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CADA – Encouraging Responsible Alcohol Behavior

Recommended Legislative Changes to the Road Traffic Act

Roadside Sobriety Checkpoints

Full report - February 2011

Summary Conclusion:

There are currently no police powers at law, for demanding and taking breath samples on the roads for the purposes of determining the presence, and if so, the level, of alcohol in the blood of persons operating or controlling motor vehicles for the purposes of checking their approximate blood-alcohol levels as a precursor to the further accurate analysis required to sustain charges of impaired driving and its cognate offences. As a result, it is a well-known fact that drinking and driving is a widespread practice in Bermuda. Bermuda is among the countries with the highest rate of road fatalities with a rate of 20 per 100,000, the Organization for Economic Cooperation and Development (OECD) average is 9.6 per 100,000 and the vast majority of these fatalities are as a result of the person being over the legal limit of alcohol or under the influence of illegal drugs. It is therefore CADA's recommendation that Bermuda's Road Traffic Act should be amended to give the police the powers to adopt the procedures below which are international best practices:

- set up well publicized roadside checkpoints
- stop every *n*th vehicle
- have every motorist stopped do a roadside alcohol breath test
- if the roadside breath test shows at or above a certain level of alcohol, transport the person to the Police Station or to the Police Command Vehicle for the fully calibrated alcohol breathalyzer machine test
- if the fully calibrated machine shows the person's alcohol level is above the legal limit for driving, arrest the person for driving while impaired

And that a well-publicized, nationally branded enforcement campaign be commenced and in so doing this will take Bermuda from being many years behind in drink driving enforcement practices to the very cutting edge of world-wide best practices.

A. Background

In 2007, CADA was commissioned by the then Ministry of Culture and Social Rehabilitation, Department for National Drug Control to form a Legislation Committee to review the Liquor License Act 1974 and provide a report of recommendations for updates to the Act. CADA reached out to various sectors of the community for persons to sit on this Committee:

- insurance companies
- faith community
- chamber of commerce
- entertainment organizations
- hospitality industry
- road safety council

In 2008, this Committee met on a regular basis for 6 months from January 2008 to June 2008 and fully reviewed the Liquor License Act 1974 and investigated other jurisdictions and in July 2008 their Final Report of recommendations for updates to the Act was complete. One of the things this Committee stated in their Final Report was:

"18. Miscellaneous Issues

The following subsections deal with areas of concern that have either been overlooked, or, under-examined in the current legislation

a. Sobriety Check Points

- I. *Whilst this section would more accurately be dealt with in Road Traffic Legislation, the Committee would like to emphasize the need for random sobriety checks. The Committee suggests that the Police should have broader powers to stop any car, regardless of driving behavior, to inspect the sobriety of the driver."*

B. The Current Situation in Bermuda

There are currently no police powers at law, for demanding and taking breath samples on the roads for the purposes of determining the presence, and if so, the level of alcohol in the blood of persons operating or controlling motor vehicles for the purposes of checking their approximate blood-alcohol levels as a precursor to the further accurate analysis required to sustain charges of impaired driving and its cognate offences.

As a result, it is a well-known fact that drinking and driving is a widespread practice in Bermuda and autopsy reports show that the vast majority of people who die on Bermuda's roads are over the legal limit of alcohol or under the influence of illegal drugs. Bermuda is among the countries with the highest rate of road fatalities with a rate of 20 per 100,000, the Organization for Economic Cooperation and Development (OECD) average is 9.6 per 100,000.

C. Best Practices

CADA has looked at best practices and found that other jurisdictions such as Ireland, Australia and all European Union countries with the exception of the UK, have now adopted the practice of:-

- setting up well publicized roadside checkpoints
- stopping every *n*th vehicle
- having every motorist stopped do a roadside alcohol breath test
- if the roadside breath test shows at or above a certain level of alcohol, the person is then transported to the Police Station or to the Police Command Vehicle for the fully calibrated alcohol breathalyzer machine test
- if the fully calibrated machine shows the person's alcohol level is above the legal limit for driving the person is arrested on impaired driving

The true objective of this practice is to create awareness amongst the driving public that if they drink then drive, their apprehension is inevitable and in order for this to be effective the enforcement campaign must be:-

- highly visible
- conducted as often as possible
- rigorously enforced so as to ensure credibility
- well publicized

The results speak for themselves.

Ireland: When Ireland adopted this practice the number of crashes fell by 19% and their current rate of road fatalities is below the OECD average at 6.7 per 100,000. <http://www.irishstatutebook.ie/2006/en/act/pub/0023/sec0004.html#sec4>

Australia: Since Australia adopted this practice in 1976 they have witnessed a dramatic reduction in drivers killed and their current rate of road fatalities is below the OECD average at 7.9 per 100,000. http://www.driveandstayalive.com/articles%20and%20topics/drun%20driving/artcl--drunk-driving-0010--random_breath_testing.htm

UK: Additionally, the UK House of Commons Select Committee on Transport stated in November 2010, "The UK Government should amend the Road Traffic Act 1988 to give police an additional power to enable preliminary breath tests to be required and administered in the course of a designated drink drive enforcement operation." See item #54 in this link <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/460/46005.htm>

Canada: And in Canada, in June 2009, the Canadian House of Commons Standing Committee on Justice and Human Rights released an all-party report containing recommendations to reduce impaired driving. One of the key recommendations was to enact legislation authorizing the police to adopt this practice, see this link: <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4004073&Language=E&Mode=1&Parl=40&Ses=2>

D. The Bermuda Constitution

It is CADA's belief that the provisions in sections 7 and 11 of the Bermuda Constitution "*in the interests of public safety*" will make this possible.

E. Conclusion and CADA's Recommendation

It is therefore CADA's recommendation that Bermuda's Road Traffic Act should be amended to give the police these powers and that a well-publicized, nationally branded enforcement campaign be commenced and in so doing this will take Bermuda from being many years behind in drink driving enforcement practices to the very cutting edge of world-wide best practices.