

**The Impact of the  
Canadian Charter of Rights and Freedoms  
on Law Enforcement:**

**A Case Study on  
Impaired Driving and the Winnipeg Police Service**

**by**

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Submitted to the Faculty of Graduate Studies  
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**THE IMPACT OF THE CANADIAN CHARTER OF RIGHTS  
AND FREEDOMS ON LAW ENFORCEMENT:  
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**BY**

**JAMES WHITING**

**A Thesis/Practicum submitted to the Faculty of Graduate Studies of The University  
of Manitoba in partial fulfillment of the requirements of the degree  
of  
MASTER OF ARTS**

**James Whiting 1997 (c)**

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## **ABSTRACT**

**The Canadian Charter of Rights and Freedoms has had considerable effect on Canada, politically, judicially and socially. One area in particular which has generated notable debate is its impact on policing. Prior to its entrenchment, many members of the law enforcement community opposed it as being an impediment to their efforts and a move towards the 'Americanization' of our criminal justice system. After living with the Charter for nearly fifteen years, we see that two of the areas of public policy most affected have indeed been those of legal rights and criminal procedures. While a popular perception of the Charter is that it undermines the enforcement of criminal law, the analysis here suggests that its influence may vary significantly across policy areas within this field. Focussing on the enforcement of impaired driving in Winnipeg, Manitoba, this study considers procedural changes necessitated by the Charter and/or Charter rulings, the effect of the increasing prominence of drunk driving as a social issue in Canada and police statistics as reflections of local and national trends. It further suggests that the Charter not only demonstrated the potential to impact on police effectiveness, but also coincided with a noticeable shift towards a due-process model of criminal justice. Both of these effects have influenced public and police perceptions of Canadian justice, which will have implications for the future management of the criminal justice system. However, the Charter has not compromised the ability of the police to enforce impaired driving laws.**

## **ACKNOWLEDGEMENTS**

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## INTRODUCTION

The entrenchment of the Canadian Charter of Rights and Freedoms within the *Constitution Act, 1982*, has been interpreted as both a reflection of and catalyst for an apparent shift on the part of Canadian society towards a more liberal and individualistic state (Cairns, 1991: 97; Lenihan, 1992: 3). Such a shift would have significant implications for both public policy and those responsible for interpreting and implementing it. This paper considers the impact of the Charter on law enforcement in Canada. This sector in particular had traditionally enjoyed operating within a strongly conservative environment emphasizing order maintenance and the primacy of community, or collective, interests (Marquis, 1991: 400-401; Manfredi, 1993: 104).

By content and structure, the Charter reflected both liberal and conservative principles. This was not surprising, since both streams have long been identified throughout Canadian society and political structures (Horowitz, 1966: 43-44; Monahan, 1987: 92,94; Macklem, 1988: 127). By emphasizing individuals' rights and empowering those individuals relative to the state, the Charter was evidently intended to play a liberalizing role in Canada (Lenihan, 1992: 3). However, the "reasonable limits" qualifier in section 1, the exclusion of evidence not on illegality but on its potential to damage the reputation of the justice system (s.24(2)) and the "notwithstanding" clause allowing Parliament and provincial legislatures to effectively suspend many of the rights and freedoms therein for periods of five years (s.33) all served to balance its inherently liberalizing nature. Peter Russell reflected on the s.33 clause as "that quintessential

Canadian compromise" (Russell, 1982: 32), an observation which might just as well have been applied to the entire Charter.

While its representation of "liberal-democratic values" (Beaudoin and Dobbie, 1992: 31) enjoyed popular support, observers of the Charter early on identified its potential as an instrument of political and social change. First, judicial review of public policy had been encouraged and empowered to the extent that some felt the principle of parliamentary supremacy under which Canada had traditionally been governed, was being challenged (Smith, 1983: 133; Greene, 1989: 62). The *Constitution Act, 1982* declared itself to be "the supreme law of Canada" (s.52) and the courts were given the mandate to enforce its provisions through s.24. Secondly, the use of the Charter to review the constitutional appropriateness of public policy had the potential to 'judicialize,' or 'legalize' inherently political issues ( Russell, 1983: 51; Mandel, 1989: 4), in fact displacing them from the political arena into a judicial one. Thus, through its content and primacy, it had the potential of contributing to the liberalization, or as some viewed it, the 'Americanization' of Canadian society (Bercuson and Cooper, 1991: 17; Marquis, 1991: 403; Adie and Thomas, 1987: 501).

An enhanced review function for the courts raised questions as to the extent of their role in the government policy process. As one of the 'three branches of government' in Canada, they traditionally exercised a modest policy-making role. Prior to the Charter, their constitutional rulings dealt almost exclusively with the division of powers between the two levels of government (Russell, 1982: 1,14; Macklem, 1988: 119). Disputes between individuals and the state seldom fell under this scrutiny. The



**Charter's provisions brought many procedural safeguards into the constitutional arena, while concurrently setting the stage for increased judicial activism. As a result, the policy-making role of the courts, particularly in relation to the actions of state officials, was to increase (Wilson, 1986: 240-241; Russell, 1985: 394; Adie and Thomas, 1987: 239). Concerns over the liberalization of Canadians' relationship to the state and increased judicial activism were at the heart of the law enforcement community's opposition to the entrenchment of legal rights.**

**In 1981 submissions to the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, both the Canadian Association of Chiefs of Police (CACP) and the Canadian Association of Crown Counselors (CACC) expressed their concern over the proposed charter. In addition to stating the belief that the responsibility for defining citizens' rights belonged in Parliament and not the courts, the CACP was primarily concerned about the impact of a constitutional 'exclusionary rule' regarding the admissibility of evidence in criminal proceedings. Making reference to American law enforcement's difficult experience with a strict exclusionary rule, the CACP argued for more flexible evidentiary guidelines (Minutes of Proceedings and Evidence, 1981: 14-7,9).**

**The CACC was also concerned about Canada following the American example in such a strict adherence to a due-process model. Its representatives argued that as criminal procedure must be detailed, it should not be placed within a constitutional text, where the language is by nature and necessity, vague (Weiler, 1968: 456). The combination of criminal procedures written in "constitutional language" and the**

proposed judicial discretion regarding the admissibility of evidence, the CACC asserted, would “create a degree of uncertainty... (where) police officers do not know what evidence is going to be admissible” (Minutes of Proceedings and Evidence, 1981: 14-10,20).

In 1981, Manitoba Crown Attorney Wayne Myshkowsky predicted that with the adoption of the proposed Charter, police could expect to lose considerable investigative powers and see their effectiveness, in terms of clearance rates, drop (cited in Prokosh, September 21, 1981: 14). From the traditionally reticent judiciary, Manitoba Court of Queen's Bench Justice James Wilson likewise gave his warning that the proposed Charter would “hamstring the police” (cited in Prokosh, September 21, 1981: 14). Edmonton Police Chief Robert Lunney similarly predicted that the Charter could result in “drastic changes in police powers” and had the potential to “change drastically the way in which the criminal justice system operates” (cited in “Police concerned over new rights,” September 8, 1980: 11). Most of these critics made reference to the advantage Canadian police had at the time over their American counterparts, in terms of investigative powers and admissibility of evidence.

Recognition of the implications for law enforcement of an entrenched Charter was also found in academia. Peter Russell suggested that the ' legal rights' section would have a particularly significant impact on policing. The protections covering searches, access to legal counsel and detention, he wrote, would become a “fertile source of police station bargaining and court house litigation” ( 1982: 23). Francis McGinn predicted increased procedural uncertainty for police, ironically at a time when

officers' actions would be under greater scrutiny than ever before. She concluded that the concerns of police and others were indeed justified (1982: 204). Hence, those in the Canadian law enforcement community who shared this perspective had little cause for optimism on April 17, 1982, when the Charter came into effect.

In the years following 1982, the area of public policy most affected by Charter rulings proved to be criminal law and its enforcement (Knopff and Morton, 1992: 20; Russell, 1985: 386). Indeed, of the Charter's various categories of rights and freedoms, legal rights have been the source of more Charter claims than any other (Manfredi, 1994:449). The question thus arose as to whether the Charter significantly limited police effectiveness.

The public sector of Canadian law enforcement includes nearly 56,000 sworn officers and has annual national expenditures approaching \$6 billion (Canadian Centre for Justice Statistics, 1996: Table 6). Considering its magnitude, as well as the fact that police officers represent one of, if not the most visible and pervasive extensions of the state in Canadian society, any influence with the potential to profoundly affect their operation and relative effectiveness warrants consideration.

One area of particular social and political importance is the issue of drunk driving. In addition to being the most commonly challenged offence in early Charter cases (Morton, 1987: 37), it represented one of the three most commonly laid criminal charges in Canada (Statistics Canada, February 27, 1996: 9). Ultimately, impaired drivers have been identified as Canada's largest single criminal cause of death and injury. In 1994, 1,886 Canadian drivers were fatally injured in traffic accidents. Of the

85 per cent tested, nearly one half showed the presence of alcohol in their bloodstream. In total, 576 of these were legally impaired at the time of their accident and the vast majority of those were found to be at least double the legal limit of 80 mg per cent (Mayhew, Bierness and Simpson, 1996: Table 3-5). This relationship between driver fatalities and alcohol was not simply correlational. The Winnipeg Police Service has found alcohol to be "the largest single contributing factor" in fatal traffic accidents (Traffic Division Annual Report, 1991: 15). Similarly, numerous studies established that specific motor skills required for safe operation of a motor vehicle were noticeably and adversely affected by even small amounts of alcohol in the bloodstream (Cormier, 1995: 3-7; Council on Scientific Affairs, 1986:522).

Nationally, impaired driver deaths rival the total reported homicides (Hendrick, 1995: Table 2). However, fatal traffic accidents often involve deaths in addition to the drivers and such deaths are commonly recorded separately (Eguakun, September 5, 1996: personal communication). Consequently, a single impaired driver fatality may be directly associated with a number of passenger, pedestrian or other driver fatalities. To illustrate, of 37 fatally injured drivers in Manitoba in 1994, over half showed an alcohol presence and a third were legally impaired (Mayhew, Bierness and Simpson, 1996: Table 7-5). In the same year, Manitoba's total alcohol-related deaths from traffic accidents was 60 (Eguakun, September 5, 1996). The government of Manitoba has previously judged drunk driving to be its "most serious criminal offence in terms of deaths and injuries " (Yost, 1990: 40). Consequently, even a conservative estimate of the total lives lost in Manitoba, as in Canada, through the act of drunk driving each year

would be far greater than those lost through criminal homicides.

Fourteen years following its entrenchment, the Charter continues to foster debate regarding its impact on law enforcement. Critics, both academic and criminal justice professionals, insist that it has significantly restricted police activities and investigative techniques to the detriment of the public interest (Rossmo and Saville, 1991: 546; Newark, 1992: 20,21). However, others maintain that the Charter has failed to live up to its liberalizing expectations. Mandel has asserted that the Charter's popular reputation is "fraudulent" and that in practice, it has "legitimized the expansion of official repression" (1992: 307). Luthor, in the mid 1980s, suggested that the Supreme Court of Canada had been very protective of police procedures and had relied on "creative statutory interpretations" and "extending the common law" to favour the actions of the state over the challenges of Charter claimants (1986-87: 222). Griffiths and Verdun-Jones suggested that by the end of the 1980s, it was clear that the law enforcement community's concerns regarding an entrenched exclusionary rule had been "unjustified" (1989: 94). Perhaps such polarized observations are to some extent the result of the commentators attempting to generalize their views across a very diverse and dynamic sector and in some cases, beyond.

## **METHODOLOGY**

Combining two areas of public policy notably drawn into the constitutional arena through the Charter, this paper provides a case study of the enforcement of impaired driving criminal laws prior to and following the entrenchment of the Canadian Charter of

Rights and Freedoms by the Winnipeg Police Service (WPS). Such a narrow focus certainly limits the degree to which the conclusions may be generalized; however, the highly discretionary and somewhat "closed" nature of the police community (Loreto, 1990: 219,220) would hamper a more general and widespread model's ability to identify what may be quite subtle or informal Charter effects. For this study, fortunately, the WPS agreed to cooperate by providing access to available statistics and personnel.

Three *Criminal Code* offences were considered: driving/in care or control of a motor vehicle while impaired (s.253(a)); driving/in care or control of a motor vehicle with a blood alcohol concentration (BAC) greater than 80 mg per cent (s.253(b)); and fail/refuse to provide a breath or blood sample on demand (s.254). Impaired driving causing bodily harm (ss.255(2)) and impaired driving causing death (ss. 255(3)) have been excluded from this analysis for two reasons. These offences did not exist during the pre-Charter period, therefore no baseline exists for comparison and each involves investigative procedures and elements other than those directly related to impaired driving. While the offence of impaired driving can include impairment through substances other than alcohol, these numbers were insignificant and generally investigated differently than the traditional alcohol-impairment (Constable Rod Sudbury, August 17, 1996: personal communication) and so were excluded. Similarly, impaired operation/care or control of a vessel, aircraft or railway equipment (also included in s. 253) represented less than one half of a percent of all impaired driving charges and were therefore also excluded (Canadian Centre for Justice Statistics, 1986-1994).

Police investigative procedures prior to the Charter will be presented within the

predominant judicial and ideological climate of the time. Specific investigative tools deemed crucial to the detection and apprehension of suspected drunk drivers are introduced as 'integral elements' and their value justified. . As the law enforcement community's objections towards the Charter focussed on the potential loss of investigative ability, pre-Charter procedures will be used as a baseline. For the period from 1983 to 1994, these 'integral elements' are re-examined, to identify any Charter-initiated revisions. Notable court rulings are discussed to evaluate their impact on law enforcement practices, as are the increasing social and legislative initiatives aimed at deterring drunk driving and complementing existing enforcement procedures. Thus, the post-Charter social, political and judicial climates are presented as potential factors affecting police behaviour. The impact of the Charter, both directly and indirectly, on investigative procedures available to the WPS when enforcing drunk driving laws will be the central concern.

Although generally considered to be a weak indicator of police activity, police annual charge rates, and conviction rates when available, will be introduced. National rates are also presented to act as a control for local factors and trends. These statistics will be only one of the measures relied on when considering the WPS's ongoing ability to successfully investigate and lay charges for drunk driving offences. In addition, a number of indicators of the true prevalence of drunk driving as well as related legislative amendments are presented as both have the potential of affecting police activities and charging rates.

## **POLICING BEFORE THE CHARTER**

Prior to and during the pre-Charter period of 1977 to 1981, Canadian criminal justice was operating within what was considered the 'crime control model' (Marquis, 1991:400; Morton, 1987:51; Parker, 1987:39). This model emphasized empowering state representatives so that they could effectively deter, apprehend and prosecute offenders, often through a very conservative interpretation of individual civil liberties. Such an environment was conducive to the adoption and continued use of a number of investigative procedures which played integral roles in the effective enforcement of impaired driving criminal offenses.

By 1960, Canadian courts already had a long standing tradition of allowing illegally, or 'irregularly' obtained evidence in the prosecution of those accused of criminal activity, including drunk driving. While introduced to Canadians as a safeguard of individual liberties, the 1960 *Bill of Rights* had little impact on this predominant judicial culture (Brent, 1984:12; Ball, 1974-76:162), even though an increased role for judicial review seemed to have some support in the legal-intellectual and political communities (Mandel, 1989:14).

Contributing to the *Bill's* impotence was its nature as a non-retroactive, federal statute (McIntosh, 1971-72:30). As such, its applicability was limited to future state activities only in sectors within federal jurisdiction and it was vulnerable to changes by subsequent Parliaments. By this legislative action, the Diefenbaker government sent a clear message to the judiciary that the *Bill* was not intended to re-shape a society with a considerable conservative tradition into one with an American liberal inclination.



Accordingly, most court judgements undermined, or at least limited the role played by the *Bill's* in Canadian society (Ball, 1974-76:149).

An early impaired driving ruling by Manitoba's Court of Appeal in *R. v. Ballegeer* (1969), briefly indicated a willingness on the part of the judiciary to use the Bill of Rights in a liberalizing fashion. In this case, it was the *Bill of Rights'* protection of access to legal counsel (s.2(c)(ii) which formed the basis of the appeal and ultimately led to a new trial. However, the overall judicial trend continued to allow evidence based more on its relevance to the offence than the process through which it was obtained (Brent, 1984:12). The landmark Supreme Court decision in *R. v. Wray* (1970) dramatically reflected this climate, as the murder suspect, having been given sodium pentothal, led police to a knife which was later used successfully as evidence against him by the prosecution. Subsequent Supreme Court impaired driving decisions such as *Curr v. R.* (1972) and *Hogan v. R.* (1974) further reflected this commitment to judicial conservatism.

The most effective way for the courts to regulate or discourage specific police practices was by ruling that the evidence collected through such procedures was inadmissible, and therefore useless to the prosecution of a criminal offence. In this manner, courts did provide police with some direction in terms of procedural guidelines. For example, in *R. v. Penner* (1973), the Manitoba Court of Appeal reversed a conviction and ruled that an accused exercising his right to legal counsel had the right to speak with his legal counsel in private. Subsequently, police were made aware by the Manitoba Attorney General's Department that a failure to meet this judicial guideline could jeopardize a conviction. In this way, the courts did establish clearer boundaries for police behaviour.

However, there were no decisions which had a significant impact on the ability of police officers to deter, apprehend and gather evidence against impaired drivers. Across Canada, only 15 per cent of all *Bill of Rights* challenges to state policies proved successful (Knopff and Morton, 1992:19). Consequently, its role in the judicial review and revision of law enforcement procedures was minimal.

This climate was also reflected in the behaviour of suspects upon apprehension. According to Constable Rod Sudbury, Coordinator-Alcohol Countermeasures for the Winnipeg Police Service, drivers accused of impaired driving during this period exercised their right to counsel to a much lesser degree than at present. Without question, this served to facilitate the processing of criminal charges at the police level (personal communication, August 17, 1996).

Even though the *Bill of Rights* appeared to empower individuals with the statutory means by which to challenge police actions and *Criminal Code* provisions, overall there was no indication that it, or concern for judicial activism played any significant role in the planning and implementation of police procedures at this time.

One of the most commonly applied measures of true prevalence of drunk driving has been the proportion of fatally injured drivers testing positive for alcohol. In the period from 1977 to 1981, well over one half of fatally injured drivers tested in Canada, based on a seven province survey, showed an alcohol presence in their blood. Of these drivers, nearly one half (48 per cent) had a Blood Alcohol Concentration (BAC) over the legal limit of 80 mg per cent (Mayhew, Brown and Simpson, 1994:33). Over the same five years, this survey showed a steady increase in the total number of driver fatalities, both alcohol

positive and alcohol-free (Beirness, et al, 1994:20). In Winnipeg, however, this upward trend was not followed, with annual traffic fatalities remaining relatively constant (Winnipeg Police Department Annual Reports 1977-1981).

The presence of alcohol in such a high percentage of traffic fatalities served to establish this issue as one of significant social importance. Police interest was apparent through the increases in the number of charges laid annually over this five year period, both in Winnipeg and nationally (Table 1 and Table 2). Such a pattern in charge rates, however, did not necessarily indicate an increase in the actual rate of offenses (Beirness et al., 1993:16; Evans and Himelfarb, 1987:51). It could have reflected an increasing tendency by police either to apprehend offenders, or proceed by way of charging as opposed to issuing warnings, or both.

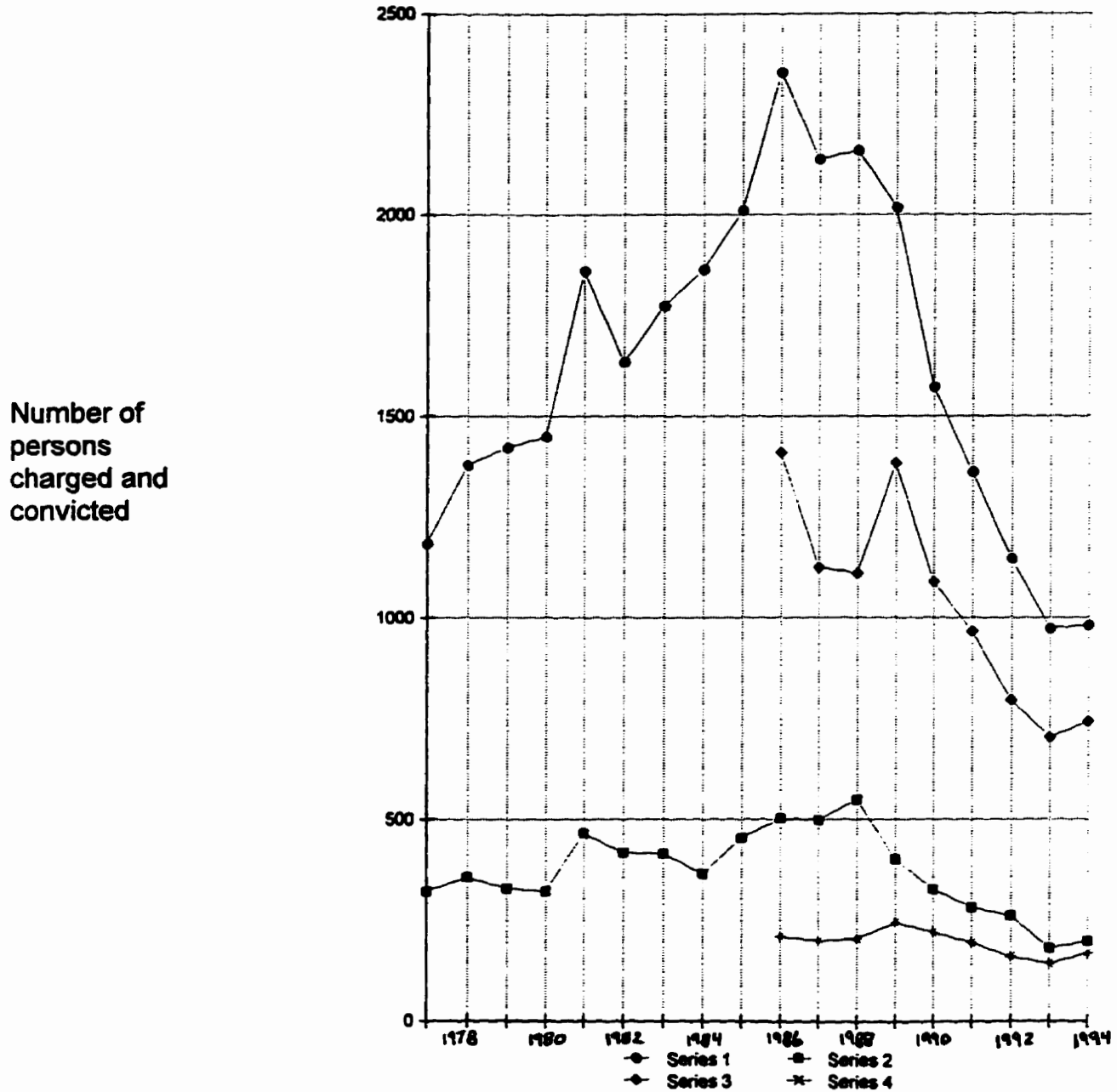
### **INTEGRAL ELEMENTS**

The 'integral elements' represented specific police powers and *Criminal Code* provisions which facilitated the apprehension of impaired drivers. Each of these three elements played a crucial role, and the loss of any would have considerably weakened the police's ability to deal with the impaired driving problem. As suspects could not be compelled to provide a blood sample (then *Criminal Code* s.237(2)), this procedure was used infrequently, and will not be considered as an integral element during this period.

Mandatory breath tests (Approved Screening Device and breathalyser) served as objective measures in the initial detection and investigation, respectively, of suspected

**TABLE 1**

**Persons charged and convicted with impaired driving offences in Winnipeg (1977-1994)  
(Calendar years)**

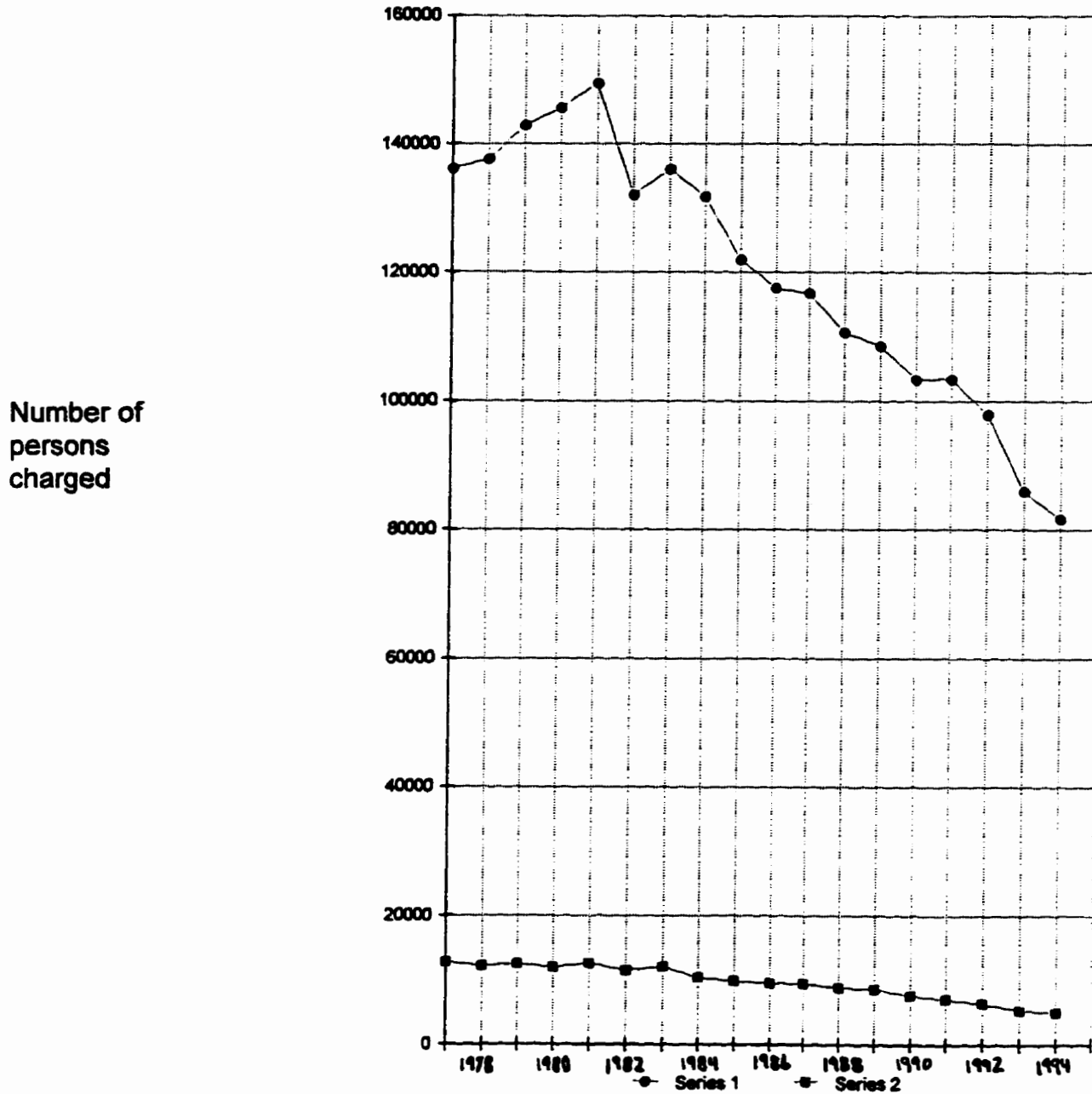


Number of persons charged and convicted

- Series 1 Persons charged with impaired driving or BAC greater than 80 mg per cent
- Series 2 Persons charged with fail or refuse to provide a breath/blood sample
- Series 3 Convictions for impaired driving or BAC greater than 80 mg per cent
- Series 4 Convictions for fail or refuse to provide a breath/blood sample

**TABLE 2**

**Persons charged with impaired driving offences in Canada (1977-1994)  
(Calendar years)**



Series 1  
Series 2

Persons charged with impaired driving or BAC greater than 80 mg per cent  
Persons charged with fail or refuse to provide a breath/blood sample

impaired drivers. The ability to conduct random spot-checks recognized the reality that most often, impaired driving was an 'invisible, victimless' crime. Such spot-checks served a deterrent function, as well as facilitated the initial apprehension of possible offenders, especially the moderately impaired, who may not necessarily have manifested any apparent signs of impairment, such as weaving or missing a traffic signal. Finally, the 'reverse onus' element of ss.237(1) increased the likelihood of successful prosecutions by relieving the state of the burden of establishing an intent to drive on the part of the accused.

### MANDATORY BREATH SAMPLES

Through *Criminal Code* amendments in December 1969, police officers were given the authority to demand a breath sample from drivers who they had "reasonable and probable grounds" to believe had a Blood Alcohol Concentration (BAC) in excess of the newly codified legal limit of 80 mg per cent (s. 238). Refusal by a suspect to comply was to be dealt with through the charge of 'refusing to provide a breathalyser sample' (s.238). The addition of the 80 mg per cent charge did not preclude a suspect also being charged with the previously existing offence of 'impaired driving' (s.237), although a conviction could be entered on only one of the two charges, as they both related to the same act (*Kienapple v. R. [1975]*). The previously existing 'impaired driving' charge relied on police observation and testimony to secure a conviction. However, such evidence, being subjective, was more vulnerable to a court challenge than the objective measure of a driver's BAC.

Coinciding with the addition of both the breathalyser as an investigative tool and the 80 mg per cent offence, was a 59.3 per cent increase in the number of Canadian drivers charged with impaired driving or BAC over 80 mg per cent from 1969 to 1970. This did not include those drivers charged with refusing to provide a breath sample. The courts also found that the 80 mg per cent charges could be processed more quickly than other drunk driving charges. (Canada Safety Council, 1973:Appendix A). This increase may have reflected an increase in police attention to impaired drivers, a possible consequence of the new *Criminal Code* provisions or political encouragement to utilize them. Such an effect could have operated in the form of individual officer discretion or at the Divisional or Departmental level, in terms of assigned resources and priorities (Grant, 1983:65).

The 1969 *Criminal Code* amendments enjoyed popular support. The Canadian Bar Association and the Canadian Medical Association in particular were in favour of the BAC test (Ball, 1974-76:147). The Canada Safety Council also supported it, while recommending even tougher enforcement measures in its 1973 position paper, including the use of 'roadside screening' to deter and identify offenders (Canada Safety Council, 1973:Appendix B).

One weakness in the breathalyser procedure was the requirement that there be 'reasonable and probable grounds' for an officer to demand a breath sample. Relying solely on the apprehending officer's subjective perception resulted in "mostly intoxicated persons being apprehended, and not the impaired driver," as the average BAC of detected drinking drivers (through traditional police observations) was between 160 and 170 mg per cent, double the legal limit (Forensic Laboratory Services-RCMP, 1987:2). Officers'

difficulty in identifying marginally impaired drivers in excess of the 80 mg per cent limit, has been documented in further studies (Lucas, 1990:25-1; Dunbar, 1990:27).

To overcome the difficulty of identifying impaired drivers in the absence of visible signs, roadside screening was introduced into the *Criminal Code* in 1976. This provision empowered a police officer to demand that a driver provide a breath sample for an Approved Screening Device (ASD) if the officer reasonably suspected the presence of alcohol. As these ASDs were small and straight-forward to operate, they could be carried in police cruisers and be immediately available. The Winnipeg Police Service quickly adopted this new tactic, and held its first officer training later the same year. Unlike the breathalyser, which provided results as a percentage BAC, ASD's were calibrated so that a BAC of 0 - 49 mg per cent would register a 'pass,' 50 - 99 mg per cent a 'warn' and 100 mg per cent or greater, a 'fail'. Even though the legal limit was 80 mg per cent, the 'fail' was calibrated at 100 mg per cent to allow for the ASD's margin of error. Results could objectively serve as reasonable and probable grounds for a subsequent, and more accurate breathalyser demand. Only the results of the breathalyser could be used in court as evidence of the offence. Of course, in the presence of observable reasonable and probable grounds, such as slurred speech, odour of alcohol and blood-shot eyes, an officer could proceed directly to a breathalyser demand, without using the ASD.

Wording in the *Criminal Code* such as 'reasonably suspects' reflected the nature of the Canadian criminal justice system. It allowed police officers more individual discretion than any of the other state representatives involved in criminal justice (Ericson, 1982:25; Griffiths and Verdun-Jones, 1989:94). Officer discretion, while difficult to monitor, was



crucial to the maintenance of public confidence. For example, while en route to a life threatening situation, an officer could choose to ignore a speeding motorist who under different circumstances might have been apprehended. This type of judgement was commonplace in the field of law enforcement. In times of limited resources, the freedom to prioritize and respond to demands selectively was a necessity. There was the perception that this discretion was an important aspect of the criminal justice system, and that the decision for example, to give a warning as opposed to laying a charge could "best advance the ends of justice in some circumstance" (Ouimet, 1969:45-46).

The police culture and its expectations also played a role in the exercise of such discretion. According to the Coordinator-Alcohol Countermeasures for the Winnipeg Police Service, during the late 1970's, the predominant standard for a charged drunk driver was "falling down (drunk)." An officer arresting a driver who was merely 'impaired' could expect to be met by the bewilderment of his co-workers, who felt that his or her time could be better spent otherwise (Sudbury, personal communication, August 17, 1996).

At this time, such discretion was for the most part, unchecked by judicial review (Griffiths and Verdun-Jones, 1989:91). The lack of public or political efforts to limit or regulate it reflected the comfort that Canadian society felt with this balance between individual liberties and social order. Generally, the Canadian courts were very lenient when dealing with the mandatory ASD and breathalyser provisions. While obtaining an breath sample clearly necessitated the brief presence and cooperation of the suspect, the Supreme Court of Canada ruled that at such a time, the driver was not legally "detained," and therefore was not entitled to exercise the right to legal counsel (*Curr v. R.* (1972);

*Hogan v. R. (1974); Chromiak v. The Queen (1979)*). In fact, both the 1969 and the 1976 *Criminal Code* amendments codifying mandatory breath samples could have been construed to contradict the long-standing principle that individuals should have protection against self-incrimination, which had a basis in both common law and the *Bill of Rights* (s.2(d)). However, the courts established early on that 'self-incrimination' applied only to written and spoken statements (McIntosh, 1971-72:23).

During the period from 1977 to 1981, the only breathalysers available to the Winnipeg Police were located in the District Stations. Consequently, a breathalyser demand necessitated transporting the suspect to the Station. When making a breathalyser demand, the police officer had to have already formed 'reasonable and probable grounds' for believing that an offence had been or would be committed. However, it was not required for police to inform suspects of their right to legal counsel or allow them to exercise this right prior to giving a breath sample. In addition, exercising the right to legal counsel in no way negated the obligation on the part of the suspect to provide the mandatory breath sample, and the charge of 'refusing to provide a breathalyser sample' reinforced this point.

Because of its value in identifying impaired drivers within a BAC range not easily detected, even by experienced officers, the mandatory breath sample for ASDs was considered an integral element in making police procedures more effective. The relative objectivity of the breathalyser results which could serve as evidence on a 'BAC greater than 80 mg per cent' charge as compared to the more subjective officer observations leading to an 'impaired driving' charge established the breathalyser as a crucial tool in the

enforcement of impaired driving offenses.

### RANDOM STOPS

The offenses of 'impaired driving' and 'BAC greater than 80 mg per cent', especially in the cases of those only marginally impaired, were often undetectable through traditional observation of such behaviours as car weaving, missed stop signs and erratic driving. It was well established, however, that long before these obvious symptoms, the driver's motor skills were adversely affected. Consequently, for police to wait until a driver's ability was visibly affected before attempting an apprehension would have presented an increased risk to both the officer and the public.

Winnipeg Police authority to stop vehicles in the pre-Charter period had two sources. The first lay in the provincial *Highway Traffic Act* which stated that drivers could be compelled to stop by a readily identifiable police officer. Secondly, the courts supported the assertion that there existed "common law authority" for random spot-checks as part of a general enforcement program. The Supreme Court upheld such programs in *Dedman v. R. [1985]*.

To deter drivers from drinking, there had to be the perception that there was a strong probability of being detected. A study by Wilson in 1984 reported that respondents believed the chances of an impaired driver being stopped by the police were between 1 in 100 and 1 in 1000 (cited in Simpson, et al., 1988:37). Random spot-checks contributed to the much needed deterrent value of the enforcement programs, by targeting the 'invisible' offenders, who could have otherwise considered themselves relatively

undetectable. In addition, random stopping programs raised public awareness through various high profile advertising programs (Yost, 1990:39).

### **REVERSE ONUS**

One of the most fundamental elements of the justice system has been the presumption of innocence. It was this premise which placed the responsibility for establishing an accused's criminal intent and guilt clearly upon the prosecution, and was specifically recognized in the 1960 *Bill of Rights* (s. 2(f)). However, both the offenses of 'impaired driving' and 'BAC greater than 80 mg per cent' contained within them a 'reverse onus' whereby it was the responsibility of the accused to establish by a 'balance of probabilities' that he never had the intent to operate the motor vehicle in question while impaired. In the absence of such a defence, the assumption existed that if the accused had the ability to operate a motor vehicle, demonstrated for example by the possession of ignition keys and proximity to the vehicle, then the intent was present (*R. v. Appleby* (1972)). The codification and enforcement of this provision were a testament to the general conservatism of both Parliament and the judiciary.

Prior to the Charter, the courts supported this reverse onus. In 1963, it was ruled (and followed) by the Alberta Supreme Court that an impaired driver who pulled his car off the road to 'sleep it off' could subsequently be convicted of impaired driving once impairment was established. Even though he had not been driving at the time of apprehension, he continued to be in "care or control" of the vehicle (*R. v. Sample*). Clearly, the 'reverse onus', while somewhat of a Canadian legal oddity, operated in favour of law

**enforcement. It drastically increased police opportunities within which to apprehend offenders. By these means, it played an integral role in the development of effective enforcement policies.**

**The combination of codified and traditional discretionary powers and a lack of aggressive judicial review created an environment within which police agencies could develop procedures based more on results than out of concern for judicial scrutiny. Notwithstanding this conservative judicial climate, a 1982 study of Canadian police found that many officers held a poor view of the courts and their ability to dispense justice (Vincent, 1982: 118). Winnipeg's annually increasing charge rates over this period contributed to the popular perception that the prevalence of drunk driving was on the rise, despite police efforts and that drunk drivers needed to be dealt with more sternly.**

## THE IMPACT OF THE CHARTER ON POLICE PROCEDURES

Through its constitutional entrenchment, applicability to both levels of government, and supremacy over conflicting statutes, the Charter's drafters sent a clear message to the judiciary as well as the Canadian people that it was to play a more prominent role than that of its predecessor, the *Canadian Bill of Rights*. The legal provisions of the Charter and the *Bill of Rights* were similar (Carson, 1988: 6), but the Charter was applied much more extensively by the courts.

While both similar in content, Chief Justice Brian Dickson noted that in a number of decisions, the Supreme Court had considered it appropriate "to reassess the meaning of words borrowed in the Charter from the *Canadian Bill of Rights*" (cited in McDonald, 1989:49). One landmark case, *R. v. Therens*, dealt specifically with impaired driving and the definition of 'detention,' and will be discussed later as it related to one of the 'integral elements' of enforcement.

Two exceptions to this similarity in content were relevant to this thesis. First, only the Charter contained a guarantee of protection from 'unreasonable search and seizure' (s.8). Secondly, the Charter's section 24 empowered the courts with a mandate to enforce the Charter, and in particular, ss.24(2) allowed for the exclusion of evidence, the admission of which would be deemed to 'bring the administration of justice into disrepute.' The legal issue of admissibility of evidence was, and continues to be "one of the most important - if not the most important - to be resolved" (Gall, 1982:91). Supporting this assertion, of the first one hundred Supreme Court of Canada Charter decisions, seventy four involved

"Legal Rights," and of these cases, over one third specifically argued ss.(24(2)) (Morton, Russell and Withey, 1991: Table 6).

In addition to the s.33 "notwithstanding" clause, section 1 of the Charter placed further "reasonable limits" on all of the rights contained therein. While the *Bill of Rights* had no such written 'limitation clause,' in practice the courts "did not interpret the guarantees of the *Canadian Bill of Rights*.... as absolute" (Carson, 1988: 4). Consequently, both documents were applied recognizing the need for balance between social and individual rights and responsibilities.

The enactment of the Charter, a number of political scientists and criminologists asserted, would carry Canada from a model of 'crime control' towards one emphasizing 'due process' (Manfredi, 1993: 104; Morton, Russell and Withey, 1991: 11; Griffiths and Verdun-Jones, 1989: 93). Such a model would emphasize procedural propriety and consistency with the Constitution, and as such could make law enforcement more difficult by subjecting police procedures and statutory provisions to intensified judicial scrutiny and increasingly detailed guidelines.

The Charter had the potential to act as a catalyst, encouraging such an ideological shift, however, it was also a product and reflection of an ongoing change in Canadian society, that was championed by the federal government under Prime Minister Trudeau. The degree to which respondents appreciated the legal implications and/or role played by an entrenched Charter was unclear, however, surveys at the close of the pre-Charter period clearly reflected strong public support for such a Charter (The Montreal Gazette, August 6, 1980: 42; The Toronto Star, January 8, 1981: A2). Not surprisingly, the

Canadian Bar Association was also on record as favouring an "entrenched Bill of Rights" (Committee on the Constitution, Canadian Bar Association, 1978: 13). This popular and professional support for a constitutional 'Bills of Rights' was not exclusive to Canada, but rather appeared to be part of an international movement towards such enactments (Committee on the Constitution, Canadian Bar Association, 1978: 14-15).

As if confirming the law enforcement community's fears, the early post-Charter period saw a level of judicial activism unprecedented in Canadian history. Over the first two years of ruling on Charter cases, the Supreme Court upheld two-thirds of the claims of rights violations which it heard (Russell, 1992: 781). This period has been referred to as the Court's "honeymoon" with the Charter (Morton, Russell and Withey, 1991: 5), and compared to previous claimants' success rate of approximately one in seven using the 1960 *Bill of Rights*, the new Charter certainly appeared to herald a new, more prominent policy-making and review role for the judiciary (Knopff and Morton, 1992: 19).

Canadian judicial tradition, however, was not to be denied, and all 'honeymoons' must sometime end. Following its first two years, the Charter claimants' success rate with the Supreme Court declined steadily. Of the first 121 Charter claims heard by the Court, the claimant was successful in only 31.4 percent overall (Heard, 1991: 297). Since 1987, claimant success rates have rested between 26 and 30 percent (Russell, 1992: 781). In 1992, former Supreme Court Justice Bertha Wilson lamented this shift to the right, and expressed concern that it had become "more likely that government objectives will take precedence over individual rights" (cited in Cox, 1992: A5).

While the Charter claimants' continued success rate of approximately 30 per cent



was twice that of the *Bill of Rights*, the volume of cases must also be recognized when considering the extent of the Charter's impact on public policy. Through its twenty-two year history up to 1982, the *Bill of Rights* was used before the Supreme Court only thirty-eight times (Morton, Russell and Withey, 1991: 5). In contrast, the Supreme Court heard more than three times this number of Charter cases in the Charter's first seven years (Heard, 1991: 297).

When considering the impact of the Charter on the enforcement of criminal law, distinction must be made between its perceived impact and identifiable, policy effects. A common perspective from law enforcers and prosecutors was that the Charter had made executing their duties much more difficult (cited in Sinclair, Jr., October 8, 1994: A14; Claridge, September 16, 1994, A1, A5; Newark, June 15, 1992: 28). The RCMP's Assistant Commissioner, in particular, asserted that "this legislation has had more impact on policing during the past ten years than all other events over the past one hundred years" (cited in Binder, August 24, 1994: A3). Lamenting their inability to warn a Manitoba community of a local pedophile prior to the murder of a young girl, RCMP in The Pas expressed their frustration with the Charter's apparent emphasis on individual rights over the safety of the community, declaring that "our hands are tied by the Charter of Rights' privacy of the individual provisions" (cited in Sinclair Jr., October 8, 1994: A14). It is notable, however, that not all police were unhappy with the Charter and its influence on policing. Some felt that it would encourage "professionalism" (cited in Moore, 1992: 571).

In a survey of 325 RCMP officers whose postings ranged from large municipalities to isolated communities, respondents were asked to identify the situations and/or factors

which caused them the most stress in their jobs. Even when compared to factors such as "potential for personal injury and death," "perceived inadequacies of the court system" was the most frequently reported source of work-related stress (Logan, 1995:4).

The judicial elimination or restriction of a number of traditional police investigative tools/procedures ruled to be incompatible with the Charter evidently contributed to the perception that the Charter inhibited law enforcement activities (Rossmo and Saville, 1991: 546; Binder, August 24, 1994: A3). One lost investigative 'tool' was a procedure referred to as a 'cell shot.' In *R. v. Hebert*, the Supreme Court ruled that an undercover police officer, posing as an arrested suspect could not collect evidence in the form of spoken statements from a genuine suspect sharing the same cell (cited in Moller, 1991: 4). A second invalidated procedure related to 'bugging,' or the electronic interception of information and/or communications. Prior to the Charter, police could monitor and record conversations without a warrant, as long as one of the parties involved consented. In *R. v. Duarte* (1990), the Supreme Court set the standard that regardless of one party's consent, such intrusions required judicial authorization in the form of a warrant. This decision was later relied upon by the Supreme Court to limit police use of 'bodypack' microphones in *R. v. Wiggins* (cited in Moller, 1991: 18-19). In these notable cases, then Alberta Crown Attorney Scott Newark expressed concern that "previously approved (by the judiciary) police investigative techniques were invalidated by the Supreme Court of Canada and the truth suppressed from evidence resulting in acquittals" (Newark, June 15, 1992: 21).

As police and prosecutors struggled to adapt to the new judicial guidelines and

expectations, frustration grew from lost cases. In a later 'wiretap' case, a senior Ontario Crown attorney had crucial evidence ruled inadmissible due to a police error when applying for the warrant. After two of three alleged members of a murder conspiracy walked free, he exclaimed, "it's really becoming the Charter of criminals' rights and freedoms" (cited in Claridge, September 16, 1994: A1).

The Charter played an integral role in the striking down of the 'reverse onus' element of the *Narcotic Control Act* in 1986. Under this 'reverse onus,' it was the responsibility of a suspect found in possession of significant amounts of illegal narcotics to establish that he did not intend to distribute the drugs. An accused who failed to prove this could be convicted of the more serious "possession for the purposes of trafficking" offence, as opposed to being found guilty of the lesser offence, "possession" of a narcotic. In *The Queen v. Oakes*, the Supreme Court decided that this 'reverse onus' contravened section 11(d) of the Charter, which guaranteed the presumption of innocence. From a law enforcement perspective, the loss of the 'reverse onus' element of this *Act* would make the investigation and subsequent prosecution of trafficking offenses more complicated and time-consuming, as specific criminal intent would have to be established. This case is of particular significance to this thesis, as the 'reverse onus' element of impaired driving *Criminal Code* provisions has been identified as an integral element in the effective enforcement of those provisions.

An extensive Justice Department - Canada study found that a relatively small number of 'high-profile' Charter cases have played a large role in shaping Canadians' perceptions of crime and how the criminal justice system is operating (Mitchell, December

3, 1994: A1,A4). The Canadian Centre for Justice Statistics has reported similar findings (Gartner and Doob, 1994: 14). One such case was *R. v. Askov*, where in 1990, the Supreme Court of Canada stayed charges against the accused because of what it found to be an unreasonable delay in his being brought to trial, which constituted a violation of section 11(b) of the Charter. The ramifications of this decision were staggering. In Ontario alone, over the following twelve months, "approximately 50,000 criminal charges....had been withdrawn by the Crown or stayed by the courts because of unreasonable delays" as defined by the *Askov* decision (Jubenville, 1991:11).

Within the 50,000 charges dropped in Ontario were hundreds of offenses of sexual assault, assault causing bodily harm and other serious, personal offenses. Even though other provinces' courts did not react as quickly or on such a grand scale in applying the Supreme Court ruling, thousands of cases across Canada were affected by this Supreme Court decision. Scott Newark, representing the Canadian Police Association, estimated that over 100, 000 criminal cases were 'dropped' across Canada as a direct result (Newark, 1993-94: 64). The *Askov* ruling, and the radical effect it had on the administration of criminal justice in Canada, was as B.C. Supreme Court Justice Stuart Legatt noted, " a public relations disaster for the bench" (cited in Jubenville, 1991: 12). The seemingly arbitrary manner with which such large numbers of horrendous offences were 'dismissed' shook both police and public confidence in the courts' ability to determine guilt and punish offenders (Pilon, 1992: 5). Exacerbating the situation was Supreme Court of Canada Justice Cory's comment that the Supreme Court was shocked by the lower courts' rigid interpretations of the *Askov* ruling (quoted in Bindman, 1991: A8). In 1992, the Supreme

Court of Canada unequivocally relaxed the time limitations of the *Askov* ruling with decisions handed down in *R. v. Morin* and *R. v. Sharma* (cited in "Supreme Court relaxes time requirements of *Askov*," 1992: 21). While the new allowances for trial scheduling were encouraging, this process appeared to validate the earlier concern of the Canadian Association of Crown Counsels that an entrenched Charter would produce uncertainty in jurisprudence (Special Joint Committee of the Senate and of the House of Commons on the Constitution in 1981 minutes of proceedings, 1981: 14:20).

Few decisions by the Supreme Court have been met with such public outrage as the 1994 ruling of *R. V. Daviault*. In ordering a new trial, the Court accepted a defence of extreme intoxication from the accused who was found to have sexually assaulted a disabled seventy-six year old woman. While some legal scholars insisted that the use of this defence would be limited (Prieger, 1994:A2), the ruling raised doubt as to whether the Supreme Court had lost touch with community standards. Soon after this ruling, then Justice Minister Allan Rock began drafting an amendment to the *Criminal Code* to disallow drunkenness as a defence for such 'general intent' offences. ("Rock eyes law to curtail drunk defence," February 21, 1995: A2)

The popular impact of such rulings was clear. Over three-quarters of Canadians surveyed by Statistics Canada believed that the courts did an 'average to good' job of protecting the rights of an accused. However, less than half felt that the courts did at least an 'average to good' job of providing justice quickly or helping the victim (Kong, 1994:Table 7).

The media play an important role in shaping Canadians' views of events, the

majority of which they cannot easily observe first-hand. For most Canadians, perceptions of judicial rulings are influenced by reviews of these decisions identified as newsworthy and described through one or more of the various media outlets. Police officers, while more directly involved than most, are not immune to this influence (Moore, 1992: 573). Unfortunately, the decision to give coverage to a Charter case is often made more for its drama and emotional elements than for inherently educational value (Morton and Knopff, 1991: 75). Consequently, the choices made by members of the media as to which judicial decisions are presented, and how they are interpreted, can determine, at least to some extent, our understanding of the criminal justice system, and elements therein, such as the Charter (Greene, 1989: 227; Morton, 1992: 645). Newspaper headings such as "Freeing rapist a 'good' thing, lawyer says," (October 3, 1994: A3), "Flip flop landmark decision" (1992: 26) and "Armed with Charter, panhandlers tackle 'medieval' bylaw" (Martin, May 3, 1992: B14) do little to encourage popular support for the role of the Charter in public safety, or to challenge any cynical views that police may have regarding the the criminal justice system (Vincent, 1987: 118).

It was within this environment that federal politicians sought out the balance between individual liberties and public safety. In 1985, the *Criminal Code* was amended to add two new offences: Impaired Driving Causing Death (ss. 255(3)) and Impaired Driving Causing Bodily Harm (ss. 2255(2)). The definition of impaired driving was broadened to include 'vehicles' other than automobiles and sentences were strengthened. The minimum fine for a conviction of impaired driving or having a BAC over 80 mg per cent was increased from \$50 to \$300 (ss.255(1)), accompanied by a mandatory prohibition from

driving for three months (ss.259(1)). Finally, police officers were given the authority to demand a blood sample from suspected drunk drivers (ss. 254(3)(b)), under specific circumstances, as had been recommended by the Law Reform Commission (1983:19). Repeat offenders were subject to mandatory imprisonment (ss.255(1)) and progressively increasing terms of license suspension (ss.259(1)). Following the proclamation, the Department of Justice produced and distributed a pamphlet describing the new sanctions and the prevalence of drunk driving in Canada (Appendix 1). This served both an educational and deterrent function.

One of the earliest Supreme Court rulings relating to the blood demand was *the Queen v. Dymont* (1988). This ruling helped to refine investigative procedures relating to the collection of suspects' blood by hospital staff. Subsequent rulings continued to fine-tune these procedures while causing little disruption to the enforcement of this provision. For example, the Supreme Court's decision in *R. v. Green* (1992) stipulated that police officers' demands for such a sample must be accompanied by the medical assurances in s.254(4) of the *Criminal Code*. The dismissal of impaired driving charges by the Supreme Court in *R. v. Dersch* (1993) reminded police to follow proper protocol when requesting physician's reports on suspected drunk drivers. In this case, a physician's report, which included the injured driver's BAC, was acquired from the hospital without the required warrant and in the absence of clear urgency, which may in some circumstances make a warrant impractical. As well, the driver had been assured by hospital staff that the test results would only be used for medical purposes (cited in Arcaro, February, 1994: 33).

The Court, however, retained the prerogative to allow even illegally seized blood

samples under certain circumstances, as was the case in *R. v. Colarusso (1994)*. A coroner, investigating the traffic accident that took the life of twenty-two year old Carol Connor, took a sample of Mr. Colarusso's blood which he had given for medical purposes while hospitalized. The coroner then passed on this sample to police where upon analysis it showed a blood alcohol level twice the legal limit. While cautioning police not to rely on such methods as a matter of course, the Supreme Court allowed the evidence, noting the "appalling circumstances" of the crime as a factor in their ruling (cited in Cox, 1994: A5). Clearly, the presence of the Charter had not prevented the codification and implementation of increasingly intrusive techniques, such as a mandatory blood testing. Nor had it prevented the Court from exercising considerable discretion in its application. At a casual glance, these two rulings may seem to represent an apparent lack of consistency in jurisprudence, however, the details and circumstances did differ significantly. Comparisons like this one, which may not be detailed in the media, may contribute to the public's and law enforcement community's frustration and confusion with Charter decisions.

The 1985 *Criminal Code* amendments were the product of both the growing public concern and a toughening government position against drunk driving. However, such legislative responses can produce significant indirect effects, which may not necessarily be consistent with the intent of the drafters. In this case, the increased sanctions precipitated an increase nationally in both 'not guilty' pleas entered from those charged with impaired driving as well as the use of legal representation (Moyer, cited in Beirness, Simpson and Mayhew, 1993: 90). For many of the drivers, the increased fine and three month license suspension made a legal defence a worthwhile effort. A similar response



to increased penalties was observed in the United States in the early 1980's (Beach, April 26, 1982: 60).

Possibly also contributing to the increased exercising of legal rights was the growing social discourse surrounding the Charter and legal rights (Abramovitch, Peterson-Badali and Rohan, 1995: 12). The considerable media coverage of Charter cases apparently contributed to a rise in Canadians' level of "rights consciousness" (Greene, 1989: 210). Its potential as such an "instrument of social engineering" has been recognized in other areas of public policy as well (Cairns, 1992: 615). One consequence of this increased familiarity with individual legal rights and the growing Charter jurisprudence was a dramatic rise in the use of provincial legal aid services (Morton, 1992: 637). Political scientist Ian Greene interviewed a criminal lawyer who offered another perspective of the Charter, seeing it as a "gold mine - the mainstay of my business" (Greene, 1989: 221).

The consequences of this change in the behaviour of accused persons were immediately noticeable. As an increasing number of charges went to trial, and judicial scrutiny became more common, police were forced to spend more time on the procedural details of each charge. The increasingly detailed process and growing frequency of those charged choosing to exercise their right to counsel served to "drag out" the officers' role. The average time taken by a police officer to process an impaired driver increased from the pre-Charter standard of half an hour, to where in 1996 it took approximately two hours (Sudbury, personal communication, August 17, 1996). Secondly, the increase in 'not guilty' pleas and use of legal counsel contributed to a considerable backlog in the provincial courts. This backlog was exacerbated, in Winnipeg for example, by the

increasing enforcement and laying of drunk driving charges during the mid to late 1980's. The delay for a trial date in Winnipeg grew to eight months, after which the arresting officer had to be prepared to appear and offer testimony (Carol Abbot, personal communication, June 14, 1996). As Manitoba Crown Attorney Don Slough observed in 1987, many charged drivers used their 'not guilty' pleas as a tactic to delay losing their licence through the court-ordered suspension. Most then changed their pleas to 'guilty' at the first court appearance (cited in Duffy, September 6, 1987: 1). This increasingly drawn out process contributed to police frustration with the court process (Sudbury, personal communication, August 17, 1996).

A considerable step forward was taken with the formation of a specialized "impaired driving" courtroom in Winnipeg in 1989. Consequently, by 1996, the backlog was reduced to where a court date could be set within approximately six to eight weeks of the offence.

However, the delay period could vary considerably, as cases were often shuffled across all court rooms in response to backlogs in other areas of crime (Abbot, personal communication, June 14, 1996). For example, as Manitoba's zero-tolerance charging policy on domestic violence produced a "skyrocketing" caseload for the courts (Bray, April 18, 1996: A12), some of these cases would then be heard in courtrooms in addition to the usual Family Violence Court, including the room normally reserved for impaired driving charges.

As the 'gate-keepers' of the criminal justice system, how police exercised their considerable discretion had serious implications for the system's overall operation. In this case, officer frustration with an increasingly time-consuming and litigious process

contributed to a response reminiscent of the traditional 'crime control' model of policing.

Two Canadian studies conducted for internal government use, one by S. Moyer (1992) and another by Beirness, Simpson and Mayhew (1992), found that police were becoming more inclined to deal with discovered drunk drivers through the use of roadside license suspensions authorized by provincial legislation, as opposed to laying criminal charges (cited in Beirness, Simpson and Mayhew, 1993: 92). The sponsor of the second study, British Columbia's Motor Vehicle Branch, agreed with the study's findings and verified that there had occurred an increase in the use of roadside suspensions and a corresponding decrease in criminal charges (Janice Schmidt, personal communication, September 11, 1996).

Constable Rod Sudbury, for the WPS also agreed with the studies' conclusions. Even when a driver's ASD readings showed a 'Fail,' which qualified as reasonable and probable grounds for a subsequent breathalyser demand, officers have been known to tell the driver that he or she had registered a 'Warn' and was subject only to a six-hour license suspension. The way in which the ASD was held by the officer prevented the driver from seeing the 'Fail' light. This somewhat informal solution got the impaired driver off of the road immediately and freed the officer to attend to what was usually a long waiting list of calls for service. In police vernacular, such a procedure was known as a "red warn" (personal communication, August 17, 1996).

Unfortunately, a complete set of data regarding the number of six-hour suspensions given out by the WPS was unavailable, as compilation only began in 1992 (Const. Larry Rea, personal communication, November 15, 1995). Similarly, Manitoba's Department of

Driver and Vehicle Licensing did not collect its licence suspension data in a manner which would allow for the isolation of six-hour suspensions in particular (Carol Armstrong, personal communication, November 28, 1996). Notwithstanding the difficulties in compiling and analysing such statistics, this would clearly be an area worthy of further consideration.

Another reflection of the growing police concern over the processing of impaired driving charges in particular was the recent publication of two books, Impaired Driving: Forming Reasonable Grounds (1993) and The Police Officer's Guide to Processing Impaired Drivers (1995). Both were specifically formatted to assist police officers in interpreting and applying both legislative and judicial guidelines and marketed in law enforcement periodicals, such as The Blue Line (November, 1995),

## **INTEGRAL ELEMENTS**

### **RANDOM SPOTCHECKS**

Judicial support for random spotchecks continued through the post-Charter period. In a series of decisions (*R. v. Dedman* [1985]; *R. v. Hufsky* [1988]; and *R.v. Ladouceur* [1990]), the Supreme Court reaffirmed its allowance of both stationary and roving spotchecks. In *R. v. Husky* and *R. v. Ladouceur*, the Supreme Court admitted that the suspects' section 9 protection against arbitrary detention had been violated, but that the practice was justified due to the "importance of detecting and reducing impaired driving" (cited in Moller, 1991: 22-23) and as such, the actions could be considered "reasonable

limits" under section 1. Crucial to these decisions was the judicial view of driving as "a licensed activity that is subject to regulation and control for the protection of life and property" (Moller, 1991: 22) as opposed to a true civil liberty.

The Winnipeg Police Service conducted Selective Enforcement Programs (stationary spotchecks) throughout the post-Charter period. Initially known as the ALERT programs, they were renamed Checkstops in 1993 as a result of a change in instruments (ASD's) and to improve consistency with other programs in Canada. While most often operating during the Christmas season, these programs were also set up at other times during the year, in high traffic areas of Winnipeg. Randomly selected drivers were either observed by officers for signs of alcohol consumption, or asked to provide an ASD sample. Drivers exhibiting signs of impairment or failing the ASD test were taken to the nearest breathalyser for a more exact reading. The number of cars stopped during each annual program ranged from 6,000 to 11,000, depending on the manpower assigned and the operating period. Although the exact locations of such spotchecks were not advertised, the program itself was well publicized to serve a deterrent function in addition to apprehending offenders.

In the face of scarce resources, the Winnipeg Police Service is currently considering a partnership with private businesses in order to keep the Checkstop program operating. Based on a model in place in Toronto called the "Safe and Sober Driving Coalition," it has been proposed that local businesses could donate \$1000 to fund a WPS Checkstop Unit for several hours. In turn, the name of the business would be advertised as a sponsor at the Checkstop site (Owen, November 15, 1996: A1). Such joint action, which works to

benefit both the public and private contributors has been termed "co-production" (Adie and Thomas, 1987: 593).

There have been previous examples of such co-productive initiatives on the part of the WPS. In 1984, a CrimeStoppers program was set up in Winnipeg. Overseen by the Winnipeg Chamber of Commerce, a Board of Directors established and managed an operating budget from which rewards were paid out to anonymous informants who had provided information which led to the solution of unsolved major crimes. The primary role of the police was to receive the informants' information and assess its value and credibility (CrimeStoppers Program fact sheet). In 1995, the WPS established a bike patrol as part of its move towards a community-based model of policing (Winnipeg Police Service Annual Report, 1995: Introduction). The purchase of these bikes was subsidized by local businesses, the names of which were displayed prominently on each unit. While such programs may have the potential to cloud the image of impartiality of the police, to date they have not been met with any notable opposition.

### MANDATORY BREATH TESTS

Mandatory breath tests were subjected to many Charter challenges through the post-Charter period. Within a few judicially imposed guidelines, however, they survived and continue today. Complying with the roadside screening breath test necessitated the brief detention of a suspect, which precluded access to legal counsel (s.10(b)). The Supreme Court of Canada, in *R. v. Thomsen* (1988) used section 1 of the Charter to allow this procedure to continue as a "reasonable limit" on a driver's rights. As Mr. Justice

Cameron of the Saskatchewan Court of Appeal observed in *R. v. Talbourdet* (1984), "having a right to retain and instruct counsel at the roadside screening stage would seriously cripple, if not destroy this carefully balanced scheme." In this case, the goals of the enforcement program were seen to outweigh, for brief periods, individual civil liberties.

While the courts were willing to allow roadside screening, police were expected to minimize the infringement on the suspects' rights, by having the Approved Screening Devices (ASDs) quickly accessible. In *R. v. Grant* (1991), the Supreme Court decided that 'detaining' a suspect for thirty minutes while an ASD was delivered was an excessive infringement and would not be saved by section 1 of the Charter (cited in Sallot, 1991: A4).

The ASDs were very useful, but only served to provide reasonable and probable grounds for a breathalyser demand. ASD readings have never been admissible as evidence of an offence. The courts have been generally cooperative with the mandatory demand for a breathalyser sample as well, with one notable exception. The Supreme Court decision in *R. v. Therens* (1985) provided a new definition of 'detention' than that which had developed under the *Bill of Rights*. Supreme Court Justice Le Dain explained, "as the Charter represented a 'new constitutional mandate for judicial review,' the definitions established under the Bill (of Rights) should not be taken as reliable guides to the meaning of the Charter" (cited in Greene, 1989: 140). This revised definition of 'detention' required the police to inform a suspect of his/her right and access to legal counsel prior to providing a breath sample for the breathalyser, the results of which could serve as evidence for the prosecution. While the subsequent procedural adjustments and associated delays for police at the time of apprehension were minimal, this ruling's impact

on pending criminal cases was significant. Ian Greene reported that in Alberta alone, the *Therens* decision resulted in 19,000 charges of BAC over 80 mg per cent being dropped (Greene, 1989: 221). However, the Supreme Court left the criminal charge of refusing to provide a breath sample intact, so it seemed clear that their intent was not to disrupt the breathalyser process as much as to ensure that suspects were made aware of their rights before providing evidence which was admissible in a prosecution.

To facilitate the use of the breathalyser, the Winnipeg Police Service began using an 'Alertmobile' in 1985 (Winnipeg Police Service Annual Report, 1985). This was a mobile breathalyser platform equipped with a telephone so suspects could speak with legal counsel, which contributed to the efficiency and success of Selective Enforcement Programs (ALERTs/Checkstops) targeting specific geographic areas. This acquisition effectively minimized the impact of the *Therens* ruling.

The role of the police as information providers was better defined through *R. v. Brydges* in 1990. The Supreme Court ruled that it was not adequate for police to simply inform an accused of his or her right to legal counsel. Police were to be expected to also explain the availability of duty counsel and Legal Aid services, regardless of whether or not the accused expressed concern over their ability to pay a lawyer. In this decision, the Court gave police in Canada thirty days to adjust their legal cautions in order to meet the new guidelines (cited in Moore, 1992: 561). Such a "grace period" had been allowed by the Supreme Court in a previous ruling (*R. v. Swain [1991]*) after striking down a section of the *Criminal Code*. Parliament was given time to revise its provision dealing with the detention of people found not guilty of a criminal offence by reason of insanity, during which, the



existing provision remained valid (cited in Moller, 1991: 10).

Section 254(3) of the *Criminal Code* appeared to stipulate that demands for a breathalyser sample had to be made within two hours of the driving offence. Lower courts in Canada followed this interpretation until a unanimous ruling by the Supreme Court in *R. v. Deruelle* (1992) interpreted this section as meaning the police officer should have formed the belief of the driving offence within two hours of the criminal act, but if it took the police officer somewhat over two hours to locate the suspect, such as was the case with *Deruelle*, where the officer spent two and a half hours looking for the suspect, this delay did not necessarily preclude a subsequent prosecution (Cox, July 10, 1992: A15). In this situation, the Supreme Court actually loosened the existing procedural guidelines for the police.

Thus, by the mid 1990s, it was apparent that the Charter, as interpreted by the Supreme Court, had not interfered significantly with the roadside screening and breathalyser programs. The procedural revisions necessitated by judicial decisions did not appear to have placed an unreasonable burden on the police.

### REVERSE ONUS

The striking down of the 'reverse onus' section of the *Narcotic Control Act* by the Supreme Court in its decision on *The Queen v. Oakes* (1986) was part of the growing tendency on the part of the Court to nullify statutes not consistent with the Charter. The Bill of Rights, in its twenty-two years, was used only once to strike down a statute, in this case, a section of the *Indian Act* in *Regina v. Drybones* [1970] (Morton, Russell and

Withey, 1991: 13). However, during the first seven years after the Charter came into effect, the courts struck down a total of twenty statutes (Morton, Russell and Withey, 1991: 13). Considering this trend, and the fate of the Narcotic Control Act 'reverse onus,' impaired driving's 'reverse onus' could reasonably have appeared to be in a precarious position.

After ruling on *The Queen v. Oakes*, the Supreme Court developed an informal test, called the 'Oakes test,' which gauged whether or not an infringement was 'demonstrably justified' and may be appropriately 'saved' by section 1 of the Charter. The impaired driving 'reverse onus' survived this test in *R. v. Whyte* (1988), even though the Supreme Court recognized that it "infringed the presumption of innocence in order to make it easier to secure convictions" (cited in Hogg, 1990:21). The reasoning of Chief Justice Brian Dickson was that considering the scope and pressing nature of the social problem, the 'reverse onus' was seen to be only a "minimal interference" (cited in Hogg, 1990:22).

Overall, therefore, Charter rulings seemed to have not significantly disrupted law enforcement procedures in the area of impaired driving, even though for the first six years with the Charter, this was the area of public policy most often argued before the Supreme Court of Canada (Morton, 1987:37). Section 1 of the Charter, in particular, was used decisively in a number of rulings to arrive at a balance between individual rights and the perceived public interest (Hiebert, 1990: 104; Petter, 1989:544). Court rulings based on the Charter did restrict some procedures, but all 'integral elements' survived. Although police had to adapt to increased judicial scrutiny of procedural standards, the courts' flexibility with regard to impaired driving enforcement was evidently a reflection of the recognized seriousness and high social cost of drunk driving. This flexibility may have been influenced

by the changing social attitudes towards drunk driving through the 1980s and into the 1990s.

## **THE RISE OF SOCIAL AND POLITICAL ACTIVISM**

From the early 1980s to the present, Canadians' concern over the issue of drunk driving became increasingly prominent. While the public's involvement in the fight against drunk driving took many forms, each reflected the outrage over the human cost as well as acted as a catalyst for further social and political activism. This social context had the potential to affect the enforcement of impaired driving laws.

The relatively rapid and widespread proliferation of issue-specific citizen activist groups throughout Canada was part of an international trend. Throughout Canada, groups such as People to Reduce Impaired Driving Everywhere - PRIDE (est. 1981), Citizens Against Impaired Driving - CAID (est. 1981), Mothers Against Drunk Driving - MADD (est. 1982), Against Drunk Driving - ADD (est. 1983), Canadians Against Impaired Driving (est. 1985), Teens Against Drinking and Driving - TADD - Manitoba (est. 1988) and Bikers Against Drunk Driving - BADD (est. 1990) were established as local chapters, in many cases as part of an international association. Both CAID and TADD are currently active in Winnipeg. Most often, such groups were initiated by victims or those close to someone hurt by an impaired driver. Some such as MADD and CAID were active in generating policy recommendations, providing educational services and support for victims of drunk drivers and their families. Others such as BADD were primarily concerned with raising awareness and promoting safety.

MADD, perhaps the best known of such groups, was established in Canada by Sally Gribble in British Columbia. Following the death of her twenty-one year old son Ken as

the result of an accident caused by an impaired driver with a history of drunk driving, Mrs. Gribble sold the family home and used the money to found this support and lobby group. Dedicating years to public education and the successful campaigning for amendments to the *Criminal Code*, she won the respect of the Vancouver Police, who recognized her as "one of those people who really made a difference" ("Canadian founded group against drunk drivers," February 1, 1996: A19). Although Mrs. Gribble passed away early in 1996, MADD continues the work she started through local chapters across Canada.

A Calgary high school formed a chapter of Students Against Drinking and Driving in response to a school-mate's death (Hall, October 18, 1987: E8). Friends of a student killed by an impaired driver used donations to sponsor annual athletic awards in the victim's name, to create a commemorative display in the school and to produce educational/preventative material. In this way, the human cost of drunk driving would be communicated to those students who had not known the victim first-hand, as well as those in the following years. Such a strategy was intended to 'humanize' the offence and its victim, so as to provide more graphic deterrence to potential offenders.

The loss of a loved one was not the only impetus for action following an impaired driving tragedy. An increasingly cynical view of the justice system's handling of drunk driving cases served to increase public anger. Upset that the drunk driver who killed his daughter was merely fined \$750.00 and given a three month license suspension, David MacNamara helped found Scarborough Council's Special Committee on the Effects of Drinking and Driving. Mr. MacNamara went on to lobby for tougher drinking and driving laws as well as more public education (Stewart, May 30, 1985: E23). A British Columbia

mother of one of three victims killed by a drunk driver felt the eighteen month sentence was an "insult" and reflected on the system that "if that's all he gets for killing three people, then it's a joke" (Bellet, January 8, 1992: B12). In this case, the local MADD chapter attacked what they felt was an inadequate sentence as a "backward step" in the fight against drunk driving. Such responses to sentences were becoming increasingly common across criminal law in general. Statistics Canada found that in 1993, 73 percent of Canadians believed that court sentences in general were not severe enough (Canadian Centre for Justice Statistics, December 1994: Table 7). As opposed to mere statistics, many of these groups and well publicized tragedies helped the general public to empathize with the victims' families and seek more stringent action against offenders.

Although not heard from as often, drunk drivers themselves and their families occasionally spoke out. Tim Franks was sixteen when he mixed drinking with driving in Cambridge, Ontario and had an accident which left him semi-comatose and paralysed from the neck down. His mother later toured Ontario schools with Tim as a graphic example of what drinking and driving could do to a young person ("Mother defends putting crippled son on display," November 16, 1987:A3).

The growing social movement against drunk driving was also apparent through the variety of existing groups which added it to their agendas. These included, but were not limited to, groups which saw the consequences of drunk driving first-hand, as well as those which worked within the system designed to deal with the problem. In 1985, the Canadian Medical Association informed the House of Commons Justice Committee that it would support the proposed *Criminal Code* amendments which would enable doctors to

take blood samples from suspected drunk drivers unwilling or unable to provide a breath sample ("MDs set to help in crackdown on drunk driving," January 30, 1985: B5). The following year, a spokesperson for the Canadian Association of Emergency Physicians emphasized the need for greater enforcement efforts, recommending "police roadblocks and spot-check blitzes" (cited in Semenak, February 13, 1986: A2).

The Canadian Bar Association similarly passed a resolution endorsing the proposed 1985 blood sample provision. That such an invasive procedure could be endorsed by the Association despite the vocal objections of many of its members demonstrated the perceived urgency of the issue ("Drunk driver crackdown supported," February 28, 1985:19).

The Roman Catholic Church, with approximately 900 million members world-wide, would easily qualify as one of the largest existing organized groups. Of religious groups within Canada, this Church was the most numerous and in 1995 claimed a membership of nearly twelve million (Statistics Canada, 1994: 108; Famighetti, 1996: 651). For the first time in 426 years, the Church issued a new catechism in 1992. This document stipulated the Church's position on a number of social topics. In it, drunk driving was identified as a threat to the public, and the drunk drivers themselves as being "gravely in the wrong" ("Revising Catholicism became a matter of faith," November 17, 1992:A1,A2). Clearly the issue of drunk driving had become a prominent issue across many elements of society, and Canadians' growing concern was part of a larger, international recognition of the damage being caused.

There have been a multitude of programs initiated in Winnipeg and across rural

Manitoba to educate drivers about the dangers of drinking and driving and prevent accidents. Many of these involved parties from a variety of sectors, both public and private. In 1984, the Manitoba Association of School Trustees (MAST) helped to establish the Safe Grad program in an attempt to reduce the number of tragic accidents occurring as students celebrated their high school graduation. Under this program, a graduating class would design its graduation celebration so to discourage drinking and driving. In particular, this involved students checking their keys as they entered the event or arranging alternate transportation as a group, prior to the graduation celebration. As of January, 1996, 150 out of Manitoba's 157 public high schools participated in this program. This program contributed to the immediate safety of the celebrants as well as served to educate students. MAST encouraged participation by providing such schools with \$30 million liability coverage for their events (Linda Lagrou, personal communication, January 30, 1996).

Liability coverage became increasingly necessary as Canadian civil courts held bar owners and event hosts financially liable for their patrons' drunk driving and any subsequent tragedies. In 1984, a Canadian hotel was ordered by the Ontario Supreme Court to pay almost \$1 million to Andreas Schmidt. Andreas had taken a car ride with a driver who had been served excessive amounts of alcohol in the Arlington House bar. This was at the time, the largest such judgement ever ordered against a Canadian bar ("Hotel agrees to pay settlement," January 27, 1984: 1). Other courts held bars similarly accountable and in 1995, the Supreme Court of Canada handed down a ruling recognizing the responsibility of liquor servers for making a reasonable effort to ensure that no one was



hurt if and when one of their intoxicated patrons decided to drive (cited in Cox, January 27, 1995: A13). Clearly, drunk driving had become a legal issue with serious implications for the business sector. In response, and as a "direct result of changing legal attitudes towards the responsibility of those who serve liquor to the public," specialized insurance policies were developed, offering protection to individuals and organizations who used Special Occasion Permits to enable them to serve liquor at their events (Appendix 2). Within this legal context, MAST's \$30 million liability coverage was a strong incentive to participate in their program.

In 1988, the Manitoba Safe Grad Steering Committee was asked by graduating students to target even younger students with its message of caution and the dangers of mixing alcohol and driving. This was the beginning of Teens Against Drinking and Driving (TADD) in Manitoba's high schools. The Manitoba Association of School Trustees provided a central administrative office and organizational manuals for any school wishing to start its own chapter (TADD manual, 1995: 6). As of January, 1996, there were twenty active TADD chapters in Manitoba public high schools (Linda Lagrou, personal communication, January 30, 1996).

Manitoba Public Insurance (formerly the Manitoba Public Insurance Corporation) was also active in its support of anti-drinking and driving initiatives. These have included numerous TADD activities as well as Manitoba's Designated Driver Program (TADD manual, 1995:5). Established in 1992 (Mark Dewart, personal communication, August 31, 1994), the Designated Driver Program has been supported by a number of other public and private sources, including the Manitoba Liquor Control Commission, the Manitoba

Hotel Association, the Manitoba Restaurant and Food Services Association, the Winnipeg Sun and various Winnipeg radio and television stations (Appendix 3). The Program encouraged one member of any group going out to a local bar to refrain from drinking alcohol, by providing that individual with complimentary soft drinks. This left the others in the group free to drink alcohol without having to drive home.

A more drastic approach was Manitoba Public Insurance's (MPI) annual anti-drinking and driving campaign which concentrated on young drivers. Dubbed the "Day of the Dead," a small number of students in targeted schools would dress in black and not be allowed to interact with other students during the school day. These 'silent students' represented a portion of those killed every year in Manitoba by drunk drivers. According to MPI, this project served to humanize the fatality statistics (Davis, December 15, 1994:B1). In addition to the Day of the Dead, MPI aired sixty-second television ads to raise awareness and deter potential offenders (Owen, December 2, 1994:B1).

In addition to the Provincially supported educational programs, the Manitoba Departments of the Attorney-General and Highways as well as Manitoba Public Insurance collaborated with the federal Ministry of Transport in 1988 to conduct an ambitious study, titled the Manitoba Roadside Survey of Night Time Driving Behaviour. This study attempted to measure the true prevalence of impaired driving Behaviour. As was the case with the federal government, impaired driving was recognized as a multi-departmental/jurisdictional issue.

Citizens Against Impaired Driving, various municipal police forces, the RCMP and a major car dealership in Winnipeg, McNaught Motors, all collaborated in 1993 to create

**'Operation Lookout' (Appendix 4). Advertised through thousands of posters, the program encouraged Manitobans to call police immediately to report suspected drunk drivers (Larson, November 30, 1993:B1). Having previously been established in Ontario under the program name 'Community Solutions,' the program invited the community at large to take an active role in crime prevention and detection (Dodd, 1995: 17). Thus, the increasingly widespread condemnation of drunk driving as a serious social problem was reinforced.**

**In 1996, MADD initiated their "Project Red Ribbon" across Canada, which served as both a fundraising and educational program. Sponsored by businesses including the Bank of Montreal, Shoppers Drug Mart, Travelodge Hotels and Hallmark Cards Canada, collection boxes were placed in local businesses along with bright red ribbons bearing an anti-drinking and driving message.**

**There have also been anti-drinking and driving initiatives by private organizations and individuals not directly involved with the issue of drunk driving which helped to discourage drinking and driving. Winnipeg in 1995 saw the inception of a "Red Nose" program, whereby drivers could telephone for someone to drive both them and their cars home at no charge. Tips were accepted however, and went to support local amateur athletics. Posters advertising the program and telephone number were displayed in popular drinking venues over the Christmas season. Organized by the Manta Swim Club, over five hundred calls had been received by December 28, 1995 (Jager, December 28, 1995:A5).**

**In Toronto, a music promoter organized a television campaign using some of the**

most popular contemporary recording artists in an attempt to appeal to young drivers and communicate an anti-drinking and driving message. With a significant donation from Carling O'Keefe, a major producer of alcoholic beverages, a series of sixteen commercials were aired on a number of Canadian networks (McClure, May 30, 1985: E23).

A variety of creative counter-measures have also been proposed and developed throughout the United States in an attempt to further deter and/or reduce the damage caused by drunk drivers. These have included enhancing drunk drivers' tort liability, improving street signage and signals, in order to help impaired drivers follow traffic directions and the adoption of specialized Drinking Drivers Schools (Jacobs, 1989: 134,183; Foley and Leschuk, 1986: 26). Drinking Driver Schools were first established in Phoenix, Arizona in 1964. Impaired driving offenders were ordered to attend a series of classes dealing with both alcohol and traffic safety issues. It has been estimated that several million Americans have at some time, passed through one of the over 1,000 programs throughout the United States. Punitive measures considered have included vehicle forfeiture as opposed to mere impoundment and imposed home detention (Jacobs, 1989: 152,156). Clearly, communities have directed considerable effort and imagination in attempting to deal with this problem.

Largely beginning with the issue-specific citizens' groups, the level of social consciousness regarding the terrible costs of drinking and driving continued to climb through the 1980s and into 1990's, owed in no small part to the increased media attention (Beirness, Simpson and Mayhew, 1993: 3). Drunk driving was perceived less and less as an isolated occurrence which occasionally harmed an anonymous victim, and more as an

ongoing, prevalent form of criminal behaviour which was exacting a terrible toll.

Another indication of public sentiment was provided by opinion polls. A national survey conducted by Health and Welfare Canada found that over 90 per cent of Canadians believed that drinking and driving was a social issue of considerable importance, and over 80 per cent of Canadians surveyed would support stricter enforcement of laws and increased roadblocks (Health and Welfare Canada, 1992:1, 46). Likewise, in Manitoba, a 1988 survey found that 59 per cent of respondents believed that 'stiffer penalties' or 'increased police enforcement' was needed to curb the problem (Minch, 1988:13). Of Winnipeg residents surveyed, 60 per cent supported tougher drinking and driving laws, even if such laws violated the Charter (Sterdan, May 28, 1989: 4). In 1993, nearly half of Winnipeg residents surveyed supported stricter enforcement of existing traffic laws in general (Winnipeg Police Service Public Opinion Survey, 1993:16). Clearly, drunk driving and traffic safety were major concerns for many citizens, to the extent that even increasingly intrusive enforcement practices were supported by a strong majority.

Detailed stories of victims and their families gave a personal element to the issue of drunk driving which balanced the cynicism that many members of the public and government representatives, including Allan Rock, then Minister of Justice had developed regarding crime' facts' as presented in the media (Prieger, June 14, 1994 ; "Fear on the increase despite drop in crime," January 15, 1996; cited in Wyatt, August 26, 1994: A9). Exemplifying such exposure was the tragedy of Winnipeg resident Leona Rouire's death at the hands of an impaired driver. Following the sentencing, the Winnipeg Free Press devoted an entire page to the story and printed a letter from the victim's daughter, Nicole,

to the family of the convicted driver, Larry Galka. In this letter, titled "To a killer's family," the seventeen year-old described her mother's extensive injuries in detail and asked the Galka family for an in-person apology for the fact that her mother would now not be "at my graduation, my wedding or the birth of my children" (December 2, 1994:B1). A second article described some of the plans that the young family had made before the accident, having just finished building their 'dream home.' Later, instead of celebrating his twentieth anniversary in the new house, Bob Rouire was serving as the new Chairman of the Victims' Assistance Committee of Citizens Against Impaired Driving. Speaking at the CAID annual general meeting in Winnipeg March 28, 1995, Mr. Rouire discussed the effect of this tragedy on his family and the role played by CAID in helping them cope. Nicole Rouire, while describing her family's loss, captured the spirit of the growing public concern, "Now I know it could happen to anyone" (cited in Owen, December 2, 1994:B1).

A more recent tragedy was the killing of Micky Syrota by a drunk driver in the summer of 1996. Mr. Syrota had been a local campaigner against drunk driving since being struck by an impaired driver three years earlier. Following the conviction of the driver, Micky's mother established a trust fund called 'The Micky Plan' to help families who suffer similar losses. The irony of this death and frustration with its needlessness was not lost on the 800 attendees of the funeral and the over 1400 signatories of a petition asking for the maximum sentence of fourteen years. They were understandably upset with the two-year sentence handed down (Bray, June 15, 1996: A1,A3).

While the judiciary had been structured so as to promote its impartiality and independence from political or public pressure, clearly they were not oblivious to the scope

of the problem. In 1988, the Ontario Court of Appeal likened a drunk driver to a “charged and ticking time bomb” (*R. v. Saunders*). This judicial perception was echoed in the 1990 Supreme Court ruling of *R. v. Ladouceur*, which upheld random police stops as a deterrent to drinking drivers, justified by the “carnage on the highways” (cited in “Split court approves random police checks,” June 1, 1990:A13). Similarly, Supreme Court Justice Cory, in 1995, identified drinking and driving as “the crime which causes the most significant social loss to the country” in terms of deaths and serious injuries (cited in “SCOC judge says police may delay ALERT test,” January 28, 1995:A3). Thus, judicial comments joined the many other voices speaking out against impaired driving.

Ottawa’s continued attention to the issue was also reflected in the volume of research and resource material it produced and sponsored, as well as by the number of federal departments directly involved. Transport Canada publications included a series titled Smashed: The Magazine on Drinking and Driving (1987) and a 1991 study of Alcohol Use Among Persons Fatally Injured in Motor Vehicle Accidents: Canada. Health and Welfare Canada produced a manual to help community groups reduce local incidents of drunk driving, called The Road to Curb Impaired Driving (1990) and conducted a National Survey on Drinking and Driving-1988 (1992). The Department of Justice sponsored a series of reports on Impaired Driving in 1985 by the Traffic Injury Research Foundation, as well as a 1993 evaluation of the 1985 *Criminal Code* changes titled the Assessment of the Impact of the 1985 Amendments to the Drinking and Driving Section of the Criminal Code of Canada.

The level and diversity of research activity, coupled with the 1985 *Criminal Code*

amendments reflected federal acknowledgement of the escalation of drunk driving into an issue of urgent concern. At the time of writing, British Columbia Member of Parliament Dick Harris planned to introduce a private member's bill (M-78) in December, 1996 which would strengthen the sentencing provisions of the *Criminal Code* dealing with drunk drivers (Logan, December 1, 1996: A6).

As the issuing of driver's licenses was a provincial responsibility, Manitoba governments have directed anti-drinking and driving efforts in this area. In 1985, a policy was introduced requiring convicted impaired drivers to complete a course conducted by the Alcoholism Foundation of Manitoba (now known as the Addictions Foundation of Manitoba) prior to regaining an active license (Yost, 1990: 40). This completed program was intended mainly as a preventative measure; but the financial cost which was paid by the driver and the time involved in completing the course served a punishment function as well.

While criminal law fell under federal jurisdiction, provincial responsibility for the administration of justice permitted Manitoba government action intended to streamline the prosecution of impaired drivers. During the 1988 provincial election campaign, a prominent element of the Progressive Conservative party's campaign was its promise to "declare war on drinking and driving" (Yost, 1990: 40). Accordingly, soon after being elected, they had Manitoba's first specialized Impaired Driving Courtroom in place to facilitate the processing of drunk driving charges. Six months later, they passed amendments to the *Highway Traffic Act* that were hailed as the "toughest (anti-drinking and driving laws) in the country," (Mitchell, May 12, 1989:1,4).



Influenced by a similar program's success in Minnesota, the Manitoba legislature amended the Manitoba's *Highway Traffic Act* on November 1, 1989 to give police, under specific circumstances, authority to issue three month license suspensions, effective immediately (ss.263.1(1) and ss.263.1(6)). These could be issued where a suspect refused to provide either a breath or blood sample, or was charged with driving with a BAC over 80 mg per cent. Also included were increased penalties for failing to stop at police request and the authority for police to impound, for thirty days, a motor vehicle driven by a suspended driver. The immediacy of sanctions was believed to enhance its deterrent function. These amendments, which appeared to give the police the ability to punish an accused before legal guilt had been established in a court of law had many critics.

Yude Henteleff, spokesman for the Manitoba Association for Rights and Liberties exclaimed, "The new law makes police the judge, jury and sentencer in these matters, not just enforcement officers" (quoted in Olijnyk, 1989: 1,4). The President of the Manitoba Bar Association cautioned that this process imposed a penalty prior to a conviction proven through due process (cited in Mitchell, May 12, 1989: 1,4). Further, there were numerous concerns regarding the 'constitutionality' of this procedure (Weber, 1989: 17,24). However, it survived Charter-based challenges on the basis that driving was considered a regulated privilege and not a right. Whether this immediate license suspension reduced the use of 'not guilty' pleas as a delaying tactic, while likely the case, is uncertain. Factors such as the significantly reduced waiting period for a court date and a lack of complete data on the type of pleas entered by crime type make such a conclusion problematic ( Abbot, personal communication, June 14, 1996).

In 1991, Manitoba's *Highway Traffic Act* was further amended. Targeting repeat driving offenders who continued to drive while their licenses were suspended, the government increased the vehicle impoundment period to sixty days. Then Justice Minister Jim McRae boasted "Canada's toughest drinking and driving laws just got tougher" (cited in "Drinking drivers face tough laws," December 17, 1991:5). As Ottawa had previously done for its *Criminal code* amendments, the Manitoba government advertised its new laws extensively through the media and the distribution of detailed pamphlets (Appendix 5).

In October, 1996, Justice Minister Rosemary Vodrey announced that she would be working with groups including CAID to develop legislation punishing drivers who registered a BAC between 50 mg per cent and 99 mg per cent on an ASD test. Currently, such drivers are subject only to a brief licence suspension. The proposed legislation would impose fines and/or licence demerits (cited in Samyn, October 25: A1,A3). Peter Crockford, President of Teens Against Drunk Driving offered his support for lower BAC standards at a 1993 Winnipeg conference on impaired driving. Dr. Peter Markesteyn, Manitoba's Chief Medical Examiner supported the lowering of the legal BAC as well, but warned that doing so would "put a heavy load on law enforcement and the courts (cited in Teichroeb, October 30, 1993: A15). Similarly, CAID and the Addictions Foundation of Manitoba supported the lowering of the legally acceptable BAC in their 1995 Position Paper on BAC and Driving, but recognized the need for corresponding increases in police resources (Cormier, 1995: 30).

While lacking the legislative autonomy of the two senior levels of government,

municipal governments also expressed their concern over the toll being taken by drunk drivers on their streets. Health and Welfare Canada estimated that over twenty thousand lives were lost in Canada between 1980 and 1990 due to alcohol-related traffic accidents (cited in Cormier, 1995:11). However, it was at the local level where these tragedies were most heartfelt. In 1989, approximately twelve hundred mayors attending the Federation of Canadian Municipalities annual meeting voted unanimously to request that the federal government identify drunk driving as a "national crisis" and that it take stronger measures in the fight against drunk drivers (Kenna, June 12, 1989:A3).

While Manitoba was initially a Canadian leader in developing anti-drinking and driving legislation, a number of other provinces have also adopted aggressive counter-measures. In an effort to promote a 'zero-tolerance' attitude among new drivers, Prince Edward Island's *Highway Traffic Act* now stipulates that it is an offence for drivers under the age of nineteen to have a BAC of 10 mg per cent or greater, well below the *Criminal Code* level of 80 mg per cent (Dodd, 1995: 5). Ontario recently adopted a ninety-day administrative licence suspension policy similar to Manitoba's, whereby a driver who shows a BAC greater than 80 mg percent or refuses a test will lose their licence immediately, regardless of criminal charges (Rusk, November 28, 1996: A16). Like Prince Edward Island, the Ontario government is currently considering a provision targeting young drivers, but setting the acceptable BAC level at 0 mg per cent (Owen, June 18, 1996: A11). Saskatchewan recently lowered its ASD 'Warn' standard for all drivers to 40 mg per cent, at which point a roadside suspension may be given by the officer (Cordon, March 13, 1996: B2).

Internationally, many countries have put into place increasingly stringent standards for their drivers' legal BACs. New South Wales in Australia was a ground-breaker, lowering their allowable BAC from 80 mg per cent to 50 mg per cent in 1980 (Cormier, 1995: 25). Dr. Ross Homel of Macquarie University, New South Wales, observed that lowering the allowable BAC was one of the few counter-measures designed to reduce alcohol-related traffic accidents which could be judged successful based on "scientifically acceptable grounds" (Homel, 1990: 3). The predominant BAC among Scandinavian countries was 50 mg per cent (Cormier, 1995: 23). Sweden, however, was an exception, having reduced their legal BAC for all drivers to 20 mg per cent in 1990 (Wilson, 1993: 217). Apparently, lowering the allowable BACs for drivers was a strategy well utilized and popular among countries considered leaders in the fight against drunk driving.

Through the 1980s and into the 1990s, many individuals, citizen groups, businesses and governments played active roles in trying to reduce the carnage being caused by impaired drivers. It was within this societal context that police officers enforced and the courts interpreted Canada's impaired driving legislation, as well as the Charter of Rights and Freedoms. Police actions were undoubtedly influenced by the conflict between increasing public demands for action and the frustration of working within an increasingly drawn-out and detailed process. Relying increasingly on the six-hour license suspensions in lieu of criminal charges may have been a result of this conflict.

## **THE CHARTER AND CHARGING RATES**

Perhaps the most commonly cited measure of crime and police activity in Canada is the number of persons charged with particular offences. While concerns regarding reliability and validity will be discussed, this does offer some statistical insight into police efforts and success in apprehending offenders. This Chapter will present the annual rates of persons charged with impaired driving offences for Winnipeg, using the Canadian rates to reflect any national trends (Appendix 6). The consistent decline in annual charges shown both locally and nationally over the last decade may suggest to some that police have been having an increasingly difficult time investigating and laying charges against impaired drivers. The degree to which this decline is the result of the Charter, directly or indirectly, is to be considered. To aid in this interpretation, a number of variables with the potential to affect these charge rates will be introduced, including allotted police resources and enforcement trends, indicators of the true prevalence of drunk driving (as opposed to police-detected rates) and legislative influences.

### **REAL vs. REPORTED CRIME RATES**

To appreciate the nature of crime statistics, the distinction between the police-reported rate of crime, as measured by the number of persons charged, and the actual rate of crime in society, is an important one. Charging rates represented only those offences that police were aware of and investigated, leading ultimately to an arrest. As most occurrences of 'invisible, victimless' crime, such as impaired driving often was, escaped police notice, such rates represented only a fraction of the actual offences being

committed. This difference between police-reported crime rates and the actual but unknown crime rates has been referred to as the "dark figure of crime" (Evans and Himelfarb, 1987:51; Solicitor General of Canada, 1984:1; Koenig, 1993:9).

This 'dark figure' was largely attributable to two factors. First, potential complainants or victims of crime have far less than a one hundred percent report rate. A national survey of Canadians found that of those victimized by violent crime, less than one third reported the incident to police (Kong and Rodgers, 1995: 4,5). Report rates also vary considerably by crime type. Break and enters had the highest report rates and not surprisingly, sexual assaults had the lowest. Reasons given for non-reporting, across various crime types, most often related to the perceived usefulness of such action and a lack of confidence in the police's ability to solve or resolve the incident (Gartner and Doob, 1994: 13). Recognition of this self-screening was an impetus for the afore-mentioned Operation Lookout, which encouraged observers to report suspected drunk drivers to police. By establishing such a program, potential complainants would perceive a greater likelihood of action being taken as a result of their report. Notwithstanding this popular initiative, few impaired driving offences were reported by the public. Additionally, in the absence of a victim or complainant, individual police officers were able to exercise considerable discretion in the handling of suspected drunk drivers. Choices made as to whether to execute an arrest, issue a six-hour licence suspension or let the driver find alternate transportation, were for the most part, unmonitored.

Secondly, contributing to the 'dark figure' was the relatively low detection rate of impaired drivers through direct police enforcement. As many legally impaired drivers did

not show any easily observable signs such as car weaving or being involved in a motor vehicle accident, the vast majority drove with impunity. Random stopping of vehicles, as was done under the Checkstop program, aided in enforcement but provided only brief insight into the true prevalence. Consequently, the predominant perception was and continues to be, that police-collected statistics "cannot measure the true extent and distribution of crime in society" (Solicitor General Canada, 1984: 2). However, they do serve a role in this thesis, as "an approximation of what we are trying to look at" (Doob, 1994: 2).

Charging rates may be influenced by a number of factors, some readily identifiable, and some less apparent or measurable. In recognition of the 'dark figure,' a number of 'indicators of prevalence' will be presented to suggest the actual rates at which drunk driving was occurring, as this could certainly affect the charging rates. These indicators will serve as informal baselines for post-Charter comparisons. Consideration of such factors may serve in the identification of possible Charter-effects.

## **PRE-CHARTER**

### **charging trends & police resources**

Within the period from 1977 to 1981, Winnipeg saw a significant rise of fifty-four per cent in the number of people charged with drunk driving (Table 1-series 1). National rates rose as well, although by a less dramatic nine per cent (Table 2-series 1). This trend coincided with the rise in public and political concern over the social cost of impaired driving. During this period, the prevalence of drunk driving, based on the number of apprehended offenders, would appear to have been increasing.

Through this period, the Winnipeg Police Service's Traffic Division, bearing primary responsibility for the enforcement of impaired driving laws, increased its complement from 56 to 59 officers. As the number of officers enforcing a law can be a factor in the rates of reported crime (Koenig, 1993:9), this will later be compared to the post-Charter Divisional complement.

### **problem index**

While legal and logistical limits made blood-alcohol testing of all drivers impossible, there was one sub-group of drivers whose circumstances allowed for such testing. Since 1973, the Traffic Injury Research Foundation of Canada has compiled the results of blood alcohol tests done on drivers who were fatally injured in motor vehicle accidents. Occasional situations did not allow for testing, but the BAC could be measured in over eighty-five per cent of cases (Beirness, Simpson, Mayhew and Wilson, 1994: 19).

A seven province survey found that between the years 1977 to 1981, nearly half of the drivers fatally injured in motor vehicle accidents had BACs over the legal limit of 80 mg per cent. Sixty percent of drivers tested were alcohol-positive. Manitoba's rates for this period were forty-five and fifty-five per cent, respectively (Mayhew, Brown and Simpson, 1994: Table 3-5, Table 7-5). The ratio of fatally injured drinking drivers to fatally injured non-drinking drivers has been referred to as the 'Problem Index.' This value offers some insight into the prevalence of alcohol among drivers, while controlling for the many factors which may affect overall motor vehicle fatality rates (Beirness, Simpson, Mayhew and Wilson, 1994: 20).



**victim & self-report surveys**

Victim and self-report surveys have been one of the most utilized tools when researchers attempt to determine the difference between police-reported rates and true prevalence. A series of self-report surveys conducted in Ontario asked subjects to indicate whether or not they had driven within one hour of having an alcoholic drink anytime during the preceding year. In 1977, fifty-eight percent indicated that they had. However, by 1981, this number had dropped to forty per cent (Smart, Adlaf and Walsh, 1991, cited in Beirness, Simpson and Mayhew, 1993: 79).

**alcohol consumption & licensed drivers**

Two final factors which may have been positively correlated with impaired driving prevalence were alcohol consumption (Ogrodnik, 1994: 18) and the number of licensed drivers. Prior to 1982, Manitobans had an average per capita consumption of 91.5 litres per year (Manitoba Liquor Control Commission Annual Reports 1977-1981). From 1977, the number of licensed drivers in Manitoba increased steadily, with the 1981 total for active drivers being 572,095 (Manitoba Department of Driver and Vehicle Licensing fact sheet). Passenger vehicles registered in Winnipeg numbered approximately 248,000 (TransPlan 2010, 1994 cited in Mitchell, 1995:A3).

**POST-CHARTER****charging trends & police resources**

Nationally, charge rates for 'impaired driving or BAC over 80 mg per cent' and 'refuse or fail to provide a sample' began to decline in 1982, and have continued this pattern (Table 2 Series 1 and 2). Canada's 1994 charge rate was less than sixty percent

of what it had been in 1977. In Winnipeg, drunk driving charges also showed the 1982 drop, then climbed to a 1986 peak of over 2300 persons charged, nearly a two hundred percent increase over the 1977 total (Table 1-series 1). Since 1987, however, the annual rate of persons charged by the Winnipeg Police Service has steadily declined to a rate well below the 1977 total.

The post-Charter period saw an almost immediate increase in Traffic Division staff to an average complement of 66 officers, while the WPS total number of officers grew only marginally. This staffing increase coincided with a five-year upward trend in Winnipeg's charging rates, unlike the declining national rate. As well, 1985 saw the acquisition of the ALERTmobile. The ALERTmobile served as a mobile breathalyser platform, which was intended to expedite the processing of suspected impaired drivers. While the ALERTmobile preceded the dramatic 1986 rise in Winnipeg charges, the total number of drivers stopped and tested with an ASD for that year was not significantly different from others. As the ALERTmobile was used for the ALERT/Checkstop Selective Enforcement Programs, it is possible that officers were more inclined to make a demand for a breathalyser sample when the mobile breathalyser was nearby, thus avoiding concerns over delays and procedures. As well, as a new 'law enforcement tool' purchased for the WPS by the Province of Manitoba, officers may have been encouraged to make use of it, thus justifying the expenditure.

Diminishing police resources relative to the demands being place on them could have contributed to the decrease in impaired driving charges. While the generally consistent annual increases in total *Criminal Code* offences reported by police across

Canada from 1977 to 1989 (Hendrick, 1996: 1) may seem to contradict this, the nature of drunk driving as an often 'victimless' crime may offer some explanation.

Police workload was inherently difficult to measure with crime statistics alone. In addition to functioning in an increasingly detail-oriented environment, the number of calls for service received annually by the WPS increased steadily through the post-Charter period. In 1994, over sixty-thousand more calls for assistance were received and dealt with than in 1983, while total police complement grew by only 7 per cent. The number of *Criminal Code* offences processed annually by the WPS did not follow this sky-rocketing trend. The 1994 total was less than three thousand five-hundred greater than that of 1983 (WPS Annual Reports 1983-1995). Similarly, the total number of *Criminal Code* charges for Canada in 1994 was only slightly higher than in 1983. However, this rate has been in a decline since 1989 (Hendrick, 1996: 1). This increase in service demands, unaccompanied by a coinciding rise in criminal charge rates, may be an effect of cut-backs at social service agencies. As such services become less available, many of their clients, whose concerns may be non-criminal in nature, turn to the police for aid (Rossmo and Saville, 1991: 543).

Effects of increased demands for service and relative reductions in available resources may be more evident in charge rates for what are often 'victimless' crimes, such as drunk driving, than other crime types. Rates for offences such as impaired driving have been found to be "particularly sensitive to changes in policing practices" (Hendrick, 1995: 35). Contributing to this sensitivity was the fact that it was often solely through the action of the police that this offence initially would be noticed, as opposed to being victim-initiated.

The lack of a specific victim or complainant may have lowered officers' perceived sense of public accountability. As police applied their considerable discretion in the handling of potential suspects, crimes considered "less serious" or less likely to necessitate investigative follow-up were more prone to an informal resolution (Hendrick, 1996: 2,3). Officers certainly recognized the serious consequences of drunk driving. However, having apprehended the driver and stopped the commission of the offence, for some officers the perceived priority of laying a criminal charge may have been pre-empted by competing demands.

In addition to increased demands in general, there was competition for existing police resources in Winnipeg from 'up and coming' social issues. The move toward a community-based model of policing with storefront offices and foot patrols re-directed personnel (Deputy Chief Joe Gallagher, cited in Wiecek, December 15, 1992: A1), forcing general patrol officers to exercise increased discretion in areas deemed less critical. Increased political and community attention on other high-profile concerns such as youth violence and illicit drug use also claimed a larger share of police resources (Wilson, 1993: 212; Overson, 1992: 121), just as impaired driving initially did in the early 1980s. Richard Solomon of the University of Western Ontario recognized the implications of impaired driving "falling off the public agenda" (cited in Branswell, September 18, 1991: 17). Hence, the expanding and multifarious demands on their time had the potential to influence the manner in which police officers set their priorities and performed their duties.

#### **the courts**

While both Canada's and Winnipeg's charge rates showed discernible drops in

that this drop was not the result of newly imposed judicial standards. In the case of lower court decisions, police procedures were rarely changed immediately, as the decision was not binding on other courts, and could itself be appealed or reversed (Bud McIvor, Manitoba Department of Justice, personal communication, February 1, 1995). In Manitoba, the process to change a police procedure as a result of a judicial ruling was quite straightforward. The written court decision was reviewed and interpreted by Manitoba Justice Crown Counsels to consider ramifications for policing practices. If a revision in policy was deemed necessary, this recommendation would be passed on to the Assistant Deputy Minister (ADM) of Justice. The ADM then faxed the revised procedure to the municipal police forces and RCMP on contract within Manitoba, making reference to the specific ruling as the impetus for the new guidelines. The Charter reportedly has not necessitated a change in this revision process, which was said to be able to react quickly (within a day or two) when needed (McIvor, personal communication, February 1, 1995). Within the WPS, such directives were circulated through the use of General Orders and each officer entered the new procedure in their Field Manual.

While neither Manitoba Justice nor WPS personnel expressed concern over the policy revision process, an empirical study conducted in 1992 looked at police implementation of Supreme Court decisions and found that this process was at times, much more difficult. In one case discussed, the revising of Ontario police procedures was initiated by a lawyer with the Ministry of the Solicitor General after reading about a Supreme Court decision in the Toronto Star. Similarly, an officer in the RCMP's Enforcement Support Branch also read of the ruling in a newspaper and this prompted

notices being sent to the other Branches and disseminated to officers (Moore, 1992: 563,566). The rather haphazard way that these two major bureaucratic branches first became aware of the ruling and the arduous process each went through as they developed a new policy suggested that the court-initiated procedure revision process did not always function smoothly or efficiently. This observation, if accurate, could have considerable implications, as it has been generally recognized that the Charter forces police to modify their procedures "more often, faster and with less warning" than was generally the case prior to 1982 (Moore, 1992: 570; Sudbury, personal communication, August 17, 1996).

Taking into account the main Supreme Court decisions that led to revisions of impaired driving police procedures, namely *R. v. Therens (1985)*, *R. v. Grant (1991)* and *R. v. Green (1992)*, the consistent nature of the declining trend of national charging rates suggests that these decisions did not significantly compromise police ability to apprehend and charge suspects. Compared to Canada's uninterrupted decline in annual charges, however, Winnipeg's charge rates have been far less consistent. When questioned on this issue, Winnipeg Police Constable Rod Sudbury, who is responsible for managing the anti-drinking and driving programs of the WPS, identified the constantly changing Divisional, Departmental and political priorities as the most likely cause (personal communication, August 17, 1996).

### **legislative influences**

Legislative changes also had the potential to affect charge rates. The amendments to the *Criminal Code* in 1985 added a number of 'impaired-related' offenses and strengthened sentences for those convicted of impaired driving. While consideration of

these new offences is beyond the scope of this thesis, it may be noted that a review of the Winnipeg Police Service Annual Reports (1986-1994) showed that including the small number of charges laid on these new offenses would not have affected the data significantly. One of these offenses, 'refusing or failing to provide a blood sample,' has been included, as it is often combined with the previous 'refusing or failure to provide a breath sample' charge when compiling statistics. An in-depth analysis of these amendments by the Traffic Injury Research Foundation (TIRF) for the Department of Justice Canada, concluded that they had no identifiable impact on the prevalence of impaired driving (Beirness, Simpson and Mayhew, 1993: 86). However, it is possible that the passage of these highly publicized amendments could have motivated Winnipeg Police, either formally or informally, to direct increased attention to impaired driving enforcement. Such an effect could have been responsible, wholly or in part, for the surge in charges seen in 1986. In the immediately following years, however, the evidence has suggested that these amendments, intended as a "hard-line" against drunk drivers, may have had the unexpected result of producing a decline in criminal charges being laid.

#### **roadside license suspensions**

The previously noted behaviour of officers issuing six-hour license suspensions, when a driver may in fact be legally impaired also warrants consideration. Future analysis of the use of roadside licence suspensions may be possible as the WPS began tracking ASD 'Warns' and suspensions monthly in 1992. The WPS 1993 Traffic Division Annual Report noted in its conclusion, that "although the number of warns is up, there is a significant reduction in the number of impaired drivers apprehended "(6). Additional

reports from the Canadian Centre for Justice Statistics have recently identified the tendency of police to use roadside licence suspensions as another factor having the potential to affect charge rates; but this has not yet been analysed nationally (Hendrick, 1995:23, Birkenmayer, 1995: 2).

### **self-report surveys**

Some indicators of prevalence suggest that actual drinking and driving rates may have begun declining in the early 1980's, and this contributed to the lower charge rates. In the Smart, Adlaf and Walsh series of self-reporting surveys on drinking and driving behaviour, the 1981 rate was significantly lower than that of 1977, 1979 and 1983. Further, while 46.8 per cent of respondents in 1983 admitted to drinking and driving behaviour, this proportion dropped to 20.4 per cent in 1991 (Beirness, Simpson and Mayhew, 1993:79). This decrease may also have been affected by the lower level of social acceptance for this behaviour. While not subject to any formal sanctions, respondents may have been less inclined or more ashamed to admit to such offensive behaviour after having been exposed to the various educational campaigns and the sensational coverage in the media.

### **Alert/Checkstop results**

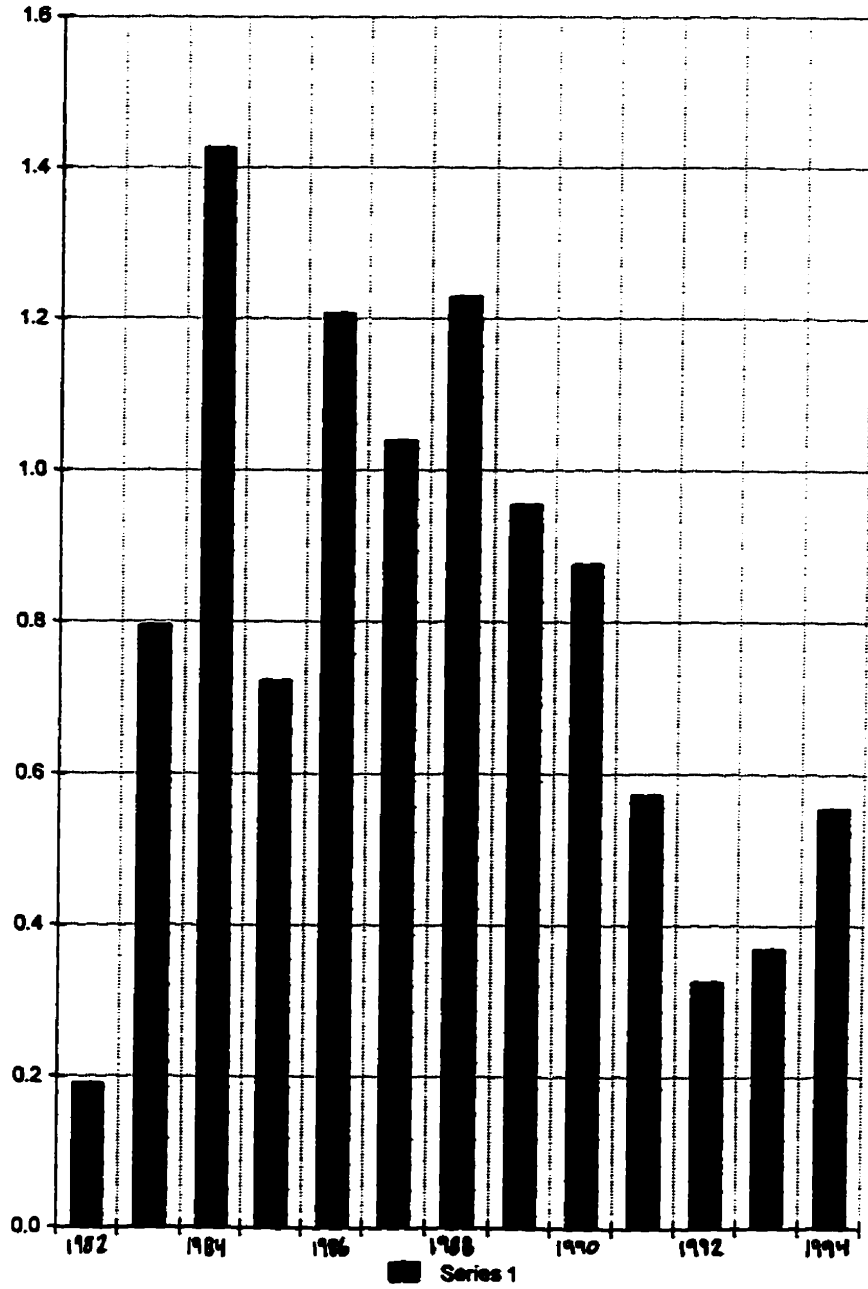
Another clue to the actual rate of drunk driving was the proportion of drivers found to be impaired, through the random stopping of vehicles, as was done in the Winnipeg Police's ALERT/Checkstop Program (Table 3). The annual proportions of such drivers closely paralleled Winnipeg's rate for persons charged with impaired driving (Table 1), including the low year of 1982, the dramatic increase in 1983, and the increase that



**TABLE 3**

**Impaired drivers discovered through ALERT/Checkstop in Winnipeg (1982-1994)  
(Calendar years)**

% of randomly stopped drivers ultimately charged with impaired driving or BAC over 80 mg %



occurred again eleven years later. Such a close match in these two sets of data lends support to Constable Sudbury's assertion that officers' priorities were influenced by changes in staff, especially changes within policy-making positions. The similarities may also reflect changing rates of true prevalence, unfortunately, there were too many variables to draw this conclusion with a high degree of confidence. The numbers of arrests made as a direct result of the ALERT/Checkstop Program were not great enough to influence the pattern of total persons charged for a given year. In 1983 for example, only 5.2 per cent of those charged with impaired driving were discovered through this program. Unfortunately, the ALERT/Checkstop results prior to 1982 were unavailable.

#### **problem index**

The percentage of fatally injured drivers in Canada testing positive for alcohol during the post-Charter period fell from the pre-Charter value of sixty percent to fifty-one percent, at a relatively constant rate. The percentage of drivers found to have a BAC greater than the legal limit of 80 mg per cent declined from approximately 50 per cent in 1983 to 41 per cent in 1992 (Mayhew, Brown and Simpson, 1994: Table 3-5). This long term reduction in alcohol-involved driving fatalities was also experienced in the United States over the same time period (Beirness, Simpson and Mayhew, 1993:81). Manitoba's post-Charter averages, however, were only slightly lower than pre-Charter levels, with 54 per cent testing alcohol positive and 42 per cent having a BAC greater than 80 mg per cent (Mayhew, Brown and Simpson, 1994: Table 7-5).

#### **roadside surveys**

Roadside surveys of night-time drivers in Saskatchewan, Ontario and Quebec

provided the percentage of drivers with an alcohol-positive BAC as well as the proportion with a BAC over 80 mg per cent for the years 1979 and 1986. In both categories, the number of Ontario drivers decreased by 30 per cent. Quebec drivers showed similar results, declining by seventeen and 39 per cent, respectively. Saskatchewan drivers, who by 1996 had earned "one of the worst records in Canada for drinking and driving" (Serby, cited in Cordon, March 13, 1996: B3) showed a decrease in alcohol-positive drivers by only 5 per cent and an 8 per cent increase in drivers with a BAC over the legal limit (Beirness, Simpson and Mayhew, 1993: 76,77).

In 1986, a joint federal-provincial roadside survey of night-time drivers was conducted in Manitoba. Drivers that cooperated by providing a breath sample were informed that no charges would be brought against them if their BAC was above the legal limit. The results showed that nearly 20 per cent of these drivers had been drinking, and 5 per cent of night-time drivers were legally impaired (Minch, 1988: 10). These values were comparable to the average across Saskatchewan, Ontario and Alberta, where 16 per cent of drivers tested were alcohol positive and 4 per cent legally impaired (Beirness, Simpson and Mayhew, 1993: 76,77).

#### **alcohol consumption/licensed drivers**

Two factors closely related to impaired driving that were noted earlier are the rate of alcohol consumption and the number of drivers on the road. Alcohol consumption in Manitoba appeared to have decreased steadily through the post-Charter period, from a pre-Charter average of 91.5 litres to the 1994 per capita rate of 72 litres per person (Manitoba Liquor Control Commission Annual Reports 1983-94). This pattern was the

same as that across Canada, both the number of drinkers and the amount being purchased have decreased (Canadian Centre for Justice Statistics, January 1994: 3). While noting this, the Brewers Association of Canada speculated that the decline in sales may, to some extent, be the result of the proliferation of home-made wine and beer kits and brew-it-yourself outlets (Brewers feel competition from at-home kits, March 3, 1993: A9). If so, true consumption rates may not have decreased as much as the official sales figures suggest.

By 1994, there were 675,659 active licensed drivers in Manitoba (Manitoba Department of Driver and Vehicle Licensing fact sheet), and approximately 270,000 passenger vehicles registered in Winnipeg (TransPlan 2010, 1995). For impaired driving charges to have been dropping, at least until 1993, while the total number of drivers on the roads in Winnipeg increased significantly, either the actual rate of offenses decreased, or significant changes in policy or police behaviour occurred within the Winnipeg Police Service regarding the enforcement of impaired driving laws. That the reduction in total number of charges laid was mirrored both nationally, as well as in the United States (Canadian Criminal Justice Association, January, 1994: Figure 2), supports the former hypothesis that a widespread social trend did exist, to at least some extent.

#### **urban vs. rural?**

A number of well-informed sources have suggested that the actual rate of drunk driving in Canada indeed did decline through the 1980s and into the 1990s. These have included Harold Basse, the President of the Canadian Association of Chiefs of Police and Orest Fedorowycz of the Policing Services Program, Canadian Centre for Justice Statistics

( cited in Branswell, September 18, 1991: 17; Fedorowycz, 1994: 1). This view was not, however, held by all members of the law enforcement community. Sgt. Brian Linklater, representing the Royal Canadian Mounted Police's Traffic Services in Manitoba, asserted that the prevalence of drunk driving unfortunately had not declined within their areas of responsibility. RCMP charge rates, he observed, had remained "fairly consistent year after year" (cited in Robertson, December 2, 1995: A7). Unfortunately, these statistics were only available for the most recent few years, and consequently were not included in this study (Sgt. Brian Linklater, personal communication, May 3, 1996). Manitoba charging rates were available from the Canadian Centre for Justice Statistics, but have not been considered due to methodological concerns (Appendix 6). This difference between the declining urban and stable rural charge rates within Manitoba had been noticed two years earlier. At that time, RCMP Spokesman Sgt. Wyman Sangster speculated that one contributing factor may have been the lack of alternative transportation for drunk drivers in a rural setting, whereas in a city, buses and taxis are available (cited in Wiecek, January 5, 1994: B1).

#### **conviction rates**

Consideration of conviction rates may be an appropriate indication of the ability of police to lay charges which ultimately secure convictions. Unfortunately, both the Executive Director of the Courts Division, Manitoba Justice (Greg Graceffo, personal communication, April 7, 1994) and a Canadian Centre for Justice Statistics Senior Analyst (Robert Allen, personal communication, December 13, 1993) explained that such rates are so problematic that they are not compiled on a regular basis.

The Policy, Legislation and Research office of Manitoba Driver and Vehicle Licencing was able to provide the number of persons convicted for the period from 1986 to 1994 for 'impaired driving' or 'BAC over 80 mg per cent' and 'refusing or failing to provide a sample' for the WPS jurisdiction. While this conviction data originated from a reliable source, it cannot as yet be corroborated.

The Traffic Injury Research Foundation report on the 1985 *Criminal Code* amendments concluded that they did not have any identifiable impact on the prevalence of drunk driving. However, the dramatic decline in conviction rates for impaired driving in 1987 and 1988, may have reflected the increase in 'not guilty' pleas and use of legal counsel which they observed.

As Table 1 illustrates, the rate of impaired driving convictions relative to total charges laid in Winnipeg increased considerably. The Table seems to suggest that the conviction rate for persons charged in 1987 was less than fifty percent, but by 1994, it had risen to over eighty percent. Such a conclusion may not necessarily be correct however, as many convictions recorded in a given calendar year may not relate to persons charged that year. The difficulty in tracking specific cases through the courts to the final disposition is why the Canadian Centre for Justice Statistics does not regularly compile conviction rates ( Robert Allen, personal communication, December 13, 1993). Unfortunately, following this reasoning, Canada has traditionally lagged behind other Western nations in compiling and analysing court data on convictions (Evans and Himelfarb, 1987: 72). Notwithstanding this weakness, the conviction rates did indicate a proportional upward trend of successful prosecutions over the last six years.

The Canadian Centre for Justice Statistics does not regularly report conviction rates; however, it did publish a report on Adult Criminal Court Statistics in 1994. This report included conviction rates for specific *Criminal Code* offenses, including impaired driving, for three Provinces and one Territory over the year 1992. Drunk driving conviction rates for Prince Edward Island, Nova Scotia, Quebec and the Yukon ranged from 80.8 per cent to 87.7 per cent . Overall *Criminal Code* conviction rates for these jurisdictions ranged from 65.5 per cent to 78.7 per cent (Canadian Centre for Justice Statistics, 1994:Table 7). A second study examining dispositions in six Canadian jurisdictions over the years 1991 and 1992 also found that the conviction rates for impaired driving charges were well above the overall average for *Criminal Code* offences (Fedorowycz, 1994: 15).

As pre-Charter conviction rates were not available, a comparison to that period was not possible. However, the observation that the proportion of persons charged resulting in convictions has been in an upward trend suggests that law enforcement and prosecuting personnel learned to function effectively in the Charter environment. A second possible explanation for the increasing success of prosecutions amidst declining charges is that police may have developed the tendency of laying charges only in those cases where the circumstances led them to believe that a conviction was likely. In situations where they were not as confident, they may have resorted to a six-hour suspension or other informal solutions such as having the driver leave the car and arrange alternate transportation. While possible, considering the exceptionally high conviction rates of impaired charges over the last number of years, police were more likely to avoid laying charges because of the time involved and competing demands than for fear of judicial scrutiny.

The weaknesses of relying on police statistics as measures of police effectiveness are well documented (Loreto,1990:225). However, in this case, the rates of persons charged annually have been considered as both a product and reflection of the police department, not an objectively empirical measure of effectiveness. Admittedly, there have likely been a number of factors influencing the charge and conviction rates within the City of Winnipeg and this study does not contend that they all have been identified or controlled for. However, an analysis of the charging and conviction trends, considered in the context of the major judicial decisions, as well as both national and international patterns indicated no acute Charter affects.

The trend, over the last six years, in particular, has been reasonably consistent in Winnipeg, across Canada and in the United States. The decline in charges was accompanied by what appears to have been somewhat of a decline in the actual prevalence of impaired driving offenses. This, combined with the higher conviction ratios support the argument that the Charter of Rights and Freedoms has not itself impaired the traditional ability of the police to enforce this area of criminal law in response to social demands.



## CONCLUSION

In the fourteen years that the Charter of Rights and Freedoms has been part of the Canadian polity, it has impacted on many aspects of society. Not all of its effects were measurable, some being qualitative in nature. As well, in some cases it has been difficult to establish a definite causal relationship between the Charter and the numerous, complex social changes occurring in Canada. In the fields of politics and criminal justice, however, the Charter appears to have served as a catalyst for, and coincided with, a number of significant social and institutional adjustments.

Both the constitutional entrenchment and subsequent media exposure that the Charter received served to raise Canadians' level of rights consciousness. The topic of civil liberties became 'front page news' with the reporting of dramatic, high-profile court cases ranging in topics from Sunday shopping (*Regina v. Big M Drug Mart Ltd. et al. [1985]*) to cruise missile testing (*Operation Dismantle v. The Queen [1985]*). Many Canadians were persuaded to believe that the Charter and its guarantees could play an active role in state decision-making, and in judicial challenges to those decisions which appeared to infringe upon individual civil rights. That this expanded policy-making role for the judiciary has been contentious is commonly recognized (Knopff and Morton, 1992:20; Morton, 1992:628; Chief Justice Dickson cited in Manfredi, 1993:119).

The increased awareness of civil liberties conflicts and the Charter's potential role was not always well received by Canadians. Often in the media, a Charter argument was identified as the means through which a 'guilty' party could escape

justice, perhaps by exploiting a procedural error on the part of the police. The distinction between legal guilt and moral guilt seemed to be championed by the Charter, and acquittals where the accused's actions were not in doubt, but he or she was seen to 'get off on a technicality,' raised the concerns of both politicians and citizens. While there was both popular and professional support for tougher and more intrusive enforcement of drunk driving laws, victims, their families and many others increasingly saw the Charter as protecting the accused, often at the expense of social safety and justice.

A second social effect of the Charter was the proliferation of organized, constitutionally motivated and empowered lobby groups, appropriately referred to as "Charter Groups" (Cairns, 1991: 103; Knopff and Morton, 1992:26). Often issue specific, or advocating a narrow agenda, such groups found the Charter to be an effective vehicle to be used in their efforts. This movement made up of Charter centred lobby groups has been collectively referred to as the "Court Party" (Morton, 1992:647). The advantage of a legal argument made in a courtroom over traditional lobbying was that both small groups and groups traditionally excluded from the political process would have a forum in which to present their arguments, presumably with a greater chance for success. While the Charter appeared to serve a role as a social equalizer, the expense of mounting a Charter challenge which could involve costly and time-consuming appeals beyond the resources of most citizens, brought into question the liberal-democratic nature of the Charter (Greene, 1989:62). Powerful, well-financed groups however, could now exploit not only their traditional access to politicians, but

also use the courts as an arena. In this manner, the Charter evidently accelerated the legalization of Canadian politics, by encouraging the use of courts and an adversarial model to sort out the conflicting interests within society (Morton and Pal, 1985:221).

In contributing to the formation and activities of such groups, the Charter aided in the 'opening' of Canada's traditionally 'closed' party-driven system of government. As private groups were encouraged by Charter success stories, they developed and matured, conducting or contracting for their own research and drafting alternative public policies. Canadian political parties have been forced to adapt to these newly empowered actors, and recognize their potential in establishing and influencing political agendas. This increased use of litigation to address fundamentally political issues and the rise in prominence of such lobby groups may indeed represent what has been referred to as the "Americanization" of Canadian politics. As a consequence, government policy-makers and those responsible for the development and drafting of legislation have been increasingly taking the Charter into consideration at the earliest stages and throughout the development process (Funston, 1992: 609; Dawson, 1992: 599). Consistency with existing, judicial Charter interpretations and survivability under future such scrutiny have become and will continue to be major concerns. Such a shift was and continues to be a concern for those comfortable with Canada's traditionally conservative model of public order. This enhanced reliance on legal and ultimately judicial direction to solve social challenges may ultimately reduce the role of the law enforcement community in the development and review of criminal policy in Canada (Marquis, 1991: 403). Considering the integral role played by police in the

implementation of criminal justice legislation and the degree of individual discretion exercised, such peripheralizing could have serious ramifications for the operation of the criminal justice system. As has been established, police will rely on their discretion to enforce legislation in the most effective manner appropriate within their circumstances. Consequently, tougher criminal sanctions may be moot if officers do not have the time to process the criminal charges or perceive that route as not being effective. Such was the environment which appears to have led to the increased reliance on administrative licence suspensions and contributed to the corresponding decrease in criminal charges. Evidently, some police officers have concluded that under certain circumstances, drunk drivers were most effectively and efficiently dealt with through immediate administrative licence suspensions and not the laying of criminal charges. Police in other jurisdictions have also been observed to exercise their considerable discretion as a way of minimizing the impact of a judicial ruling or procedural revision which they do not agree with (Moore, 1992: 553). Consequently, the most effective way to ensure that laws can or will be enforced in the desired manner would be to maintain the law enforcement community's role in the planning and decision-making process.

The impact of the Charter on the criminal justice system has been multi-faceted.

Representing and contributing to an apparent shift from a crime-control model to one emphasizing due process, the Charter and subsequent judicial rulings have focussed attention on procedural details. Admittedly, being somewhat intangible in nature, the significance of this shift should not be underestimated. Having grown up with a strong

tradition of 'getting the job done,' even if the means were somewhat irregular [*R. V. Wray (1970)*], Canadian police quickly became very aware of the increased expectation for procedural propriety under the Charter. The tightening of policies and an increasingly cynical perception of the courts' ability to determine guilt and punish offenders has seemingly led some officers to effectively by-pass the criminal court system. Such reactions on the part of police, who act as gatekeepers of the criminal justice system, have serious implications for the legitimacy of our system.

The problematic nature of acquiring and analyzing police and court statistics does demonstrate the need for more uniformity between police forces and Statistics Canada when collecting and defining statistics. Additionally, police statistics of charges laid are of limited value when they cannot be tracked to determine the degree to which those specific charges are successful in court.

The Charter's impact on law enforcement in general, has not been as disruptive as many of the skeptics predicted in the early 1980's. One reason for this was the content and specific wording within the Charter. Two sections of particular relevance were s.1 and ss.24(2). Tracing its roots back to the 1971 Victoria Charter (Hiebert, 1990:113), s.1 stated that all rights and freedoms contained therein may be limited to the extent found to be "demonstrably justified in a free and democratic society". By this, the drafters showed their intention that within a society, individual liberties may on occasion be sacrificed for the good of the community. Roadside breath-testing (ASD), for example, compelled a suspect to provide a sample "forthwith," apparently in violation of the right to counsel, yet in 1988, the Supreme Court 'preserved' this procedure by

invoking s.1, making reference to the pressing nature of impaired driving offences (*Regina v. Thomsen*). Random vehicle stops were ruled to violate the entrenched protection against arbitrary detention, yet such activities by police were given a 'judicial blessing' repeatedly (*Hufsky v. R (1988)*; *R. v. Ladouceur (1990)* cited in Pilon, 1992:13,14).

The admissibility of evidence was one of the most crucial issues relating to law enforcement. True to the Canadian tradition of allowing what may be 'irregularly' or 'illegally' obtained evidence and trying to avoid what was "regarded as the excessively liberal exclusionary rule" operating in the United States (Russell, 1985:392), ss.24(2) directed the exclusion of evidence only if it would "bring the administration of justice into disrepute." In practice, Canadian courts placed the onus for establishing 'disrepute' on the defence and did not automatically exclude evidence because of a legal error.

A final aspect of the courts' handling of post-Charter cases which supported police efforts was the allowance of 'good faith' arguments on the part of the prosecution. In cases where an officer had clearly violated a Charter provision, but at the time believed his actions to be legally appropriate, judges could acknowledge the violation, but still allow the evidence to be admitted [*R. v. Duarte (1990)*]. This judicial flexibility served to give law enforcement agencies time to develop new procedures, while not necessarily losing a high-profile conviction.

Clearly, the Charter reflected and served to preserve significant elements of Canada's traditional crime-control model of criminal law. The principle that driving was a "licensed activity" as opposed to a fundamental right contributed to the afore-

mentioned rulings, however, it was the vague wording of the Charter which gave the courts the flexibility to consider the social importance of these enforcement procedures in the context of Canadian legal tradition.

Therefore, despite the courts' initial 'honeymoon' with the Charter in general, impaired driving cases have enjoyed relatively conservative rulings. There have, admittedly, been judicially directed procedural adjustments, such as including a medical caution at the time of a blood sample demand, having approved screening devices readily available when making a breath demand and obtaining a warrant prior to receiving an unsolicited blood sample from a doctor who provided medical care to an suspected impaired driver. None of these, however, necessitated significant policy retreats, or placed unmanageable hardship on police. Other areas of criminal law, however, have been affected more drastically, by court Charter-rulings. What has been established is that an assessment of Charter effects must focus on specific areas of enforcement, and take into account both formal and informal consequences. When considering the impact of the Charter on law enforcement, one's first inclination is to consider whether the detection, apprehension and charging of suspects had been made more problematic. While some areas of enforcement such as narcotics investigations, the use of wire-taps and guidelines for under-cover officers have been directly affected by Charter decisions, over the first eight years with the Charter, "few discrete powers (were) outright abolished or eliminated" (Normandeau and Leighton, 1990:124).

To date, therefore, impaired driving procedures have continued relatively

unscathed. The investigative tools integral to the deterring and apprehension of drunk drivers, being mandatory breath tests and random vehicle stops, have generally been supported and through some rulings, strengthened by the judiciary. Unlike the reverse onus element of the *Narcotic Control Act* which was struck down as a Charter infringement, the reverse onus in the impaired driving *Criminal Code* provision has thus far survived. With the exception of some 'fine-tuning' of procedural guidelines, the enforcement of impaired driving criminal laws has enjoyed great support from Canadian courts.

A lower level of social tolerance, brought about in part by the extensive media coverage, will continue to be an essential aspect in the fight against impaired drivers. This social activism may take on a new role, as police consider non-traditional partnerships and alternative sources of revenue. As well, the likelihood of donations from private sources to continue anti-drinking and driving enforcement programs is expected to be positively correlated with the public's perception of the necessity and effectiveness of such activities.

The Charter of Rights and Freedoms will continue to play an important role in Canadian society and how citizens interact with government structures, including the criminal justice system. In the case of impaired driving, Canada's most costly criminal offence in terms of deaths and injuries, the Charter does not seem to have compromised the ability of police to enforce the *Criminal Code* provisions. It is acknowledged, however, that this study considered many subtle factors which, while they had the potential to affect enforcement, cannot be precisely or conclusively measured.



Appendix 1

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## Appendix 2

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# PAL

PARTY ALCOHOL LIABILITY

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**PAL...** Provides Protection  
Against Liquor  
Liability/Lawsuits  
for People/Organizations  
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Liquor Licence Board  
Special Occasion Permits

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SUPPORTS

## Manitoba's Designated Driver PROGRAM

Look for it in  
your favorite bar...



*Think and Drink Responsibly*



THE MANITOBA PUBLIC  
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PRESENTED IN PART BY:

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### Here's how the program works:

- One individual in a group (at least four people) can be appointed the Designated Driver of any licensed establishment participating in the program. Designated Driver must be identified prior to any alcohol consumption.
- Once identified, the Designated Driver receives a Think & Drink Responsibly wristband and four tokens redeemable for free non-alcoholic beverages during the group's stay at the participating establishment. The wristband will identify the Designated Driver to the members of his/her group and to servers in the establishment.
- The Designated Driver will not consume any alcoholic beverages and will ensure the safe transportation home of individuals in the group.
- The program operates on a zero-tolerance basis. It promotes the social expectation that "the driver doesn't drink ANY alcohol."

## Appendix 4

# OPERATION LOOKOUT

**IF YOU SEE AN IMPAIRED DRIVER:**

**"TELEPHONE" 729-2345**

**AND PROVIDE THE POLICE WITH THE FOLLOWING:**



1. State you are following or have seen an impaired driver.
2. State the location.
3. State the direction of travel.
4. Vehicle description - Licence number  
- Colour  
- Make and Model
5. Description of driver.



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# GETTING TOUGH ON DRUNK DRIVERS

Manitoba's  
strategy  
to keep  
drunk drivers  
off the road.



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IS  
TOUGH  
ON  
DRUNK  
DRIVERS**

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## Appendix 6

The Winnipeg 'persons charged' rates were received directly from the Winnipeg Police Service (WPS), while the national rates are the product of the Canadian Centre for Justice Statistics (CCJS), Statistics Canada. A caution must be noted in the comparison between these two sets of data. While the CCJS receives its data for Winnipeg exclusively from the Winnipeg Police Service through the Uniform Crime Reporting system, frequent discrepancies were discovered when CCJS and WPS values for Winnipeg were compared. For example, in the 1986 calendar year, the CCJS reported 3574 persons charged with impaired driving or BAC over 80 mg per cent within the jurisdiction of the WPS, while the WPS, for the same year, reported that 2353 persons were charged for those offences. For 1993, in contrast, both the CCJS and WPS agreed that 973 persons were charged. Through the years from 1977 to 1994, neither the WPS nor the CCJS was consistently higher or lower than the other.

Constable D.R. Daniels of the WPS Research and Planning has explained that the WPS, unlike the CCJS, is able to adjust and correct its statistics continuously. As well, through the period from 1977 to 1994, the WPS has had a consistent methodology for collecting charge rates, while the CCJS has revised its system (personal communication, October 4, 1994). CCJS staff in contrast, were unable to explain inconsistencies in the charge rates. Consequently, as the national charge rate was composed of provincial and municipal rates, it is best considered in terms of its long-term trends, and not its specific values.

Further exemplifying such inconsistency was a 1996 report from Statistics Canada

on violent crime rates. Its values for Winnipeg did not agree with those of the Winnipeg Police Service. It was discovered that for the purposes of the report, Statistics Canada had included, within Winnipeg's crime rate, the statistics of several large rural municipalities and a village sixty kilometres south. Such idiosyncratic practices limit the usefulness of such statistics. As Winnipeg Police spokesman Sgt. Carl Shier commented, "we'll look at their numbers, but they won't provide us with many answers" (cited in Nairne, July 31, 1996: A5).

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