

# MANITOBA FEDERATION OF LABOUR

## Bill 2 – The Highway Traffic Amendment Act (safety of workers in construction zones)

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Presentation to the Manitoba Legislative Committee on Human Resources

December 3, 2013

Thank you for this opportunity to provide input into your consideration of Bill 2, the Highway Traffic Amendment Act (safety of workers in construction zones).

The Manitoba Federation of Labour (MFL) represents 96,000 unionized workers from 27 unions across the province. For decades, the MFL has been the leading voice for Manitoba workers in promoting safe and healthy workplaces. Workplace health and safety is the issue area about which our members are most passionate and active. To support this concern, the MFL:

- holds an annual Health and Safety Conference providing training workshops from a worker perspective;
- nominates labour representatives for the Minister's Advisory Council on Workplace Safety and Health, the Workers Compensation Board, and the WCB Appeals Commission;
- supports the MFL Occupational Health Centre and SAFE Workers of Tomorrow in their work promoting awareness of workers' health and safety rights;
- has active committees where health and safety activists work together to promote safe and healthy workplaces and to promote workers' interests at the WCB; and
- lobbies the provincial government and WCB for stronger workplace safety and health measures.

I would like to state first that the Manitoba Federation of Labour strongly supports Bill 2 and the approach that it will enable to protect the safety of workers in construction zones on our roads and highways. Our members include workers who do both maintenance and major construction work on both municipal streets and provincial highways.

In October, 2010, a 21 year old flagger named Brittany Murray was killed when she was struck by a vehicle driving 112km/h through the construction zone in which she was working.

Although the driver of that vehicle was travelling at nearly double the 60km/h speed limit when workers are present, he was acquitted by a judge who said there was "insufficient evidence that the accused's manner of driving was a marked departure from the standard of care expected of a reasonable person in the circumstances."

I submit that we have a serious problem in Manitoba if driving that fast through a construction zone – through a workplace – is considered to be the reasonable community standard. As I said in my open letter on this issue in August, Manitoba urgently needs to send a clear message to drivers that failing to slow down enough in construction zones is a serious, life-and-death issue, and that violators will face serious consequences. That is why we support provisions in Bill 2 that will raise fines for speeding in a construction zone to double the regular fine levels for speeding.

That is not enough though, to fix the problems made so painfully clear by the Brittany Murray tragedy. In acquitting the driver of the vehicle that killed her, the judge noted that a lack of clarity around when drivers must respect the reduced construction zone limit was a key factor

in his decision. Current law provides for a reduced speed limit only “when workers are present.” Ignoring the fact that a worker named Brittany Murray was clearly present when she was struck, the judge ruled that the effective speed limit at the time was not 60km/h because the construction work was not taking place in the immediate vicinity of the incident. He stated: “if it was intended that the speed limit of 60km/h applied throughout the construction zone, whether workers were present or not, the sign should have said that.” Although I might take issue with the suggestion that a worker was not present in this case, the ruling shows there is clearly some ambiguity about when drivers are required to respect reduced construction zone limits.

This lack of clarity stems from the current practice of leaving it to drivers to determine when they need to slow down. This is problematic because by the time a driver encounters workers on the road, it is often too late to slow down to a safe speed. The responsibility to determine whether or not workers are present is also an unsafe distraction for drivers. That is why we support the removal of the provision that reduced limits only apply “when workers are present.”

We have been calling for new rules requiring clear signage that makes it explicitly clear exactly when reduced limits are in effect, what they are, and when they end. We also believe that signage specifying what speed limit is in effect for a construction zone should be the same white and black signage used to indicate speed limits in other situations. This will remove any doubt about whether or not the posted limit is mandatory.

We also believe the rules should require employers to adjust signage as work at the site evolves. This would enable employers, where conditions are appropriate, to restore regular speed limits when workers are not present. The key is that the posted limit is the limit, period. What we are advocating, in effect, is replacing “when workers are present” with “when signs are present.” This will produce a situation where drivers will know exactly what is expected of them when passing through a construction zone.

Bill 2 will provide government with the authority to pass regulations requiring such clear signage, and if the bill is passed, we look forward to participating in promised stakeholder consultations on the new rules in the new year.

In addition to clear signage, Manitoba road workers also need other changes to protect their safety. Current regulations under the Workplace Safety and Health Act do not specify any mandatory controls to protect workers. Employers are left to choose “one or more” controls from a list of possible controls, such as barriers, flashing lights, lane control devices, etc. We believe the rules should be more prescriptive about mandatory controls. For example:

- concrete barriers should be required on major projects where the regular road speed is high, traffic flows are heavy, or the road surface has ice or gravel.
- rumble strips to alert drivers they are entering a construction zone should be mandatory on many major highway construction projects.

Bill 2 will enable regulations that are more prescriptive in this regard, and we welcome the government's commitment in its November 15 news release to implement regulations prescribing mandatory controls.

What workers are saying on this issue can be summarized this way:

Road workers need drivers to slow down. Drivers need clear signs telling them exactly what speed limits are in effect. And employers need to know what is expected of them to operate a safe workplace. Bill 2 is a necessary step in accomplishing all of these things.

I would be remiss, however, if I failed to mention another critical factor in making road construction zones safe for workers: enforcement. The province's November 15 news release promised that "Manitoba Workplace Safety and Health will be stepping up enforcement measures to ensure worker safety standards are maintained at the highest level during construction." We welcome this commitment. It is not enough for an employer's safety plan to be approved before construction begins; it is critical that employers know Safety and Health Officers will be conducting regular safety inspections to verify that employers are living up to the requirements of their approved safety plans. To that end, in addition to regular safety inspections of road construction sites, we would urge periodic, high profile inspection blitzes, as has been done in Ontario.

Given that the police are charged with responsibility for enforcing speed limits in construction zones, we would also urge the province to engage Manitoba police forces on the new road worker safety strategy

I would also like to comment on the urgency of this bill. There is a great deal of road and highway construction planned under the government's infrastructure plan. We believe the new rules can and should be in place before the spring construction season begins. That would require this bill to pass this week so that stakeholder consultations and the development of regulations can be undertaken in the new year. We urge the legislature to pass bill 2 as quickly as possible, and we urge the government to launch stakeholder consultations as early as possible in January.

Finally, I would note that our August open letter calling for change in road worker safety rules was endorsed by Chris Lorenc, President of the Manitoba Heavy Construction Association. It is not every day that workers and employers speak with one voice on workplace issues. Our unity

on the need for these changes speaks volumes. I urge the legislature to consider that in deliberating on this bill.

Thank you for this opportunity to provide a worker perspective on bill 2.

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