

Bill 34, *The Highway Traffic Amendment Act*

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1. INTRODUCTION

Bill34, *The Highway Traffic Amendment Act*,¹ was sponsored by Justice Minister Gord Mackintosh, and had its first reading on 27 April 2005. The bill was passed without amendment, and received Royal Assent on 16 June 2005. All parties involved debated the bill, however, very little was focused on the contents of the bill. Instead, the debate strayed from the issues found in the bill and was directed towards tangential topics like the Government's support of law enforcement officers. The Justice Minister had created a bill which the opposition had to support. Politicians love to appear tough on crime, and this bill appeared tough on crime. The core of this bill increases penalties for traffic offences causing death, prostitution related offences involving vehicles, and drinking and driving with a child passenger. Common sense seems to suggest that the voters of the province would support this bill.

While the opposition supported the bill, they did not want Bill 34 to go through the system with great ease, as this bill was bound to create positive publicity for the New Democratic Party. So how does the opposition attack a voter friendly bill? The opposition steps outside the bill and examines the issue of enforcement. They point out that legislation that is tough on crime is meaningless without enforcement. Who then, is responsible for the lack of enforcement? Why, the penny-pinching NDP and the Minister of Justice, of course. The opposition therefore demanded that the NDP Government increase its support of the police in Manitoba.

The following piece will examine the four provisions contained in the bill individually, and will follow Bill 34 as it travels through the readings, the debates and the committee stages.

Bill34, *The Highway Traffic Amendment Act*, Jtd Sess., 38th Leg., Manitoba, 2005 (assented to 16 June 2005), S.M. 2005, c. 31.

A. Offences Causing Death

Bill34 increases the punishment available if death results from an offence under *The Highway Traffic Act*,² specifically s. 239(1):

239(1) A person who contravenes or fails to comply with or obey

- (a) a provision of this Act or the regulations;
 - (b) a municipal by-law passed under the authority of this Act or the regulations; or
 - (c) an order, direction or requirement of a peace officer, a traffic authority, the traffic board, the transport board or another authority or person
- (i) given under the authority of this Act or the regulations, or
- (ii) indicated or conveyed by a traffic control device;

is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000.

The amendment reads:

239.2(1) If a person's death results from the commission of an offence for which another person is convicted under subsection 239(1) or another provision of this Act, the convicting judge or justice may impose either or both of the following penalties:

- (a) a fine in an amount that is not restricted to the maximum fine otherwise provided for the offence;
- (b) a term of imprisonment of not more than two years.

This is despite section 239 or any other provision of this Act that sets out a penalty for the offence.

Licence suspension or disqualification

239.2(2) In addition to imposing a penalty under subsection (1) or under any other provision of this Act, the convicting judge or justice may

- (a) suspend the person's licence for a term of not more than five years; or
 - (b) disqualify the person from holding a licence for a term of not more than five years if, at the time of the conviction,
- (i) the person does not hold a licence, or
- (ii) the person's licence is suspended or he or she is disqualified from holding a licence.

Limitation period—offences resulting in death

239.3 Despite any other provision of this Act or of any other Act, a prosecution for an offence described in subsection 239(1) or under another provision of this Act may be commenced not later than two years after the day on which the offence is alleged to have been committed, if

(a) a person's death is alleged to have resulted from the commission of the offence; or

(b) a person is alleged to have suffered a life-threatening injury as a result of the commission of the offence.

The additional punishment is a fine that has no restriction on the amount, imprisonment up to a maximum of two years, and a suspension or disqualification from holding a driver's licence for up to five years.

The limitation period for commencing the prosecution of an offence under s. 239(1) is set at two years after the day on which the offence occurred; if a death is alleged to have resulted from the offence or a person is alleged to have suffered life-threatening injuries from the commission of the offence. The previous limitation period was only six months following the accident.

B. Drinking and Driving With a Child Under 16 Years of Age in the Vehicle

According to Mothers Against Drinking and Driving ("MADD"): "Manitoba has been very proactive when it comes to the crime of impaired driving."³ Andrew Murie, the Canada CEO for MADD, encourages other jurisdictions to look to Manitoba's example.⁴ The bill, which is in line with Manitoba's "proactive" stance toward drinking and driving, also proposes increasing the suspension of drivers' licenses for alcohol related driving offences under *The Criminal Code*⁵ if a person under the age of 16 is a passenger in the vehicle.⁶ In the year 2000, 152 children aged 14 and under died, and 16 662 were injured as a result of intoxicated drivers in Canada. Almost 11% of passengers killed by intoxicated drivers are children aged 14 and under.⁷ Mr. Mackintosh decided to confront this issue. According to s. 264 (1), driving while one's ability to operate a motor vehicle is impaired,⁸ or failing or refusing to allow a breath sample to be taken at an officer's request⁹ while a child under the age of 16 years is in the vehicle, is a Category B offence. All Category B offences are offences under the *Criminal Code* which involve a vehicle in the commission of

MADD, News Release, "Provincial Governments should look to Manitoba for 'what can be done,'" {11 January 2005}, online: MADD Canada <<http://www.madd.ca/english/news/pr/p05jan11.htm>>.

Ibid.

R.S.C. 1985, c. C-46.

Supra note 1 at s. 252.

Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics*, (2001) online: Transport Canada <<http://www.tc.gc.ca/roadsafety/tp/tp3322/2000/pdf/st2000e.pdf>>.

Supra note 5 at s. 253(a).

Ibid. at s. 254{5}.

the offence, ranging from manslaughter¹⁰ to theft of a motor vehicle. Section 264(1.1) sets out the punishments for offences under s. 264¹²:

264(1.1) Subject to subsection (1.2) the licence and right to have a licence of a person convicted of a Category A or Category B offence, or of an unrelated series or combination of those offences committed within a 10-year period, is suspended, and the person is disqualified from operating a motor vehicle and an off-road vehicle, for a period determined according to the following table:

Number of convictions for Category A offences	Number of convictions for Category B offences	Length of suspension and disqualification
	0	1 year
2	0	5 years
0		5 years
3	0	10 years
		10 years
0	2	10 years
4 or more	0	lifetime
2 or more		lifetime
1 or more	2 or more	lifetime
0	3 or more	lifetime

Increased suspension for refusal

264(1.2) Despite subsection (1.1), when a person commits

(a) one offence under subsection 254(5) of the *Criminal Code*¹³ within the 10-year period, but no other offences, the length of suspension and disqualification shall be increased to two years; or

(b) two offences under subsection 254(5) of the *Criminal Code* within the 10-year period, but no other offences, the length of suspension and disqualification shall be increased to seven years.

At the time of the bill's creation, drivers convicted of driving while intoxicated, including those where there was a child passenger, could have their licences

¹⁰ *Ibid.* at s. 236.

¹¹ *Ibid.* at s. 234.

¹² *Ibid.* at s. 264 (1.1).

¹³ *Supra* note 5.

suspended for one year after the first conviction, five years after a second conviction, 10 years after a third conviction, and a lifetime driving ban for four convictions within 10 years.¹⁴ According to Bill 34, the maximum suspensions for driving intoxicated with a child in the vehicle are set at five years for the first offence, 10 years for a second offence and a lifetime suspension for a third conviction.¹⁵

C. Suspensions for Prostitution Related Offences

The bill sought to add suspensions to the driver's licenses of those who were convicted of prostitution related offences where a vehicle was used in the commission of the act. The suspension will be one year for offenders who have not been convicted of prostitution related offences in the past 10 years, and two years for offenders who have been convicted in the past 10 years.¹⁶ This amendment is intended to supplement the vehicle forfeiture and seizure for prostitution related offences under *the Highway Traffic Act*.¹⁷

The amendment reads as follows:

Suspension for prostitution-related offences

264(6.1) The licence and right to have a licence of a person convicted of a prostitution-related offence is suspended, and the person is disqualified from driving a motor vehicle and operating an off-road vehicle, for

(a) one year from the date of the conviction, if in the 10 years before the date of the offence the person did not commit another prostitution-related offence for which he or she was also convicted; or

(b) two years from the date of the conviction, if in the 10 years before the date of the offence the person did commit another prostitution-related offence for which he or she was also convicted.

D. Setting Aside Forfeiture of a Vehicle

Section 242.3¹⁸ is amended to allow an application by faultless owners to have a vehicle forfeiture set aside after it has taken place. The forfeiture may be set aside if the Justice is satisfied that the offender was in possession of the vehicle without the knowledge and consent of the owner or the owner could not reasonably have known that the vehicle would be operated in the course of committing the offence. There is also a requirement for timely action on behalf

¹⁴ Allison Dunfield, "Manitoba drunk drivers facing tougher sanctions/" *Globe and Mail* (28 April 2005L online: MADD Canada <http://www.madd.ca/english/news/stories/n05_apr28.htm>.

¹⁵ *Supra* note 1 at s. 264(1.1).

¹⁶ *Ibid.* at s. 264(6.1).

¹⁷ *Supra* note 2.

¹⁸ *Ibid.* at s. 242.3.

of the owner. In addition, if the vehicle was seized and not forfeited, under s. 242.3(39)¹⁹ the owner will have to pay for the cost of the seizure before an order to set aside the forfeiture can be made. This provision did not garner much attention in the readings, the debates, nor the committee.

II. FIRST READING²⁰

The Minister of justice, Gord Mackintosh, introduced Bill 34, which was seconded by the Minister of Transportation. At this time, Mr. Mackintosh briefly summed up the bill by stating that it "enhances some sanctions, including for drivers convicted of impaired driving with a child passenger, and for offences resulting in death."²¹

The other provisions of the bill, those covering prostitution related offences and the innocent car seizure, were not specifically identified at that time.

On the day after the first reading of Bill34, a statement by Mr. Mackintosh was printed in the *Globe and Mail*: "Impaired drivers are a hazard to everyone on the road, but the offence is even more reprehensible when they endanger a child."²²

III. SECOND READING

A. 10 May 2005 ²³

Mr. Mackintosh began the second reading by addressing the increased penalty for *Highway Traffic Act*²⁴ violations resulting in death. The purpose, he stated, is to punish those who have violated the *Act* but, due to a lack of evidence, criminal charges cannot be supported.²⁵ Because *The Highway Traffic Act* had previously limited the fines for most offences to \$2 000, and licence suspensions to one year, the Government decided to increase the penalty to match the gravity of the offence. The limitation period for commencing an action where death occurs, or where there is a life-threatening injury, was increased from six months to two years. The reason for the extended limitation period, however, was not expressed by the Minister of Justice. An interview with David Greening

¹⁹ *Ibid.* at s. 242.3(39).

²⁰ Manitoba, Assembly, *Debates and Proceedings* Vol. LVI No. 37 (27 April 2005) [*Petitions* (27 April 2005)] at 1927.

²¹ *Ibid.*

²² *Supra* note 14.

²³ Manitoba, Legislative Assembly, *Debates and Proceedings* Vol. LVI No. 44 (10 May 2005) [*Debates* (10 May 2005)] at 2566-2572.

²⁴ *Supra* note 2.

²⁵ *Supra* note 23 at 2566.

from Manitoba Justice's Policy, Development and Analysis Department revealed that it,

[W]as done to ensure that the police do not miss an opportunity to charge the right people with the right offence because they need more than six months to complete a thorough investigation or are dealing with a complicated case that takes more time.²⁶

The Minister of Justice then spoke on the next issue, covering impaired driving and child endangerment, with greater detail. He stated that "persons who are convicted of impaired driving with a child in their vehicle do not currently receive a higher level of suspension than impaired drivers who do not have child passengers."²⁷ Under the new amendment, those persons would face stiffer penalties. The amended penalties are the most severe licence suspensions available under the *Highway Traffic Act*. These range from a five year suspension to a life suspension. Mr. Mackintosh pointed out that although this policy of protecting children from intoxicated drivers is a first in Canada, it is used in approximately 35 American jurisdictions.²⁸ The provision itself, however, was not modeled after a specific jurisdiction but was influenced by the actions taken by those jurisdictions.²⁹

The next provision discussed by the Justice Minister was the driver's licence suspension for persons convicted of prostitution related offences, in which a vehicle was involved in the commission of the offence. He stated that the purpose of this amendment was to supplement the provision in the *Highway Traffic Act*³⁰ that allows for the seizure and forfeiture of the vehicle used in the commission of a prostitution related offence. Following that brief note, the Minister moved on to another provision in the amendment that sets out a procedure for those innocent vehicle owners who have mistakenly failed to apply for the release of their vehicle before the forfeiture took place.³¹ This is for honest mistakes and failures that are not the owner's fault.

The Justice Minister concluded on that point, and Kevin Lamoureux, the Deputy Leader of the Liberal Party, continued the discussion by stating his concerns about the bill. He wondered why the Minister of Justice was not protecting those children who are not passengers in an intoxicated driver's car, but are also at risk through the driver's actions; "Why is [Mr. Mackintosh] not protecting those children? Why does he have a double standard?" Mr.

²⁶ Interview of David Greening by James Pullar (5 December 2005).

²⁷ *Supra* note 23 at 2566.

²⁸ *Ibid.*

²⁹ *Supra* note 26.

³⁰ *Supra* note 2.

³¹ *Supra* note 1 at s. 242.3(25).

Lamoureux believes that the Legislation should bring "the heavy arm of the law" down on all drunk drivers.³²

Mr. Lamoureux also looked at the provision dealing with prostitution related offences. His criticism of that amendment shared a common theme with the criticism brought forth by many other MLAs who spoke about the bill. The criticism was directed at the Government's lack of support for those enforcing the law. He stated that *so* few cars have been confiscated that amending the penalty will not make a difference. Why make the penalty stiffer if it will not be used? A deterrent only works if it is enforced. He wanted support for the police so that they would be able to enforce the legislation.

Mr. Lamoureux criticized the Justice Minister for forcing the opposition to vote for legislation like Bill34. He stated:

I am getting tired of the fluff legislation which the minister tries to challenge us to vote against. He makes it very difficult. You know, we are going to have to look at this legislation. You make it very difficult to say no because we know how this minister operates on propaganda.³³

Mr. Lamoureux cannot vote against the bill on the principle that it is pointless legislation because the Justice Minister will play politics with the statement. Mr. Mackintosh will "[try] to give the impression that maybe I am not as tough as the New Democrats when it comes to dealing with crime."³⁴ Mr. Lamoureux claimed that it is, in fact, Mr. Mackintosh who is not tough on crime, which he claimed could be backed by statistics. He then spent 10 minutes discussing unrelated crimes to illustrate how inaction and lack of support for police from the Justice Minister has allowed crime in Manitoba to continue unabated.

As Mr. Lamoureux's allotted time expired, he was beginning to discuss the issue of protecting other people, aside from just children, such as veterans and seniors. He stated that Mr. Mackintosh should look to the reason for creating the bill. At this point he was cut off by the Speaker. One could make the assumption that Mr. Lamoureux was trying to make the point that the bill's purpose was to protect vulnerable people, and children are not the only vulnerable people. Or, that all people are at risk and should be protected by stiffer penalties for all intoxicated drivers.

Following the announcement of the expiry of time, a motion to adjourn the debate was made. The motion passed.³⁵

³² *Supra* note 23 at 2568.

³³ *Supra* note 23 at 2569.

³⁴ *Ibid.* at 2570.

³⁵ *Ibid.* at 2572.

B. 30 May 2005³⁶

On 30 May 2005, the second reading resumed with Kelvin Goertzen, the Conservative Justice Critic, who criticized the Minister of Justice while speaking favourably about the bill. Mr. Goertzen pointed out that, for all the legislative action taken by the Minister to prevent drinking and driving, the province is not safer, and that there has not been a reduction of drinking and driving in Manitoba. He stated that Manitoba already has tough drinking and driving legislation, although he gives credit for this to the Conservative government of the 1990s and not to the current government. Despite all this legislation, he maintains that drinking and driving is on the rise. Mr. Goertzen had two explanations for the rise in drinking and driving offences.³⁷

The first of Mr. Goertzen's reasons for the increase was the lack of support for law enforcement. He claims that despite the Minister's statements regarding additional officers, the numbers have not yet increased. Mr. Goertzen made reference to the addition of 54 "paper officers" on paper, which he explained does not translate into officer on the streets. I asked Mr. Goertzen what he meant by "paper officers." He explained that: "[W]hile they added these officers to their books, they were not in place and are still not in place because the training is so far behind." Even though additional officers were "added" months before the legislation was announced, the officers did not begin training until November 2005.³⁸ Mr. Goertzen actually suggested in the second reading that these "paper officers" are used by Mr. Mackintosh to "force [the] opposition into the comer," so that they cannot criticize his policing of the province.³⁹ This, apparently, has not worked, as both the Liberals and the Conservatives have criticized the Minister of Justice's support for tnlice in Manitoba. Mr. Goertzen pointed to the possible closure of the Morris RCMP detachment as a sign of decreasing law enforcement.

The second reason for higher levels of intoxicated drivers suggested by the Justice Critic was lax punishment. He blamed the Government for conditional sentences handed out by judges; which in turn, prevents the creation of deterrents for drivers. He noted that he has suggested in the past that the Minister of Justice should institute a policy that the Crown will not recommend conditional sentences. Mr. Mackintosh responded by informing Mr. Goertzen that the Ministry of Justice does not set policies like that for the Crown. Mr. Goertzen countered with a recent policy, introduced by the Minister of Justice, that the Crown will ask for "specific and strict sentences" for crimes committed

³⁶ Manitoba, Legislative Assembly, *Debates and Proceedings*, VoL LVI No. 54 (30 May 2005) [Debates (30 May 2005)J at3076-3079.

³⁷ *Ibid.* at 3077-3079.

³⁸ Interview of Kelvin Goertzen by James Pullar (7 December 2005).

³⁹ *Ibid.*

with handguns and other weapons, and asked, if the Minister of Justice can do it for these crimes, then why not drinking and driving offences?⁴⁰

If these two issues are not addressed, this tougher legislation will not make a difference, explained Mr. Goertzen. To make a difference, people need to know that they will get caught and that the sanctions will be stiff.⁴¹

IV. CONCLUSION

The committee began by hearing from a private citizen, Ms. Diane Rybak. She expressed her support for the bill, but she also requested an amendment. She felt that the legislation should reflect the age of majority in Manitoba, which is 18. She asserted that the discrepancy as to who is a child under this legislation and who is a child in reality is not sending the correct message to new drivers, and many 16 and 17 year olds are not in a position to refuse rides with their intoxicated parents. Ms. Rybak also requested more checkpoints in rural Manitoba. At this point her presentation was completed, but she was asked several questions from some of the committee members.

Mr. Goertzen, who was the first to ask questions of Ms. Rybak, began by stating that his party does not oppose tough legislation, but that they believe that the problem lies with the enforcement of the legislation; as tough laws without enforcement are of no use. His question was whether she thought that the reason more and more people are caught drinking and driving in Manitoba was due to a lack of police resources. She agreed but added that she felt that an unwillingness to enforce the law was also to blame.⁴² The points made by both parties seem somewhat peculiar, as the lack of resources and lack of enforcement should logically decrease the number of charges. Mr. Goertzen and Ms. Rybak may have intended to make the point that low levels of enforcement of current laws create and reinforce a coinciding public perception of low enforcement; therefore, no deterrence is created; resulting in high incidences when the law is enforced. They felt that were there greater enforcement, there would be a greater number of charges, at least in the short run, as hopefully these numbers would go down over time as the enforcement created deterrence.

The next person to speak was Dr. Jon Gerrard, leader of the Manitoba Liberal Party. He asked Ms. Rybak about her thoughts on the suggestion that legislation ought to be extended to cover all vulnerable people.⁴³ She agreed with the suggestion, because these individuals rely on others for transportation

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVI No. 7 (6 June 2005) [Standing Committee (6 June 2005)] at 168-170.

⁴³ *Ibid.* at 168-169.

and may not have the ability to refuse a ride or to understand the danger that they are in." This recommendation, however, ultimately was not heeded, as Bill 34 was passed without such an amendment.⁴⁵

Conservative MLA David Faurshou brought forward the issue of enforcement once again. In short time, this was restated by Mr. Goertzen before the Justice Minister replied. In defence, Mr. Mackintosh pointed to the recent injection of \$9.5 million into the RCMP budget.⁴⁶ He stated that the money was not earmarked for any particular need, but that it was for the RCMP to decide how it would be deployed.

The meeting was concluded after a few further comments by Ms. Rybak. She relayed her concerns that without check stops, the message-that drinking and driving is wrong and will be punished-is not being disseminated. Concern was also raised about possible behaviours that children could be learning from their parents who drink and drive. She believed that by acting now, these potential behavioural patterns could be broken.⁴⁸

In the end, the message conveyed by both the opposition and the private citizen was that the law should be amended to include other vulnerable people and that enforcement needs to be increased. Nevertheless, the Justice Minister never addressed the issue of amending the bill to cover other vulnerable individuals. The bill left the committee stage without any amendments. I asked Mr. Greening why the Government did not consider an amendment to include others. He replied, "It is important to remember that Manitoba was breaking new ground by being the first province in Canada to introduce this type of legislation and it was thought that, as a starting point, it would be best to proceed with legislation that had a very precisely defined scope with straightforward and easily determinable criteria (i.e. a passenger in a car under 16)."⁴⁹

It is worth noting that the other elements of Bill 34 were completely ignored during the committee, including the issues brought up during the second reading.

⁴⁴ *Ibid.* at 169.

⁴⁵ Manitoba, Legislative Assembly, *Debates and Proceedings*, Vol. LVI No 65B (16 June 2005) [Debates 16 June 2005].

⁴⁶ *Supra* note 42 at 169.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* at 169-170.

⁴⁹ *Supra* note 26.

V. ROYAL ASSENT

Bill34 was passed without amendment and received Royal Assent on 16 June 2005.⁵⁰

VI. MR. MACKINTOSH AND MADD

The Minister of Justice and MADD have a very congenial relationship. Mr. Mackintosh has transformed Manitoba into a leader in the fight against drinking and driving. The Minister is rewarded for his work, as MADD continually recognizes the province's accomplishments through press releases and by posting the Minister's letters on the MADD website. MADD cites Manitoba as an example, urging other jurisdictions to follow the province's example. The following is a brief look at their symbiotic relationship through correspondence with each other and with others.

A. A Letter from Mr. Macintosh to MADD

On 22 December 2004, the Justice Minister wrote a letter⁵¹ to MADD outlining the current and future state of drinking and driving laws in Manitoba. He began by announcing the Government's plans for the next bill on the issue, Bill34. He pointed to similar legislation in 35 American states and maintained that he would push for the addition of increased penalties in *The Criminal Code*⁵² for driving impaired with children as passengers. In the meantime, Manitoba will introduce a four point plan to combat this child endangerment.⁵³

The first step in the plan is to implement a Crown policy of seeking higher penalties for impaired drivers who had children in the vehicle at the time of the offence.⁵⁴ The second step is to work with the police "to develop protocols for reporting instances of adults driving impaired with children to Child and Family Services for their action."⁵⁵ The third step is Bill134, which introduces penalties under *The Highway Traffic Act*.⁵⁶ The final step is to have the government

⁵⁰ *Supra* note 45.

⁵¹ "Letter from Gord Mackintosh, Manitoba's Minister of Justice and Attorney General/" MADD Canada Releases (30 September 2005), online MADD Canada <<http://www.madd.ca/english/news/pr/p05janlLhtm>>.

⁵² *Supra* note 5.

⁵³ *Supra* note 51.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Supra* note 2.

provide advice for separated or divorced parents about the steps they can take to prevent the other parent from driving impaired with the children.⁵⁷

The Minister of Justice closed the letter by listing all of the Government's accomplishments over the past five years. The list featured nine changes that were made to drinking and driving legislation. For these initiatives, the Government of Manitoba and the Minister have been praised repeatedly by MADD.

B. A Press Release from MADD

On 11 January 2005, MADD posted a press release⁵⁸ on its website encouraging other provinces to follow in Manitoba's footsteps: "We hope that governments across the country look to Manitoba for what can be done."⁵⁹ The press release looked at the proposed legislation-which would become Bill 34-and recent legislation. "Manitoba's comprehensive strategy to deal with impaired driving child endangerment is very encouraging/" says Mr. Murie, MADD Canada's Chief Executive Officer.⁶⁰ "We are also very pleased with latest amendments to Manitoba's *Highway Traffic Act* that will provide express authority for police officers to use Standard Field Sobriety Testing."⁶¹ Mr. Murie and MADD took the time to mention the Justice Minister personally: "Unquestionably, the Province of Manitoba is leading the way on many fronts when it comes to the fight against impaired driving. We are appreciative of Minister Gord Mackintosh's leadership and courage to take some tough stands on the issue of impaired driving."⁶²

C. MADD's Progress Report

MADD ranked Manitoba as top the province for the third year in a row when it comes to curbing drinking and driving, in a report issued on the eve that Bill34 received Royal Assent. "I wish we had 12 jurisdictions like Manitoba," Mr. Murie said.⁶³ Despite the praises, MADD was not content with Manitoba resting on its laurels; MADD was requesting more changes to the Manitoba *Highway Traffic Act*.⁶⁴ MADD wanted Manitoba to give the police more authority to do check stops and use passive alcohol sensors, which are currently

⁵⁷ *Supra* note 51.

⁵⁸ *Supra* note 3.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Mia Rabson, "Manitoba has come out at the top," *Winnipeg Free Press* (15 June 2005), online: MADD Canada <<http://www.madd.ca/english/news/stories/n05jun15#Lhtm>>.

⁶⁴ *Ibid.*

used without legislative authority. In late 2004, another amendment was passed which gave police statutory authority to conduct Standardized Field Sobriety Test, reducing the likelihood of a court challenge to positive result.⁶⁵ MADD also wants the driving age raised from 15 and Y2 years to 16. Mr. Mackintosh responded by agreeing to consider the advice.^m

D. Analysis of the Relationship

The Manitoba Government, fresh off the proclamation of *Highway Traffic Act* amendments dealing with Standard Field Sobriety Testing, introduced another bill on the issue of drinking and driving. Although great strides have been made by the Doer Government, it is as if they are using a step-by-step method to deal with a serious problem. On the issue of drinking and driving, laws which hand down tougher punishment to offenders are generally favoured by the public. It would seem unlikely that a majority government, like the Doer government⁴ would find any difficulties in pushing the legislation through as one comprehensive amendment. Is the method it is using merely an attempt to garner more positive publicity? Clearly, the government is using MADD to create positive publicity, while MADD is using the Doer government to make strides in the prevention of drinking and driving in Manitoba and across the country. The Justice Minister stated during the second reading of Bill 34 that ((Manitoba has been recognized by MADD Canada for its efforts to counter impaired driving, and those efforts cannot ever be taken for granted."⁶⁷ Any ulterior motives behind this symbiotic relationship, however, are not necessarily a bad thing, as this relationship may ultimately result in safer streets in Manitoba.

VII. CONCLUSION

A. MADD and the Bill

In 2000, Manitoba was fourth on MADD's provincial ranking. Manitoba moved into the top spot in 2003 and has remained there for three years.⁶⁸ The NDP government and the Justice Minister, in particular, have been very progressive on this issue. Whether this legislation was created out of pure desire to protect children, or merely politics, the children of Manitoba are now safer; at least in the eyes of MADD, because of Bill 34.

Although the actions of this government to reduce drinking and driving may be deserving of praise, the manner in which they have introduced the legislation

⁶⁵ *Supra* note 49.

⁶⁶ *Supra* note 61.

⁶⁷ *Supra* note 23 at 2567.

⁶⁸ *Supra* note 63.

leads one to think that the primary motivation was praise. The amount of legislation pushed through in the last six years by the NDP government on this issue, and the announcement of Bill 34 mere days after the last legislation received Royal Assent, is telling of this. The NDP government recently introduced another bill Bill 18: *The Highway Traffic Amendment Act*⁶⁹ (Countermeasures Against Impaired Drivers and Other Offenders), to combat drinking and driving. This bill will allow alcohol related offences committed in the United States to have the same status as offences committed in Canada for the purposes of drivers' licence suspensions and related administrative sanctions.⁷⁰ In an interview, Mr. Goertzen stated that Bill 34 "should have been part of a larger bill or package but I suspect this allows the government to get media over time as opposed to all at once!"⁷¹

With all the drinking and driving legislation that this government has introduced, however, are accidents on the decrease? Have the number of fatalities gone down? The MADD rating is based on legislation and not results. Therefore, a high MADD rating does not necessarily mean that the streets of Manitoba are safer than those of lower ranked provinces.

B. The Opposition and the Bill

Bill 34 is not a bill that the opposition could fight. To vote against the bill would not be a wise political choice. Mr. Goertzen stated that his party, the Conservatives, supported the bill but questioned the NDP's intentions: "The frustration came not from the fact the government may get good publicity on [the bill] but rather that it might have been introduced for no other reason."⁷² The only options were to attack the reach of the bill using questionable reasoning (if we cannot help everyone then we should not help anyone), and to stress the futility of introducing new legislation when the old legislation was not being enforced. Both of these options were utilized by the opposition. A Liberal MLA, Mr. Lamoureux, questioned the bill because it only protected certain children. Why protect only a select group of children—those who are passengers in a vehicle being driven by someone under the influence—and not protect all children put at risk due to impaired driving? Conservative MLAs, Liberal MLAs and a private citizen demanded greater enforcement of current legislation, stating that stiffer penalties will only be a deterrent if they are enforced. The opposition claims that there simply are not enough people being charged with prostitution related offences and drinking and driving offences because the police in this province do not receive enough support. In the words

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Supra* note 38.

⁷² *Ibid.*

of Mr. Goertzen: "Legislation does not pull over drivers nor does legislation administer breathalyser tests. The law is only effective if police are in place to enforce it."⁷³

⁷³ *Ibid.*