



# **Canada's Blood Alcohol Laws – An International Perspective**

Update to 2002 and 2006 Reports

April, 2009

Prepared for the Canada Safety Council by  
John Helis  
B.Soc.Sc.(Hons), LL.B.  
Ottawa, Ontario

The 2002 report *Canada's Blood Alcohol Laws – an International Perspective* addressed claims that Canada lags behind other countries in combating impaired driving by maintaining a 0.08 BAC level in the *Criminal Code*. This update supplements the original 2002 report and the 2006 update written by Professor David Paciocco.

# **Canada's Blood Alcohol Laws – an International Perspective Update to 2002 and 2006 Reports (April, 2009)**

## **Contents**

I.	Introduction	1
II.	Permissible Blood Alcohol Levels in Canada	3
III.	Comparison of International Blood Alcohol Levels	7
IV.	Divergent Responses to Blood Alcohol Levels – Comparing Apples and Oranges	11
V.	Comparison of Penalties	15
	a. Incarceration Periods	16
	b. Fines	20
	c. Driving Restrictions	27
VI.	Conclusion	33

## **Tables**

1.	Provincial Blood Alcohol Levels and Sanctions	4
2.	Permissible Blood Alcohol Levels by Country	8
3.	Nature of Sanctions Imposed at 0.05	12
4.	Incarceration Periods in Jurisdictions with a BAC of 0.08	16
5.	Comparison of Fines	21
6.	Comparison of Driving Restrictions	27

The original 2002 report, the 2006 update as well as this update may downloaded from the Canada Safety Council's website ([www.safety-council.org](http://www.safety-council.org)).

© Canada Safety Council, 2009

## I. Introduction

In 2002 Professor David Paciocco of the Faculty of Law at the University of Ottawa prepared a report entitled *Canada's Blood Alcohol Laws – an International Perspective*, which was commissioned by the Canada Safety Council to provide information to government decision-makers, stakeholders and the public on the international trend relating to the permissible blood alcohol concentration (BAC) when operating a motor vehicle. The purpose of the report was “to identify what assistance Canadians could draw from international BAC trends when considering whether to change the tolerable BAC limit in the *Criminal Code*,”<sup>1</sup> and consisted of a comprehensive and contextual review of the laws of 20 similarly situated countries. The report also took into account the federal structure in the United States and Australia, and thus ultimately compared Canadian law to 77 jurisdictions. This is an update to that report which is meant to determine whether there have been any changes to the law that would affect the conclusions reached in 2002.

Professor Paciocco observed that the majority of countries in the study “begin to impose legal consequences on ordinary drivers at 0.05,” and that internationally “the trend has been downward in recent years.”<sup>2</sup> However, he held that it is too “simplistic and misleading” to rely on these trends alone in suggesting that Canada’s should adopt a 0.05 BAC level in the *Criminal Code* without a more in-depth and contextual review of the laws. He also warned of the inherent malleability of statistics which “can be organized to create different impressions.”<sup>3</sup> Focusing solely on the permissible BAC level without considering how the laws operate, who they apply to, how they are enforced, and the extent of the penalties paints a distorted picture of international BAC laws. While in some jurisdictions BAC laws apply when one drives a motor vehicle, in Canada and several other jurisdictions they apply when one has “care and control of a motor vehicle,” which is broader in scope and includes situations where a person is merely seated in the driver’s seat of an unmoving vehicle.<sup>4</sup> Moreover, many jurisdictions have different

---

<sup>1</sup> David M. Paciocco, *Canada's Blood Alcohol Laws – An International Perspective* (Canada Safety Council, March 2002) at footnote 2.

<sup>2</sup> *Ibid.*, at 1-2.

<sup>3</sup> *Ibid.*

<sup>4</sup> The offence in section 253(1) of the *Criminal Code* is for “the care or control of a motor vehicle ... whether it is in motion or not.”

Section 258(1)(a) also clarifies this further: “where it is proved that the accused occupied the seat or position ordinarily occupied by a person who operates a motor vehicle ... the accused shall be deemed to have had the care

blood alcohol levels for different categories of drivers, such as youth, novice drivers, and drivers of heavy or commercial vehicles.<sup>5</sup> By far the most significant difference in the way BACs are used is whether a violation results in criminal or administrative penalties. In Canada a BAC violation at 0.08 leads to criminal sanctions with a potentially long prison sentence and a large monetary fine. While criminal sanctions are common in jurisdictions with a 0.08 BAC level, they are not common in jurisdictions that have adopted a 0.05 BAC level, where less severe administrative sanctions such as fines and licence suspensions are imposed. When all of these factors are fully considered they reveal that BAC levels are used in divergent ways internationally, which “diminishes the value in using international trends to support an initiative to reduce BACs in the *Criminal Code* of Canada to 0.05.”<sup>6</sup>

Professor Paciocco concluded that Canadian law is in line with the international trend if the question one asks is whether Canada’s decision not to use the criminal law against drivers with a BAC between 0.05-0.08 is consistent with the international trend, rather than merely focusing on the surface-level question of which BAC level is most commonly used.<sup>7</sup> The 2006 update of the report continued to support this conclusion even while noting that a number of jurisdictions had reduced their BAC levels.<sup>8</sup> This update, which makes the report current to 2009, supports the conclusions reached in the 2002 report and the 2006 update.<sup>9</sup> While there have been some minor changes in international BAC laws since the 2006 update, they are fewer and less significant than the changes that occurred between 2002 and 2006, and do not affect the

---

or control of the vehicle, ... unless the accused establishes that the accused did not occupy that seat or position for the purpose of setting the vehicle ... in motion.”

There considerable variance among the American states.

Some states refer to “driving a vehicle,” or “operating a vehicle,” e.g. Alaska, California, Colorado, Connecticut, Indiana, Iowa, Louisiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Virginia, Washington, West Virginia.

Some American jurisdictions have a broader definition such as being in “physical control of a motor vehicle,” e.g. Arkansas, Arizona, D.C., Georgia, Hawaii, Idaho, Illinois, Kentucky, Nebraska, Nevada, New Hampshire, North Dakota, Oklahoma, Tennessee, Utah, Vermont, Wyoming.

<sup>5</sup> See Tables 1 and 2.

<sup>6</sup> David M. Paciocco, *Canada’s Blood Alcohol Laws – An International Perspective. Update to 2002 Report* (Canada Safety Council, March 2006) at 15.

<sup>7</sup> *Ibid.* at 3.

<sup>8</sup> *Ibid.*

<sup>9</sup> The problem noted by Professor Paciocco in 2002 and 2006 in locating primary source law was also encountered in this update. Every effort was made to rely on primary sources, although this was not possible in the case of a number of European jurisdictions. However, the information was obtained from official government websites and embassies, and reliable secondary sources such as the BBC were used.

overall conclusions reached in 2002. Only one country has lowered its BAC level since the 2006 update: Luxembourg lowered its BAC level from 0.08 to 0.05.

BAC levels have not changed in Canada, although there have been changes to penalties both at the federal and provincial levels that have made the law stricter. The penalties have substantially increased for those charged criminally. The maximum term of imprisonment when the offence is punishable on summary conviction has been increased from six to 18 months. The mandatory minimum term of imprisonment for a second and subsequent offence has been increased from 14 and 90 days to 30 and 120 days respectively. Moreover, the mandatory minimum fine for a first offence has been increased from \$600 to \$1,000.<sup>10</sup> There have also been some changes at the provincial level that result in longer licence suspension periods. British Columbia has increased the licence suspension period imposed with a BAC of 0.05 from 12 to 24 hours, and Ontario has increased the 12 hour licence suspension period imposed with a BAC of 0.05 to three days. These changes increase the severity of the criminal sanctions imposed with a BAC of 0.08 and highlight the importance of the non-criminal sanctions imposed at the 0.05 level. Since there have been so few changes in BAC levels internationally since 2006, this update will place considerable focus on the penalties associated with contravening the legal BAC levels, such as the possibility and duration of incarceration, monetary fines, and driving restrictions, to determine how strict Canadian law is in comparison to other jurisdictions.

## **II. Permissible Blood Alcohol Levels in Canada**

The focal point of Canada's laws related to BAC levels when operating a motor vehicle is section 253 of the *Criminal Code*, which establishes a 0.08 level. There have not been any changes to this level since the 2002 report. Section 253(b) reads as follows:

253(1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,

(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or

---

<sup>10</sup> *Criminal Code*, R.S. 1985, c. C-46, s. 255(1).

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.<sup>11</sup>

The penalties associated with violating this level are severe, and the charge can be prosecuted either by indictment or summary conviction, based on the seriousness of the offence. In a first offence the maximum period of incarceration is five years when a person is prosecuted by indictment, and 18 months when prosecuted by summary conviction. A second offence includes a mandatory minimum term of incarceration for 30 days, and 120 days for subsequent offences. It is an indictable offence if the person causes an accident resulting in bodily harm to another person, and it carries a maximum term of imprisonment of 10 years. In cases of impaired driving causing death the maximum sentence is life imprisonment.<sup>12</sup> Additional penalties include a monetary fine and a driving prohibition. A first offence carries a mandatory minimum fine of \$1,000,<sup>13</sup> and a driving prohibition of between one and three years, which increases to between two and five years for a second offence, and a minimum of three years for a subsequent offence.<sup>14</sup>

Characterizing Canada's BAC level as 0.08 is inaccurate without considering provincial limitations. While the federal *Criminal Code* imposes criminal sanctions for a BAC of 0.08, most provinces have adopted lower levels with administrative sanctions in the form of licence suspensions. The current provincial and territorial law related to BAC levels is outlined in the following chart.

**TABLE 1: PROVINCIAL BLOOD ALCOHOL LEVELS AND SANCTIONS**

<b>Province</b>	<b>BAC level</b>	<b>Sanctions</b>	<b>Special BAC levels</b>
Alberta <sup>15</sup>	0.08	24 hour licence suspension if peace officer has reasonable and probable grounds to believe that a driver has a BAC of 0.08 or more. One year driving prohibition for first conviction under s. 253 of the <i>Criminal Code</i> . This increases up to a five year prohibition in the third offence.	Zero for novice drivers.

<sup>11</sup> *Ibid.*, s. 253(b).

<sup>12</sup> *Ibid.*, s. 255.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, s. 259(1).

<sup>15</sup> *Traffic Safety Act*, R.S.A., 2000, c. T-6, ss. 83, 89, 90.

British Columbia <sup>16</sup>	0.05	24 hour licence suspension if peace officer has reasonable and probable grounds to believe that a driver's ability is affected by alcohol. The licence is returned forthwith if the driver's BAC is less than 0.05. One year driving prohibition if convicted under s. 253 of the <i>Criminal Code</i> .	Zero for drivers with conditional licences.
Manitoba <sup>17</sup>	0.05	24 hour licence suspension at 0.05. 90 day licence suspension if over 0.08. Licence suspension if convicted under the s. 253 of the <i>Criminal Code</i> . For a first offence the suspension is for one year, which increases to a permanent revocation in the fourth offence.	Zero for new drivers.
New Brunswick <sup>18</sup>	0.05	24 hour licence suspension at 0.05 Licence suspension if convicted under s. 253 of the <i>Criminal Code</i> . For a first offence the suspension is for one year, which increases to five years in the third offence.	Zero for novice drivers.
Newfoundland <sup>19</sup>	0.05	24 hour licence suspension at first occurrence at 0.05. This increases up to the fifth occurrence in which the suspension is for six months. 90 licence suspension at 0.08. Licence suspension if convicted under s. 253 of the <i>Criminal Code</i> . For a first conviction the suspension is for three months, which increases to six months for a subsequent offence.	Zero for novice drivers.
Northwest Territories <sup>20</sup>	0.05	24 hour licence suspension at 0.05. 30 day licence suspension for novice drivers with any BAC. Cancellation of licence if convicted under s. 253 of the <i>Criminal Code</i> .	Zero for novice drivers.

<sup>16</sup> *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, ss. 89(1), 90.3, 99(1), 215(2), (6).

<sup>17</sup> *Highway Traffic Act*, S.M., c. H-60, ss. 263.1, 264, 265.

<sup>18</sup> *Motor Vehicle Act*, R.S.N.B. 1996, c. M-17, ss. 84, 94, 302, 310.01, 310.02(5).

<sup>19</sup> *Highway Traffic Act*, R.S.N.L. 1990, c. H. H-3, ss. 60.1, 60.2, 60.4, 64.

<sup>20</sup> *Motor Vehicle Act*, S.N.T. 1988, c. M-16, ss. 88(1), 116.1, 116.2.

Nova Scotia <sup>21</sup>	0.05	24 hour licence suspension at 0.05. Licence revoked if convicted under s. 253 of the <i>Criminal Code</i> . An application to restore the licence cannot be made for one year in the case of the first offence, three years for the second offence, and indefinitely in a subsequent offence.	Zero for learners.
Nunavut <sup>22</sup>	0.06	24 hour licence suspension.	No special legislation.
Ontario <sup>23</sup>	0.05	Three day licence suspension with a BAC of 0.05. This increases up to 30 days in the third occurrence. 90 day suspension with a BAC of 0.08. One year licence suspension if convicted under s. 253 of the <i>Criminal Code</i> . This increases up to the third offence in which the person's licence is suspended indefinitely.	Zero for new drivers.
Prince Edward Island <sup>24</sup>	0.05	24 hour licence suspension for first occurrence with a BAC of 0.05. This increases up to the third occurrence in which the suspension is for 90 days. 90 day suspension if the person's BAC is 0.08. Cancellation of driver's licence if convicted under s. 253 of the <i>Criminal Code</i> . The person is disqualified from holding a licence for one year for the first offence, which increases up to five years for the third offence.	Zero for drivers under 19 and new drivers.
Quebec <sup>25</sup>	0.08	30 day licence suspension. Licence cancellation when a person is convicted under s. 253 of the <i>Criminal Code</i> . A new licence can be issued only after one year in the case of a first offence, which increases up to five years in the case of a third offence.	Zero for new drivers.

<sup>21</sup> *Motor Vehicle Act*, R.S.N.S. 1989, c. 293, ss. 67(5), 100A, 278(1)(b), 279C.

<sup>22</sup> Nunavut incorporated the law of the Northwest Territories pursuant to the *Nunavut Act*, S.C., 1993, c. 28, s. 29. *Motor Vehicle Act*, R.S.N.W.T. 1988, c. M-16, ss. 88(1), 116(4), (6)(a).

<sup>23</sup> *Highway Traffic Act*, R.S.O., 1990, c. H-8, ss. 41, 48, 48.1, 48.3. The recent changes to the licence suspension periods will come into effect on May 1<sup>st</sup> 2009.

<sup>24</sup> *Highway Traffic Act*, R.S.P.E.I., 1988, c. H-5, ss. 261, 277.1, 277.8. Graduated Driver Licensing Regulations, P.E.I. Reg. EC225/07 s. 2(3)(a).

<sup>25</sup> *Highway Safety Code*, R.S.Q. c. C-24.2, ss. 76, 180, 202.2, 202.4.



Saskatchewan <sup>26</sup>	0.04	24 hour licence suspension at 0.04. This increases to 90 days in the second occurrence. Driving prohibition if convicted under s. 253 of the <i>Criminal Code</i> . In a first conviction the prohibition is for one year, which increases to five years for the third offence.	Zero for new drivers.
Yukon <sup>27</sup>	0.08	The shorter of 90 days or until the driver is convicted of an offence under s. 253 of the <i>Criminal Code</i> .	Zero for co-driver accompanying a learner.

Nine provinces and territories have adopted a BAC level at or below 0.05 with administrative sanctions in the form of a licence suspension. Most have established a zero BAC level for learners or novice drivers. The licence suspension period has been increasing in the last few years and the lowest period is now 24 hours. Some provinces have much longer periods when the offender has a BAC of 0.08 – 30 days in the case of Quebec, and 90 days in Manitoba, Newfoundland, Ontario and Prince Edward Island. Provincial legislation also imposes a longer driver’s licence suspension period when there is a conviction under s. 253 of the *Criminal Code*, which closely mirrors the driving prohibition which can be imposed under the *Criminal Code*.

### III. Comparison of International Blood Alcohol Levels

Many jurisdictions, including Canada, have established two separate sets of offences related to drinking and driving. The first offence is driving while intoxicated or under the influence of alcohol, and deals with situations where a person is physically unfit to operate a motor vehicle from the consumption of alcohol regardless of their BAC level. The second type of offence involves the operation of a motor vehicle with more than the legal BAC level, regardless of visible signs of impairment or ability to drive. This report is primarily concerned with the latter of the two, where it is *per se* illegal to drive with a BAC above the legal limit. The 2002 report and 2006 update compared Canadian law on BAC levels when operating a motor vehicle to the laws of 20 other states – specifically the United States, Australia, New Zealand, Switzerland, Norway and the 15 members of the European Union prior to its enlargement in

<sup>26</sup> *Traffic Safety Act*, S.S. 2004, c. T-18.1, ss. 141, 146, 147, 150.

<sup>27</sup> *Motor Vehicle Act*, R.S.Y. 2002, c. 153, ss. 9(3), 257(1)(a), (8).

2004 and 2007.<sup>28</sup> The reports also accounted for the federal structure in the United States and Australia, and thus ultimately compare Canadian law to 77 jurisdictions. This includes 18 unitary states, 51 American jurisdictions (including the District of Columbia) and eight Australian jurisdictions (including the Australian Capital Territory). While minor mention was made of a number of other states, it is logical to place most of the focus on jurisdictions with similarities to Canada.<sup>29</sup>

Of the 20 countries being compared to Canada, significantly more have adopted a BAC level of 0.05 or lower than those that have adopted 0.08. In 2002 the ratio was 13:7, which increased to 15:5 in 2006, and is now 16:4. The following table compares Canada’s BAC laws to that of 20 other states.

**TABLE 2: PERMISSIBLE BLOOD ALCOHOL LEVELS BY COUNTRY**

Country	BAC Limit	Contextual Limits
Canada	Federal 0.08 Alberta 0.04 Quebec 0.08 Saskatchewan 0.04 Other provinces 0.05	Zero for new drivers.
Australia <sup>30</sup>	0.05	Lower levels are imposed by some jurisdictions (zero to 0.02) for learners, youth, professional drivers, heavy vehicles and public transportation.
Austria <sup>31</sup>	0.05	0.01 for heavy vehicles and drivers that have held a licence for less than two years.
Belgium <sup>32</sup>	0.05	
Denmark <sup>33</sup>	0.05	
Finland <sup>34</sup>	0.05	

<sup>28</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom.

<sup>29</sup> Since the purpose of the study is to consider laws related to drinking and driving adopted for public safety reasons, it would distort the results if jurisdictions were included that have established a BAC of zero for cultural or religious reasons.

Drive and Stay Alive Inc. lists the following five countries as having a zero blood-alcohol limit primarily for religious reasons: Bahrain, Mali, Pakistan, Saudi Arabia, and the United Arab Emirates. *Drive and Stay Alive Inc. (DSA Inc.)*, online: <http://www.driveandstayalive.com/articles%20and%20topics/drun%20driving/artcl--drunk-driving-0005--global-BAC-limits.htm>. Last visited 29 January 2009.

<sup>30</sup> BAC levels and penalties are established at the state and territorial level. See Table 3 for details and sources.

<sup>31</sup> E-mail confirmation from the Embassy of Austria, 2 February 2009. On file with the author.

<sup>32</sup> E-mail confirmation from the Embassy of Belgium, 4 February 2009. On file with the author.

<sup>33</sup> E-mail confirmation from the Embassy of Denmark, 4 February 2009. On file with the author.

<sup>34</sup> E-mail confirmation from the Embassy of Finland, 2 February 2009. On file with the author.

France <sup>35</sup>	0.05	0.02 for public transit vehicles.
Germany <sup>36</sup>	0.05	Zero for drivers under 21 and drivers with less than two years of experience.
Greece <sup>37</sup>	0.05	
Italy <sup>38</sup>	0.05	
Ireland <sup>39</sup>	0.08	
Luxembourg <sup>40</sup>	0.05	0.02 for drivers under 21 and drivers with less than two years of experience.
Netherlands <sup>41</sup>	0.05	0.02 for new drivers.
New Zealand <sup>42</sup>	0.08	0.03 if younger than 20.
Norway <sup>43</sup>	0.02	
Portugal <sup>44</sup>	0.05	
Spain <sup>45</sup>	0.05	0.03 for inexperienced drivers, heavy vehicles, buses, and vehicles carrying dangerous goods.
Sweden <sup>46</sup>	0.02	
Switzerland <sup>47</sup>	0.05	
United Kingdom <sup>48</sup>	0.08	
United States <sup>49</sup>	0.08	Some states have BAC levels of 0.04 for commercial vehicle drivers and between zero and 0.02 for drivers under 21.

<sup>35</sup> *Code de la Route*, chapitre 4, Article L234-1&2.

<sup>36</sup> E-mail confirmation from the Embassy of Germany, 6 February 2009. On file with the author.

<sup>37</sup> Since the BBC confirms 0.05 to still be the BAC level in Greece as in 2006, the rest of the information from the 2006 update is presumed to be the same. "How Europe tackles drink-driving," *BBC News* (29 July 2007), on-line: <http://news.bbc.co.uk/1/hi/uk/6920720.stm>. Last visited 11 April 2009.

<sup>38</sup> *Decreto-Legge*, 27 Guigno 2003, N.151, Art. 5. Available at the Italian Department of Justice website (Ministero dela Guistizia): [http://www.giustizia.it/cassazione/leggi/dl151\\_03.html](http://www.giustizia.it/cassazione/leggi/dl151_03.html). Last visited 11 April 2009.

<sup>39</sup> *Road Traffic Act*, 1994, No. 7/1994, s. 11.

<sup>40</sup> "How Europe tackles drink-driving" *BBC News*, *supra* note 37.

<sup>41</sup> E-mail confirmation from Dutch Embassy, 2 February 2009. On file with the author. See also *Dutch Traffic Bureau Enforcement of the Public Prosecution Service*, online: [http://www.om.nl/onderwerpen/verkeer\\_\(bvom\)/english/information\\_on/alcohol\\_and\\_drugs/](http://www.om.nl/onderwerpen/verkeer_(bvom)/english/information_on/alcohol_and_drugs/). Last visited 11 April 2009.

<sup>42</sup> *Land Transport Act* 1998, No. 10, s. 56(2).

<sup>43</sup> Since the BBC and the official travel website of Norway confirms 0.02 to still be the BAC limit as in 2006, the rest of the information from the 2006 update is presumed to have remained the same. "How Europe tackles drink-driving," *BBC News*, *supra* note 37.

*Official Travel Website of Norway*, online: <http://www.visitnorway.com/en/Articles/Theme/Getting-here-and-around/Driving-in-Norway/>. Last visited 17 April 2009.

<sup>44</sup> E-mail confirmation from Portuguese Embassy, 17 February 2009. On file with the author.

<sup>45</sup> Since the BBC confirms 0.05 to still be the BAC level in Spain as in 2006, the rest of the information from the 2006 update is presumed to be the same. "How Europe tackles drink-driving," *BBC News*, *supra* note 37.

<sup>46</sup> Fact sheet provided by the Embassy of Sweden. Government Office of Sweden, "Driving Under the Influence of Alcohol and drugs. Road Traffic Offences Act" (Ministry of Justice, 2008). On file with the author.

<sup>47</sup> E-mail confirmation from Swiss Embassy, 5 February 2005. On file with the author.

*Ordonnance sur les règles de la circulation routière* (OCR) 74.11 du 13 novembre 1962 (Etat le 1<sup>er</sup> janvier 2008) Art. 2.

*Ordonnance de l'Assemblée fédérale concernant les taux d'alcoolémie limites admis en matière de circulation routière* 71.13 du 21 mars 2003 (Etat le 27 juillet 2004) art. 1.

<sup>48</sup> *Highway Code*.

Of the 20 countries compared to Canada in this table, 16 have adopted a BAC of 0.05 or lower, while only four have adopted a BAC of 0.08. At face value this gives the impression that Canada lags behind other states and that 0.05 is increasingly becoming the international standard. A number of states have lowered their BAC levels in recent years – the most recent example being Luxembourg, which lowered its level from 0.08 to 0.05 since the 2006 update. This trend may seem even more significant if one considers that the European Union promoted the harmonization of a maximum BAC level of 0.05 in its member states, and if one expands the ambit of countries being considered to areas such as Eastern Europe where countries generally have lower BAC levels.<sup>50</sup> Many Eastern European countries have adopted BAC levels that are even lower than 0.05 – some outright prohibiting any alcohol when operating a motor vehicle.<sup>51</sup>

A deeper comparison reveals this conclusion to be too simplistic. The European Transport Safety Council reports that the EU's attempt to harmonize BAC levels at 0.05 has failed.<sup>52</sup> Moreover, while one can refer to the generally lower BAC levels in Eastern Europe to suggest an international trend toward lower BAC laws, the opposite conclusion can also be reached on the basis of the legislative changes that have occurred in some of these countries. Ultimately the diverse experiences from country to country prevents a generalisation, as some countries have consistently maintained low BAC levels while others have raised them. For example, prior to the unification of Germany there was a considerable discrepancy in the BAC laws between West and East Germany. In 1993 the West German law was made applicable to the unified country, which effectively raised the BAC level in East Germany from zero to 0.08.<sup>53</sup> Russia also increased its BAC level from zero to 0.05 in 2003, which the government claimed was meant to “bring the country into line with other European countries where small amounts of

---

<sup>49</sup> BAC levels and penalties are established at the state level. Most states have adopted a BAC of 0.08, with the exception of Colorado where penalties are imposed with a BAC of 0.05. See Table 4 for sources.

<sup>50</sup> European Commission. *Commission recommendation on the maximum permitted blood alcohol content (BAC) for drivers of motorised vehicles* (17 January 2001) at 9.1.3.

<sup>51</sup> Of the former communist states in Eastern Europe Wikipedia reports that the following have a zero BAC limit: Albania, the Czech Republic, Hungary, Estonia, Romania, Serbia, Slovakia and the Ukraine. Latvia and Poland are reported to have BAC levels of 0.02. Moldova is reported to have a BAC of 0.03. Lithuania is reported to have a BAC of 0.04. The following are reported to have a BAC level of 0.05: Bulgaria, Bosnia and Herzegovina, Croatia, and Slovenia.

<sup>52</sup> European Transport Safety Council. “Drink Driving: Legislation,” online: <http://www.etsc.eu/enforcement-drinkdriving-legislation.php>. Last visited 29 January 2009.

<sup>53</sup> M. Vollrath a, H.P. Kruger & R. Lobmann, “Driving under the influence of alcohol in Germany and the effect of relaxing the BAC law,” *Transportation Research Part E* 41 (2005) 377 at 378.

alcohol are allowed.”<sup>54</sup> Russia has now lowered the BAC level to 0.03, although a fine is not imposed for an infraction and incarceration is only possible if there are victims.<sup>55</sup> Thus, if anything substantive is to be gained for Canada by comparing BAC laws in other jurisdictions a more in-depth review of BAC laws is required.

#### **IV. Divergent Responses to Blood Alcohol Levels – Comparing Apples and Oranges**

A more in-depth comparison requires more than a simple review of BAC levels, and must consider whether the legal limitations are criminal or administrative in nature, and the scope of the sanctions that can be imposed. Professor Paciocco outlined three general differences between administrative and criminal responses in the 2002 report: a higher degree of stigma associated with criminal offences; greater police powers for criminal offences; and more severe penalties for criminal offences.<sup>56</sup> Justice Cory of the Supreme Court of Canada describes criminal offences as “conduct that is, in itself, so abhorrent to basic values of human society that it ought to be prohibited completely.”<sup>57</sup> Conversely, administrative sanctions are imposed for the violation of regulatory offences, which are prohibited not because they are “inherently wrong, but because unregulated activity would result in dangerous conditions being imposed upon members of society.”<sup>58</sup> Offences such as murder and sexual assault are some of the clearest examples of criminal offences because of their abhorrent nature, while speeding, building and fire regulations represent regulatory offences which are created for the health and safety of society. While the difference between the two category of offences is not always as clear as these examples, the general distinction between the two still has to be made, and it necessary to review whether the jurisdictions that have adopted a BAC of 0.05 impose criminal or administrative sanctions at that level.

The 2002 report and 2006 update considered the possibility of imprisonment as the measure of criminal sanctions. While imprisonment in some circumstances is possible for a

---

<sup>54</sup> “Russia Drivers' Licence to Drink” *BBC News* (24 July 2003), online: <http://news.bbc.co.uk/2/hi/europe/3093269.stm>. Last visited 11 April 2009.

<sup>55</sup> In the case where there is a victim the incarceration period is from three to seven years. For a first offence at 0.03 a driving prohibition is imposed for 1.5 to two years, and three years for subsequent offences.

E-mail confirmation from Russian Embassy, 13 March 2009. On file with the author.

<sup>56</sup> Paciocco, 2002 report, *supra* note 1 at 18-19.

<sup>57</sup> *R. v. Wholesale Travel Group Inc.* [1991] 3 S.C.R. 154 at 218.

<sup>58</sup> *Ibid.*

violation of a regulatory offence, it is not as commonly imposed and it is more characteristic of criminal offences. The following table reviews 22 jurisdictions that have adopted a 0.05 BAC level, and considers whether prison time is possible at 0.05 and the potential duration.<sup>59</sup>

**TABLE 3: NATURE OF SANCTIONS IMPOSED AT 0.05**

<b>Jurisdiction<sup>60</sup></b>	<b>Sanctions at 0.05</b>	<b>Possibility of Prison</b>	<b>Duration of Prison Time at 0.05</b>
Canada	0.05 administrative 0.08 criminal	Not possible at 0.05.	-
Austria	0.05 administrative	Not possible.	-
Belgium	0.05 administrative in first offence criminal only in subsequent offences	Prison time is only possible in the case of a second offence within three years.	Minimum of one month and up to two years.
Denmark	0.05 administrative – criminal at 0.20 or in subsequent offences	Prison time is only possible in a first offence with a BAC of 0.20 or more, or in subsequent offences.	In a second offence with a BAC between 0.05-0.20 – imprisonment for 10 days, unless sentenced to prison in the first offence, then 20 days.
Finland	0.05 criminal	Possible at 0.05, with increased penalties at 0.12.	At 0.05 max. six months. At 0.12 max. two years.
France	0.05 administrative 0.08 criminal	Not possible at 0.05.	-
Germany	0.05 administrative 0.11 criminal	At 0.05 prison is only possible if the offender drove dangerously or caused an accident.	At 0.05 if the offender drove dangerous or caused an accident max. five years.
Greece	0.05 administrative 0.11 criminal	Not possible at 0.05.	-
Italy	0.05 criminal	Possible at 0.05.	Up to one month.
Netherlands	0.05 administrative	-	-
Norway	0.05 criminal	-	-
Portugal	0.05 administrative	-	-

<sup>59</sup> Switzerland and Luxembourg are excluded from this comparison despite having a BAC level of 0.05. Information on whether criminal or administrative sanctions are imposed in Luxembourg with a BAC of 0.05 could not be obtained. In case of Switzerland, while the BAC level is established by the Swiss government, the embassy has confirmed that the penalties are set by the cantons.

<sup>60</sup> Sources for the European jurisdictions are found in Table 2. Sources for Colorado are found in Table 4, footnote 77.

Spain	0.05 administrative	-	-
Sweden	0.02 criminal	Possible at 0.02.	With a BAC of 0.02 max. six months. With a BAC of 0.10 max. one year.
Colorado	0.05 criminal	Possible at 0.05 with increased penalties at 0.08	For a first offence at 0.05 min. two days, max. 180 days. For a second offence at 0.05 Min. 45 days, max. 180 days.
Australian Jurisdictions			
Australian Capital Territory <sup>61</sup>	0.05 administrative 0.08 criminal	Not possible at 0.05.	-
New South Wales <sup>62</sup>	0.05 administrative 0.08 criminal	Not possible at 0.05.	-
Northern Territory <sup>63</sup>	0.05 criminal	Possible at 0.05.	For a first offence at 0.05 max. three months. For a subsequent offence max. six months.
Queensland <sup>64</sup>	0.05 criminal	Possible at 0.05.	For a first offence at 0.05 max. three months. This increases up to the third offence max. nine months.
South Australia <sup>65</sup>	0.05 administrative	Not possible.	-
Tasmania <sup>66</sup>	0.05 criminal	Possible at 0.05.	For a first offence at 0.05 max. three months. For a subsequent offence max. six months.

<sup>61</sup> *Department of Territory and Municipal Services*, online:  
[http://www.tams.act.gov.au/move/roads/road\\_safety/drink](http://www.tams.act.gov.au/move/roads/road_safety/drink). Last visited 11 April 2009.

<sup>62</sup> *New South Wales Road and Traffic Authority*, online:  
<http://www.rta.nsw.gov.au/rulesregulations/penalties/serioustrafficoffences/alcoholanddrugs.html?r1id=drugsandalcohol>. Last visited 11 April 2009.

<sup>63</sup> *Traffic Act*, ss. 21, 22, 23, 24, 25. As in force at 1 July 2008.

<sup>64</sup> *Transport Operations (Road Use Management) Act 1995*, s. 79. As in force on 1 January 2009.

<sup>65</sup> *Road Traffic Act 1961*, s. 47A.

<sup>66</sup> *Road Safety (Alcohol and Drugs) Act, 1970*, ss. 6(1), 17.

Victoria <sup>67</sup>	0.05 administrative for first offence criminal for subsequent offences	Imprisonment cannot be imposed for a first offence.	Max. six months for a second offence with a BAC of 0.05. For subsequent offences max. one year with a BAC of 0.05.
Western Australia <sup>68</sup>	0.05 administrative	Not possible at 0.05	-

While 0.05 is often described as being “the European standard,”<sup>69</sup> this table reveals that how 0.05 is used varies considerably from one European jurisdiction to the next. Even the eight Australian jurisdictions are evenly split: incarceration is possible with a BAC of 0.05 in four states while it is not possible in three states and the Australian Capital Territory. In total, of the 22 jurisdictions that have adopted a BAC level of 0.05 or lower, only 11 allow for incarceration at that level. In three of those 11 jurisdictions, incarceration is not possible for a first occurrence with a BAC of 0.05. Belgium, Denmark and the Australian state of Victoria reserve prison sentences for subsequent offences with a BAC of 0.05. A prison term is only possible in Germany at 0.05 if the offender drove dangerously or caused an accident. Incarceration is only possible for a first offence in Denmark with a BAC of 0.20, and in Germany and Greece with a BAC of 0.11. Thus, only seven jurisdictions have been found to have adopted a criminal response to the operation of a motor vehicle with a BAC of 0.05 for a first offence. Thus, while one can suggest that the 0.05 level represents an international trend from which some form of administrative sanctions are imposed, what is clear from this table, however, is that it is certainly not the standard for imposing criminal sanctions.

In addition to the fact that relatively few jurisdictions impose criminal sanctions for operating a motor vehicle with a BAC of 0.05, the few jurisdictions that do tend to impose significantly shorter periods of incarceration than those that have adopted a 0.08 level. The maximum term of imprisonment for a first offence ranges from a mere one month in Italy, three months in the Australian Northern Territory, Queensland and Tasmania, to six months in Finland and Sweden. While incarceration is only possible in Canada with a BAC of 0.08, the possible

<sup>67</sup> *Road Safety Act*, 1986, ss. 3, 49, 50.

<sup>68</sup> *Road Traffic Act*, 1974, ss. 63, 64, 64AA.

<sup>69</sup> “Drink-drive limit ‘could be cut’” *BBC News* (15 June 2007), online: [http://news.bbc.co.uk/2/hi/uk\\_news/politics/6756361.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/6756361.stm). Last visited 11 April 2009.



term is considerably longer. For a first offence the maximum is five years when the charge is prosecuted by indictment, and 18 months when prosecuted summarily. Sweden is the only jurisdiction reviewed above where incarceration is possible with a BAC below 0.05, and with a BAC of 0.02 the maximum possible term of imprisonment is six months. However, Swedish law also refers to the BAC level of 0.10 as “gross intoxication,” which carries a maximum one year imprisonment – a period which is significantly shorter than the five year maximum in Canada with a BAC of 0.08. Moreover, incarceration is only possible in Denmark for a first offence with a BAC of 0.20 and in Germany with a BAC of 0.11. In Canada a second offence carries a minimum sentence of 30 days, and 120 days for subsequent offences. Only two of the jurisdictions where incarceration is possible at 0.05 have mandatory minimum terms for subsequent offences – 10 days in Denmark and one month in Belgium.

## **V. Comparison of Penalties**

Since the few jurisdictions where incarceration is possible with a BAC level of 0.05 tend to impose significantly shorter periods of imprisonment than those imposed in Canada at the 0.08 level, it needs to be determined how Canadian incarceration periods compare to other jurisdictions that have adopted a 0.08 BAC level.

At the onset it should be noted that all of the jurisdictions that have adopted a 0.08 BAC level treat a violation as a criminal offence, although there are considerable differences on how prison time is imposed. Firstly, while the majority of jurisdictions impose higher periods of incarceration for subsequent offences, the number of prior offences that have to be committed before one reaches the maximum varies considerably. Moreover, a number of jurisdictions, particularly in the United States, require that previous offences be committed within a certain number of years for them to be considered prior offences for the purposes of sentencing. An example of this would be an offender that could only be sentenced to the highest possible prison term if he or she committed a fourth offence within a five year period. The number of years between offences varies considerably from jurisdiction to jurisdiction, even within the United States. The following table compares the length of prison terms imposed in jurisdictions for first and subsequent offences.

**a. Incarceration Periods**

**TABLE 4: INCARCERATION PERIODS IN JURISDICTIONS WITH A BAC OF 0.08**

<b>Jurisdiction<sup>70</sup></b>	<b>Prison Time for First Offence</b>	<b>Prison Time for Subsequent Offence</b>
Denmark	20 days.	In a third offence with a BAC between 0.05-0.20 min. 20 days, and if more than 0.20 min. 40 days.
France	Max. two years.	-
Germany	Max. five years.	-
Ireland	Max. six months.	-
United Kingdom	Max. six months.	-
New Zealand	Three months to one year.	For third or subsequent offence up to two years.
<b>Australian Jurisdictions<sup>71</sup></b>		
Australian Capital Territory	Max. six months.	-
New South Wales	With a BAC of 0.08 max. nine months. With a BAC of 0.15 or above max. 18 months.	In subsequent offences at 0.08 max. 12 months. In subsequent offences at 0.15 max. two years.
<b>American Jurisdictions</b>		
Alabama <sup>72</sup>	Max. one year.	For a fourth offence min. one year, max. 10 years.
Alaska <sup>73</sup>	72 hours.	For a fourth offence min. 360 days.
Arkansas <sup>74</sup>	Min. 90 days, max. one year.	For a fifth offence min. two years, max. 10 years.
Arizona <sup>75</sup>	Min. 10 days.	For a second offence min. 90 days.
California <sup>76</sup>	Min. 96 hours, max. six months.	For a fourth offence min 180 days, max. one year.
Colorado <sup>77</sup>	With a BAC of 0.05 min. two days, max. one year. With a BAC of 0.08 min. five days, max. one year.	For a second offence with a BAC of 0.05 min. 45 days, max. one year. For a second offence with a BAC of 0.08 min. 90 days, max. one year.

<sup>70</sup> Sources for New Zealand and the European jurisdictions can be found in Table 2.

<sup>71</sup> Sources for the Australian jurisdictions can be found in Table 3.

<sup>72</sup> *Code of Alabama*, 32-5A-191.

<sup>73</sup> *Alaska Statutes*, 28.25.030.

<sup>74</sup> *Arkansas Code*, 5-65-103, 5-65-111, 5-65-112, 5-65-104 (2001).

<sup>75</sup> *Arizona Revised Statutes*, 28-1381.

<sup>76</sup> *California Vehicle Code*, 12-2-23152.

<sup>77</sup> *Colorado Revised Statutes*, 42-4-1301, 42-2-126. Colorado Driving Manual, at 11.

Connecticut <sup>78</sup>	Min. 48 hours, max. six months.	For a third offence min. one year, max. three years.
Delaware <sup>79</sup>	Max. six months.	For a fourth offence min. two years, max. five years.
District of Columbia <sup>80</sup>	With a BAC of 0.08 max. 90 days. With a BAC of 0.20-0.25 min. five days. With a BAC more than 0.25, min. 10 days.	For a third offence with a BAC of 0.08 min. five days, max. one year. With a BAC between 0.20-0.25, min. 15 days. With a BAC of more than 0.25 min. 25 days.
Florida <sup>81</sup>	With a BAC of 0.08 max. six months. With a BAC of 0.15 or more min. nine months.	For a fourth offence max. five years.
Georgia <sup>82</sup>	Min. 10 days, max. one year.	For a fourth offence min. one year, max. five years.
Hawaii <sup>83</sup>	Min. 48 hours, max. five days.	For a third offence min. 10 days, max. 30 days.
Idaho <sup>84</sup>	With a BAC of 0.08 max. six months. With a BAC of 0.20 min. 10 days, max. one year.	For a subsequent offences min. 30 days, max. 10 years.
Illinois <sup>85</sup>	Max. one year.	For a third offence max. three years.
Indiana <sup>86</sup>	Max. one year.	For a third offence min. 10 days, max. three years.
Iowa <sup>87</sup>	48 hours.	For a third offence min. 30 days, max. five years.
Kansas <sup>88</sup>	Min. 48 hours, max. six months.	For a fourth offence min. 90 days, max. one year.
Kentucky <sup>89</sup>	Min. 48 hours, max. 30 days.	For a fourth offence min. 240 days.
Louisiana <sup>90</sup>	Min. 10 days, max. six months.	For a third offence min. one year, max. five years.

<sup>78</sup> *Conn. Gen. Stat*, Title 14-127a.

<sup>79</sup> *Delaware Code*, ch. 41, 4177.

<sup>80</sup> *D.C. Official Code*, 50-1902, 50-2201.05.

<sup>81</sup> *Fla. Stat.* 316.193.

<sup>82</sup> *Official Code of Georgia*, 40-6-391.

<sup>83</sup> *Hawaii Revised Statutes*, 291E-61 (2008).

<sup>84</sup> *Idaho Code*, 18-8004.

<sup>85</sup> *Illinois Vehicle Code*, 625 ILCS 5/11-501.

<sup>86</sup> *Indiana Code*, 9-30-5-1, 9-30-5-10, 35-50-3-2, 35-50-3-4.

<sup>87</sup> *Iowa Code*, 321J.2.

<sup>88</sup> *Kansas Statutes*, 8-1567.

<sup>89</sup> *Kentucky Revised Statutes*, 189A.010.

<sup>90</sup> *Louisiana R.S.*, 14.98.

Maine <sup>91</sup>	Max. 90 days.	For a fourth offence min. six months.
Maryland <sup>92</sup>	Max. one year.	For a third offence min. 10 days, max. three years.
Michigan <sup>93</sup>	Max. 93 days.	For a third offence min. one year, max. five years.
Minnesota <sup>94</sup>	Max. 90 days.	For a fifth offence min. one year, max. seven years.
Mississippi <sup>95</sup>	48 hours.	For a third offence min. one year, max. five years.
Missouri <sup>96</sup>	Max. six months.	For a fourth offence min. five years, max. 15 years.
Montana <sup>97</sup>	Min. one day, max. six months.	For a fourth offence min. 13 months, max. five years.
Nebraska <sup>98</sup>	Min. seven days, max. 60 days.	For a fourth offence min. one year, max. 20 years.
Nevada <sup>99</sup>	Min. two days, max. six months.	For a third offence min. one year, max. six years.
New Hampshire <sup>100</sup>	Prison time not possible for a first offence. For a second offence min. 10 days.	For a seventh offence min. 180 days, max. 15 years.
New Jersey <sup>101</sup>	Max. 30 days.	180 days.
New Mexico <sup>102</sup>	Min. 96 hours, max. 90 days.	For a seventh offence three years.
New York <sup>103</sup>	Max. one year.	For a third offence max. seven years.
North Carolina <sup>104</sup>	Min. 14 days, max. two years.	For a fourth offence min. one year, max. three years.
North Dakota <sup>105</sup>	For a second offence min. five days.	For a fourth offence 180 days.
Ohio <sup>106</sup>	For a second offence min. 10 days.	For a sixth offence min. 60 days, max. five years.

<sup>91</sup> *Maine Revised Statutes*, 29-A 2411.

<sup>92</sup> *Maryland Code*, 11-127-1.

<sup>93</sup> MCLS - 257.303, 257.625. Sunset clause will cause the 0.08 to revert to 0.10 on October 1, 2013 when the terms of the federal legislation expire.

<sup>94</sup> *Minn. Stat.*, 169A.20.

<sup>95</sup> *Miss. Code Ann.*, 63-11-30.

<sup>96</sup> *Missouri Revised Statutes*, 560.011, 560.016, 577.03, 558.011, 577.012.

<sup>97</sup> *Mont. Code Anno.*, 61-5-208, 61-5-401.

<sup>98</sup> *R.R.S. Neb.*, 66-6-196, 28-105, 28-106.

<sup>99</sup> *N.R.S.* 484.379.

<sup>100</sup> *New Hampshire Code*, 265A:2, 265A: 18.

<sup>101</sup> State of New Jersey, "Driving While Intoxicated," online: [www.state.nj.us/lps/hts/downloads. DUI-bro-eng.pdf](http://www.state.nj.us/lps/hts/downloads. DUI-bro-eng.pdf)

<sup>102</sup> *New Mexico Statutes*, 66-8-102, 66-8-111.

<sup>103</sup> *NY CLS*, 31-1192, 31-1193.

<sup>104</sup> *North Carolina General Statute*, 20-138.1, 20-172.

<sup>105</sup> *ND Century Code*, 39-08-01.

<sup>106</sup> *ORC. Ann.*, 4511.19.

Oklahoma <sup>107</sup>	With a BAC of 0.08 .min. 10 days, max. one year. With a BAC of 0.15 min. one year.	For a third offence min. one year, max. 10 years.
Oregon <sup>108</sup>	Min. 48 hours.	For a third offence min. 48 hours, max. one year.
Pennsylvania <sup>109</sup>	Prison is only possible for a first offence with a BAC of 0.10. Min. two days, max. six months.	For a third offence min. 10 days, max. two years.
Rhode Island <sup>110</sup>	For a first offence max. one year.	For a third offence min. one year, max. three years. With a BAC of 0.15 min. three years, max. five years.
South Carolina <sup>111</sup>	Min. 48 hours max. 30 days.	For a fourth offence min. one year, max. five years.
South Dakota <sup>112</sup>	For a first offence prison time is not possible. For a second offence max. one year.	For a third offence up to two years.
Tennessee <sup>113</sup>	Min. 48 hours, max. 11 months 29 days.	For a third offence min. 120 days, max. 11 months and 29 days.
Texas <sup>114</sup>	Min. 72 hours, max. one year.	For a third offence min. two years, max. 10 years.
Utah <sup>115</sup>	48 hours.	For a second offence min. 240 hours.
Vermont <sup>116</sup>	Max. two years.	For a third offence min. 100 hours, max. five years.
Virginia <sup>117</sup>	For a first offence no prison time unless BAC is between 0.15 and 0.20. At 0.15 min. five days. At 0.20 min. 10 days.	For a fourth offence min. one year.
Washington <sup>118</sup>	With a BAC of 0.08 min. one day, max. one year. With a BAC of 0.15 min. two days, max. one year.	For a fourth offence with a BAC of 0.08 min. 90 days, max. one year and 120 days. With a BAC of 0.15 min. 120 days, max. one year and 155 days.

<sup>107</sup> *Okl. St.*, 47-11-902, 47-6-205.

<sup>108</sup> *ORS* – 810.010, 813.010.

<sup>109</sup> *PA Driver's Manual* - Chapter 4, pg. 58-59.

<sup>110</sup> *R.I. Gen. Laws*, 31-27-2 (2001).

<sup>111</sup> *S.C. Code Ann.*, 56-5-2933, 56-5-2933.

<sup>112</sup> *South Dakota Code*, 32-23-1.

<sup>113</sup> *Ten. Code Ann.*, 55-10-401.

<sup>114</sup> *Tex. Penal Code*, 12.21, 12,34, 49.04.

<sup>115</sup> *Utah Code*, 41-6a-502, 41-6a-505.

<sup>116</sup> *Vermont Code*, 23-1201.

<sup>117</sup> *Code of Virginia*, 18.2-266, 46.2-34.18.

<sup>118</sup> *Revised Code of Washington (RCW)*, 46.61.502, 46.61.5055.

West Virginia <sup>119</sup>	Min. 24 hours, max. six months.	For a third offence min. one year, max. 3.
Wisconsin <sup>120</sup>	Prison is not possible for a first offence. For a second offence min. five days, max. six months.	For a third offence min. 30 days, max. one year.
Wyoming <sup>121</sup>	Max. six months.	For a fourth offence, max. two years.

This table demonstrates that there is considerable variation among these jurisdictions in the length of the prison term imposed with a BAC of 0.08. Firstly, while some jurisdictions have a mandatory minimum term of imprisonment as well as a maximum, others simply have a maximum and therefore give judges more latitude in determining an appropriate prison term. For a first offence the maximums range from six months in Ireland, the United Kingdom and the Australian National Territory, to one year in New Zealand, two years in France and five years in Germany. Most of the American states have a maximum of either six months or one year for a first offence. In Canada the maximum prison term for a first offence is five years when a person is prosecuted by indictment, and 18 months when prosecuted by summary conviction – periods which are considerably longer than in other jurisdictions. Only Germany has a five year maximum for a first conviction, while in the American jurisdictions the longest maximum period is two years.

A second offence in Canada results in a mandatory minimum term of imprisonment for 30 days, and 120 days for subsequent offences. This is generally in line with the time imposed in jurisdictions that have mandatory minimums for subsequent offences. Some American jurisdictions have longer mandatory minimum terms of imprisonment for subsequent offences, although they tend to be for repeat offenders.

## **b. Fines**

In addition to imprisonment, most jurisdictions impose a monetary fine for driving with a BAC that exceeds the legal limit. The following table compares the fines imposed in the various jurisdictions.

<sup>119</sup> *West Virginia Code*, 17C-5-2.

<sup>120</sup> *Wisconsin State Code*, 346.63, 346.64.

<sup>121</sup> *Wyoming Statutes*, 31-7-127, 31-5-233.

**TABLE 5: COMPARISON OF FINES**

<b>Jurisdiction<sup>122</sup></b>	<b>BAC Level</b>	<b>Fine for First Offence</b>	<b>Fine for Subsequent Offence</b>
Austria	0.05	Fines begin at €218.	Fines can be up to €5,813.
Belgium	0.05	With a BAC of 0.05 automatic fine of €37.50 and court can impose fine up to €2,750. With a BAC of 0.08 but under 0.12 automatic fine of €400 and court can impose fine between €1,100 and €1,000. From 0.12 to 0.15 automatic fine of €500 and court can impose between 1,100€ and 11,000 € 0.15 and above court can impose fine between €1,100 and €1,000.	In repeat offences the court can impose a fine between €2,200 and €27,500.
Denmark	0.05	Fines are calculated based on the offender's average monthly income.	-
Finland	0.05	With a BAC of 0.05 a petty fine is imposed - amount not indicated. With a BAC of 0.12 the fine is a percentage of the offender's monthly income.	-
France	0.05	Fine with BAC of 0.05. With BAC of 0.08 the fine is €4,500.	-
Germany	0.05	From €5 to €3,000.	-
Greece	0.05	A fine can be imposed but amounts are not indicated.	-
Italy	0.05	From €258 to €1,032.	-
Ireland	0.08	Min. €300	-
Luxembourg	0.05	A fine can be imposed but amounts are not indicated.	-
Netherlands	0.05	Min. €250.	-
Norway	0.02	A fine can be imposed but amounts are not indicated.	-

<sup>122</sup> Sources for the European jurisdictions and New Zealand can be found in Table 2.

New Zealand	0.08	Max. \$4,000.	For a third and subsequent offence max. \$6,000.
Portugal		With a BAC between 0.05-0.08 - €240 to €1,200 With a BAC above 0.08 €360 to €1,800.	-
Spain	0.05	A fine can be imposed but amounts are not indicated.	-
Sweden	0.02	A fine can be imposed but amounts are not indicated.	-
Switzerland		Fines are set by the Cantons.	-
United Kingdom	0.08	£300 to £400.	Max. £5,000.
Australian Jurisdictions <sup>123</sup>			
Australian Capital Territory	0.05	With a BAC of 0.05 max. \$500. With a BAC of 0.08 max. \$1,000.	For subsequent offences max. \$1,000.
New South Wales	0.08	With a BAC of 0.08 max. \$2,200. With a BAC of 0.15 max. \$3,300.	In subsequent offences with a BAC of 0.08 max. \$3,300. In subsequent offences with a BAC of 0.15 max. \$5,500.
Northern Territory <sup>124</sup>	0.05	With a BAC of 0.05 max. \$550. With a BAC of 0.08 max. \$825. With a BAC of 0.15 max. \$1,100.	For a subsequent offence with a BAC of 0.05 max. \$825. For a subsequent offence with a BAC of 0.08-0.15 max. \$2,200.
Queensland <sup>125</sup>	0.05	With a BAC of 0.05 max. \$1,400. With a BAC of 0.15 max. \$2,800.	For a third offence with a BAC of 0.05 max. \$2,800. For a second offence with a BAC of 0.15 max. \$6,000.
South Australia	0.05	With a BAC of 0.05 - \$700. With a BAC of 0.08 min. \$500 max. \$900. For a first offence at 0.15 min. \$700, max. \$1,200.	For subsequent offences with a BAC 0.05 the fine remains \$700. For subsequent offences with a BAC 0.08 min. \$1,100, max. \$1,800. For subsequent offences with a BAC of 0.15 min \$1,500, max. \$2,500.

<sup>123</sup> Sources for the Australian jurisdictions can be found in Table 3. Fines are in Australian dollars.

<sup>124</sup> See Table 3. See also *Northern Territory of Australia Penalty Units Act*, s. 3. As in force at 5 August 2002.

<sup>125</sup> See Table 3. See also *Penalties and Sentences and Other Acts Amendment Act*, 2008, s. 3. In force January 1, 2009.



Tasmania <sup>126</sup>	0.05	With a BAC of 0.05 but less than 0.10, min. \$240, max. \$1,200. With a BAC of 0.10 but less than 0.15 min. \$480, max. \$2,400. With a BAC of 0.15 and above min. \$600, max. \$3,600.	For subsequent offences with a BAC at 0.05 but less than 0.10 min. \$480, max. \$2,400. With a BAC of 0.10 but less than 0.15 min. \$1,200, max. \$7,200.
Victoria <sup>127</sup>	0.05	Max. \$1,361.04.	For subsequent offences with a BAC less than 0.15 max. \$13,610.40. For subsequent offences with a BAC over 0.15 max. \$20,415.60.
Western Australia <sup>128</sup>		With a BAC between 0.05 and 0.06 min. \$500, max. \$1,000. With a BAC between 0.06-0.07 min. \$600, max. \$1,000. With a BAC between 0.08 and 0.09 min. \$800, max. \$3,000. This increases with higher BAC up to 0.14 or more – min. \$1,400, max. \$3,000.	With a BAC of 0.05 min. \$500 max. \$1,000. With a BAC of 0.08 min. \$800 max. \$3,000. This increases with higher BAC up to 0.14 or more – min. \$1,400 max. \$3,000.
American Jurisdictions <sup>129</sup>			
Alabama	0.08	Min. \$600, max. \$2,100.	For a fourth offence min. \$4,100, max. \$10,100.
Alaska	0.08	Min. \$1,500.	For a fourth offence min. \$7,000.
Arkansas	0.08	Min. \$150, max. \$1,000.	For a third offence min. \$900, max. \$5000.
Arizona	0.08	Min. \$200.	For a second offence min. \$500.
California	0.08	Min. \$390, max. \$1,000.	Same for subsequent offences.

<sup>126</sup> See Table 3. See also *Penalty Units and other Penalties Act*, 1987 (No. 13 of 1987) s. 4. Changed by *Penalty Units and Other Penalties Amendment Bill*, 2007.

<sup>127</sup> See Table 3. See also *Monetary Units Act*, 2004 s. 5. Victoria Government Gazette No. S66 Friday March 14, 2008 - sets a penalty unit for 2008-2009 at \$113.42.

<sup>128</sup> See Table 3. See also *State Penalties Enforcement Act*, 1999, as amended by the *Penalties and Sentences and Other Acts Amendment Bill*, 2008, s. 3 sets a penalty unit at \$100.

<sup>129</sup> Sources for the American jurisdictions can be found in Table 4. Fines are in American dollars.

Colorado	0.08	With a BAC of 0.05 min. \$100, max. \$500. With a BAC of 0.08 min. \$600, max. \$1,000.	For a second offence with a BAC of 0.05 min. \$300, max. \$1,000. For a second offence with a BAC of 0.08 min. \$500 max. \$1,500.
Connecticut	0.08	Min. \$500, max. \$1,000.	For a third offence min. \$2,000, max. \$8,000.
Delaware	0.08	Min. \$230, max. \$1,150.	For a fourth offence min. \$2,000, max. \$6,000.
District of Columbia	0.08	Min. \$300, max. \$1,000.	For a third offence min. \$2,000, max. \$10,000.
Florida	0.08	With a BAC of 0.08 Min. \$500, max. \$1,000. With a BAC of 0.15 or more min. \$1,000, max. \$2,000.	For a third offence with a BAC of 0.08 min. \$2,000, max. \$5,000. With a BAC of 0.15 or higher, min. \$4,000.
Georgia	0.08	Min. \$300, max. \$1,000.	For a fourth offence min. \$1,000, max. \$5,000.
Hawaii	0.08	Min. \$150, max. \$1,000.	For a third offence min. \$500, max. \$2,500.
Idaho	0.08	With a BAC of 0.08 max. \$1,000. With BAC of 0.20 max. \$2,000.	For subsequent offence max. \$5,000.
Illinois	0.08	Max. \$1,000.	For a third offence max. \$10,000.
Indiana	0.08	Max. \$5,000	For subsequent offences up to \$5,000.
Iowa	0.08	Min. \$1,250 which can be reduced by \$625 if there was no injury to persons or damage to property.	For a third offence min. \$3,125, max. \$9,375.
Kansas	0.08	Min. \$500, max. \$1,000.	For a fourth offence \$2,500.
Louisiana	0.08	Min. \$300, max. \$1,000.	For a third offence max. \$2,000.
Kentucky	0.08	Min. \$200, max. \$500.	For a fourth offence min. \$500, max. \$1,000.
Maine	0.08	Min. \$500.	For a fourth offence min. \$2,100.
Maryland	0.08	Max. \$1,000.	For a third offence max. \$3,000.
Michigan	0.08	Min. \$100, max. \$1,000.	For a third offence min. \$500, max. \$5,000.
Minnesota	0.08	Max. \$1,000.	For a fourth offence max. \$14,000.

Mississippi	0.08	Min. \$250, max. \$1,000.	For a third offence min. \$2,000, max. \$5,000.
Missouri	0.08	\$500	For a fourth offence max. \$5,000.
Montana	0.08	Min. \$300, max. \$1,000.	For a fourth offence min. \$1,000, max. \$10,000.
Nebraska	0.08	Min. \$400, max. \$500.	For a fourth offence max. \$25,000.
Nevada	0.08	Min. \$400, max. \$1,000.	For a third offence min. \$2,000, max. \$5,000.
New Hampshire	0.08	Min. \$500, max. \$1,200.	For a fourth offence min. \$500 max. \$4,000.
New Jersey	0.08	Min. \$250, max. \$400.	For a third offence \$1,000.
New Mexico	0.08	Max. \$500.	For a third offence min. \$750, max. \$1,000.
New York	0.08	Min. \$500, max. \$1,000.	For a third offence max. \$2,000.
North Carolina	0.08	Min. \$100, max. \$2,000.	For a fifth offence max. \$4,000.
North Dakota	0.08	Min. \$250.	For a fifth offence max. \$5,000.
Ohio	0.08	Min. \$250, max. \$1,000.	For a sixth offence min. \$800, max. \$10,000.
Oklahoma	0.08	Max. \$1,000.	For a third offence max. \$5,000.
Oregon	0.08	Min. \$1,000.	For a third offence min. \$2,000, max. \$10,000.
Pennsylvania	0.08	With a BAC of 0.08 - \$300. With a BAC of 0.10 - \$500.	For a third offence with a BAC of 0.08 min. \$500, max. \$5,000. With a BAC of 0.10 min. 1,500, max. \$10,000.
Rhode Island	0.08	Min. \$100, max. \$300.	For a third offence min. \$400.
South Carolina	0.08	\$400	For a third offence min. \$3,800, max. \$6,300.
South Dakota	0.08	Max. \$1,000.	For a third offence max. \$2,000.
Tennessee	0.08	Min. \$300, max. \$1,500.	For a third offence min. \$1,100, max. \$10,000.
Texas	0.08	Max. \$2,000.	For a third offence max. \$10,000.
Utah	0.08	Min. \$700.	For a third offence min. \$1,500.
Vermont	0.08	Max. \$750.	For a third offence max. \$2,500.

Virginia	0.08	Min. \$500, max. \$1,000.	For a third offence min. \$1,000.
Washington	0.08	Min. \$350, max. \$5,000.	For a fourth offence min. \$1,000, max. \$5,000.
West Virginia	0.08	Min. \$100, max. \$500.	For a third offence min. \$3,000, max. \$5,000.
Wisconsin	0.08	\$300	For a third offence min. \$600, max. \$2,000.
Wyoming	0.08	Max. \$750.	For a fourth offence max. \$10,000.

As with prison terms, there is considerable variation among these jurisdictions in the fines imposed. Some jurisdictions impose a mandatory minimum fine while others simply have a maximum amount which a judge cannot exceed when imposing a sentence. In Canada a first offence carries a mandatory minimum fine of \$1,000. This amount exceeds the mandatory minimum for a first offence in the American jurisdictions, which generally tend to be several hundred dollars. A \$1,000 fine is more representative of the maximum fine that can be imposed in the majority of American jurisdictions for a first offence. The fine imposed in Canada for a first offence also exceeds the mandatory minimum fines imposed in the Australian jurisdictions – although as in the U.S. there are also maximum amounts that can be imposed. New Zealand does not have a mandatory minimum fine for a first offence, and the maximum is \$4,000.

Fines are imposed in a variety of ways in the European countries. Firstly, the countries that have mandatory minimum fines for a first offence tend to impose amounts that are lower than or comparable to Canada. The fines for a first offence range from €18 in Austria, €250 in the Netherlands, €300 in Ireland, from £300 to £400 in the United Kingdom, from €258 to €1,032 in Italy, and from €240 to €1,200 in Portugal. The one notable exception is France, which imposes a fine of €4,500 when the offender's BAC is 0.08. Some European jurisdictions, such as Finland and Denmark, impose a fine that is calculated based on the offender's monthly income. Lastly, in Belgium an offender receives an automatic fine of €137.50 as a traffic offence, although a judge could impose a fine of up to €2,750 if the matter goes to court.

The most significant difference between the fine regime in Canada and the regimes in other jurisdictions is that fines in Canada are focused on the first offence, while some other jurisdictions have significantly higher fines for subsequent offences. One could suggest that this is representative of how Canadian law is less strict, although a more accurate portrayal would

have to take into account that more focus is placed on incarceration in subsequent offences in Canada.

### c. Driving Restrictions

The final form of penalty that can be imposed for driving with a BAC that exceeds the adopted BAC level is a driving restriction. Driving restrictions vary considerably from one jurisdiction to the next and are alternatively called licence suspensions, driving disqualifications and licence revocations. In most jurisdictions, regardless of what the driving restriction is called, the offender is prevented from driving for a set period of time. In a few jurisdictions the offender's licence is revoked, and rather than being able to drive after the passage of a defined period of time, the offender merely becomes eligible to apply for a licence reinstatement. This type of driving restriction is sometimes used for repeat offenders. While the majority of jurisdictions impose longer periods of driving restrictions for subsequent offences, the number of prior offences that have to be committed before reaching the maximum varies considerably from one jurisdiction to the next. Moreover, in some jurisdictions offences have to be committed within a certain number of years for them to be considered prior offences for the purposes of sentencing. The following table compares the length of driving restrictions imposed in jurisdictions for first and subsequent offences.

**TABLE 6: COMPARISON OF DRIVING RESTRICTIONS**

<b>Jurisdiction<sup>130</sup></b>	<b>BAC Level</b>	<b>Restriction period for First Offence</b>	<b>Restriction Periods in Subsequent Offences</b>
Canada	0.08	Min. one year, max. three years.	For a second offence min. two years, max. five years. For a subsequent offence min. three years.
Austria	0.05	Typically one to four months.	-
Belgium	0.05	With a BAC of 0.05 but under 0.08 three hour driving ban. With a BAC of 0.08 to 0.12 temporary six hour driving ban, possible suspension for 15 days to six months if driving caused danger to other motorists.	Suspension can be as high as five years to life in the case of repeat offenders.

<sup>130</sup> Sources for the European jurisdictions and New Zealand can be found in Table 2.

		With a BAC of 0.15 temporary six hour driving ban and a 15 day to six month suspension.	
Denmark	0.05	In the first offence when the person's BAC is between 0.05 and 0.12 the licence is suspended for min. three years.	In a third offence with a BAC of 0.051-0.12 licence suspended for five years. With a BAC of more than 0.12 suspensions is for 10 years.
Finland	0.05	With a BAC of 0.05 min. one month. With a BAC of 0.12 min. three months, max. five years. Usually ranges from six months to one year.	Max. five years.
France	0.05	Max. three years.	-
Germany	0.05	With a BAC of 0.05-0.109 suspension max. three months. When there is dangerous driving or an accident the licence is revoked. With a BAC of 0.11 or more the licence is revoked. With a licence revocation, a new licence cannot be issued for between six months to five years.	-
Greece	0.08	A ban is possible, but the duration is not indicated.	-
Italy	0.05	Min. 15 days, max. three months.	For subsequent offences from one month to six months.
Ireland	0.08	Min. two year disqualification.	Min. four year disqualification.
Luxembourg	0.05	A ban is possible, but the duration is not indicated.	-
Netherlands	0.05	A temporary ban is possible, although the duration is not indicated. A permanent ban is also possible.	-
Norway	0.05	A ban is possible, but the duration is not indicated.	-
New Zealand	0.08	Mandatory suspension for six months.	For a third or subsequent offence one year mandatory suspension.
Portugal	0.05	A ban is possible, but the duration is not indicated.	-

Spain	0.05	A ban is possible, but the duration is not indicated.	-
Sweden	0.02	Not indicated.	-
Switzerland	0.05	A ban is possible, but the period is established by the cantons.	-
United Kingdom	0.08	One year.	Three years for a second offence.
Australian Jurisdictions <sup>131</sup>			
Australian Capital Territory	0.05	With a BAC of 0.05 max. five months. With a BAC of 0.05 max. one year.	With a BAC of 0.05 for subsequent offences max. one year. With a BAC of 0.08 for subsequent offences max. three years.
New South Wales	0.08	With a BAC of 0.08 min. six months. With a BAC of 0.15 min. one year.	With a BAC of 0.08 for subsequent offences min. one year. With a BAC of 0.15 in subsequent offences min. two years.
Northern Territory	0.05	With a BAC of 0.05 min. three months. With a BAC of 0.08 min. six months. With a BAC of 0.15 min. one year.	With a BAC of 0.05 min. six months. With a BAC of 0.08 min. one year. With a BAC of 0.15 min. 18 months.
Queensland	0.05	Licence suspended and application for replacement required.	-
South Australia	0.05	No disqualification for a first offence with a BAC of 0.05. With a BAC of 0.08 min. six months. With a BAC of 0.15 min one year.	With a BAC of 0.05 for a fourth and subsequent offence min. one year. With a BAC of 0.08 for a third and subsequent offence min. two years. With a BAC of 0.15 for a second and subsequent offence min. three years.

<sup>131</sup> Sources for the Australian jurisdictions can be found in Table 3.

Tasmania	0.05	With a BAC of 0.05 min. six months, max. two years. With a BAC of 0.1 but less than 0.15 min. one year, max. three years. With a BAC of 0.15 or more min. two years, max. six years.	-
Victoria	0.05	Max. six months.	This increases in subsequent offences to max. 48 months.
Western Australia		With a BAC 0.05-0.1 min. three months. This increases with an increased BAC up to 0.14 six months.	With a BAC between 0.08-0.09 – six months. This increases with an increased BAC up to 0.14 14 months.
American Jurisdictions <sup>132</sup>			
Alabama	0.08	Mandatory 90 day suspension.	For a fourth offence mandatory five year suspension.
Alaska	0.08	Min. 30 days.	Upon a subsequent offence licence revoked and cannot obtain new one for min. one year for the second offence and min. three years for a third or subsequent.
Arkansas	0.08	With BAC between 0.08-0.15 – 120 day suspension. With a BAC of 0.15 or more the 180 days.	For a fourth offence revocation for four years.
Arizona	0.08	Six months.	For second offence mandatory one year suspension.
California	0.08	Six months.	Three years for the fourth offence.
Colorado	0.08	Three month suspension for first offence.	One year for subsequent offences.
Connecticut	0.08	One year.	For third offence licence will be revoked.
Delaware	0.08	Between 12 and 18 months.	For a fourth offences 60 months.
District of Columbia	0.08	Six months.	Two years.
Florida	0.08	Six months.	For a third offence licence revoked for life.

<sup>132</sup> Sources for the American jurisdictions can be found in Table 4.



Georgia	0.08	Max. one year.	For a third offence five years.
Hawaii	0.08	90 days.	For a third offence min. one year, max. five years.
Idaho	0.08	With BAC of 0.08 – 30 days. With BAC of 0.20 – one year.	For subsequent offences min. one year max five years.
Illinois	0.08	One year.	For the fourth offence six years.
Indiana	0.08	Max. two years.	For subsequent offences min. one year, max. two years.
Iowa	0.08	Min. 180 days, max. one year.	For the third offence six years.
Kansas	0.08	30 days.	For a fifth offence permanently revoked.
Louisiana	0.08	Max. 90 days.	Two years.
Kentucky	0.08	Min. 30 days, max. 120 days.	For a third offence min. two years, max. three years.
Maine	0.08	90 days.	For a fourth offence six years.
Maryland	0.08	Min. 45 days.	Min. 18 months.
Michigan	0.08	30 days.	Min. five years.
Minnesota	0.08	Min. 90 days.	For a fourth offence max. four years.
Mississippi	0.08	90 days.	For a third offence five years.
Missouri	0.08	30 days.	For a third offence 10 years.
Montana	0.08	Six months.	For subsequent offence one year.
Nebraska	0.08	With a BAC of 0.08 six months. With a BAC of 0.15 one year.	For a fourth offence 15 years.
Nevada	0.08	90 days.	For a third offence three years.
New Hampshire	0.08	Min. nine months, max. two years.	For a fourth offence licence revoked and ineligible to apply for one for seven years.
New Jersey	0.08	Max. three months.	For a third offence 10 years.
New Mexico	0.08	Six months.	For a second offence one year or until conditions are met.

New York	0.08	Six months.	For a third offence five years.
North Carolina	0.08	30 days.	For a fourth offence licence is revoked.
North Dakota	0.08	180 days.	For a fourth offence three years.
Ohio	0.08	Six months.	For a fourth offence potential permanent revocation.
Oklahoma	0.08	30 days.	For a third offence one year.
Oregon	0.08	One year.	For a third offence permanent revocation.
Pennsylvania	0.08	One year with a BAC of 0.10.	In a third offence with a BAC of 0.08 – one year, with a BAC of 0.10 – 18 months.
Rhode Island	0.08	Min. 30 days, max. 180 days.	For a third offence min. two years, max. three years.
South Carolina	0.08	Six months.	For a third offence permanent revocation depending on the circumstances.
South Dakota	0.08	Min. 30 days.	For a fifth offence min. three years.
Tennessee	0.08	One year.	For a third offence min. three years, max. 10 years.
Texas	0.08	Min. 90 days, max. one year.	For a third offence min. 180 days, max. two years.
Utah	0.08	90 days.	For a second offence one year.
Vermont	0.08	90 days.	For a third offence revocation potentially for life.
Virginia	0.08	One year.	For a third offence indefinite revocation.
Washington	0.08	90 days.	For a third offence three years.
West Virginia	0.08	Max. six months.	For a third offence revocation.
Wisconsin	0.08	Max. six months.	For a third offence one year.
Wyoming	0.08	90 days.	For a fourth offence three years.

As previously explained, nine Canadian provinces and territories impose an administrative licence suspension with a BAC of 0.05. Eight of the nine impose a 24 hour suspension, and as of May 1, 2009 a three day suspension will be imposed in Ontario. The

majority of jurisdictions that have adopted a BAC level of 0.05 generally have longer disqualification periods, although the periods still tend to be relatively short in comparison to those imposed in jurisdictions with a 0.08 BAC level. The disqualification periods in jurisdictions with a 0.05 BAC level range from a mere three hours in Belgium, one month in Austria and Finland, three months in Germany, Italy, the Northern Territory and Western Australia, to a maximum of three years in Finland and France.

The driving prohibition imposed in Canada for a first offence with a BAC 0.08 is between one and three years. This period is longer than the driving restrictions imposed in other jurisdictions that have adopted a 0.08 BAC level. In fact, the one year minimum in Canada is more reflective of the maximum disqualification period for a first offence in other jurisdictions. The disqualification period in Canada for subsequent offences is also comparable to or higher than in other jurisdictions, with a few notable exceptions in the United States that are higher.

## **VI. Conclusion**

This update supports the conclusion of the 2002 report and 2006 update that the various approaches to BAC laws internationally are “so complex and varied” that the trends cannot be used as a justification to lower the BAC level to 0.05 in the Canadian *Criminal Code*.<sup>133</sup> The multiple nuances to how BAC laws function in other jurisdictions prevent a conclusion based on a simple count of the number of jurisdictions that have adopted a 0.05 BAC level. Considerable differences on how BAC levels are used are even found between jurisdictions within the same country, as is the case in Canada, Australia and the United States.

If the adoption of a 0.05 BAC level by numerous countries is to be referred to as an international trend, what can be gained from this trend is that it is more common to impose administrative rather than criminal sanctions at that level. In Canada, since focus is most commonly placed on the *Criminal Code* level of 0.08, it is often overlooked that it is in fact unlawful to drive with a BAC level of 0.05 in the majority of provinces and territories. The few jurisdictions that impose criminal sanctions at the 0.05 BAC level generally impose penalties that are less strict than those that do so at the 0.08 level. A BAC of 0.08 leads to significant criminal sanctions in Canada which are comparable to, and in most cases more strict than, the majority of other jurisdictions. In the 2006 update Professor Paciocco determined that Canada already treats

---

<sup>133</sup> Paciocco, 2006 Update, *supra* note 6 at 31.

offenders at the 0.08 level firmly compared to other jurisdictions, and that “if we were to treat 0.05 offenders in the same way we would likely have the harshest regime among comparative nations for 0.05 offenders.”<sup>134</sup> This conclusion is even more valid today than it was in 2006 given the increases in the fine and the term of imprisonment. Ultimately, this report will not conclude whether or not Canada should adopt a BAC level of 0.05 in the *Criminal Code*, although it does highlight that the issue is to be determined through a careful examination of the potential benefits and social costs within Canada, rather than through the argument that Canada’s law is not in accordance with the international trend.

---

<sup>134</sup> *Ibid.*