

# Bill 2: *The Highway Traffic Amendment Act (Safety of Workers in Highway Construction Zones)*

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A N D R E W   H N A T I U K

## I. INTRODUCTION

On November 15, 2013 Bill 2 was introduced into the Manitoba Legislature. It amends *The Highway Traffic Act*<sup>1</sup> in four ways: First, this Bill defines a “designated construction zone” and allows the Traffic Authority to (a) mark a “designated construction zone” and (b) give permission to another person, usually the contractor, to place the necessary signage. Second, this Bill removes the “when passing workers” provision from speed limits in designated construction zones. Third, it makes the fine for speeding in a designated construction zone double the fine for speeding elsewhere by increasing the additional fine per kilometre per hour in excess of the speed limit from \$5.00 to \$7.70. Finally, this Bill permits regulations to be made relating to safety measures, signage requirements, broadening of the definition of “designated construction zone,” and exclusion of certain persons or entities from the definition of “Traffic Authority.”

The Honourable Erna Braun, Minister of Labour and Immigration, introduced the Bill by explaining:

This bill will enhance safety for workers by making speeding in a construction zone an offence and doubling the fine amount issued to motorists that speed in construction zones. When a motorist enters a construction zone, they are entering a workplace. These amendments will ensure construction zones are consistently marked and motorists are clearly informed of the reduced speed limit.<sup>2</sup>

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<sup>1</sup> *The Highway Traffic Act*, RSM 1985, c H60.

<sup>2</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol LXVI, No 4 (15 November 2013) [*Debates* (15 November 2013)] at 93.

On its face, this legislation is simple and the provincial government's stated purpose and means are clear: to enhance safety for workers through increased fines and better rules around signage. Nevertheless, issues arose due to the rushed passing of the Bill, and the fact that its safety features were left to its Regulations, which would only be determined later. Furthermore, no justification was provided for increasing fines, which were already high compared to other provinces.

This paper will examine the development, political dealings, debate and committee hearings related to Bill 2. While it is too early to say whether this legislation is effective, this paper will analyze whether the provincial government should have expected this legislation to meet its stated objectives.

## II. DEVELOPMENT CONDITIONS

A number of factors contributed to the development and implementation of Bill 2. It remains unclear why this legislation was brought forward in November 2013, and not earlier.

### A. The Accident

The event most frequently cited as the catalyst of Bill 2 occurred on October 18, 2010. Shortly before 4 p.m. that day, a white Chrysler Concord driven by Mr. Mitchell Blostein collided with Ms. Brittany Murray, who was working as the flag-person in a construction crew that was repaving Highway 207. Tragically, the 21-year-old Ms. Murray died from her injuries.<sup>3</sup>

At the time, the applicable legislation reduced speed limits in construction zones "where workers may be present or using equipment."<sup>4</sup> Half a kilometre before Ms. Murray's post, there was a temporary speed limit sign reading: "Maximum 60 When Passing Workers."<sup>5</sup> As the flag-person, Ms. Murray would be the first worker any drivers would pass. Approximately 150 metres before that sign, there was another sign showing a worker using a shovel, and 150 metres before that, two orange signs were posted that read "Construction Area" and "Next 7 km."<sup>6</sup> Even

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<sup>3</sup> *R v Blostein*, 2013 MBQB 159, 292 ManR (2d) 308 [*Blostein* MBQB] at para 2.

<sup>4</sup> *R v Blostein*, 2014 MBCA 39, 306 ManR (2d) 15 [*Blostein* MBCA] at para 20.

<sup>5</sup> *Ibid* at para 5.

<sup>6</sup> *Blostein* MBQB, *supra* note 3 at para 12.

though signage was not at issue in this incident, the need for adequate signs would become a key part of Bill 2.

After the incident, it was determined that the driver was travelling at a speed of at least 112 kilometres per hour.<sup>7</sup> The regularly posted speed was 90 kilometres per hour, and the driver was charged with the dangerous operation of a motor vehicle causing death.<sup>8</sup>

## B. 2012 Report and Worker Safety Amendments

In 2012, the government of Manitoba completed a review of the rules around flag-persons.<sup>9</sup> As a result, the government implemented changes to its *Workplace Safety and Health Regulations*.<sup>10</sup> These changes included introducing the requirement for anyone who wishes to work as a flagperson to hold “a valid flagperson's training certificate.”<sup>11</sup> At Bill 2's second reading, Minister Braun stated that the amendments to *The Highway Traffic Act* would build on these changes to *The Workplace Safety and Health Regulations*.<sup>12</sup>

## C. The Court Case

The Manitoba Queen's Bench decision on the charges against the driver, Mr. Mitchell Blostein, was released on June 28, 2013.<sup>13</sup> Local media reacted strongly against the judgment.<sup>14</sup> Justice Abra was not satisfied beyond a reasonable doubt that the “when passing workers” speed limit of 60 kilometres per hour was applicable to the accused at the time of the collision.<sup>15</sup> Mr. Blostein was found not guilty. The Manitoba Court of Appeal upheld Justice Abra's decision.<sup>16</sup>

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<sup>7</sup> *Ibid* at para 80.

<sup>8</sup> *Criminal Code*, RSC 1985, c C-46, s 249(4).

<sup>9</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol LXVI, No 14 (2 December 2013) [*Debates* (2 December 2013)] at 541 (Hon Erna Braun).

<sup>10</sup> Man Reg 217/2006.

<sup>11</sup> *Ibid*, s 20.6(1)(a)

<sup>12</sup> *Debates* (2 December 2013), *supra* note 9 at 541.

<sup>13</sup> Blostein MBQB, *supra* note 3.

<sup>14</sup> See for example: Dean Pritchard, “Man not guilty in crash that killed construction worker Brittany Murray”, *Winnipeg Sun* (28 June 2013), online: <[www.winnipegsun.com](http://www.winnipegsun.com)>; “Senior found not guilty in highway worker's death”, *CBC News* (28 June 2013), online: <[www.cbc.ca](http://www.cbc.ca)>.

<sup>15</sup> Blostein MBQB, *supra* note 3 at para 90.

<sup>16</sup> Blostein MBQA, *supra* note 4.

While there was good visibility on the day of the incident, the Court found that the flag-person was alone, 100 to 200 metres from where construction was being completed. In addition, the flag-person was listening to an iPod, and was standing in the middle of the road, both of which were contrary to the safety instructions she had received. From this case, two things became clear: For one, better training and enforcement of the rules was needed for flag-persons. Secondly, existing legislation provided insufficient protection for these workers.

### D. The Labour Recommendation & Open Letter

Shortly after Ms. Murray's death, the Manitoba Federation of Labour (MFL) recommended that the Government of Manitoba change its legislation in order to protect workers. The Opposition referred to this recommendation regularly during house debates, as it took three years before the government would act on them.<sup>17</sup>

On August 15, 2013, the MFL published an open letter to the Minister of Labour and Immigration. This letter called on the government to make it clearer to drivers when reduced speed limits are in effect. The MFL advocated for the removal of the "when passing workers" provision, and the addition of signs that show exactly where reduced speeds begin and end. It also recommended making employers responsible for moving signs along the construction area as work progresses, and following Saskatchewan's lead in requiring rumble strips and gates at the beginning of construction zones.<sup>18</sup>

### E. Other Legislation At The Time

As noted above, increased fines formed a key part of Bill 2, while specific changes to signage and safety requirements were left to be determined later through the Regulations. It was noted throughout the debate that the government had already expanded the provincial sales tax (PST) to apply to beauty services and insurance premiums and, at the time of Bill 2, were also proposing to increase PST from 7 to 8 percent.<sup>19</sup> The

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<sup>17</sup> See for example: *Debates* (2 December 2013), *supra* note 9 at 542 (Mr. Kelvin Goertzen).

<sup>18</sup> Letter from Kevin Rebeck, President, Manitoba Federation of Labour, to Jennifer Howard, Minister of Family Services and Labour (15 August 2013), online: <[www.mfl.ca](http://www.mfl.ca)>.

<sup>19</sup> *Debates* (2 December 2013), *supra* note 9 at 545 (Mr. Cliff Cullen).

Opposition suggested that Bill 2 may have been introduced in mid-November of 2013 as part of this overarching agenda of the Government.<sup>20</sup>

## F. The Ticket Challenge

In 2008, photo radar enforcement began to be used at construction sites across Manitoba. Many of the tickets given were to drivers who exceeded the reduced speed limit when no construction workers were present. The related signage, however, stated that the reduced speed only applied “when passing workers.”<sup>21</sup> In 2009 the Manitoba Courts went back and forth on the issue of whether reduced speed limits could be enforced without the presence of construction workers.<sup>22</sup>

Nearly a year before Ms. Murray’s death, Mr. Kelvin Goertzen, the Opposition House Leader, blogged about safety in construction zones. He noted driver confusion over the “when passing workers” signs, and a recent court decision regarding photo radar tickets.<sup>23</sup> He critiqued the government’s position on speeding tickets in construction zones when no workers were present. Later, in debate over the Bill, Mr. Goertzen suggested, “Had there, in fact, not been a court ruling that brought up the challenges and issues around—of this particular situation, the government still might not have acted.”<sup>24</sup>

## III. PASSAGE THROUGH THE LEGISLATURE

### A. First Reading

Bill 2 was introduced for first reading on November 15, 2013.<sup>25</sup> The Legislature had sat through the summer, and in September an agreement had been made between the Government and Opposition as to which

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<sup>20</sup> *Ibid.*

<sup>21</sup> Kelvin Goertzen, “Photo Radar Fiasco” (14 May 2009), *View From The Legislature* (blog), online: <[www.mysteinbach.ca/blogs/542.html](http://www.mysteinbach.ca/blogs/542.html)>.

<sup>22</sup> See “Manitoba won’t fight photo radar ruling, cancels hundreds of tickets”, CBC News (6 May 2009), online: <[www.cbcnews.ca](http://www.cbcnews.ca)>. Compare: *R v Sneyd*, 2009 MBQB 272, 246 ManR (2d) 214 (overturning an acquittal of the respondent by a Judicial Justice of the Peace).).

<sup>23</sup> Goertzen, *supra* note 21.

<sup>24</sup> *Debates* (2 December 2013), *supra* note 9 at 542.

<sup>25</sup> *Debates* (15 November 2013), *supra* note 2 at 93.

bills, and how many, would be debated during the fall session, and which would be delayed until spring.<sup>26</sup> Bill 2 was not included in the fall list, which hints at its rushed nature. This rush would be pointed out throughout the debate and committee stages.<sup>27</sup>

The day of the first reading, the *Winnipeg Free Press* released an article on their website with the headline, “Manitoba proposes hiking fines for speeding in construction zones.”<sup>28</sup> This article included an audio clip of Ms. Murray’s mother supporting the legislation, but its emphasis was on the delay in bringing Bill 2 forward. It cited Justice Critic Reg Helwer, who said, “Bill 2 is welcome, but it should have been tabled long ago as its provisions are common practice in other provinces.”<sup>29</sup> He asked, “What took this government so long? We had to wait for severe injuries and death of Manitobans to force their hand?”<sup>30</sup> The *Free Press* reminded readers that “The Manitoba Federation of Labour had lobbied the province to crack down on speeding in construction zones following the death of a 21-year-old highway flag worker three years ago.”<sup>31</sup> While the delay would remain an important topic for politicians, the media’s emphasis would shift throughout the Bill’s life.

The *Winnipeg Free Press* followed its online article with a print version the next day entitled “Work-zone speeders to see penalties climb,” with the subtitle “Bill 2 designed to protect workers.”<sup>32</sup> This article recited much of the online content from the day before, but also included an outline comparing the old ticket amounts with the fines under the proposed legislation.

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<sup>26</sup> *Debates* (2 December 2013), *supra* note 9 at 545 (Mr. Cliff Cullen).

<sup>27</sup> See for example: Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol LXVI, No 17B (5 December 2013) [*Debates* (5 December 2013)] at 684 (Ms. Leanne Rowat).

<sup>28</sup> “Manitoba proposes hiking fines for speeding in construction zones”, *Winnipeg Free Press* (15 November 2013), online: <[www.winnipegfreepress.com](http://www.winnipegfreepress.com)> [*Winnipeg Free Press* (15 November 2013)].

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Bruce Owen, “Work zone speeders to see penalties climb”, *Winnipeg Free Press* (16 November 2013), online: <[www.winnipegfreepress.com](http://www.winnipegfreepress.com)> [Owen (16 November 2013)].

## B. The Stand-Off

Ten days after its first reading the Government tried to move Bill 2 to second reading. The Opposition refused to allow it to proceed. Because this Bill was not part of the agreement adopted in September, the Opposition House Leader, Mr. Kelvin Goertzen, would have to agree to allow it to move forward. He declined saying, “Mr. Speaker, there's not been adequate notice provided and have not had the discussion with our critic and with stakeholders.”<sup>33</sup>

Two days later, on November 27, the Government tried again to move the Bill to second reading. The Opposition again refused, this time stating that their critic had provided the Government with a series of questions for which they had not yet received responses. These questions addressed the liability of municipalities under Bill 2.<sup>34</sup> In particular, the Opposition wanted assurance that municipalities would know exactly who is responsible for a particular section of highway, and that the legislation would not create more liability for some municipalities over others.<sup>35</sup> Mr. Goertzen stated: “I'm sure when the government wants to make it a priority, they'll send those answers back, and then we can deal with it at that time, but we are not prepared to until those questions are answered.”<sup>36</sup>

The next day, the Government tried for a third time to bring the Bill for second reading. Again the Opposition declined stating, “Mr. Speaker, we've asked three times for answers to a series of questions. The government refused to provide them. If they ever decide to make this a priority, we'll consider it.”<sup>37</sup>

After debating another bill, the House turned back to *The Highway Traffic Act Amendment*. Government House Leader Andrew Swan began by saying “I have to correct the record in regards to the statement made by the Opposition House Leader earlier in regards to Bill 2.”<sup>38</sup> He explained

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<sup>33</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol LXVI, No 10 (25 November 2013) [*Debates* (25 November 2013)] at 319.

<sup>34</sup> *Debates* (2 December 2013), *supra* note 9 at 544.

<sup>35</sup> *Debates* (5 December 2013), *supra* note 27 at 684.

<sup>36</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol LXVI, No 12 (27 November 2013) [*Debates* (27 November 2013)] at 418.

<sup>37</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 3rd Sess, Vol LXVI, No 13B (28 November 2013) [*Hansard* (28 November 2013)] at 485.

<sup>38</sup> *Ibid* at 490.

that there had been an in-person technical briefing with the opposition members in the previous week, and “a written response was provided to members opposite yesterday.”<sup>39</sup> On the issue of whether this was a priority for the Government, he explained that they hoped “to move to committee with the goal of protecting workers before the next construction season.”<sup>40</sup> The Opposition was unmoved. Mr. Goertzen responded that he was not sure if the correspondence dated yesterday “was simply received today, but I suspect the minister wouldn't mind if we actually read the correspondence.”<sup>41</sup>

When the Legislature moved to discuss a different bill, James Allum, the Minister of Education and Advanced Learning, began by complaining, “I just want to say that I regret that the House Leader for the opposition doesn't want to provide roadside protection for construction workers.”<sup>42</sup> Mr. Goertzen replied by pointing out the impracticality of the Government's request: “The House leader for the government indicated that a response was drafted yesterday ... I'm not expecting our critic to have to read something that may have come in in the dark of night and make a decision a couple of hours later.”<sup>43</sup> He added, “If this had been a priority to him, they could've been doing this the last 12 years.”<sup>44</sup> After Minister Swan argued that it was “clearly a dispute on the facts,”<sup>45</sup> the Speaker reminded Minister Allum to “stick to the bill under consideration.”<sup>46</sup>

The *Winnipeg Free Press* reported the exchange above on Saturday, November 30, under the headline “Opposition stalling worker-safety bill.”<sup>47</sup> The online version of this article generated 490 “shares” on social media.<sup>48</sup> This article demonstrated a noticeable change in focus from

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<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.* at 491.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> Bruce Owen, “Opposition stalling worker-safety bill”, *Winnipeg Free Press* (30 November 2013), online: <[www.winnipegfreepress.com](http://www.winnipegfreepress.com)> [Owen (30 November 2013)].

<sup>48</sup> *Ibid.* (number of social media shares assessed 6 April 2015).



increased fines to emphasizing worker safety issues.<sup>49</sup> The *Free Press* blamed the Opposition for not moving forward, and quoted Ms. Murray's mother saying, "Is it going to take someone else being injured or killed before they realize how important safety is?"<sup>50</sup> Despite this emphasis, comments from the public centred around the seemingly rushed nature of the Bill and suspicion about the Government's motives. Only a few commenters supported the Government's position.

On Monday morning a deal was struck.<sup>51</sup> The Opposition agreed to allow the Bill to proceed so that it could be implemented before the spring construction season.<sup>52</sup> In exchange, the Government agreed to delay Bill 32, *The Manitoba Institute of the Purchasing Management Association of Canada Act*, until mid-March.<sup>53</sup> Mr. Goertzen told the media, "We simply wanted the government to keep their word on the number of bills that would be voted on," while Minister Swan explained that Bill 32 was "non-urgent."<sup>54</sup> When the deal was announced in the Legislature, Minister Swan asked for leave on six points to ensure the Bill would be passed by the week's end.<sup>55</sup> The Opposition agreed, explaining that they had received answers to their questions that they were able to share with stakeholders over the weekend.<sup>56</sup>

## C. Second Reading

Bill 2 was then called for second reading by the Honourable Erna Braun, Minister of Labour and Immigration, and seconded by Steve Ashton, Minister of Infrastructure and Transportation. Despite the agreement made that morning, Ms. Braun only briefly mentioned the Bill's purpose before criticizing the Opposition, saying "I would like to put on the record my disappointment the way in which members opposite

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<sup>49</sup> *Winnipeg Free Press* (15 November 2013), *supra* note 28.

<sup>50</sup> Owen (30 November 2013), *supra* note 47.

<sup>51</sup> *Debates* (2 December 2013), *supra* note 9 at 540.

<sup>52</sup> Bruce Owen, "Bill to protect highway construction workers to go to vote", *Winnipeg Free Press* (3 December 2013), online: <[www.winnipegfreepress.com](http://www.winnipegfreepress.com)> [Owen (3 December 2013)].

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Debates* (2 December 2013), *supra* note 9 at 540.

<sup>56</sup> *Ibid.*

played politics with this bill.”<sup>57</sup> After Ms. Braun concluded her remarks, Mr. Goertzen spoke, followed by Mr. Ashton, and then Ms. Leanne Rowat, PC Labour Critic.<sup>58</sup> Each continued to argue, not about the merits of the Bill, but rather about the delay in bringing it to this point. Finally, Dr. Jon Gerrard, Liberal Member for River Heights, quelled the bickering. He said, “I’m certainly in support of this legislation and of moving it forward, and I’m glad that there’s an agreement among all parties that we will be able to get this legislation passed this session and before Christmas.”<sup>59</sup> Dr. Gerrard highlighted the need to provide workers with adequate protection, saying:

I believe that, in addition to this legislation, that the government needs to pay very careful attention to the requirements for signage. Having really clear, well-marked signage can make a very big difference, and, in the past, this is not something that’s always been paid enough attention to. This has been brought to the fore by a number of people in Winnipeg, where signage hasn’t been always up to what it really should be.<sup>60</sup>

This issue would continuously arise in the Legislature and the media: namely, that while Bill 2 increased fines, its safety measures were left to be defined by regulations.

Mr. Cliff Cullen, PC Member for Spruce Woods, spoke next. He described his experience as a volunteer firefighter, and added, “I think we, certainly, as legislators, should be driving home the safety component, and I think we have to do a better job of educating Manitoba motorists about the— what’s going on out on the highways.”<sup>61</sup> He then addressed the need for better signage around construction zones in order to bring Manitoba in line with other jurisdictions. Mr. Cullen also addressed the other concern that had consumed the media’s focus, stating that, while he was not opposed to increasing fines:

I know the government is interested in getting as much money out of Manitobans’ pockets as they can. And we’ve seen that through taxation; we’ve seen that through various levies; we’ve seen the increase in fines, speeding tickets. And I know we’re probably the highest level of fines in terms speeding in

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<sup>57</sup> *Ibid* at 541.

<sup>58</sup> *Ibid* at 542–545.

<sup>59</sup> *Ibid* at 545.

<sup>60</sup> *Ibid*.

<sup>61</sup> *Ibid* at 546.

probably in any jurisdiction in Canada, and, clearly, that is a tax grab that the NDP are looking at. It'll be interesting to compare numbers to see if these increases in fines are actually translating into safer roads in our communities.<sup>62</sup>

After Mr. Cullen concluded, the Speaker announced the committee for the next day.<sup>63</sup>

That evening the *Winnipeg Sun* published the headline, "Speeding ahead on plan to double construction-zone tickets."<sup>64</sup> This article focused on the delay and deal that brought Bill 2 to second reading. The next day the *Winnipeg Free Press* ran a similar article that concentrated on the bipartisan deal, only briefly summarized Bill 2's contents, and the accident and subsequent court case that was being used to justify them.<sup>65</sup>

#### D. Committee Stage

At the committee stage, there were three written submissions and ten presenters. Five of the presenters were private citizens, including roadside construction workers and a presenter from Wise Up Winnipeg. The other five representatives were from unions or labour organizations. Most presentations focused on the need for more safety measures, especially clearer signage, and the need for better enforcement, including regular inspections of construction sites by safety and health officers.

The committee also heard repeated support for the requirement to remove the "when passing workers" provision, with presenters noting that drivers need to know what is expected of them. The presenter from the Operating Engineers Local 987 explained that there are added dangers for drivers when heavy equipment is left at a worksite, even when workers are not present, and therefore this provision would protect not just workers but also the public at large.<sup>66</sup>

Some presenters mentioned the need to make employers responsible for adjusting the signs throughout the construction project; one presenter noted that the current practice involved the City of Winnipeg

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<sup>62</sup> *Ibid* at 547.

<sup>63</sup> *Ibid*.

<sup>64</sup> "Speeding ahead on plan to double construction zone tickets", *Winnipeg Sun* (2 December 2013), online: <[www.winnipegsun.com](http://www.winnipegsun.com)>.

<sup>65</sup> Owen (3 December 2013) *supra* note 52.

<sup>66</sup> Manitoba, Legislative Assembly, *Standing Committee on Human Resources*, 40th Leg, 3rd Sess, Vol LXVI, No 1 (3 December 2013) [Committee] at 11 - 12.

subcontracting this job to a third party.<sup>67</sup> The President of the Manitoba Federation of Labour, Mr. Kevin Rebeck, also took this opportunity to criticize *The Workplace Safety and Health Act* for its lack of “mandatory controls to protect workers.”<sup>68</sup> Only the day before, Ms. Braun had bragged about the safety enhancements made to the *Regulations* under this Act after her government’s 2012 review.<sup>69</sup>

Presenters also regularly suggested Manitoba follow other jurisdictions, for example, by implementing safety inspections like Ontario, and rumble strips like Ontario and the United States. With regard to the urgency of the Bill, the Presidents of the MFL, the Winnipeg Labour Council and the Canadian Union of Public Employees all attested that there was a significant need to have these changes in place before the spring construction season began.<sup>70</sup> Mr. Rebeck added that the development of regulations would require consultations with stakeholders, and this would need to be done early in the new year.<sup>71</sup> Ms. Michelle Gawronsky, President of the Manitoba Government and General Employees’ Union, noted that this legislation’s “introduction has been recommended by our union for many, many years.”<sup>72</sup> Private citizens who worked in the construction industry made similar criticisms. They explained that they had faced these dangerous conditions for years and were glad “something’s finally being done.”<sup>73</sup>

The presenter from Wise Up Winnipeg, Mr. Christian Sweryda, explained that Manitoba’s fines were already much higher than those in other jurisdictions. He compared Alberta where fines in construction zones double to \$156 for a driver going ten kilometres per hour over the speed limit; in Manitoba, the base fine is \$266.<sup>74</sup> Mr. Sweryda also noted that the Court found Mr. Blostein had shown no “marked departure from the standard of care expected of a reasonably prudent person in the circumstances.”<sup>75</sup> Mr. Sweryda asserted, “doubling the fines is not going to

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<sup>67</sup> *Ibid* at 8.

<sup>68</sup> *Ibid* at 3.

<sup>69</sup> *Debates* (2 December 2013), *supra* note 9 at 541.

<sup>70</sup> Committee, *supra* note 66 at 3, 9, 11.

<sup>71</sup> *Ibid* at 3.

<sup>72</sup> *Ibid* at 4.

<sup>73</sup> *Ibid* at 13.

<sup>74</sup> *Ibid* at 6.

<sup>75</sup> *Ibid* at 7.

deter reasonable and prudent actions.”<sup>76</sup> He, like the other presenters, encouraged the government to focus on improving safety measures and signage requirements. The last presenter, Mr. David Grant, summarized the legislation fittingly: “This very particular, peculiar legislation spelling out the \$7.70 surcharge, but it’s silent on the really important changes, like the buzz strips and the barriers and the safety watchers.”<sup>77</sup>

The only amendment made at the committee stage was to the “when passing workers” provision. The change would ensure that the exception “unless a traffic control device states” would apply only to the words “at all hours of the day and on all days of the week, including holidays,” and not to the words “whether or not workers are present in the construction zone or equipment is being used in it.”<sup>78</sup>

### E. Third Reading

On December 5, the last sitting before the holiday break, Bill 2 was brought forward for third reading. The Opposition and Government again spent much of their time blaming one another for delays. Ms. Rowat noted how, despite all the political game playing that had occurred, it had only taken the Government a week to provide the Opposition with the answers they had requested.<sup>79</sup>

Both Ms. Rowat and Dr. Gerrard pointed out the rushed nature of the Bill. Ms. Rowat stated, “I believe that Bill 2 is a step in the right direction. It’s unfortunate that it was introduced so late in this session, and I just feel that it would’ve respected the family if we would’ve had the opportunity to have all the answers upfront with regard to concerns listed.”<sup>80</sup> Dr. Gerrard, referring to comments made during the committee stage, noted that the legislation omitted details on barriers or rumble strips, but added, “we’ve been assured, we think, by the minister that these details may be compensated for by what is put in the regulations.”<sup>81</sup> He hoped that signs would be made so clear “that people will always recognize when there’s a construction zone.”<sup>82</sup> Dr. Gerrard also mentioned how the

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<sup>76</sup> *Ibid* at 8.

<sup>77</sup> *Ibid* at 16.

<sup>78</sup> *Ibid* at 18.

<sup>79</sup> *Debates* (5 December 2013), *supra* note 27 at 684.

<sup>80</sup> *Ibid*.

<sup>81</sup> *Ibid*.

<sup>82</sup> *Ibid* at 685.

proposed fines would be much greater than those of other provinces. “We don’t want people to be saying that this NDP is just jacking up fines because they’re running short of money,” he said, but concluded that he did not believe this to be the case.<sup>83</sup>

Finally, the Bill was passed unanimously.<sup>84</sup>

#### IV. ANALYSIS: WILL BILL 2 BE EFFECTIVE?

##### A. Do higher fines work?

There was little discussion of what features would be most effective in providing a safe workplace for construction workers. The Government never explained why it was necessary to increase speeding fines nor did it show how effective this would be when compared with other means,<sup>85</sup> yet this was a key piece of the Government’s Bill. No evidence was presented to show that higher fines in Manitoba were producing safer roads.

There are a plethora of related studies that the Government could have reviewed. One such report notes: “The use of punishment as a deterrence effect to reduce road accidents has been a central topic of road safety research in past decades.”<sup>86</sup> The overwhelming consensus of these studies has been that increased speeding fines are ineffective unless they are combined with greater enforcement.

Dominic Zaal, of Australia’s Monash University Accident Research Centre, conducted a substantial review of research in this area in 1994.<sup>87</sup> One reviewed study examined the consequences of doubling speeding fines in Sweden, and found “there was no detectable change in speeding behaviour even though over one third of drivers knew about the publicised fine increases.”<sup>88</sup> Another Swedish study found that, upon a subsequent fine increase five years later, there was nevertheless “no

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<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid* at 686.

<sup>85</sup> While it is beyond the scope of this paper, the Government could have, for example, examined the Driving Safety Rating System in place through Manitoba Public Insurance. It is also disappointing that the Legislature did not discuss the impact this increase would have on low-income Manitobans.

<sup>86</sup> Qinghui Suo, “Investigation on Deterrence Effect of Legal Punishment Measures on Driving After Drinking in Chongqing, China” (2015) 16:6 *Traffic Inj* 540 at 540.

<sup>87</sup> Dominic Zaal, “Traffic Law Enforcement: A Review of the Literature” (Melbourne: Monash University Accident Research Centre, 1994).

<sup>88</sup> *Ibid* at 107.

significant change in speeding behaviour.”<sup>89</sup> A third review of deterrence-based policy found “if the probability of detection was perceived by the majority of road users as being low then the existence of severe penalties would be negligible.”<sup>90</sup> On basis of these studies, Zaal concluded: “penalty severity has little deterrence impact upon road user behaviour.”<sup>91</sup>

A fourth report Zaal examined suggested that, “the severity of the penalty is less crucial to the deterrent impact on the road user than the actual existence of the penalty itself.”<sup>92</sup> A fifth study concluded that, “unless road users perceive the risk of apprehension and punishment to be sufficiently high then there may be only minimal deterrence benefits to be gained by introducing more severe penalties.”<sup>93</sup> Zaal also noted a study which indicated, “speeding fines are normally set in relation to fines for other criminal acts and substantial increases in speeding fines, for what are often viewed as relatively minor misdemeanours, may undermine other aspects of the criminal justice system.”<sup>94</sup>

Zaal’s findings have been supported by a number of subsequent studies. For example, a 2007 study of speeding in Maryland found, “Receiving fines and points had no significant impact on the risk of repeat citations, although this was the most severe penalty.”<sup>95</sup> The authors noted that their findings were consistent with Zaal’s conclusions.<sup>96</sup>

Another study recently published by Debora Moolenaar reached similar conclusions. Moolenaar compared two categories of data from the Netherlands: “speeding offences detected by average speed measuring systems (ASMS) and speeding offences detected by police officers.”<sup>97</sup> She found, “if the fine increases by one percent then the offence rate detected by an ASMS will decline by 0.14%.”<sup>98</sup> Yet, “for fines handed out by police

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<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid* at 10.

<sup>91</sup> *Ibid* at 10–11.

<sup>92</sup> *Ibid* at 11.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid* at 108.

<sup>95</sup> Saranath Lawpoolsri, Jingyi Li & Elisa R Braver, “Do Speeding Tickets Reduce the Likelihood of Receiving Subsequent Speeding Tickets? A Longitudinal Study of Speeding Violators in Maryland” (2007) 8:1 *Traffic Injury Prevention* 26 at 32.

<sup>96</sup> *Ibid* at 32.

<sup>97</sup> Debora EG Moolenaar, “Motorist’s Response to an Increase in Traffic Fines” (2014) *J Criminology* 1 at 1-2.

<sup>98</sup> *Ibid* at 9.

officers there is no such effect.”<sup>99</sup> She concluded, “The results imply that motorists only adjust their behavior if the risk of being caught is high, as is the case with ASMS, and even then the adjustments are moderate.”<sup>100</sup>

In addition to these studies, Transport Canada reports that, of all Canadian provinces, Manitoba has the highest number of motor vehicle injuries per 100,000 licensed drivers, per 100,000 people, and per billion vehicle kilometres.<sup>101</sup> When motor vehicle fatalities are compared, Manitoba falls in the middle, but still surpasses the Canadian average in every category.<sup>102</sup> While other factors are undoubtedly at play, these statistics fail to suggest that higher fines make Manitoba roads safer.

Taken together, these studies suggest that safer roads are more likely to be achieved through better enforcement than through higher fines. One construction worker who presented at the committee stage neatly alluded to this phenomenon when he suggested, “Actually, all you need is just put a student RCMP officer there [at the construction zone]. They don't actually have to hand out tickets; just show up with the car.”<sup>103</sup>

## **B. Has Manitoba seen positive changes since the legislation was enacted?**

While it is too early to reach a definitive conclusion as to whether there will be any positive impact from the passing of Bill 2, news reports suggest that additional amendments may be necessary.

On July 31, 2014, *CBC News* published an online article with the headline: “Winnipeg drivers unfairly ticketed in construction zones, says group: Lack of proper signage creates slew of tickets, says Wise Up Winnipeg.”<sup>104</sup> The next day the *Winnipeg Sun* ran a similar article suggesting the problem is that new regulations are not being followed:

the “construction ends” signs are frequently not posted, speed limit signs are smaller than the minimum size, and signs aren’t posted on on-ramps from other

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<sup>99</sup> *Ibid* at 10.

<sup>100</sup> *Ibid* at 11.

<sup>101</sup> Canada, Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics 2012*, (Ottawa: Transport Canada, 2014) at 4.

<sup>102</sup> *Ibid*.

<sup>103</sup> Committee, *supra* note 66 at 13.

<sup>104</sup> “Winnipeg drivers unfairly ticketed in construction zones, says group”, *CBC News* (31 July 2013), online: <www.cbc.ca> [CBC News (31 July 2013)].



highways. All of it adds up to drivers who inadvertently speed, say Wise Up officials, creating a hazard to workers and a profitable situation for police.<sup>105</sup>

When CBC *News* contacted the provincial government about this issue, a spokesperson responded by referring to the other changes made in the legislation: “The traffic authority, which could be a municipality or the province, allows contractors to set up signage on its behalf.”<sup>106</sup>

It is difficult to determine if Bill 2 has yet made a positive impact on the number of injuries and deaths in construction zones. Manitoba Public Insurance (MPI) has not yet released its 2014 *Traffic Collision Statistics Report*. In its 2013 *Traffic Collision Statistics Report*, MPI shows the number of collisions where the presence of a “construction zone” was considered a contributing factor.<sup>107</sup> In 2013, there were zero fatalities, three injuries and eight instances of property damage recorded in these zones.<sup>108</sup> Over the previous five years, these numbers averaged zero fatalities, six injuries, and 27 collisions resulting in property damage.<sup>109</sup> It will be interesting to see if there is any significant change to these statistics over the next few years.

## V. CONCLUSION

Of the four changes entailed in Bill 2, the first, pertaining to the “when passing workers” provision, will likely be the most significant. Government and key stakeholders had long known of the need for change in this area, and could have addressed it sooner. With regard to the second change, the increased fines will likely have little if any impact on safety unless the government also increases enforcement. Third, responsibility for posting signage continues to be problematic. This, too, can likely be resolved with better enforcement, including the addition of safety inspectors who were recommended at the committee stage. Fourth, new regulations were registered on May 9, 2014 to address safety in

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<sup>105</sup> “Drivers being ticketed in poorly marked construction zones: WiseUp Winnipeg”, *Winnipeg Sun* (1 August 2014), online: <[www.winnipegsun.com](http://www.winnipegsun.com)>.

<sup>106</sup> CBC *News* (31 July 2013), *supra* note 103.

<sup>107</sup> Manitoba Public Insurance, *Traffic Collision Statistics Report 2013*, online: <[www.mpi.mb.ca](http://www.mpi.mb.ca)>.

<sup>108</sup> *Ibid* at 149.

<sup>109</sup> *Ibid* at 151.

construction zones. These include many of the features recommended throughout the House debates and committee stages.

The rushed introduction of Bill 2 raised many eyebrows and caused a stir at the Manitoba Legislature. Although the Member from Riding Mountain thought the “dark cloud over this bill” had lifted by the time of second reading,<sup>110</sup> many questions still remain unanswered.

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<sup>110</sup> *Debates* (2 December 2013), *supra* note 9 at 540.