

Legislation to Combat Impaired Driving: Bill 12, *The Highway Traffic Amendment and Drivers and Vehicles Amendment Act*

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I. INTRODUCTION

Bill 12, *The Highway Traffic Amendment and Drivers and Vehicles Amendment Act*, was introduced to the Legislative Assembly of Manitoba by the New Democratic Party (“NDP”) government on 1 December 2010. A focal point of the proposed legislation was the amendment of *The Highway Traffic Act* to establish a tiered program of immediate suspension and disqualification of a driver’s licence where a driver’s blood alcohol concentration was between 0.05 (50 mg of alcohol in 100 mL of blood) and 0.08 (80 mg of alcohol in 100 mL of blood) or where the driver had failed a physical co-ordination test.¹ This legislative initiative applied not only to drivers of motor vehicles but to the driver’s licence of persons operating vehicles under federal jurisdiction, watercraft, aircraft and railway equipment.²

Parliament passes legislation with respect to impaired driving through its jurisdiction over criminal law.³ Provinces are able to supplement federal

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¹ *The Highway Traffic Act*, SM 1985-86 c 3, s 263.1(2)(c), s 263.1(2)(d), s 263.1(7) [HTA].

² *Ibid*, s 263.1(2).

³ *Constitution Act, 1867*, (UK) 30 & 31 Vict, c 3, s 91(27).

legislation through their jurisdiction with respect to the licensing of drivers.⁴ In 2010, impaired driving continued to be a serious problem in Canada and in Manitoba. During the previous year, 714 Canadians were killed in motor vehicle accidents where the consumption of alcohol by a driver was a factor.⁵ In 2009 in Manitoba, there were ninety crashes on highways—thirty-eight involved alcohol or drugs.⁶ The Traffic Injury Research Foundation reported in its December 2009 report that when compared to other road safety issues, “drinking drivers were rated as a very or extremely serious problem by 83.4% of Canadians.”⁷

Legislation with enforcement and public education are fundamental elements of any program for deterring impaired driving.⁸ Bill 12 was the legislative initiative of the government of Manitoba in 2010 to combat impaired driving. This paper examines this initiative. It will begin with a summary of Bill 12, followed by a discussion of the conditions that affected the development of the legislation. A review of the legislative process and accompanying media coverage follows. The paper concludes with a consideration of the merits and criticisms of Bill 12.

II. SUMMARY OF BILL 12

Bill 12 contained three significant amendments to *The Highway Traffic Act*. Each amendment pertained to the suspension and disqualification of

⁴ *Prince Edward Island (Provincial Secretary) v Egan*, [1941] SCR 396 at para 11, 73-74, 3 DLR 305.

⁵ Kyla D Marcoux, Ward GM Vanlaar & Robyn D Robertson, *The Road Safety Monitor 2011 Drinking and Driving in Canada* (Ottawa: Traffic Injury Research Foundation, 2011) at 1.

⁶ “Manitoba Highway deaths near record” *CBC News* (14 November 2011), online: CBC News <<http://www.cbc.ca/news/canada/manitoba/story/2011/11/14/mb-highway-deaths-record-manitoba.html>>.

⁷ Ward GM Vanlaar, Kyla D Marcoux, & Robyn D Robertson, *The Road Safety Monitor 2009 Drinking and Driving in Canada* (Ottawa: Traffic Injury Research Foundation, 2009) at 4 [*Road Safety Monitor 2009*].

⁸ James C Fell & Robert B Voas “Mothers Against Drunk Driving (MADD): The First 25 years” in *Traffic Injury Prevention* (New York: Taylor & Francis Group, LLC, 2006) at 205; “ICAP Blue Book Drinking and Driving” online: International Center for Alcohol Policies <<http://www.icap.org/PolicyTools/ICAPBlueBook/BlueBookModules/15DrinkingandDriving/tabid/175/Default.aspx#4>>.

the driver's licence of an impaired driver by a peace officer. Each of these amendments will be examined separately.

First, the legislation imposes an immediate three month suspension and disqualification of a driver's licence in four circumstances. The suspension is imposed if a driver has a blood alcohol concentration that exceeds 0.08 (80 mg of alcohol in 100 mL of blood) or refuses to comply with a demand to provide a breath or blood sample. The immediate three month suspension is also imposed if a driver refuses to perform a physical coordination test⁹ or fails to follow a peace officer's instructions in regard to the test.¹⁰

The significance of this amendment to *The Highway Traffic Act* is the timing of the three month suspension and disqualification. Upon one of the four circumstances arising, the three month suspension and disqualification is imposed immediately. Prior to Bill 12, *The Highway Traffic Act* imposed a three month suspension and disqualification in the event that a driver satisfied one of the criteria, but the suspension and disqualification was not immediate. If a driver breached one of these impaired driving provisions, a peace officer took possession of the driver's licence and issued a temporary permit that was in effect for seven days. The officer also served a notice of intention to suspend, and an order of suspension took effect seven days later.¹¹

The second significant amendment is the introduction of a tiered program of immediate suspension and disqualification of a driver's licence where a driver's blood alcohol concentration is between 0.05 (50 mg of alcohol in 100 mL of blood) and 0.08 (80 mg of alcohol in 100 mL of blood), or where a driver fails a physical coordination test.¹² The program of tiered suspensions and disqualifications was a key element of Bill 12.

⁹ "Physical coordination test" is defined in *The Highway Traffic Act* as having the same meaning that this term has in s. 254 of the *Criminal Code*, RSC 1985, c C46. It includes the following standard field sobriety tests: the horizontal gaze nystagmus test, the walk-and-turn test, and the one-leg stand test (Canada Regulation 2008-196 under the *Criminal Code*, SOR/2008-196).

¹⁰ HTA, *supra* note 1, s 263.1(2)(a)(b) and s 263.1(7).

¹¹ *The Highway Traffic Act*, CCSM c H60, s 263.1(1.2) prior to being amended by *The Highway Traffic Amendment and Drivers and Vehicles Amendment Act*.

¹² HTA, *supra* note 1, s 263.1(2)(c), s 263.1(2)(d).

The length of a driver's suspension and disqualification is directly related to the driver's history of impaired driving in the previous ten years. For a first violation, a driver's licence is suspended and disqualified for twenty-four hours. A second violation within a period of ten years results in a driver's licence suspension and disqualification of fifteen days. A third violation will result in a driver's licence suspension and disqualification of thirty days, double the length of the previous penalty. For any further infractions during a ten year period, the period of suspension and disqualification is sixty days.¹³

Prior to the enactment of Bill 12, where a driver had a blood alcohol concentration level of 0.05 or more or where a driver failed a field sobriety test, the licence of an impaired driver was suspended for a period of twenty-four hours.¹⁴ The length of the suspension was not related to the driver's history of impaired driving. The suspension remained constant, regardless of the number of previous incidents of impaired driving.

Bill 12 also contained an amendment to *The Highway Traffic Act* pertaining to the operation and storage of the motor vehicle that was used by the suspended driver. It provides a peace officer with the discretion to remove and store the vehicle and any towed equipment that is connected to the vehicle. The legislation creates a lien for the costs of removal and storage that may be enforced under *The Garage Keepers Act*¹⁵ by the person who moves or stores the motor vehicle and any equipment.¹⁶

The third significant amendment is the expansion of the scope of the driver's licence suspension provisions for impaired driving in *The Highway Traffic Act*. The immediate three month sanction and the immediate progressive sanctions do not apply solely to drivers when driving motor vehicles. These sanctions are applicable if a person operates watercraft, aircraft, and railway equipment as well.¹⁷ Prior to Bill 12, the sanctions in *The Highway Traffic Act* against impaired driving applied only when driving a motor vehicle.¹⁸

¹³ *Ibid*, s 263.1(2)(c), s 263.1(7).

¹⁴ HTA, *supra* note 11, s 265(2), s 265(3.1) and s 265(6).

¹⁵ *The Garage Keepers Act*, CCSM c G10.

¹⁶ HTA, *supra* note 1, s 263.1(17) and s 263.1(18).

¹⁷ *Ibid*, s 261.1(2)(a) and s 261.1(2)(c).

¹⁸ Motor vehicle was defined to include "an implement of husbandry, special mobile

Although the goal of the legislation is to combat impaired driving, it does include safeguards for a driver whose licence has been suspended by a peace officer under the impaired driving provisions of *The Highway Traffic Act*. Bill 12 provided that a driver can apply for a review by the Registrar of Motor Vehicles of any suspension and disqualification within one year from the date that the suspension takes effect.¹⁹ Furthermore, where a licence remains suspended after a review by the Registrar, the impaired driver is entitled to appeal to The Licence Suspension Appeal Board (“LSAB”).²⁰ The LSAB is an independent administrative tribunal and has jurisdiction to set aside a suspension if it is satisfied that exceptional hardship will occur if the suspension remains in effect and that revoking the suspension is not contrary to the public interest.²¹

Bill 12 also amended *The Drivers and Vehicles Act*, to complement the amendments in *The Highway Traffic Act*. The legislation grants to the Registrar of Motor Vehicles the authority to require a person whose driver’s licence has been suspended for impaired driving to obtain an impaired driver’s assessment from a recognized agency.²² An impaired driver’s assessment provides an evaluation of the suspended driver and the appropriate educational program that should be followed. The amendment further provides that if the agency considers it advisable, the impaired driver will be required to successfully complete an educational or treatment program to reinstate the licence.²³

III. THE DEVELOPMENT OF BILL 12

The unique context that existed in 2010 had the ability to affect the development of Bill 12. Statistics continued to demonstrate that impaired driving was a significant contributor to fatal accidents in Manitoba and in Canada. Mothers Against Drunk Driving (“MADD Canada”) and

machine, tractor and off-road vehicle.” at HTA, *supra* note 11, s 263.1(1).

¹⁹ HTA, *supra* note 1, s 263.2(1).

²⁰ The Licence Suspension Appeal Board was created by the HTA, s 278(1), s 279(1)(a).

²¹ HTA, *supra* note 1, s 279(27)(a).

²² *The Drivers and Vehicles Act*, CCSM c D104, s 21(2).

²³ *Ibid.*

Manitoba Public Insurance (“MPI”) supported a renewed effort to reduce impaired driving. Furthermore, impaired driving is a problem across Canada, and legislation in other provinces had the potential to serve as a guide for Manitoba.

In 2010, there were many statistics available to support the government’s initiative to combat impaired driving. Between 1999 and 2008, motor vehicle accidents in Canada where alcohol or drugs was a factor, caused an estimated 12,100 deaths and 713,845 injuries.²⁴ In 2008, 100 people died in motor vehicle accidents in Manitoba.²⁵ The Traffic Injury Research Foundation of Canada (“TIRF”) estimates that of this number, 63 people in Manitoba died in alcohol related accidents.²⁶ In December 2009, a TIRF survey found that Canadians are very concerned about impaired driving. The study found that “[m]ore Canadians are concerned about drinking and driving than about any other societal issue: 79.2% indicate they are very or extremely concerned about drinking and driving.”²⁷

MADD Canada is influential when impaired driving legislation is being considered, and Bill 12 was no exception. The mission of MADD Canada is to work to reduce impaired driving and to assist the victims of impaired driving.²⁸ In fulfilling its mandate, it advocates for reform of federal and provincial laws related to impaired driving.²⁹ In November 2009, MADD Canada issued a report, “Rating The Provinces & Territories: The 2009 Report”. This report recommended that Manitoba introduce legislation that would permit the police to issue a 7 to 14 day administrative licence suspension if an officer believed a driver’s ability to drive was impaired or if the driver registered a blood alcohol reading of

²⁴ S Pitel & R Solomon, *Estimating the Number and Cost of Impairment – Related Traffic Crashes in Canada: 1999 to 2008* (Oakville, ON: MADD, 2011) at 3.

²⁵ Traffic Injury Research Foundation of Canada, *Alcohol-Crash Problem in Canada: 2008 CCMT A Road Safety Report Series* (Ottawa: Canadian Council of Motor Transport Administrators, 2010) at 94 [*Alcohol-Crash Problem 2008*].

²⁶ *Ibid.*

²⁷ *Road Safety Monitor 2009*, *supra* note 7 at 4.

²⁸ R Solomon & E Chamberlain, *Rating The Provinces & Territories: The 2009 Report* (Oakville, ON: MADD, 2009) at 1 [*Rating The Provinces & Territories*].

²⁹ *Ibid* at 3.

0.05 or higher on a blood, breath or urine test.³⁰ The report further recommended that a second suspension within a three year period should carry a thirty day administrative licence suspension, followed by a ninety day suspension for subsequent suspensions.³¹ Finally, MADD Canada's report recommended a \$150 to \$300 licence reinstatement fee following each suspension.³²

The views of MADD Canada with respect to tiered licence suspension legislation were considered by the government in the creation of Bill 12.³³ MADD Canada was also consulted on the expansion of the driver's licence penalties to include the impaired operation of watercraft, aircraft and railway equipment.³⁴ In April 2010, MADD Canada reported that in 2005 there had been 126 boating fatalities in Canada, "47 of which involved known or suspected alcohol use."³⁵ MADD Canada's interest in the impaired operation of watercraft, aircraft and railway equipment was consistent with its mission "...to assist all victims of impaired crashes and to reduce the total number of such fatalities, injuries and crashes."³⁶

MPI also played a role in the creation of Bill 12. It is a provincial Crown corporation that provides mandatory motor vehicle insurance. In the fiscal year March 1, 2009 to February 28, 2010, MPI paid out \$189.5 million to satisfy injury claims and \$384.2 million in property damage claims.³⁷ Based upon statistics gathered by TIRF, a significant portion of these claims would have arisen from accidents where alcohol was a factor. The motor vehicle insurer clearly has an interest in reducing impaired

³⁰ *Ibid* at 22-23.

³¹ *Ibid* at 23.

³² *Ibid*.

³³ Email from David B Greening, Executive Director, Policy Development and Analysis at Manitoba Justice, to Patricia Doyle (26 March 2012) [Email from David Greening].

³⁴ *Ibid*.

³⁵ "The Magnitude of the Alcohol/Drug-Related Crash Problem in Canada: Overview" online: MADD Canada <http://www.madd.ca/madd2/en/impaired_driving/impaired_driving_statistics.html>.

³⁶ *Ibid*.

³⁷ "Manitoba Public Insurance 2009 Annual Report" online: Manitoba Public Insurance <<http://www.mpi.mb.ca/AnnualReportAnnualReport2009/PDFs/2009AnnualReportComplete.pdf>> at 3.

driving in Manitoba. MPI was consulted throughout the development of Bill 12.³⁸

The development of Bill 12—including the development of draft legislation—was ongoing for more than a year prior to its introduction in the Legislative Assembly.³⁹ The legislation of other provinces with tiered licence suspensions and impaired boating legislation was considered during this time.⁴⁰ The province of Ontario had a tiered licence suspension program for the government of Manitoba to consider. The Ontario program requires anyone caught driving with a blood alcohol content over 0.05 to immediately surrender his or her licence to a peace officer.⁴¹ For a first infraction, there is an immediate suspension of three days.⁴² The “lookback” period for any prior infraction of driving with a blood alcohol level of 0.05 or more, is five years.⁴³ A second impaired driving infraction during this period results in an immediate seven day licence suspension. Any subsequent infraction results in a 30 day licence suspension.⁴⁴

Saskatchewan also has an administrative licence suspension program that the government of Manitoba may have considered. The Saskatchewan program results in the immediate suspension of a driver who is caught with a blood alcohol concentration over 0.04.⁴⁵ The penalty for a first infraction is an immediate twenty-four hour suspension.⁴⁶ Like Ontario, the “lookback” period is five years.⁴⁷ An impaired driver who commits a second infraction during this period receives a suspension of 15 days, and any subsequent infractions trigger an immediate administrative licence suspension of 90 days.⁴⁸

³⁸ Email from David Greening, *supra* note 33.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Rating The Provinces & Territories*, *supra* note 28 at 46.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid* at 57-58.

⁴⁶ *Ibid* at 58.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

In September 2010, the government of British Columbia implemented comprehensive amendments to its *Motor Vehicle Act* to combat impaired driving.⁴⁹ These amendments were available to the government of Manitoba to consider during the development of Bill 12. The British Columbia legislation includes an immediate tiered licence suspension for a driver with a blood alcohol concentration of 0.05 or more. The suspension for a first infraction is an immediate suspension of three days,⁵⁰ and the “lookback” period is five years.⁵¹ A second infraction within this period results in an immediate suspension of seven days.⁵² Any subsequent infractions carry an immediate thirty day suspension.⁵³

The government of Manitoba also had the opportunity to consider including additional penalties in Bill 12 which the government of British Columbia had implemented in its legislation. Depending on the length of the suspension, an impaired driver in British Columbia is required to pay a monetary penalty ranging from \$200 for a three day suspension to \$400 for a thirty day suspension.⁵⁴ An impaired driver with a 30 day suspension was subject to mandatory impoundment of his or her vehicle for a period of 30 days.⁵⁵ Furthermore, where a 30 day suspension had been imposed in British Columbia, the impaired driver was required to pay to attend a remedial program, the cost of which was set by regulation in the amount of \$880.⁵⁶

It was in the context of the available statistics, consultations with MADD Canada and MPI, and the passage of legislation in other jurisdictions that the Manitoba Legislative Assembly turned its attention to addressing the issue of impaired driving in November 2010.

⁴⁹ *Motor Vehicle Act*, RSBC 1996, c 318 [MVA]; Justine Hunger, “Court ruling on drunk-driving unlikely to water down penalties” *The Globe and Mail* (5 December 2011) online: *The Globe and Mail* <<http://m.theglobeandmail.com/news/british-columbia/court-ruling-on-drunk-driving-unlikely-to-water-down-penalties/>>.

⁵⁰ MVA, *supra* note 49, s 215.43(1).

⁵¹ *Ibid*, s 215.43(4).

⁵² *Ibid*, s 215.43(1).

⁵³ *Ibid*.

⁵⁴ *Motor Vehicle Act Regulations* (BC Reg 26/58) s 43.09.

⁵⁵ MVA, *supra* note 49, s 215.46(2).

⁵⁶ MVA, *supra* note 49, s 215.45; BC Reg 26/58, *supra* note 54, s 46.01.

IV. SPEECH FROM THE THRONE

On 16 November 2010, the Lieutenant Governor of Manitoba, The Honourable Philip Lee, opened the fifth session of the thirty-ninth legislature by reading the Speech from the Throne.⁵⁷ The Throne Speech, prepared by the NDP government, outlined the past achievements and presented a summary of the legislative agenda for the upcoming session.⁵⁸ It did not mention that the government had any intention of introducing new sanctions against impaired driving.

The Throne Speech debate⁵⁹ followed the Lieutenant Governor's Speech. On the second day of the debate, the Leader of the Official Opposition, Hugh McFadyen, noted that no mention had been made of the problem of impaired driving.⁶⁰ He stated, "there are families through the province of Manitoba...who continue to grieve and suffer today as a result of the deaths of members of their family caused by reckless drunk drivers...And those families, Mr. Speaker, were ignored in this Speech from the Throne."⁶¹

Mr. McFadyen then made a motion to amend the Throne Speech, seconded by the House Leader of the Progressive Conservative opposition, Gerald Hawranik, to express non-confidence in the government. In bringing his non-confidence motion, Mr. McFadyen included his criticism that "the speech fails to deal with the problem of increased drunk driving or to acknowledge that this reckless behaviour has caused heartaches for far too many families."⁶² The government defeated Mr. McFadyen's motion of non-confidence in a recorded vote on 26 November 2010.⁶³

⁵⁷ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 1 (16 November 2010) at 1 (Hon. Philip Lee).

⁵⁸ *Ibid.*

⁵⁹ The Throne Speech is also known as the Debate on the Motion for an Address in Reply to the Speech from the Throne. "Fact Sheet No. 15: Throne Speech and Debate" online: The Legislative Assembly of Manitoba <<http://www.gov.mb.ca/legislature/public/factsheets/fact015.pdf>>.

⁶⁰ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 3 (18 November 2010) at 66 (Hugh McFadyen).

⁶¹ *Ibid* at 66.

⁶² *Ibid* at 68.

⁶³ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess,

Five days later, the government introduced Bill 12 to the Legislative Assembly.

V. PASSAGE OF BILL 12 THROUGH THE ASSEMBLY

Bill 12 passed through the Assembly of Manitoba quickly and easily. The Bill moved from first reading to receiving Royal Assent from the Lieutenant Governor in nine days. The legislative process during this short period will be reviewed.

A. First Reading

On 1 December 2010, the Minister of Justice and Attorney General, the Honourable Andrew Swan moved first reading of Bill 12, seconded by the Minister of Entrepreneurship, Training and Trade, the Honourable Peter Bjornson.⁶⁴

There is no debate on a motion at this stage of the legislative process.⁶⁵ However, Minister Swan, as the sponsor, took the opportunity to briefly describe and justify the proposed amendments to *The Highway Traffic Act* and *The Drivers and Vehicles Act*. He explained that the purpose of these amendments was to “continue to make Manitoba a leader at tackling the challenge of impaired driving, and it will make our streets and our highways safer.”⁶⁶ After these brief comments, the House adopted the motion.

B. Second Reading

Second reading has been described as “the most important stage” in the passage of a bill in the legislative process.⁶⁷ If a bill is passed on second

No 9 (26 November 2010) at 276-277; The motion was defeated by a vote of 33 to 19.

⁶⁴ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 12 (1 December 2010) at 373.

⁶⁵ “Fact Sheet No. 4: How Laws Are Made” online: The Legislative Assembly of Manitoba <<http://www.gov.mb.ca/legislature/public/factsheets/fact4.pdf/>> [How Laws Are Made].

⁶⁶ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 12 (1 December 2010) at 373 (Hon. Andrew Swan).

⁶⁷ How Laws Are Made, *supra* note 65.

reading, it demonstrates that the House supports the principle of the bill.⁶⁸ On the same day that Bill 12 completed first reading, the Government House Leader, the Honourable Jennifer Howard, asked for leave to proceed to second reading which was agreed upon by the members of the Legislative Assembly.⁶⁹ Minister Swan then moved, seconded by the Minister for Healthy Living, Youth and Seniors, the Honourable Jim Rondeau, that Bill 12 be read a second time and be referred to committee.⁷⁰ The debate on second reading commenced on 1 December 2010 and continued on 2 December 2010. A total of six members of the Legislative Assembly spoke on the Bill.

The first speaker at this stage of the legislative process was Minister Swan. He reviewed the principal terms of the Bill and continued to reiterate the theme that he introduced on first reading—the need to make the roads of Manitoba safer. He stated, “we’ve had too many tragedies where people have gotten behind the wheel when they should not, and it’s our belief that this bill will take another important step at making our roads and our highways safer.”⁷¹

On the second day of debate, Opposition Justice Critic Kelvin Goertzen was the first speaker. Although he had not seen the Bill prior to first reading, he was not unfamiliar with its proposals.⁷² This was due to previous discussions Mr. Goertzen had with groups outside of government about some of the terms that were contained in Bill 12.⁷³ Mr. Goertzen was not opposed to the Bill, and he agreed with the government position that any measures to reduce fatalities caused by impaired driving were important.⁷⁴ However, Mr. Goertzen criticized the government for not complementing the legislation with a public awareness campaign. He stated, “there needs to also be a rigorous campaign to ensure that

⁶⁸ *Ibid.*

⁶⁹ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 12 (1 December 2010) at 389 (Hon. Jennifer Howard).

⁷⁰ *Ibid.*

⁷¹ *Ibid* at 391.

⁷² Email from Kelvin Goertzen sent to Patricia Doyle (26 March 2012) [Email from Kelvin Goertzen].

⁷³ *Ibid.*

⁷⁴ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 13b (2 December 2010) at 439 (Kelvin Goertzen).

awareness is – continues to grow and that people continue to know that drinking and driving will be taken seriously and that it costs lives and destroys families.”⁷⁵

Four members of the government then spoke in support of the Bill. Minister of Agriculture, Food and Rural Initiatives, the Honourable Stan Struthers, presented a personal anecdote that demonstrated the change in society’s attitude toward impaired driving since his youth. He recalled:

I remember back in—when I was at university...we had a team that did a lot of curling in the southwest part of Manitoba...it was well known that one of the skips on one of the teams had done a little work on his half-ton. Now, I can’t imagine him getting away with this today, but here’s what he did. He drained the windshield wiper fluid out of the truck and replaced it with rye whisky, then ran the hose from his windshield wiper container through the dash of his half ton...and every time he then turned his windshield wipers on he got about an ounce and a half of rye whisky into his glass as he was driving.⁷⁶

He then recounted:

...when I graduated from Swan Valley regional school in 1977... a whole bunch of graduates and their guests drove up that winding road, all the way up the north side of Duck Mountains to Wellman Lake, stayed the whole night there, partaking in some alcoholic beverages and then, in the dark, proceeded to drive all the way back down the winding gravel road, home to various points located throughout the Swan River Valley. How somebody didn’t get killed over those years, Mr. Speaker, is beyond me.⁷⁷

By presenting his anecdotes, Minister Struthers provided compelling testimony of how far society has moved on this issue in a generation. In his view, Bill 12 “continues that spirit in which we approach this blight in terms of drinking and driving.”⁷⁸

Ms. Erin Selby, NDP MLA for Southdale, followed, declaring that she supported Bill 12 from her perspective as a mother. She continued the theme that had been initially presented by Minister Swan of the need to make the streets and highways in Manitoba safer. Ms. Selby stated, “Manitobans do have a right to feel safe in their communities and on their

⁷⁵ *Ibid.*

⁷⁶ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 13b (2 December 2010) at 440 (Hon. Stan Struthers).

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

streets... drinking and driving is not an accident. It's a choice. It's a lack of planning. It's someone who didn't think ahead..."⁷⁹ In advocating in favour of the Bill, Ms. Selby aligned the government initiative closely with the highly regarded efforts of MADD Canada. She stated:

We also work with MADD Canada... we appreciate the recognition of ...MADD and appreciate their advice as well. We'll continue to work with them and other stakeholders and this issue will always continue as an important issue until we can get through a holiday season where at the police stops and the checkpoints that they find no one drinking and driving.⁸⁰

The Minister of Innovation, Energy and Mines, the Honourable Dave Chomiak, followed Ms. Selby.⁸¹ He introduced a degree of antagonism into the debate. Rather than focusing on the merits of the legislation, Minister Chomiak concentrated on stridently attacking the Official Opposition. Opposition members did not oppose Bill 12 and the only opposition member to speak to the Bill was Kelvin Goertzen. Yet, Minister Chomiak charged at the Official Opposition characterizing it as "The one-trick pony party opposite."⁸² He condemned the opposition declaring, "Now we have an opportunity to debate a significant issue of which the Province has jurisdiction... and I don't hear a peep from members opposite, Mr. Speaker. Nary a word from members opposite. Nary a word from members opposite about the support for Manitoba getting another A rating from MADD Canada."⁸³ The speech was not a constructive presentation on the substance of Bill 12, but more of a pre-election campaign speech for the provincial election that was to be held on 4 October 2011.⁸⁴

Ms. Sharon Blady, NDP MLA for Kirkfield Park, was the last member of the government to speak. She spoke in a more moderate tone than Minister Chomiak. She noted, "members opposite...have only put up one

⁷⁹ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 13b (2 December 2010) at 441 (Erin Selby).

⁸⁰ *Ibid* at 444.

⁸¹ *Ibid* at 444-449 (Hon. Dave Chomiak).

⁸² *Ibid* at 445.

⁸³ *Ibid*.

⁸⁴ "Voting in a Manitoba Provincial Election" online: Elections Manitoba <<http://www.electionsmanitoba.ca/en/Voting/index.html>>.

person to speak on this legislation and yet – and go on saying that they want to pass it.”⁸⁵ She expressed the hope that the opposition would support Bill 12, and that, on third reading, the Bill would have the unanimous support of the Legislative Assembly.⁸⁶

After Ms. Blady completed her remarks, opposition member Ms. Heather Stefanson, PC MLA for Tuxedo, rose on a point of order, and requested leave to have Bill 12 referred to Committee. Leave was granted and the question of whether Bill 12 should be approved on second reading was put to the House. On 2 December 2010, the Bill passed second reading without a recorded vote.⁸⁷

With the exception of Minister Chomiak’s speech, the debate on second reading was notable for its lack of acrimony between government and opposition members, and the unity of purpose among all members of the Legislative Assembly. No one was opposed to Bill 12. This collegial spirit continued at the next stage of the legislative process, the consideration of Bill 12 by the Standing Committee on Justice.

C. The Standing Committee on Justice

The Standing Committee on Justice (“the Committee”), composed of eleven members of the Legislative Assembly, examined Bill 12 during the evening of 7 December 2010. There was unanimous support for the Bill. This stage of the legislative process lasted less than ten minutes.⁸⁸

Minister Swan briefly described the purpose of the proposed legislation stating, “Bill 12 is a further step as we crack down on impaired driving in the province of Manitoba.”⁸⁹ The Minister then reviewed the key amendments to *The Highway Traffic Act* and *The Drivers and Vehicles Act*. In his review, he identified the means that the government was proposing to combat impaired driving.

⁸⁵ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 13b (2 December 2010) at 450 (Sharon Blady).

⁸⁶ *Ibid.*

⁸⁷ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 13b (2 December 2010) at 451.

⁸⁸ Manitoba, Legislative Assembly, *Justice Committee Debates*, 39th Leg, 5th Sess, No 1 (7 December 2010) at 6-7 [*Justice Committee Debates*].

⁸⁹ *Ibid.*

Prior to the meeting of the Committee, Opposition Justice Critic Kelvin Goertzen received a document from the government known as a “side-by-side”.⁹⁰ It contained a description of each amendment as well as an explanation of what the amendment was intended to achieve.⁹¹ He had also met with Minister Swan, his Deputy Minister and staff in the Department of Justice and had been able to ask questions with respect to the legislation.⁹²

The Opposition Justice Critic, Kelvin Goertzen, responded to the remarks of Minister Swan with a short statement that included the comment: “to the extent that this bill provides additional legislative punishment and may reduce drinking and driving, we support it.”⁹³ The Committee effectively rubber-stamped the Bill. Each clause of Bill 12 was approved by the Committee without any amendment.

Members of the public are entitled to appear before the Committee to present their views.⁹⁴ There are several interest groups that have a mandate to lobby governments on the issue of impaired driving. The mandate of MADD Canada is “to stop impaired driving and to support victims of this violent crime.”⁹⁵ The mandate of the Canadian Automobile Association (“CAA”) includes, “...advocating on behalf of the motoring and travelling public.”⁹⁶ It would have been unsurprising if there had been presentations by these groups before the Committee. However, no members of the public and no representatives of any interest group appeared before the Committee. A number of factors may have contributed to the absence of presentations. The public notice of the meeting of the Committee was only five days. The Bill had only been introduced on first reading six days earlier. The day and time of the meeting may have been inconvenient,

⁹⁰ *Supra* note 72. The document is referred to as a side-by-side because on the left side of the document there is a description of each section of the Bill and on the right side, there is a description of the intention of each section.

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Justice Committee Debates*, *supra* note 88 at 7.

⁹⁴ *Supra* note 72.

⁹⁵ “What We Do - Our Mission” online: MADD <http://www.madd.ca/madd2/en/about/about_mission.html>.

⁹⁶ “CAA Advocacy” online: CAA <<http://www.caa.ca/publicAffairs/public-affairs-advocacy-e.cfm>>.

Tuesday at 6:00 p.m. Adding to the potential inconvenience is a factor that is inherent with the current process. Times for presentations before the Committee are not set prior to the meeting. Anyone wishing to make a presentation would have to be prepared to devote the evening to appearing before the Committee.⁹⁷

However, in light of the way that Bill 12 had passed through second reading, with no one speaking out against the Bill, the most probable explanation for the absence of any submissions to the Committee was that all interested individuals and groups regarded the passage of Bill 12 in committee as a *fait accompli*. Accordingly, the Bill passed smoothly to the next stage of the legislative process, the Report Stage.

D. Report Stage

On 8 December 2010, Bill 12 returned to the Legislative Assembly for the Report Stage.⁹⁸ At this stage, upon providing written notice, members of the Legislative Assembly were entitled to propose amendments to the Bill. Any proposed amendment would then be debated.⁹⁹ Bill 12 moved easily through the Report Stage. No member of the Legislative Assembly moved a Report Stage amendment to Bill 12.

The Chairperson of the Standing Committee on Justice, Erna Braun, NDP MLA for Rossmere, presented the report of the Committee concerning Bill 12 to the Speaker of the Legislative Assembly.¹⁰⁰ Ms. Braun then moved, seconded by the Vice-Chairperson of the Committee, Mohinder Saran, NDP MLA for Maples, that the report of the Committee be received.¹⁰¹ The motion was agreed to, and Bill 12 moved to third reading.

⁹⁷ *Supra* note 72.

⁹⁸ “Fact Sheet No. 14: Report Stage Amendment” online: The Legislative Assembly of Manitoba <<http://www.gov.mb.ca/legislature/public/factsheets/fact014.pdf>>.

⁹⁹ *Ibid.*

¹⁰⁰ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 16 (8 December 2010) at 563 (Erna Braun).

¹⁰¹ *Ibid* at 564.

E. Third Reading

On 9 December 2010, the Government House Leader, the Honourable Jennifer Howard moved, seconded by Minister Swan, that Bill 12 be read a third time and passed.¹⁰² The Bill passed uneventfully through third reading. During third reading, amendments may be proposed to a bill or the bill may be referred back to Committee.¹⁰³ No member of the Legislative Assembly proposed any amendment to Bill 12 and no member expressed any desire that the Bill be referred back to Committee.

The unity of purpose that existed among members of the Legislative Assembly at second reading, continued during third reading. Only two members of the Legislative Assembly spoke on third reading of Bill 12. Opposition Justice Critic Kelvin Goertzen stated, “we hope that the legislation before us today will be part of reducing drinking and driving.”¹⁰⁴ Jon Gerrard, Liberal Party MLA for River Heights, commented, “we hope that these measures will help to contribute to an effort to decrease the deaths and disabilities as a result of people who have been drinking and driving.”¹⁰⁵

After hearing the comments of Mr. Goertzen and Mr. Gerrard, the Legislative Assembly passed the Bill without a recorded vote. Third reading of Bill 12 took less than ten minutes.¹⁰⁶ Opposition Justice Critic Goertzen recalled that there was “a desire to see the provisions in the Bill put in place relatively quickly.”¹⁰⁷ The final day that the Legislative Assembly held debates prior to the holiday season was 9 December 2010. Following this sitting, debates and proceedings in the Legislative Assembly were adjourned for approximately four months, until 12 April 2011.¹⁰⁸ In

¹⁰² Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 17b (9 December 2010) at 644-645 (Hon. Jennifer Howard).

¹⁰³ How Laws Are Made, *supra* note 65.

¹⁰⁴ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 17b (9 December 2010) at 645 (Kelvin Goertzen).

¹⁰⁵ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 17b (9 December 2010) at 645 (Jon Gerrard).

¹⁰⁶ *Ibid.*

¹⁰⁷ *Supra* note 72.

¹⁰⁸ “Debates and Proceedings” online: Manitoba Legislative Assembly <<http://www.gov.mb.ca/legislature/hansard/>>.

these circumstances, all members of the Legislative Assembly had a common desire to have the amendments to Bill 12 enacted without delay.

F. Royal Assent

The Lieutenant Governor, the Honourable Philip Lee gave Royal Assent to Bill 12 on 9 December 2010, the same day that it had passed third reading.¹⁰⁹ On receiving Royal Assent, Bill 12 became part of the laws of Manitoba. Approximately eight months later, on 15 August 2011, this legislation was proclaimed to come into force.¹¹⁰

VI. MEDIA COVERAGE

Public education is a fundamental element of any program for deterring impaired driving. The media plays an important role in public education. During December 2010 the media provided extensive coverage of the problem of impaired driving. In particular, the media focused on three stories.

The Checkstop Program which began on 3 December 2010 received prominent attention.¹¹¹ On 3 December 2010, Global News announced, “City police, RCMP stepping up patrols for annual festive checkstops.”¹¹² On 18 December 2010, CBC News declared, “7 arrested in 1 night at Winnipeg checkstops.”¹¹³ Two days later, the Winnipeg Free Press

¹⁰⁹ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 17b (9 December 2010) at 653.

¹¹⁰ Notice of Proclamation, M Gaz (2011) I 365 Vol 140, No 27.

¹¹¹ Mary Agnes Welch, “Number of drunk-driving charges nearly doubles” *Winnipeg Free Press* (20 December 2010), online: Winnipeg Free Press <<http://www.winnipegfreepress.com/local/number-of-drunk-driving-charges-nearly-doubles-112174074.html>>.

¹¹² “City police, RCMP stepping up patrols for annual festive checkstops” *Global News* (3 December 2010), online: Global News <<http://www.globalnews.ca/city+police+rcmp+stepping+up+patrols+for+annual+festive+checkstops/90079/story.html>>.

¹¹³ “7 arrested in 1 night at Winnipeg checkstops” *CBC News* (18 December 2010) online: CBC News <<http://www.cbc.ca/news/canada/manitoba/story/2010/12/18/mb-checkstop-arrests-101219.html>>.

reported, “Number of drunk-driving charges nearly doubles” in comparison to the previous year.¹¹⁴

The second story that the media devoted significant attention to in December 2010 was a national survey conducted by CAA that found that 35% of Manitobans admitted to drinking and driving at least once during the previous year. On 10 December 2010, the *Winnipeg Sun* reported “Tobans taking chances” and *Global News* announced, “Manitobans more likely to drink and drive.”¹¹⁵ On the following day, the *Winnipeg Free Press* presented its report concerning the CAA survey with the opening statement, “Manitobans say they are among the strongest opponents of drinking and driving in the country but a new survey indicates we don’t practice what we preach.”¹¹⁶

The media also provided considerable coverage to a rally held on 28 December 2010 at the Manitoba Legislature in honour of two teenage girls who had been recently killed by an alleged drunk driver. On 28 December 2010, *CBC News* presented the story under the headline, “Tougher drunk-driving laws sought in Manitoba.”¹¹⁷ On 29 December 2010, the *Winnipeg Free Press* reported the event with the headline, “Seeking justice for their friends.”¹¹⁸

By providing publicity to the Checkstop Program, the CAA survey, and the rally, the media contributed significantly to public awareness of the problem of impaired driving in late 2010. In providing this coverage,

¹¹⁴ Mary Agnes Welch, *supra* note 111.

¹¹⁵ Paul Turenne, “Tobans taking chances” *Winnipeg Sun* (10 December 2010) online: *Winnipeg Sun* <<http://www.winnipegnews.com/news/manitoba/2010/12/10/16511486.html>>;

“Manitobans more likely to drink and drive” *Global News* (10 December 2010) online: *Global News* <<http://www.globalwinnipeg.com/Manitobans+more+likely+drink+drive/3960580/story.html>>.

¹¹⁶ “Drinking and driving: despite objections, ‘Tobans still do it’” *Winnipeg Free Press* (11 December 2010) online: *Winnipeg Free Press* <<http://www.winnipegfreepress.com/local/drinking-and-driving-despite-objections-tobans-still-do-it-111714824.html>>.

¹¹⁷ “Tougher drunk-driving laws sought in Manitoba” *CBC News* (28 December 2010) online: *CBC News* <<http://www.cbc.ca/news/canada/manitoba/story/2010/12/28/teens-crash-protest.html>>.

¹¹⁸ Larry Kusch, “Seeking justice for their friends” *Winnipeg Free Press* (29 December 2010) online: *Winnipeg Free Press* <<http://www.winnipegfreepress.com/local/seeking-justice-for-their-friends-112592724.html>>.

the media fulfilled an important public education function for deterring impaired driving. However, the media gave only minimal attention to Bill 12.

On 1 December 2010, the government released a nine paragraph news release that outlined the terms of the proposed legislation.¹¹⁹ On the following day, the Winnipeg Free Press presented a short report under the title “Province’s new laws hike penalties for impaired driving.”¹²⁰ A community newspaper in Carman, Manitoba, *The Valley Leader* also published an article on 7 December 2010 that described the legislation and reported that, “MADD pleased with tougher short-term driving suspensions.”¹²¹ Journalists and reporters did not provide any analysis or critique of the proposed legislation. Where any coverage was provided, they were satisfied to simply report the essential terms of the Bill that were contained in the government’s short news release.

On second reading of Bill 12, Kelvin Goertzen criticized the government for not implementing a campaign to increase public awareness to complement the legislation. There is justification for this criticism as the only publicity generated by the government in December 2010 with respect to Bill 12 was a short news release. The media did not make up for the lack of publicity by the government. Consequently, with respect to public education, neither the government nor the media fully exploited the opportunity presented by Bill 12 for combating impaired driving.

VII. ANALYSIS

The opposition members in the Legislative Assembly accepted the terms of Bill 12, and refrained from offering a substantive critique. The

¹¹⁹ Province of Manitoba, News Release “Proposed Legislation Would Widen Impaired Driving Sanctions: Swan” (1 December 2010) online: News Release – Manitoba <<http://news.gov.mb.ca/news/index.html?item=10279>>.

¹²⁰ Larry Kusch, “Province’s new laws hike penalties for impaired driving” *Winnipeg Free Press* (2 December 2010) online: Winnipeg Free Press <<http://www.winnipegfreepress.com/local/provinces-new-laws-hike-penalties-for-impaired-driving-111180274.html>>.

¹²¹ “In the News” (7 December 2010) online: MADD Canada <<http://www.madd.ca/english/news/stories/n20101207-1.htm>>.

media did not provide any critical commentary. In these circumstances, an analysis of the merits and the weaknesses of Bill 12 is required.

A. Merits of Bill 12

Minister Swan described the purpose of Bill 12 in first reading. He stated that the legislation would “continue to make Manitoba a leader at tackling the challenge of impaired driving, and it will make our streets and our highways safer.”¹²² An assessment of the merits and weaknesses of the legislation should be in the context of the stated purpose of Bill 12.

MADD Canada has rated Manitoba as a leader in combating impaired driving. In 2009, it assessed each of the provinces and territories and gave a letter grade to each jurisdiction for its implementation of effective measures to reduce impaired driving. It gave Manitoba the second highest ranking out of ten provinces and three territories, an A.¹²³ Bill 12 mandates an immediate suspension and disqualification of a driver’s licence, where a driver’s blood alcohol concentration exceeds 0.05. MADD Canada has consistently maintained that the rate of crashes, deaths and injuries caused by impaired driving will be reduced by the swift removal of impaired drivers from our streets.¹²⁴ Consequences must be felt immediately for deterrence to be most effective. The immediate suspension of impaired drivers, whatever their level of impairment, has this effect. It reinforces the position of Manitoba as a leader in combating impaired driving and makes our streets and highways safer. Bill 12 is also significant for making the suspensions that are prescribed by *The Highway Traffic Act* applicable to a person operating watercraft, aircraft or railway equipment.

Bill 12 increases the deterrent value of a suspension for driving with a blood alcohol concentration of 0.05 or more. Prior to Bill 12, the deterrent for driving with a blood alcohol concentration of 0.05 or more, or failing a field sobriety test, whatever the number of previous incidents

¹²² Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, No 12 (1 December 2010) at 373.

¹²³ *Rating The Provinces & Territories*, *supra* note 28 at 2.

¹²⁴ “Public Policy Initiatives - Provincial” online: MADD Canada <http://www.madd.ca/madd2/en/impaired_driving/impaired_driving_public_policy_provincial.html>.

of impairment, was a suspension of twenty-four hours.¹²⁵ MADD Canada commented, “Drivers often have their licences back in 24 hours or less, and that offers little incentive for them to change their behaviours.”¹²⁶ A licence suspension and disqualification of fifteen, thirty and sixty days for a second, third, fourth and subsequent occurrence of driving with a blood alcohol level of 0.05 or more, or failing a physical coordination test, has significantly more deterrent value. MADD Canada gave its highest ranking to Ontario in its assessment of the measures taken by provinces and territories to reduce impaired driving in 2009.¹²⁷ As a result of Bill 12, the licence suspensions and disqualifications in Manitoba for second, third and subsequent occurrences are equal to or significantly higher than those in Ontario.¹²⁸

The length of the “lookback” period in Bill 12 for the tiered suspensions is ten years. This is twice the length of the “lookback” period in Ontario, Saskatchewan and British Columbia.¹²⁹ The longer “lookback” period has significant deterrent value. After a first infraction, an impaired driver will be required to not reoffend for ten years to not receive the lengthier suspensions.

Recently, the government of Alberta followed the government of Manitoba’s initiative in amending its driver suspension legislation. On 8 December 2011, the Lieutenant Governor of Alberta gave Royal Assent to Bill 26, the *Traffic Safety Amendment Act, 2011*. The Bill amends the *Traffic Safety Act*,¹³⁰ to implement a tiered program of immediate suspension of a driver’s licence where a driver’s blood alcohol concentration is 0.05 or more. Perhaps taking a cue from Bill 12, the “lookback” period for prior infractions will be ten years.¹³¹

¹²⁵ HTA, *supra* note 11, s. 265(2), s 265(3.1) and s 265(6).

¹²⁶ “Public Policy Initiatives –Provincial”, *supra* note 124.

¹²⁷ *Rating The Provinces & Territories*, *supra* note 28 at 2.

¹²⁸ In Ontario, an impaired driver with a blood alcohol concentration of 0.05 or more receives a suspension and disqualification of seven days on a second occurrence, thirty days on a third occurrence, fourth and subsequent occurrence in *Rating The Provinces & Territories*, *supra* note 28 at 46.

¹²⁹ *Rating The Provinces & Territories*, *supra* note 28 at 17, 46, 58.

¹³⁰ *Traffic Safety Act*, RSA 2000 c T-6.

¹³¹ Bill 26, *Traffic Safety Amendment Act, 2011*, s 88(4).

There is no objective test for determining whether Bill 12 is succeeding in making the streets and highways in Manitoba safer. There are statistics that relate to the Checkstop Program in Winnipeg during the December 2011 holiday season. They indicate that in 2011, there was a reduction in the number of individuals charged with impaired driving related offences compared to the previous year.¹³² However, it is not known whether as many motorists were stopped in 2011 compared to 2010.

It is simplistic to assess the effectiveness of Bill 12 by merely comparing statistics before and after the proclamation date. Bill 12 is dependent upon other fundamental elements of a comprehensive program to deter impaired driving—public education and enforcement—for its effectiveness. Hopefully, with the passage of time, it will be possible to make an assessment of the effectiveness of Bill 12 that takes into account the impact of public education and enforcement.

B. Criticism of Bill 12

Although neither the opposition nor the media offered any criticisms of Bill 12, two comments ought to be made. Firstly, Bill 12 maintains a short suspension of twenty-four hours on the first occurrence where an impaired driver operates a vehicle with a blood alcohol concentration of 0.05 or more.¹³³ There is little deterrent value in a suspension that is measured in hours. MADD Canada has observed that so brief a suspension “offers little incentive for them [impaired drivers] to change their behaviours.”¹³⁴ MADD Canada had recommended that a 7 to 14 day licence suspension be imposed on a first occurrence where a driver has a blood alcohol concentration of 0.05 or more.¹³⁵ Ontario and British Columbia each impose an immediate three day suspension in this circumstance.¹³⁶ The government of Manitoba would have strengthened

¹³² “Older drivers facing more impaired charges” *Winnipeg Free Press* (7 February 2012) online: Winnipeg Free Press <<http://www.winnipegfreepress.com/local/older-drivers-facing-more-impaired-charges-138836319.html>>.

¹³³ *HTA*, *supra* note 1, s 263.1(7).

¹³⁴ “Public Policy Initiatives – Provincial”, *supra* note 124.

¹³⁵ *Rating The Provinces & Territories*, *supra* note 28 at 21.

¹³⁶ *Ibid* at 46; *MVA* *supra* note 49, s 215.43(1).

Bill 12 in its ability to combat impaired driving had it followed the recommendation of MADD Canada, or the examples of Ontario and British Columbia.

Secondly, Bill 12 does not specifically address the issue of impaired driving caused by the use of drugs. In 2004, approximately 20% of male and 15% of female high school students over the age of sixteen in Manitoba admitted to driving after using cannabis at least once in the previous year.¹³⁷ A driver impaired by drugs can receive a suspension as a result of failing a physical coordination test.¹³⁸ However, there is no term in Bill 12 that is specifically directed to the driver who is impaired by drugs. In 2009, MADD Canada recommended that the government of Manitoba grant peace officers the authority to give ninety day suspensions to drivers where peace officers have “reason to believe, based on a drug recognition evaluation, [that drivers] are impaired by drugs or drugs in combination with alcohol; or fail to submit to drug recognition testing without a reasonable excuse.”¹³⁹ There is significant deterrent value in this proposal. If the government had followed this recommendation, it would have improved Bill 12, and better accomplished its goal of maintaining Manitoba as a leader in combating impaired driving.

VIII. CONCLUSION

Although Bill 12 is not without criticism, it did strengthen the penalties for impaired driving in Manitoba. The Bill incorporated an immediate licence suspension and disqualification of any driver who breached the impaired driving provisions of *The Highway Traffic Act*. It further introduced a tiered program of suspension and disqualification of a driver’s licence where a driver’s blood alcohol concentration is between 0.05 and 0.08 or where the driver fails a physical coordination test. Bill 12 also caused the sanctions against impaired driving to be applicable to persons who operate watercraft, aircraft or railway equipment while impaired. If combined with enforcement and public education, the

¹³⁷ R Solomon, J Organ & M Abdoullaeva, *Alcohol, Trauma and Impaired Driving*, 4th ed. (Oakville, ON: MADD, 2009) at 90.

¹³⁸ HTA, *supra* note 1, s 263.1(2)(b), s 263.1(2)(d).

¹³⁹ *Rating The Provinces & Territories*, *supra* note 28 at 23.

legislative amendments in Bill 12 will ensure that Manitoba remains a leader in combating impaired driving.

The legislative process that saw Bill 12 move from first reading to Royal Assent demonstrates that when government and opposition members have a common purpose, the process of creating legislation to address a significant problem can be efficient. In nine days in December 2010, the members of the Legislative Assembly of Manitoba were able to pass legislation to combat impaired driving in Manitoba. This accomplishment is a credit to them and to the legislative process that made it possible.