16.1% of licensed drivers reported driving within two hours of drinking in the last 30 days. When applied to the entire population of licensed drivers, it shows that 3.4 million Canadians admit to driving after drinking. Moreover, based on the survey results, the authors estimated that 1.7 million Canadians drove when they thought they were impaired. Clearly, it is misleading to attribute Canada’s impaired driving problem to what one commentator described as the “dangerous 1%”, namely, hard-core drinking drivers.

We acknowledge that there is a small number of people who frequently drive with high BACs and that they are dramatically overrepresented in alcohol-related crashes. However, it does not mean that they are responsible for the majority of these crashes. While additional research is needed, it is likely that, given the sheer number of people that occasionally drink to excess and drive, this much larger group is probably responsible for many, if not most, of the alcohol-related deaths and injuries. Indeed, research indicates that occasional drinking drivers are at a much higher relative risk of crash per trip than frequent drinking drivers with the same BACs. For example, an American report indicated that, at the relatively modest BAC of 0.06%, the risk of crash relative to their sober counterparts increases nearly 700% for those who drink on an annual basis, 425% for those who drink monthly, and 50% for those who drink daily. Presumably, the relative risk for infrequent drinkers is even more disproportionate at the high BAC levels typically associated with serious and fatal crashes.

The hard-core stereotype not only mischaracterizes Canada’s impaired driving problem, but also distracts attention from more comprehensive approaches. For example, the industry has relied on the hard-core stereotype to oppose population-based alcohol policies and, as we shall discuss, lower BAC limits for driving. The industry tells us that the problem is not alcohol, but rather alcohol abusers. Instead of punishing and inconveniencing responsible drinkers with prohibitionist measures, the industry advocates targeted programs for abusers. One problem with this approach is that the proposed measures have been found to be ineffective in reducing impaired driving.
Research establishes that general limits on alcohol availability hold the greatest promise of reducing consumption levels and alcohol-related problems, including impaired driving. Among the measures that have proven to be effective are raising the drinking age, limiting the number of alcohol outlets, restricting the days and hours of alcohol sales, and increasing alcohol taxes. These initiatives have a broad preventative impact across the population. Moreover, they cost little to implement, would not burden the criminal justice system and are largely immune to any plausible constitutional challenges.

In summary, contrary to the stereotype, research establishes that a significant number of so-called social drinkers occasionally drink to excess and drive. Moreover, when they do so, they are at an extremely high risk of crash. It is inappropriate to ignore these individuals in our attempts to find a convenient scapegoat for our impaired driving problem. Research also indicates that population-based approaches can play an important role in reducing impaired driving. Thus, MADD Canada finds itself in direct conflict with the alcohol industry over both the nature of Canada's impaired driving problem and the range of effective countermeasures.

**The Need for a Criminal Code 0.05% BAC Offence**
MADD Canada has proposed introducing a new *Criminal Code* 0.05% BAC offence. It would include streamlined procedures for processing cases, discourage needless court appearances and trials, carry lower penalties than the current 0.08% BAC offence, and protect first-time 0.05% BAC offenders who do not re-offend within two years from having a permanent criminal record. The offence would complement the existing *Criminal Code* impaired driving offences, which would remain unchanged. Moreover, it would be compatible with the existing provincial and territorial short-term licence suspension legislation. The remainder of this section briefly sets out the rationale for the proposed 0.05% BAC offence and addresses some of the common arguments that have been raised against it.

**(a) The Rationale for the Proposed Criminal Code 0.05% BAC Offence**
The current 0.08% BAC offence simply does not have a sufficient deterrent impact. While the situation has improved since the 1980s, millions of Canadians continue to drink immoderately and then drive. Moreover, impaired driving remains the single largest criminal cause of death in Canada, and one of the country's largest criminal causes of injury. According to a 2001 Transport Canada report, Canada ranked highest among eight selected OECD countries in terms of the percentage of fatally-injured drivers who were impaired, despite the fact that most of these countries have far higher rates of per capita alcohol consumption. For example, while Germans consume 70% more alcohol than Canadians, only 11% of Germany's fatally-injured drivers were impaired compared to 32% of Canada's fatally-injured drivers.

The current 0.08% BAC offence allows individuals to drive after drinking large amounts of alcohol in a relatively short period of time. Given the margin of error accepted by the Canadian courts, most police will not consider laying impaired driving charges unless the driver's evidentiary BAC readings are 0.10% or higher. This *de facto* threshold allows an average 200-lb. man to drink over six beers (12 ounces containing 5% alcohol by volume) on an empty stomach in a two-hour period and then drive, largely immune from criminal sanction. Few Canadians would view this level of consumption as acceptable for driving. For example, in a 2003 survey that explained the consumption patterns associated with various BACs, 87% of Canadians indicated that a criminal 0.05% BAC limit was about right or too high.
Research has established that key driving-related skills are impaired at BACs well below 0.05%. For example, the authors of a recent comprehensive study concluded that “a majority of the driving population is impaired in some important measures at BACs as low as 0.02%”. Research from Canada and abroad has also established that the relative risk of a fatal crash rises significantly at BACs above 0.05%, particularly for young drivers. Consequently, it is not surprising that virtually every leading traffic safety, medical and accident prevention organization in the world supports a BAC limit of 0.05% or lower. Moreover, the clear international trend has been to reduce legal BAC limits.

The traffic safety benefits of lowering BAC limits have been repeatedly demonstrated in studies from numerous countries. Almost every jurisdiction that has lowered its BAC limit has experienced reductions in impaired driving, and related crashes, injuries and deaths. The research has also established that lowering the BAC limit deters drivers at all BAC levels, including so-called “hard-core” drinking drivers. A recent Canadian study, reviewing the international experience, reported that creating a Criminal Code 0.05% BAC offence would save between 185 and 555 lives per year.

(b) The Alcohol Industry’s Arguments Against the 0.05% BAC Offence

It has been argued that a criminal 0.05% BAC limit would criminalize conduct that poses only trivial risks. However, studies conducted over the last 40 years have consistently established that drivers with BACs in the 0.050% to 0.079% range are at a substantially greater risk of death than drivers with a 0.00% BAC. Moreover, these relative risks rise sharply in the 0.080% to 0.099% range, a level at which most police will not even consider laying a criminal charge under the existing 0.08% offence. It is true that, in terms of any one trip, the likelihood of being in a fatal crash is very small even for drivers with BACs in the 0.050% to 0.099% range. However, given that millions of Canadians continue to drink and then drive, this risk is commonly taken and imposed on others. Like the proponents of seatbelts, airbags, bicycle helmets, and airport screening, MADD Canada believes that the mere fact that the risk per occasion is small does not justify ignoring it.

The industry argues that the proposed BAC offence would overwhelm police and court resources, and generate unacceptable costs. However, while more drivers would theoretically be liable to prosecution, it does not follow that the criminal justice system would be inundated. First, a 0.05% BAC offence would have a major general deterrent effect, reducing the numbers who drink and then drive. Second, given current police and court practices, suspects would not likely be charged under the proposed 0.05% BAC offence unless they registered BACs of 0.07% or higher on their evidentiary BAC tests. Third, the proposed offence contains streamlined procedures that would minimize court appearances and discourage trials. Fourth, jurisdictions that have lowered their BAC limits have not reported such problems, including the American states that reduced their criminal BAC limits from 0.10% to 0.08%, and the Australian states that introduced 0.05% BAC limits, in some cases 20 years ago.

Even if demands on the criminal justice system and related costs did increase modestly, these would be more than offset by the accompanying traffic safety benefits. For example, a study from the Stanford Institute for Economic Policy Research estimated that reducing the criminal BAC limit to 0.08% in New York State would increase police and court costs by $8 million a year, but would also save between $900 million and $1.1 billion a year in medical, property, employment, and other costs.

Contrary to what its critics contend, a 0.05% BAC law would not trigger a flood of criminal charges against people who drove after having two glasses of wine with dinner or two...
beers with friends after work. As indicated, given current police and court practices, charges are unlikely to be laid unless a suspect’s BAC is 0.07% or higher. This means that a 200-lb. man could drink slightly more than four beers in two hours and be largely immune from criminal charges. Even a 130-lb. woman could have a little more than two glasses of wine on an empty stomach in two hours and remain below the likely threshold for being charged.23

Finally, it is argued that a 0.05% BAC offence would not deter “hard core” drinking drivers who are largely responsible for impaired driving crashes in Canada. As indicated, social drinkers, not hard-core drinking drivers, appear to be responsible for many, if not most, impaired driving crashes. Nevertheless, even if the rhetoric about the “hard core” drinking driver is accepted, it does not follow that such drivers cannot be deterred. For example, after Sweden lowered its BAC limit to 0.02%, the average BAC of convicted impaired drivers, as well as the percentage of impaired drivers with BACs above 0.15%, fell substantially. Similarly, drivers with high BACs were strongly affected by the 0.05% BAC limit in the Australian Capital Territory. In particular, there was a 34% decrease in the percentage of drivers with BACs between 0.15% and 0.199%, and a 58% decrease in the percentage above 0.20%. These studies suggest that high BAC drivers might still drive illegally, but most at a lower BAC than before.22,25,26

In summary, the current 0.08% BAC law shields drivers who have consumed large amounts of alcohol from criminal liability, and exposes safe, sober drivers to significant risks. MADD Canada has proposed the 0.05% BAC offence because the evidence indicates that it would reduce impaired driving. Unfortunately, MADD Canada once again finds itself in direct conflict with the alcohol industry.

Conclusion
MADD Canada remains willing to work with any organization or group that shares its commitment to reducing impaired driving. In our view, the alcohol industry is not one of them. It mischaracterizes the impaired driving problem and rejects measures that are effective, while promoting measures that are not.

References
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