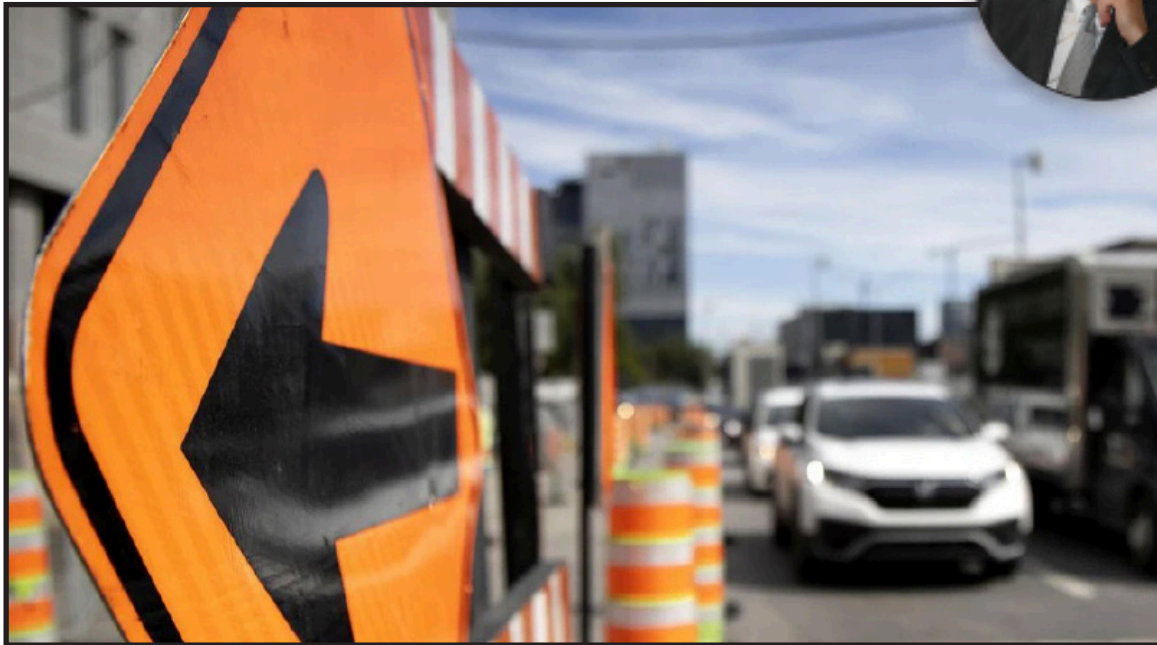


Opinion: Let's take a different road for DUI cases

Impaired drivers who don't harm others should be handled outside the criminal justice system.

Ralph Mastro Monaco • Special to Montreal Gazette • March 25, 2021



Convicted persons are entitled to sentencing justice — not gratuitous punishment, argues lawyer Ralph Mastro Monaco.

PHOTO BY ALLEN MCINNIS / Montreal Gazette.

No one disputes the need to respond to the issue of impaired driving. On this subject, too often, political optics trumps the public interest.

Politicians yearn to be favourably perceived on criminal justice.

Richard Nixon's successful 1968 "law and order" campaign became the template for North American politicians. To this day political parties of all stripes generate "tough on crime" policies to curry favour with voters. When elected, politicians convert their policies into "tough" laws.

For decades governments have used the blunt force of criminal law to address impaired driving. But crafting public policy requires analysis, not superficial buzz words like "zero tolerance."

The "tough on crime" policy demonizes the impaired driver and arms police with powers that push Charter limits. The convicted must receive "stiff" sentences. Mandatory sentence requirements ensure that judges do not "go easy" on offenders.

In reality most DUI charges are brought against otherwise law-abiding persons. People who are employed, provide for themselves, their families and pay taxes. An isolated lack of judgment typically explains the commission of this infraction. This is the flesh and blood person our criminal justice system regularly arrests, detains, fingerprints, puts on trial and when convicted stigmatizes as a criminal.

Most arrests occur in circumstances where no prejudice is caused to anyone or anything. Consider the many who are arrested while sleeping off alcohol in their cars. This socially responsible choice is rewarded with being charged with having the care and control of a vehicle while being inebriated. Someone so arrested at 3 a.m. on a deserted street faces the same sanctions as someone driving a vehicle while impaired. Convicted persons are entitled to sentencing justice — not gratuitous punishment. Yet judges cannot apply the individualized sentencing principles contained in Section 718 of the Criminal Code. The law ensures that anyone convicted of impaired driving is stigmatized with a criminal record that cannot be avoided by granting a discharge pursuant to Section 730 of the Criminal Code.

A criminal record carries life consequence that far outweighs the cost of any fine.

A criminal record can lead to employment loss or compromise employment opportunities. Permanent residents, refugee claimants, student or work visa holders convicted of impaired driving risk removal from Canada under Section 36 of the Immigration and Refugee Protection Act. Someone convicted of summary conviction sexual assault can be discharged to avoid a criminal record but a discharge for impaired driving is not permitted.

Does any of this make sense?

The criminal justice system is appropriate for impaired drivers who cause death or bodily harm.

The criminal justice system is not the proper forum for all other impaired driving cases.

Impaired driving cases are among the most litigated cases before our criminal courts, engaging significant police, prosecutorial and judicial resources at considerable taxpayer cost. Governments disingenuously ignore that when you make laws “tougher” the accused litigate more. A person facing employment loss or possible removal from Canada resulting from a conviction will, not surprisingly, take even a slim chance case to trial.

There is a better way — diversion of non-injurious impaired driving cases out of criminal courts and into SAAQ jurisdiction to sanction and rehabilitate the impaired driver through measures such as: vehicle seizures; license suspensions; significant fines; ignition interlock installation that ensures alcohol-free vehicle operation; mandatory driver education; and restricting or revoking driving privileges.

Radical idea?

Not really.

British Columbia did this in 2010 — with support from Mothers Against Drunk Drivers (MADD), the most powerful lobby group on this issue in North America. Although freeing up police, prosecutorial and judicial resources and alleviating court docket congestion were considerations driving this reform, since adopting this new approach British Columbia has experienced a 50 per cent decrease in alcohol related deaths.

Alberta and Manitoba have followed the B.C. diversion model, again with MADD support.

What is Quebec waiting for?

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