

# **Dude, Where's My Car?: Bill C-46 and the New Drug-Impaired Driving Law**

Prepared for: Legal Education Society of Alberta  
*Legalization of Marijuana*

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**BILL C-46 AND THE NEW DRUG-IMPAIRED DRIVING LAW**

**1. INTRODUCTION**

The Canadian Association of Chiefs of Police has expressed concern with the Federal Government's plan to legalize marijuana in July of 2018. The police believe they do not have enough time to sufficiently train officers for what they predict will be a corresponding rise in people driving high. Although it is not clear whether legalization will *actually cause* more people to drive high, or whether police simply are *unable to detect* people who are already driving while high, legalization is causing the government, police, and the justice system to turn their attention to drug-impaired driving.

A new legal regime (enforced by poorly trained officers) and the associated constitutional questions will present a potential boon to defence lawyers. Current drug-impaired driving law and police practice, and the proposed amendments to the *Criminal Code*, can help offer a 'best guess' as to what marijuana legalization's new prosecutorial regime will look like. Specific challenges that Crown attorneys will face in prosecuting people under the new legislation, and areas where the legislation will face significant constitutional challenges, can also be identified.

**2. CURRENT IMPAIRED DRIVING LAW**

To best understand how impaired driving law will change, it is helpful to understand current impaired driving laws.

**a. Current Alcohol-Impaired Driving Law**

The *Criminal Code* criminalizes two related driving activities. The first prohibited activity is driving *while the ability to do so is impaired* by alcohol or a drug (s. 253(1)(a)). This is commonly referred to as the offence of "impaired driving"). The second prohibited activity is driving with a *prohibited blood-alcohol concentration* more than – 80 milligrams of alcohol per 100 milliliters of blood (s. 253(1)(b)). This is commonly referred to as the offence of "over 80").

*i. Impaired Driving (s. 253(1)(a))*

There is no test to definitively determine if someone's brain function is so impaired as to be impaired to drive, and so Crown prosecutors present evidence of indicia that the accused's ability to drive was impaired. Even slight impairment when driving is criminalized; however, in practice it will require