SUBJECT: Changes to Alcohol Legislation for Driving
(BOH08008/PW08037) - (City Wide)

RECOMMENDATION:

(a) That the Premier of Ontario and the Minister of Transportation of the Province of Ontario be requested to expedite the implementation of changes in the Administrative Drivers Licence Suspension, under the Safer Roads for a Safer Ontario Act (2007) and be asked to carefully monitor, evaluate and report on the effects of these changes.

(b) That the Prime Minister and the federal Minister of Transportation be requested to initiate a formal Committee review and update of the conclusions of the 1999 House of Commons Standing Committee on Justice and Human Rights regarding drinking and driving and the Criminal Code, with specific emphasis on a
a reduction in the Blood Alcohol Concentration (BAC) limit and with a goal of meeting the targets of the Canadian Council of Motor Transport Administrators Strategy to Reduce Impaired Driving 2010 (STRID 2010).

Elizabeth Richardson, MD, MHSc, FRCPC
Medical Officer of Health
Public Health Services

Scott Stewart, C.E.T.
General Manager
Public Works

EXECUTIVE SUMMARY:

The road safety problems which result from the combination of alcohol consumption and driving have concerned countries around the world for decades. Governments have enacted various regulations in an attempt to minimize the human loss and property damage. Much research has been conducted, with thousands of studies undertaken and conclusions and opinions offered. Even with all of the research and investigation, researchers are far from unanimous as to the best approach to respond to the problem. There is consensus among leading medical, crash prevention and traffic safety organizations around the world for a BAC driving limit at or below 0.05.

Against this background, Council has received a copy of a formal request to the federal government from the Regional Municipality of Durham. The request asks that the statutory legal limit for the Criminal Code offence of driving while under the influence of alcohol be lowered from 0.08 to 0.05. Staff were asked to prepare a position in response to the Durham request and to provide Council with further information to consider endorsement of the position of Addictions Ontario, Centre for Addiction and Mental Health, Mothers Against Drunk Driving and the Ontario Public Health Association that the legal BAC be reduced from 80 mg (0.08%) of alcohol in 100mL of blood to 50 mg (0.05%) of alcohol.

In 1997, the House of Commons Standing Committee on Justice and Human Rights was charged with reviewing the drinking-driving sections of the Criminal Code of Canada. After review of a number of submissions, in May of 1999, the Committee decided not to lower the standard of 80 mg/dL (0.08%).

Recently, the Province of Ontario passed the Safer Roads for a Safer Ontario Act (2007). This Act has provisions which greatly strengthen the procedures and impacts relating to the current procedures for short term suspension of licences at the 0.05% level. The intent of this Act supports the position taken by a number of researchers that using short-term licence suspensions with a progressively increasing penalties, and especially, introducing recording of the suspensions for police and insurance company use, could have a marked and beneficial effect on reducing drinking and driving collisions.

Staff of Police Services, Public Health Services and Public Works have spent significant time reviewing the literature and attempting to critically appraise the research.
However, this is an area in which investigators can and do spend entire careers, and staff have done their best to provide Council with a limited overview of the latest opinions and trends.

There are two recommendations. First, Safer Roads for a Safer Ontario Act (2007) has reached royal assent, but has not been entirely implemented. It is recommended that the City ask the province to fully implement the Safer Roads for a Safer Ontario Act (2007) as soon as possible and to monitor carefully its effects. Second, it is recommended that the federal government be asked to revisit the 1999 decision to determine, in view of Ontario’s Safer Roads for a Safer Ontario Act (2007) and many other changes in society since 1999, whether a change in the Criminal Code to reduce the legal limit for blood alcohol while driving, or any other modifications to legislation, are now required and appropriate.

**BACKGROUND:**

Impaired driving is a significant public health and safety concern with physical, social, emotional and economic consequences. There is growing concern that the Criminal Code limit of 0.08% which has been in place since 1969 is too high. Research indicates that there is impairment of driving-related skills and an increased relative risk of fatal crashes even at moderate levels of alcohol consumption. Some studies have shown that there can be significant impairment of driving skills even at BAC levels of 0.02% and lower. Drivers with BACs in the 0.05% to 0.08% range are 7.2 times more likely to be involved in a fatal crash than drivers with a 0% BAC. These relative risks are greatly increased in young drivers. This evidence combined with the traffic safety benefits which have been achieved in other countries that have lowered their BAC limits, has resulted in the call to reduce the current BAC limit of 0.08% under the Criminal Code.

There is consensus among leading medical, crash prevention and traffic safety organizations around the world for a BAC driving limit at or below 0.05. In 2004, the World Health Organization recommended an upper BAC limit of 0.05 for the general driving population as best practice.

**BAC Limits for Driving Worldwide**

<table>
<thead>
<tr>
<th>BAC</th>
<th>Countries</th>
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<tbody>
<tr>
<td>0</td>
<td>Armenia, Azerbaijan, Bahrain, Croatia, Czech Republic, Ethiopia, Hungary, Jordan, Nepal, Pakistan, Romania, Saudi Arabia, Slovak Republic, and United Arab Emirates</td>
</tr>
<tr>
<td>.01% -.04%</td>
<td>Albania, Algeria, China, Estonia, Georgia, India, Japan, Lithuania, Moldova, Mongolia, Norway, Poland, Russia, Sweden, and Turkmenistan</td>
</tr>
<tr>
<td>.05%</td>
<td>Argentina, Australia, Austria, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Cambodia, Costa Rica, Denmark, El Salvador, Estonia, Finland, France, Germany, Greece, Iceland, Israel, Italy, Kyrgyzstan, Latvia, Macedonia, Monaco, the Netherlands, Peru, Philippines, Portugal, Serbia, Slovenia, South Africa, South Korea, Spain, Switzerland, Taiwan, Thailand, Turkey, and Venezuela</td>
</tr>
<tr>
<td>.06% -.07%</td>
<td>Bolívia, Ecuador, and Honduras</td>
</tr>
<tr>
<td>.08%</td>
<td>Botswana, Brazil, Canada, Ghana, Guatemala, Ireland, Jamaica, Kenya, Luxembourg, Malaysia, Malta, Mexico, New Zealand, Nicaragua, Paraguay, Singapore, Uganda, United Kingdom, United States, and Zimbabwe</td>
</tr>
</tbody>
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(Solomon, R.M., Chamberlain, E., Usprich, S.J., 2006)
ANALYSIS/RATIONALE:

While there is far from total consistency in the literature, two facts are clear. First, persons with increased blood alcohol limits have poorer motor skills. Second, the effect of the reduced motor skills is an increased likelihood of involvement in a motor vehicle collision.

The part that remains far from clear is how to convince drivers of the connection between these two facts – that is, how, through a combination of education and enforcement, to separate drinking from driving. There are many issues which are far from clear. For instance, there is controversy as to whether the driver most likely to be in a car crash after driving is a “hard core” drinker (in essence, a person with a substance abuse problem) or just a social drinker who went on a binge. Even the number of drivers involved in collisions in the 0.05% to 0.08% range and the possible safety benefits is subject to a wide range of estimates.

Against this background, staff have attempted to identify the most critical facts.

In Hamilton, an average of about 2 fatal and 80 injury-causing motor vehicle collisions occur annually, where one or more of the drivers involved had consumed alcohol.

According to the Traffic Injury Research Foundation, progress in the reduction of drinking and driving in Canada has stalled. (Traffic Injury Research Foundation, Road Safety Monitor, 2007)

The rates of drinking and driving in Hamilton reflect this. They reached their lowest point in 1998 and have been steadily rising since. The 2005 and 2006 rates of collisions where one or more of the drivers had consumed alcohol were 7.4% and 7.3% respectively, the highest rates in over 20 years.

Canada is unique in the world in that it has a two-tiered system of penalties for impaired driving. Federally, since 1969 it has been a criminal offence to drive with a Blood Alcohol Concentration (BAC) level of .08 or higher under the Criminal Code of Canada. All provinces and territories have their own legislation for impaired driving that differs greatly. In Ontario, under the Highway Traffic Act, drivers whose BAC exceeds 0.05% are subject to a 12 hour Administrative Driver’s Licence Suspension (ADLS), but with no other penalties. Provincially, there are also requirements for new drivers to have .00% BAC levels when driving through the Graduated Licence Program. In Ontario, drivers who are convicted of the over 0.08% charge under the Criminal Code, are also subject to additional penalties under the Highway Traffic Act. These penalties include larger fines, ignition interlock conditions and remedial measures which are not part of the Criminal Code. Thus, in Ontario and other Canadian provinces, there are, in fact, already BAC limits of 0.05% or similar, but with limited or non-existent penalties.

Safer Roads for a Safer Ontario Act (2007), an Act to amend the Ontario Highway Traffic Act, received Royal Assent on June 4, 2007. The clauses relating to the increase in ADLS have not yet been proclaimed. This delay is due to problems with the current wording of the act. At present, an administrative driver’s licence suspension of 12 hours is given to a driver whose blood alcohol concentration is between 0.05 and 0.08.

With proclamation, the ADLS changes are as follows under section 48:

- First suspension - 3 days
Second suspension - 7 days and mandatory enrolment in remedial measures course

Third suspension - 30 days and mandatory enrolment in remedial measures course, ignition interlock licence condition for six months.

A vehicle forfeiture program will be introduced and will allow federal impaired driving offenders to apply for early licence reinstatement, if they participate in Ontario’s mandatory alcohol interlock program.

Specifically, there will now be penalties which increase in severity with repeat offences and by tracking repeat offences, drivers face an increase in vehicle insurance rates; both of these measures serve as a stronger means to reduce impaired driving. This legislation is a positive step towards meeting some of the recommendations made in the Canadian Council of Motor Transport Administrators (CCMTA) Strategy to Reduce Impaired Driving 2010 (STRID 2010) Task Force Report, however it still falls short of meeting those recommendations fully. (CCMTA, STRID Strategy to Address Lower BAC Drinking Drivers, June 2005). The Ministry of Transportation indicates that the outstanding clauses of this legislation should be proclaimed by late 2008. It is expected that, with introduction of these changes, significant publicity will occur, with the attendant positive effect.

Several recognized organizations support reducing the federal BAC level to 0.05%. The CCMTA report supports the reduction of the BAC to 0.05%. Their position is that the discrepancy between the federal and provincial BAC limits conveys a message that unless a driver’s BAC exceeds 0.08%, it is safe to drink alcohol and drive. This message is inconsistent with the evidence which shows that impairment is significant and key driving-related skills are impaired at much lower BAC levels (CCMTA, STRID Strategy to Address Lower BAC Drinking Drivers, June 2005). Furthermore, the World Health Organization recommends member countries set and enforce blood alcohol concentrations levels for drivers and upper limits of 0.05% BAC for the general driving population are considered best practice (WHO, World Report on Road Traffic Injury Prevention, 2004). Most recently, in February 2008, the Centre for Addiction and Mental Health (CAMH) prepared a presentation to the Standing Committee on Justice and Human Rights on Reducing Alcohol-Related Deaths on Canada’s Roads demonstrating strong scientific support for a legal limit of 0.05% BAC as well as the necessary actions to ensure the success of such legislation (CAMH, Presentation to the Standing Committee on Justice and Human Rights on Reducing Alcohol-Related Deaths on Canada’s Roads, Feb 2008). Since Canada has a unique system with provincial sanctions, much research has been done on the issue of lowering the BAC. There has been some controversy as outlined in a report produced by TIRF (The safety impact of lowering the BAC limit for drivers in Canada, 2002). However, since that time MADD Canada and the Ontario Public Health Association have advocated that the Criminal Code limit be reduced to 0.05% BAC (OPHA Letter, 2007). MADD Canada recognizes that simply changing the limit on the Criminal Code would pose certain administrative challenges and thus have proposed that a new 0.05% BAC offence would need to be introduced that would complement the existing 0.08% offence (MADD Canada, The Elements of a Workable 0.05% BAC Criminal Code Offence, 2006).

In summary, available research supports lowering the Criminal Code BAC limit to 0.05%. It also must be noted that the provincial system, even after the passing of Safer
Roads for a Safer Ontario Act (2007), still falls short of the recommendations in STRID 2010 and the National Alcohol Strategy and that the further advocacy in strengthening provincial impaired driving legislation is needed. Specifically, the STRID paper recommends even stiffer penalties for ADLS and longer suspension periods than those in Safer Roads for a Safer Ontario Act (2007). This may be an area which requires advocacy in the future pending the outcomes realized through implementation of Safer Roads for a Safer Ontario Act (2007).

In 1997, the House of Commons Standing Committee on Justice and Human Rights was charged with reviewing the drinking-driving sections of the Criminal Code of Canada. After review of a number of submissions, in May of 1999, the Committee decided not to lower the standard of 80 mg/dL (0.08%).

There are many issues associated with implementation of a 0.05% limit in Canada which need to be considered when deciding whether or not to reduce the BAC limit and whether to make other legislative changes as well. These include:

- The true impact on road safety of the group of drivers with BAC from 0.05% to 0.08%
- Whether “hard core” drinkers are the real problem, and whether such a change would impact on their behaviour
- Whether the change would result in more arrests and whether the courts have the capacity to manage the increased load
- Whether police departments can manage the increased demand
- How much the proposed administrative changes in Ontario will improve the situation

It is therefore recommended that the federal government be asked to revisit the 1999 position with regard to the BAC limit and other administrative rules around the processing of convictions. A number of the researchers and agencies promoting a reduced BAC limit, have made the recommendation in conjunction with other administrative changes to streamline the processing, all with a view toward increasing the probability of capture and conviction. Much has changed in the 10 years since the government last considered the drinking and driving issue. The federal government should take the lead by conducting a complete and through review of the current problem and the known information. The Ontario government should document the effects of the Safer Roads for a Safer Ontario Act (2007) and this will form a key part of the input to a federal review.

**ALTERNATIVES FOR CONSIDERATION:**

Council could choose to take no action. Given that the downward trends in drinking and driving rates have stalled and begun to reverse, this would be an unfavourable option.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

The primary impacts would potentially be on the police and the courts system.

**POLICIES AFFECTING PROPOSAL:**

The Public Works Strategic Plan “Innovate Now” stated mission is as follows: *Provide safe, strategic and environmentally conscious services that bring our communities to life.*
The Public Health Services Strategic Plan stated mission is as follows: *Hamilton Public Health Services works together with the community to assess, promote and protect health, and to prevent disease and injury.*

The initiative to reduce the impact of injury and death due to drinking and driving is a core action to improve the safety, environment and quality of life of our citizens.

**RELEVANT CONSULTATION:**

Public Works and Public Health Services contributed to the report. Hamilton Police Service submitted an independent report to the Police Services Board on December 10, 2007, recommending lowering the legal BAC limit to 0.05%. The Service has subsequently reviewed this report and agreed with the report’s content.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.** ☑ Yes ☐ No
Any initiative which will reduce injuries and deaths due to involvement in motor vehicle collisions is a positive action on behalf of citizens of, and visitors to, the City of Hamilton.

**Environmental Well-Being is enhanced.** ☑ Yes ☐ No
Motor vehicle collisions cause micro environmental effects due to spills and damage, and cause macro effects due to the energy and materials necessary to replace damaged vehicles. Therefore an initiative which can reduce this loss will be of environmental benefit to the City and province.

**Economic Well-Being is enhanced.** ☑ Yes ☐ No
Motor vehicle collisions are a major source of economic loss in Hamilton – the total cost of all collisions annually is estimated at $85 million. Therefore an initiative which can reduce this loss will be of economic benefit to the City.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☑ Yes ☐ No
A safer place to live is a better place to work.