

# Bill 34: *The Safer Roads Act (Drivers and Vehicles Act and Highway Traffic Act Amended)*

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C O L L I N   I N T R A T E R \*

## I. INTRODUCTION

Bill 34 - *The Safer Roads Act*<sup>1</sup> was first introduced to the Manitoba Legislature on June 4, 2015 during the fourth session of the fortieth Legislature,<sup>2</sup> and subsequently received Royal Assent on November 5, 2015.<sup>3</sup> The bill amended both *The Drivers and Vehicles Act*,<sup>4</sup> and *The Highway Traffic Act*,<sup>5</sup> with the overall objective to keep dangerous drivers off the road by targeting chronic bad drivers, as well as distracted and impaired driving offenders through implementation of immediate driver improvement actions, including license suspensions.<sup>6</sup> It was stated by the Minister of Justice and Attorney General, the Honourable Gord Mackintosh (Mr. Mackintosh) that “the introduction of *The Safer Roads Act* sends a strong message that dangerous and illegal driving behaviours, such

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\* J.D. (2017).

<sup>1</sup> Bill 34, *The Safer Roads Act (Drivers and Vehicles Act and Highway Traffic Act Amended)*, 4th Sess, 40th Leg, Manitoba, 2015 (assented to 5 November 2015) SM 2015 c 39 [Bill 34].

<sup>2</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 4th Sess, Vol LXVII, No. 42B (4 June 2015) at 1567 [First Reading].

<sup>3</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 4th Sess, Vol LXVII, No. 78B (5 Nov 2015) at 3040 [Royal Assent].

<sup>4</sup> *The Drivers and Vehicles Act*, CCSM 2005, c D104.

<sup>5</sup> *The Highway Traffic Act*, CCSM H60 [Highway Traffic Act].

<sup>6</sup> First Reading, *supra* note 2 at 1568 (Hon Gord Mackintosh).

as driving while impaired by drugs or alcohol, or committing other serious driving-related offences that put others at risk, are not acceptable and will not be tolerated.”<sup>7</sup> Following the adaptations of the affected legislation, *The Safer Roads Act* was proclaimed and came into force on December 1<sup>st</sup>, 2015.<sup>8</sup>

This paper will explore the amendments made to both *The Drivers and Vehicles Act*, and *The Highway Traffic Act* through the implementation of *The Safer Roads Act*, and the background of what brought about the need for these changes. Following this, the paper will examine the legislative process concerning the development of Bill 34, including the debates and concerns throughout the different stages within the house. Finally, it will address whether the amendments produced by Bill 34 will in fact achieve the sought after objectives intended by the legislature.

## II. SUMMARY OF BILL 34 AMENDMENTS

*The Safer Roads Act* amended both *The Drivers and Vehicles Act*, and *The Highway Traffic Act* in very different respects.

### A. The Highway Traffic Act

Looking first at *The Highway Traffic Act*, there are two major changes affecting those who were driving with a blood alcohol content (BAC) of 0.05 - 0.08, or were previously convicted of an impaired operation offence under the *Criminal Code*. Firstly, prior to the amendment made by Bill 34, if an individual was found to be operating a vehicle with a BAC of 0.05 - 0.08, or was shown not to be able to safely operate it by the results of a physical coordination test or drug recognition evaluation, they received an automatic 24 hour administrative license suspension.<sup>9</sup> The amendment made to this provision by *The Safer Roads Act* increased the penalty from

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<sup>7</sup> Manitoba Government, News Release, “Manitoba Introduces Legislation that would Toughen Laws Aimed at Impaired, High-Risk Drivers” (4 June 2015), online: <<http://news.gov.mb.ca/news/index.html?item=35078>> [Manitoba Government News Release (4 June 2015)].

<sup>8</sup> Bill 34, *The Safer Roads Act (Drivers and Vehicles Act and Highway Traffic Act Amended)*, 4th Sess, 40th Leg, Manitoba, 2015 (Proclaimed on 1 December 2015) SM 2015 c 39 [Proclamation].

<sup>9</sup> *Highway Traffic Act*, *supra* note 5 as it appeared on 4 November 2015.

24 hours to 72 hours.<sup>10</sup> In addition, if the operator of the vehicle is accompanied by a passenger younger than 16 years of age, the automatic licence suspension is extended to seven days.<sup>11</sup>

Secondly, *The Highway Traffic Act* was amended so that an individual who was convicted of an impaired operation offence under the *Criminal Code* cannot avoid participating in the ignition interlock program by merely waiting out the prescribed participation period.<sup>12</sup> The ignition interlock program requires those who have been convicted of impaired driving offences to install an alcohol breath-screening device in their vehicle for a predetermined amount of time.<sup>13</sup> The device is wired to the vehicle's ignition, and will prevent the vehicle from starting if it detects alcohol on the driver's breath. In addition, the device will require random samples throughout the course of the operation of the vehicle, and if a sample is not provided or alcohol is detected in the sample, the device will issue a warning, log the event and set off an alarm until the vehicle is shut off.<sup>14</sup> Prior to this amendment, if one was convicted of an impaired operation offence, they could simply avoid participation in the required ignition interlock program by delaying licensing once a mandatory period of suspension had been served.<sup>15</sup> For example, when one is convicted of an impaired operation offence for the first or second time, they must participate in the ignition interlock program, and have an ignition lock installed in their vehicle for a period of one year.<sup>16</sup> In the past, if the offender delayed licensing for this one year after their mandatory suspension period, they would no longer be required to participate in the ignition interlock program when becoming licensed again. However, since *The Safer Roads Act* came into force, this is no longer a possibility as impaired driving offenders are required to participate in the ignition

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<sup>10</sup> Bill 34, *The Safer Roads Act (Drivers and Vehicles Act and Highway Traffic Act Amended)*, 4th Sess, 40th Leg, Manitoba, 2015 (assented to 5 November 2015) SM 2015 c 39, Explanatory Note [Explanatory Note].

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

<sup>12</sup> *Ibid.*

<sup>13</sup> Manitoba, Manitoba Public Insurance, *Ignition Interlock Program*, 2015 at 1 [Interlock].

<sup>14</sup> *Ibid.* at 2.

<sup>15</sup> Manitoba Government News Release (4 June 2015), *supra* note 7.

<sup>16</sup> Interlock, *supra* note 13 at 1.

interlock program as a condition of immediate licence reinstatement following a mandatory driver's licence suspension.<sup>17</sup> The program takes effect upon the driver's license reinstatement, not when the mandatory suspension period lapses. It has been said that required ignition lock devices are not issued as a penalty to the driver, but strictly to influence safer driving behaviour, and past research in the area has stated that they do in fact achieve this goal. A study conducted in 1990 "reported significantly lower rearrest rates for drivers with a ignition interlock fitted to their vehicle (3.4%) when compared to a control group who had received licence revocation sanctions (9.8%)."<sup>18</sup> This suggested that even while sanctions are in effect, the alcohol interlock is an effective way to deter drinking and driving behaviour.<sup>19</sup>

## B. The Drivers and Vehicles Act

Looking now to *The Drivers and Vehicles Act*, one of the main amendments made by Bill 34 is that law enforcement officers are now required to report to the Registrar of Motor Vehicles when a driver is charged with a serious driving offence listed under s. 125(6) of *The Drivers and Vehicles Act*.<sup>20</sup> The listed offences all revolve around the theme of dangerous driving, and this is in an effort to keep dangerous and chronic bad drivers off the roads. Coinciding with the requirement to report all listed offences to the Registrar of Motor Vehicles, the registrar has the power to suspend a driver's license, and this power is made explicitly applicable to contraventions of *The Highway Traffic Act*.<sup>21</sup> This is a unique approach among Canadian jurisdictions, and it infers that drivers may lose the privilege of driving immediately after a high-risk driving charge (since it can now be taken into account along with at fault accidents and other infractions) as opposed to waiting for a court conviction on the charge.<sup>22</sup> Mr. Mackintosh stated that this "would improve road safety by taking

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<sup>17</sup> Manitoba Government News Release (4 June 2015), *supra* note 7.

<sup>18</sup> Dominic Zaal, "Traffic Law Enforcement: A Review of the Literature" (Melbourne: Monash University Accident Research Centre, 1994) at 64.

<sup>19</sup> *Ibid.*

<sup>20</sup> Explanatory Note, *supra* note 10.

<sup>21</sup> *Ibid.*

<sup>22</sup> Manitoba Government News Release (4 June 2015), *supra* note 7.

immediate action when a driver's past driving history warrants."<sup>23</sup> However, this raises concerns about presuming what the courts will rule, and removing a privilege based on this presumption. This will be discussed in further detail later in the paper. In addition, the amendment allows the registrar to delegate these powers and duties to employees of Manitoba Public Insurance (MPI), as well as the Department of Infrastructure and Transportation.<sup>24</sup>

It should be noted that amendments to the Driver Safety Rating regulation administered by MPI were also introduced to compliment Bill 34.<sup>25</sup> These amendments are aimed at penalizing drivers who are using handheld devices while operating a vehicle. A person convicted of using a handheld device while operating a vehicle will receive a \$200 fine, as well as five demerits, which is an increase of three demerits from the previous penalty.<sup>26</sup> The new implemented changes based on Bill 34 and the complimenting Driver Safety Rating regulation will be the toughest laws on distracted drivers in Canada.<sup>27</sup> They will work together to get dangerous drivers off our roads, as the registrar takes demerits into account when deciding to implement immediate driver improvement action, such as a license suspension.

### III. BACKGROUND TO THE DEVELOPMENT OF BILL 34

There were multiple factors contributing to the introduction of Bill 34, and the need to crack down on dangerous driving, including distracted driving, impaired driving or simply chronic bad driving. In 2014, the most prevalent contributing factor for collisions in Manitoba was distracted driving, accounting for 21% of all collisions.<sup>28</sup> Distracted driving also topped the charts for most prevalent contributing factor for collisions

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<sup>23</sup> *Ibid.*

<sup>24</sup> Explanatory Note, *supra* note 10.

<sup>25</sup> Manitoba Government News Release (4 June 2015), *supra* note 7.

<sup>26</sup> "Manitoba distracted drivers to face stiffest penalties in Canada", *CBC News* (4 June 2015), online: <www.cbc.ca> [CBC News (4 June 2015)].

<sup>27</sup> *Ibid.*

<sup>28</sup> Manitoba, Manitoba Public Insurance, *Traffic Collision Statistics Report*, 2014 at v [Traffic Collision Statistics Report].

where people are killed or seriously injured, with nearly 27% of people killed, and 29% of people seriously injured.<sup>29</sup> As Mr. Mackintosh stated, “[t]he prevalence of distracted driving on our roads is equally as disturbing as impaired driving.”<sup>30</sup> He added that “[o]n average, 28 people are killed every year in Manitoba due to distracted driving” and that “[t]his is devastating and senseless because texting or talking while driving is 100 per cent preventable.”<sup>31</sup> Further, according to MPI, impaired driving was one of the top five most prevalent contributing factors for collisions where people are killed or seriously injured, having 28% of people involved killed, and 8% of people seriously injured in 2014.<sup>32</sup> Skipping ahead to 2015, the RCMP have reported that the number of fatalities due to collisions on Manitoba roads has increased to 79 (from 74 in 2014), and that in 40% of these fatal collisions, alcohol or drug impairment was involved.<sup>33</sup> On top of this, there were an alarming 1,922 alcohol related *Criminal Code* convictions in 2013, which is only 3% less than in 2012.<sup>34</sup> As Mr. Mackintosh stated in response to *The Safer Roads Act*, “while we have been successful in reducing alcohol-related incidents, we will continue to enhance our laws to send the message that drinking and driving will not be tolerated.”<sup>35</sup> Statistics such as these made it evident that further preventative measures need to be taken in regards to dangerous drivers, and Bill 34 made an effort to tackle some of these issues.

While both distracted and impaired driving were crucial contributing factors to the creation and advancement of Bill 34, this bill arose largely in response to the death of Kendall Wiebe.<sup>36</sup> On April 7, 2012, Kendall was working at a hair salon on Portage Avenue in Winnipeg, Manitoba, when a man named Adebola Shoyoye drove his SUV through the salon, killing

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

<sup>30</sup> Manitoba Government News Release (4 June 2015), *supra* note 7.

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

<sup>32</sup> Traffic Collision Statistics Report, *supra* note 28 at vi.

<sup>33</sup> “Manitoba RCMP see rise in number of fatal crashes in 2015”, *CBC News* (7 January 2015), online: <www.cbc.ca> [CBC News (7 January 2015)].

<sup>34</sup> Traffic Collision Statistics Report, *supra* note 28 at vi.

<sup>35</sup> Manitoba Government News Release (4 June 2015), *supra* note 7.

<sup>36</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 4th Sess, Vol LXVII, No 68B (20 October 2015) at 2358 (Hon Jon Gerrard) [Third Reading].

Kendall and seriously injuring one of her co-workers.<sup>37</sup> While driving down Portage Avenue, Shoyoye lost control of his jeep, causing him to erratically and dangerously drive across all six lanes of Portage Avenue, jump the median boulevard, go over the curb and sidewalk, and across a parking lot before crashing through the salon.<sup>38</sup> The incident lasted 25 seconds, and it was stated that he was “depressing the gas pedal when he meant to depress the brake pedal to try to stop.”<sup>39</sup> Shoyoye failed to stop the vehicle for over 700 metres before crashing through the salon at a speed of 100 km/h.<sup>40</sup> Shoyoye is responsible for nine at fault accidents, and committed five infractions contrary to *The Highway Traffic Act* from 2005 to 2013.<sup>41</sup> In fact, multiple infractions occurred following the Kendall Wiebe incident, where Shoyoye was able to maintain his licence in the years following the crash.<sup>42</sup> In the end, Shoyoye pled guilty and was convicted of dangerous driving causing bodily harm, and dangerous driving causing death, for which he was sentenced to 90 days behind bars and an eight year license suspension.<sup>43</sup> Looking at the chronic bad driving record of Shoyoye, and the fact that he was able to maintain his driving privileges not only after all the accidents and infractions leading up to the Kendall Wiebe incident, but even after the fatal incident occurred, it is clear that something had to be done. The amendments made by *The Safer Roads Act*, specifically to *The Drivers and Vehicles Act* attempt to target this chronic bad driving behaviour.

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<sup>37</sup> “Partner of Winnipeg woman killed in crash calls driver ‘menace to the road’”, *CBC News* (13 April 2015), online: <www.cbc.ca> [CBC News (13 April 2015)].

<sup>38</sup> *R v Shoyoye* 2015 MBQB 72 at paras 4–6, 317 Man R (2d) 57 [Shoyoye].

<sup>39</sup> *Ibid* at para 9.

<sup>40</sup> *Ibid* at paras 8–9.

<sup>41</sup> *Ibid* at para 17.

<sup>42</sup> “Legal System Devalued the Life of Kendall Wiebe”, *CJOB News* (04 May 2015), online: <www.cjob.com>.

<sup>43</sup> “‘Something needs to change’ says dad of Ultracuts crash victim Kendall Wiebe”, *CBC News* (30 April 2015), online: <www.cbc.ca>; Shoyoye, *supra* note 38 at para 37.

## **IV. THE LEGISLATIVE PROCESS OF BILL 34**

Bill 34, *The Safer Roads Act*, was debated in the Manitoba legislature over the course of the fourth session of the Fortieth Legislature. It followed the common path through the legislative process, and did not spark a lot of debate between the different parties as dangerous driving is an issue that everyone can get behind. Although members of the legislature supported the bill due to it having the right intention, a number of concerns were still raised throughout the legislative process.

### **A. The First Reading**

As previously stated, Bill 34 - *The Safer Roads Act* was first introduced on June 4, 2015.<sup>44</sup> The Minister of Justice and Attorney General, the Honourable Gord Mackintosh, introduced Bill 34 and brought forth a motion that it should be read for the first time. He briefly explained that the bill would introduce immediate driver improvement actions, including:

licence suspension when charges are laid for serious traffic offences, longer administrative roadside suspensions for blowing over .05, especially when a child is in the vehicle, extending participation in Manitoba's Ignition Interlock Program for all convicted impaired drivers, which will complement regulatory changes for Canada's highest demerits for using a cellphone while driving.<sup>45</sup>

The house agreed to adopt the motion and Bill 34 proceeded to the second reading.

### **B. The Second Reading**

On June 29, 2015, Bill 34 was presented for debate and the second reading.<sup>46</sup> Mr. Kelvin Goertzen, MLA for the Steinbach constituency and house leader of the Progressive Conservative party, the official opposition, was the first and only one to speak to the bill at this stage.<sup>47</sup> Mr. Goertzen began by reminding everyone that drinking and driving is still a prevalent

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<sup>44</sup> First Reading, *supra* note 2 at 1568.

<sup>45</sup> *Ibid* (Hon Gord Mackintosh).

<sup>46</sup> Manitoba, Legislative Assembly, *Debates and Proceedings*, 40th Leg, 4th Sess, Vol LXVII, No 54 (29 June 2015) at 2248 [Second Reading].

<sup>47</sup> *Ibid* (Kelvin Goertzen).



issue of concern in our province today, and that Bill 34 aims at ensuring “those who are driving on our highways and our roads in Manitoba are doing so, not only responsibly when it comes to obeying the rules of the road, but that they’re not doing so in an impaired fashion.”<sup>48</sup> Mr. Goertzen spoke in favour of the bill generally. However, he raised a concern for the first time, which became a recurring concern in nearly every stage of the legislative process moving forward. While the amendments to make things more punitive is something of interest and value for a problem as extreme as drinking and driving, there is the worry that increasing the severity of the penalties is not necessarily the best approach, as the greatest deterrent is police enforcement itself, and the chance that the offender thinks they have of actually getting caught.<sup>49</sup> Once individuals are in a state where they have been drinking, they do not really consider the penalties involved with the action of drinking and driving. It is before the individuals go out, if the chance of being caught is higher, that a potential offender may be more likely to find other means of transportation for the evening, and not engage in impaired driving activity.<sup>50</sup> This concern is especially relevant to rural areas of Manitoba, where policing areas per detachment are huge, and the presence of law enforcement at any one time within a specific area is often very little.<sup>51</sup> Not only are units covering large masses of land at a time, but they are required to do many more things in the course of duty, such as remain with individuals in detainment, or be at a hospital after an incident, both of which require their constant attendance.<sup>52</sup> This would make them unable to be on patrol, and limit the true policing presence they can offer. The amendments set out in this bill were briefly compared to *The Highway Traffic Act Amendment (Promoting Safer and Healthier Conditions in Motor Vehicles)*, which was passed in the third session of the thirty-ninth legislature, making it illegal to drive with a child under 16 years of age in the car while smoking.<sup>53</sup> Since the bill has been passed, there have not

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<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> Bill 5, *The Highway Traffic Amendment Act (Promoting Safer and Healthier Conditions in*

been very many convictions on this particular provision.<sup>54</sup> The worry here is that it is an issue of enforcement, and not one of a lack of offenders.<sup>55</sup> Mr. Goertzen concluded by saying that he looked forward to having this bill sent to committee, but summed up his concerns:

[T]he ability for the police to be able to ensure that the law is being followed really falls on their ability to do active policing and the ability for them to be empowered to have enough individuals to provide a deterrent and to hope that [...] those who are within the purviews of, perhaps, making a criminal act or one that violates *The Highway Traffic Act*, believe that they're going to get caught.<sup>56</sup>

Following Mr. Goertzen's submissions to the house, the house agreed to adopt the motion and sent Bill 34, *The Safer Roads Act*, to committee.

### C. The Committee Hearings

#### 1. *The Social and Economic Development Committee*

On September 24, 2015, Mr. Mackintosh opened the committee discussion by thanking the main groups who contributed to the bill, through giving of advice, support and cooperation. Following this opening statement, Mr. Kelvin Goertzen was the only one that spoke to the bill at committee. As the official opposition, he stated that he was in "broad agreement with the intention of all aspects of [Bill 34]", and what the minister was trying to do in response to the tragedy of Kendall Wiebe.<sup>57</sup> However, while Mr. Goertzen agreed with the general intention of the bill, he stated that he was unsure whether this legislation would have changed the outcome of the Kendall Wiebe situation, and therefore that questions should be raised with MPI when the Crown Corporations Committee would meet.<sup>58</sup> Mr. Goertzen stressed that driving is a privilege, not a right, and that this needs to be further addressed with MPI to determine when

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*Motor Vehicles*), 3rd Sess, 39th Leg, Manitoba, 2009 (assented to 11 June 2009) SM 2009 c 6.

<sup>54</sup> Second Reading, *supra* note 46 at 2248 (Kelvin Goertzen).

<sup>55</sup> *Ibid.*

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

<sup>57</sup> Manitoba, Legislative Assembly, *The Standing Committee on Social and Economic Development*, 40th Leg, 4th Sess, Vol LXVII, No 7 (14 September 2015) at 141 (Kelvin Goertzen).

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

an individual hits a bar and loses that privilege, as well as what specific criteria are in place to ensure this happens, so that it complements the amended legislation.<sup>59</sup> Following Mr. Goertzen's submissions, the committee passed all clauses of *The Safer Roads Act*, and sent it to concurrence and its third reading.

## ***2. The Crown Corporations Committee for MPI***

The Crown Corporations Committee for MPI met on September 28, 2015 and discussed a variety of matters, some of which were in relation to Bill 34.<sup>60</sup> During the committee meeting, Mr. Dan Guimond, President and Chief Executive Officer for MPI Corporation, spoke to the majority of the concerns raised. The main issue that was addressed in relation to Bill 34 at this committee meeting was the process of how and when one may have their driving privileges revoked. This is especially important in getting dangerous and chronic bad drivers off the road, which is in the spirit of *The Safer Roads Act*, and complements the amendments made, specifically to *The Drivers and Vehicles Act*. Mr. Goertzen was the one to raise this concern at committee, posing the question of whether there were certain specific criteria that would result in one losing their privilege to drive.<sup>61</sup> Mr. Guimond laid out the three-pronged approach which helps them to "isolate people that are starting to be problematic" and determine whether MPI should remove their license or not.<sup>62</sup> The first prong is the Driver Safety Rating Scale, which rates drivers on a demerit based system, coinciding with the number of infractions and at-fault accidents one has.<sup>63</sup> The less infractions and accidents one is involved in, the higher up they are on the point scale, and this leads to discounts on their license and auto insurance to promote safe driving. Mr. Guimond explained that by monitoring the pattern of infractions and accidents one is involved with, it allows them to analyze, from an actuarial perspective, when there will be a

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

<sup>60</sup> Manitoba, Legislative Assembly, *The Standing Committee on Crown Corporations* 40th Leg, 4th Sess, Vol LXVII, No 4 (28 September 2015) at 119 [Crown Corporation Committee].

<sup>61</sup> *Ibid* (Kelvin Goertzen).

<sup>62</sup> *Ibid* (Dan Guimond).

<sup>63</sup> *Ibid*; Manitoba Public Insurance, *The Driver Safety Rating*, online: <[www.mpi.mb.ca](http://www.mpi.mb.ca)>.

higher chance that a particular individual will be involved in an accident, and allows MPI to take action and prevent this from happening.<sup>64</sup> Taking action leads into the second prong of the approach, the Driver Improvement and Control Program. This is where a proactive approach is taken to counteract an individual's bad driving behaviour.<sup>65</sup> For example, in 2014, 48,000 Manitoba drivers were put through a variety of mandatory courses to improve their driving.<sup>66</sup> If MPI is not satisfied with how things are going for an individual partaking in the mandatory program, they enter the third prong of the approach, and hold a show-cause hearing to determine if the particular individual should be allowed to continue to drive or not.<sup>67</sup> In 2014, MPI held 8,000 show-cause hearings, and out of those hearings, approximately 4,000 drivers lost their licenses.<sup>68</sup> This three pronged approach will work hand in hand with the amendments made by *The Safer Roads Act*, as the registrar can now take into account not only infractions and at fault accidents when deciding whether to put an individual into the program, but also charges laid on an individual for serious driving offences. This will allow the registrar to take action sooner, and the three-pronged approach to kick in faster, as MPI no longer has to wait for convictions to take actions of the driver into account, theoretically taking bad and dangerous drivers off the road in a more efficient time frame.<sup>69</sup>

Mr. Goertzen, based on the description of the approach used to determine when one should lose their driving privileges, made the argument that this approach seems very arbitrary and discretionary, as there is no specific point where these different punishments arise.<sup>70</sup> In addition, he pointed out that one can by-pass the system all together by buying back their accident claims, which is effectively paying MPI back for the percentage of the damage which was their fault, and not being

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<sup>64</sup> Crown Corporation Committee, *supra* note 60 at 119 (Dan Guimond).

<sup>65</sup> *Ibid* at 120.

<sup>66</sup> *Ibid.*

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

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

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid* (Kelvin Goertzen).

penalized in MPI's system by way of demerits.<sup>71</sup> If individuals are buying back their claims and avoiding the demerits that come along with them, this means that their Driver Safety Rating Scale is no longer an adequate representation of their driving ability. This can undermine the effectiveness of the three-pronged approach, as the measures to help get dangerous or chronic bad drivers off the road, such as the Driver Improvement and Control Program or a show-cause hearing, are based on the Driver Safety Rating Scale, and therefore would not be implemented at the correct time, potentially putting the public at risk. These were valid concerns regarding the three-pronged approach; these potential problems will be explored later in the paper.

#### D. The Third Reading

On October 20, 2015, Bill 34 was introduced for its concurrence and third reading to the house.<sup>72</sup> The debate was started again by Mr. Goertzen, who stated for the record that even though he still had concerns that the bill would not meet the sought after objectives, he supported it.<sup>73</sup> He explained this was “not a partisan matter” and that “[t]here have been different Attorney Generals under different political stripes who have tried to take action on drinking and driving and to try to reduce it in Manitoba.”<sup>74</sup> Mr. Goertzen renewed many of the same concerns that enforcement and presence are as much of a deterrent as the actual penalty itself, and elaborated that while there is good work being done in the field, there continues to be an unacceptable level of drinking and driving.<sup>75</sup> He briefly explained that while deterrents such as MPI check stops have been effective, there needs to be a greater visible policing presence as a reminder, especially in rural communities where RCMP officers are very sparse due to the large landmass each detachment must cover.<sup>76</sup> Mr. Goertzen mentioned the Community Safety Officers Program as a potential way to get more presence in these communities, a program

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<sup>71</sup> *Ibid* at 122.

<sup>72</sup> Third Reading, *supra* note 36 at 2355.

<sup>73</sup> *Ibid* at 2356 (Kelvin Goertzen).

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

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

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

explored later in this paper. In concluding his submissions, he stated that he was willing to allow this bill to go through because the intention of the bill was the right one (that of reducing drinking and driving to ensure that dangerous drivers are not on the road putting families at risk).<sup>77</sup> He contended that while the bill would not likely prevent any deaths, it also would not cause any harm, and therefore was worth a try.<sup>78</sup>

The Honourable Jon Gerrard (Mr. Gerrard), MLA for the River Heights constituency and member of the Liberal party, spoke to Bill 34 following Mr. Goertzen's submissions.<sup>79</sup> His submissions focused heavily on the provisions which allowed driver's licenses to be suspended following the charge of a high risk driving incident, as opposed to MPI waiting to take action until the offender has been convicted in court. He expressed that while he was prepared to allow the bill to move forward, this must be done with caution. He stated:

[W]e always have to be careful about measures which will presume what a court will decide or will take away individual's privileges in this context, because without actually having a clear conviction and, clearly, when licences are taken away in this fashion, there needs to be a very significant amount of due diligence done to make sure that individuals are not penalized incorrectly.<sup>80</sup>

He pointed out that it was made evident during the committee stage that MPI's considerations for license suspensions, and the threshold to take action against an individual were very unclear, and that this should be explicitly clarified to the public prior to the enactment of the legislation.<sup>81</sup> All drivers need this information if they are vulnerable to having their driving privileges removed, as it will help to ensure they are not incorrectly penalized.

Lastly, Mr. Cliff Graydon, MLA for the Emerson constituency and member of the Progressive Conservative caucus, exclaimed again that the purpose of the bill is to take chronic poor drivers off the road.<sup>82</sup> While there was nothing in this bill Mr. Graydon opposed, he wanted to put on

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<sup>77</sup> *Ibid* at 2358.

<sup>78</sup> *Ibid* at 2357.

<sup>79</sup> *Ibid* at 2358 (Hon Jon Gerrard).

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

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

<sup>82</sup> *Ibid* at 2359 (Cliff Graydon).

record that authorities had to be mindful of their conduct when dealing with dangerous and impaired driving situations. He stated that “the authorities have to realize when these individuals start to run, that perhaps they can quit chasing a little bit sooner”, as chasing prolongs the danger.<sup>83</sup> He related this back to the tragic death of 20 year old Taylor Renwick, who was killed on October 9, 2015, when a drunk driver, Manuel Cowley, collided head on with her vehicle while being pursued by the RCMP.<sup>84</sup> Police found Cowley at a gas station on highway 2 in the Midland constituency, and began the chase when he attempted to evade the RCMP. The chase was eventually called off when Cowley was driving too recklessly at excessive speeds, but not long after, he collided with Renwick’s vehicle. The police conduct during the incident is still under investigation by the Independent Investigations Unit, and due to this, no further information is available.<sup>85</sup> In rural Manitoba, there are few places one can run to, and with the communication and resources of the RCMP, which includes helicopters, they must be strategic in such situations. Mr. Graydon concluded by speaking of Kendall Wiebe’s family, and how they want to ensure what happened to her no longer happens to others.<sup>86</sup> This legislation is a step towards that goal.

With the conclusion of those comments, the house adopted the motion of concurrence and third reading of *The Safer Roads Act*, and it subsequently proceeded to receive Royal Assent on November 5, 2015.<sup>87</sup> Bill 34 was finally proclaimed and put into force on December 1, 2015.<sup>88</sup>

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<sup>83</sup> *Ibid* at 2360.

<sup>84</sup> Mike McIntyre, “Man accused of killing university student in high-speed crash has long legal history”, *The Winnipeg Free Press* (22 October 2015), online: <[www.winnipegfreepress.com](http://www.winnipegfreepress.com)>.

<sup>85</sup> Tamara Forlanski, “Man facing 19 charges after crash near St.Claude kills Manitoba woman”, *Global News* (22 October 2015), online: <<http://globalnews.ca>>.

<sup>86</sup> Third Reading, *supra* note 36 at 2360 (Cliff Graydon).

<sup>87</sup> Royal Assent, *supra* note 3 at 3040.

<sup>88</sup> Proclamation, *supra* note 8.

## V. WILL BILL 34 ACHIEVE THE OBJECTIVE OF TAKING DANGEROUS DRIVERS OFF THE ROAD?

### A. Harsher Penalties

One of the main concerns with Bill 34 was whether increasing the harshness of penalties will actually have any bearing on the number of dangerous or impaired drivers getting behind the wheel. Although this was cause for concern, everyone agreed with the intention of the bill to reduce drinking and driving and to keep dangerous drivers off the road, therefore this concern was not enough to prevent the bill from passing.<sup>89</sup> There is a considerable amount of research completed in the field of deterrents, most of which finds that the actual presence of law enforcement itself is the most crucial and effective deterrent, and that the harshness of the penalty itself is not going to do much to deter offenders.

Dominic Zaal of the Federal Office of Road Safety, working with the Monash University Accident Research Centre in Australia, carried out a large review of literature relating to traffic law enforcement which was carried out in 1994.<sup>90</sup> According to Zaal, traffic law enforcement generates two different types of deterrents, general and specific. General deterrents result from a belief that traffic laws are being enforced, and there is a real risk of detection and punishment for breaking such laws, while specific deterrents are specific to the traffic law itself, such as the penalty for breaking a particular law.<sup>91</sup> It was suggested that the primary way to modify road behaviour is achieved through the process of general deterrence, and specific deterrents only work if they are accompanied by a perceived risk of detection.<sup>92</sup> In fact, one study's results indicated that "the existence of statutes impacts only those least likely to drink and drive, while perceptions of the likelihood of arrest [...] significantly reduce the propensity for almost everyone."<sup>93</sup> The effect of specific deterrents alone can be seen in one study that measured the severity of speeding fines in

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<sup>89</sup> Third Reading, *supra* note 36 at 2355.

<sup>90</sup> Zaal, *supra* note 18 at 1.

<sup>91</sup> *Ibid* at 8.

<sup>92</sup> *Ibid* at 9.

<sup>93</sup> Anthony Bertelli & Lilliard Richardson Jr., "The Behavioural Impact of Drinking and Driving Laws" (2008) 36:4 Policy Studies J 545.



Sweden. In 1982, speeding fines were increased, and even though a significant portion of drivers knew of the fine increases, they found no change in subsequent driving behaviour over the next seven years.<sup>94</sup> This conclusion was supported by another study that found that “enforcement strategies which emphasise the perceived probability of detection rather than the severity of punishment had a much greater impact on road user behaviour.”<sup>95</sup> If the probability of detection and punishment was perceived by the drunk drivers as low, “then the effect of increasing penalty severity would be negligible.”<sup>96</sup> However, it can be seen in a study reviewed by Zaal that if the risk of apprehension is high, then increasing the fine amount can also bring about an increase in the level of general deterrence.<sup>97</sup> When looking at the risk of apprehension and the effectiveness of general deterrents, the effectiveness is dependent on having a sufficiently high and visible level of enforcement to create the perception that there is a real possibility a traffic offence will be detected.<sup>98</sup>

Zaal’s findings have subsequently been confirmed by a number of more recent studies in the area. In February of 2014, a paper titled “Effective drink driving prevention and enforcement strategies: Approaches to improving practice” was published by the Australian Institute of Criminology. It stated that “evaluations of drink driving penalties [...] indicate harsher penalties alone may not have a significant impact on drink driving and road safety.”<sup>99</sup> This was exemplified by a study conducted in New South Wales, where drink driving penalties were doubled in 1998.<sup>100</sup> The study involved comparing court data from 1997 (prior to the increased penalties) and 1999 (after the increased penalties) on first time and repeat offenders.<sup>101</sup> While the results showed a decrease

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<sup>94</sup> Zaal, *supra* note 18 at 10–11.

<sup>95</sup> *Ibid* at 50.

<sup>96</sup> *Ibid* at 49.

<sup>97</sup> *Ibid* at 25.

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

<sup>99</sup> Kiptoo Terer & Rick Brown, “Effective drink driving prevention and enforcement strategies: Approaches to improving practice” (2014) 472 *Trends and Issues in crime and criminal justice*, Australian Institute of Criminology 1 at 5 (Ebscohost).

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

<sup>101</sup> *Ibid*.

in recidivist drink driving following the new penalties, it was very slight compared to the severity of the new penalties, and may have resulted from the offenders having lengthier sanctions that incapacitated them from driving.<sup>102</sup> It was further stated that the increased penalties would have been more effective if combined with improved enforcement, and a consistent application of license disqualification.<sup>103</sup> Another study examined the effect of fine amounts on driving re-convictions.<sup>104</sup> The results showed that the fine amount exerted no effect on the likelihood of a further driving offence.<sup>105</sup> Based on the outcomes above, and a review of evidence relating to penalty severity, it seems apparent that the introduction of more severe penalties only exerts an effect when the perceived risk of apprehension and punishment is sufficiently high.<sup>106</sup> Otherwise, there may be “only minimal deterrence benefits to be gained by introducing more severe penalties.”<sup>107</sup>

The amendments made by *The Safer Roads Act* attempt to deter drinking and driving through the use of harsher penalties, such as roadside suspensions and mandatory participation in the ignition interlock program, as previously discussed. As we have seen from the studies above, this is not usually the best method of deterrence, and theoretically, it needs to be paired with greater visible police presence to achieve the desired outcome of preventing drinking and driving incidents in Manitoba. One study showed that sobriety checkpoints have reduced the number of alcohol impaired drivers in the traffic stream, and were associated with a reduction of alcohol related fatalities in the range of 10% to 20%.<sup>108</sup> In 2014, more than 300 impaired drivers were removed from Manitoba roads as part as MPI’s road side check program.<sup>109</sup> While this

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

<sup>103</sup> *Ibid.*

<sup>104</sup> Steve Moffatt & Suzanne Poynton, “The deterrent effect of higher fines on recidivism: driving offences” (2007) 106 *Crime and Justice Bulletin* 1 (Ebscohost).

<sup>105</sup> *Ibid* at 2–4.

<sup>106</sup> *Ibid.*

<sup>107</sup> Zaal, *supra* note 18 at 11.

<sup>108</sup> *Ibid* at 39.

<sup>109</sup> “MPI, police take aim at impaired drivers with more checkstops”, *MyToba* (14 May 2015), online: <mytoba.ca>.

has been successful, a subsequent study demonstrated that over half the drivers who were over the legal BAC limit were able to pass through such checkpoints without being tested, due to the level of police discretion in determining which drivers should be administered breathalyzer tests.<sup>110</sup>

The best, and most obvious way to deter dangerous and impaired driving, and have a greater visible presence of police in public would be to increase the number of officers on duty at any given time, and have them patrol smaller areas where their presence can be seen. However, this is not always possible for a variety of reasons, including budgetary restrictions and the struggle to fill vacant positions.<sup>111</sup> During the third reading of Bill 34, Mr. Goertzen stated that one possible solution to getting a more visible policing presence on the roads in rural Manitoba is to expand the Community Safety Officer Program.<sup>112</sup> Bill 31 - *The Police Services Amendments Act (Community Safety Officers)* was passed in the third session of the fortieth legislature, and subsequently came into force on the date of proclamation, June 26, 2015.<sup>113</sup> These amendments enabled municipalities to establish Community Safety Officer Programs, to “deliver crime prevention programs, connect persons in need with appropriate social services and maintain a public presence in the community.”<sup>114</sup> Further, with authorization “community safety officers may assist local police officers in non-criminal matters, exercise prescribed powers and enforce specific enactments.”<sup>115</sup>

The first Community Safety Officer Program was established in Thompson, Manitoba, and the officers were prescribed powers to enforce some provincial laws, including but not limited to *The Liquor and Gaming Control Act*, *The Intoxicated Persons Detention Act*, and *The Highway Traffic Act*.<sup>116</sup> Establishing CSO programs in rural areas with low levels of visible

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<sup>110</sup> Zaal, *supra* note 18 at 38.

<sup>111</sup> Josh Crabb, “RCMP staffing levels raise concerns in rural Manitoba”, *CTV News Winnipeg* (12 November 2015), online: <[www.winnipeg.ctvnews.ca](http://www.winnipeg.ctvnews.ca)>.

<sup>112</sup> Third Reading, *supra* note 36 at 2356–2357 (Kelvin Goertzen).

<sup>113</sup> Bill 31, *The Police Services Amendments Act (Community Safety Officers)*, 3rd Sess, 40th Leg, Manitoba, 2014 (assented to 12 June 2014) SM 2014 c 9.

<sup>114</sup> *Ibid*, explanatory note.

<sup>115</sup> *Ibid*.

<sup>116</sup> Manitoba Government, News Release, “Manitoba Government announces Community Safety Officer Program to launch in Thompson” (27 April 2015), online:

police presence, and granting them the power to enforce legislation such as *The Highway Traffic Act*, could be a major step towards deterring dangerous and impaired driving by creating the risk of apprehension needed to compliment the harsher penalties instated by Bill 34. While it is still too early to see the effects of the program in Thompson, as it was only implemented in June of 2015, Commanding officer of the RCMP in Manitoba, Kevin Brosseau, stated that “[t]he launch of the CSO program in Thompson demonstrates a collaborative effort toward preventing crime and addressing social issues, which brings us closer to our ultimate goal – making the community safer,” and this can be the case for many scarcely policed areas throughout rural Manitoba.<sup>117</sup>

## B. Registrar’s Power to Suspend Driving Privileges

Bill 34 grants the Registrar of Motor Vehicles the power to take immediate driver improvement action on individuals, such as suspending their driving privileges, based on not only driving infractions, at-fault accidents and convictions, but also charges laid on an individual prior to a court conviction.<sup>118</sup> It was stated by Mr. Mackintosh that “Authorizing the registrar to take immediate driver improvement action based on serious driving charges laid by police [...] would improve road safety by taking immediate action when a driver’s past driving history warrants.”<sup>119</sup> This view is supported by a study conducted by Robinson and Smiley in 1989, where they found that license disqualifications were a useful countermeasure to a violation of serious traffic laws as it reduces the amount of driving and level of risk taking behaviour among problem groups of drivers.<sup>120</sup>

There is no question that taking immediate driver improvement action, such as suspending an individual’s license because of dangerous driving behaviour, can be effective and meet the objective of getting these dangerous drivers off the road. However, as Mr. Gerrard expressed during the third reading of Bill 34, we must be careful about presuming what the

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<www.gov.mb.ca> [Manitoba Government News Release (27 April 2015)].

<sup>117</sup> *Ibid.*

<sup>118</sup> Bill 34, *supra* note 1.

<sup>119</sup> Manitoba Government News Release (4 June 2015), *supra* note 7.

<sup>120</sup> Zaal, *supra* note 18 at 26.

courts will decide, and taking action based on these presumptions.<sup>121</sup> If we are going to allow the deprivation of a privilege based on what we presume the court will decide, there needs to be a very significant amount of due diligence done to make sure that individuals are not penalized incorrectly.<sup>122</sup> This due diligence would include the need for MPI to lay out a list of conditions for suspending a driver's license, and ensure this information is adequately available to the public.<sup>123</sup> This is an extremely important factor as the current system is quite confusing and unclear regarding license suspensions, including when an individual's license is at risk for suspension, and what the threshold is to have their license suspended. Drivers need this information to ensure they are not suddenly deprived of a privilege which is essential to their everyday life.

## C. MPI Penalty System

### *1. Is a clearer system necessary?*

During the Crown Corporations Committee meeting, Mr. Guimond laid out the three-pronged approach to how an individual may lose their license, which consists of the Driver Safety Rating Scale, the Driver Improvement and Control Program, and the show-cause hearing. Drivers are monitored from an actuarial perspective based on the number of infractions and at fault accidents they are involved with, and their rating on the Driver Safety Rating Scale.<sup>124</sup> If it is determined that an individual has a higher propensity to get into an accident, proactive action is taken and they are put into the Driver Improvement and Control Program.<sup>125</sup> From here, if MPI is not satisfied with how things are going in the program, they hold a show-cause hearing which determines whether the individual will keep their driving privileges or not.<sup>126</sup> These stages are said to be in place to ensure that high risk drivers are made aware that their high risk driving is not to be tolerated, and there are consequences in

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<sup>121</sup> Third Reading, *supra* note 36 at 2358 (Hon Jon Gerrard).

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> Crown Corporation Committee, *supra* note 60 at 119-120 (Dan Guimond).

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid* at 120.

terms of suspensions and finances towards keeping or retaining their driver's license.<sup>127</sup>

During the committee meeting, Mr. Goertzen pointed out that the approach seems quite arbitrary, and imposes a fair amount of discretion on the decision maker, since there is no specific point where one must have their privilege removed.<sup>128</sup> It is up to the decision maker to remove the driving privilege, or give the individual another chance. This arbitrariness and discretion may even contradict the objective of ensuring that high risk drivers are made aware that their driving will not be tolerated, as they have little information regarding what will prompt a consequence or punishment, and when it will kick in. Other provinces in Canada have adopted a much stricter system, giving individuals more information about when a punishment will be given, and what level of punishment it would be. For example, British Columbia has a driver improvement program which is much more concrete. If an individual is convicted of an offence, they are given a strict number of points based on the offence committed.<sup>129</sup> An individual's driving record is monitored over a five year span, and depending on the number of points accumulated during the specified time period, there is a mandatory penalty within a predetermined range which must be invoked.<sup>130</sup> The Adjudicator still has a level of discretion in granting a penalty closer to the minimum mandatory penalty, or the maximum, and can consider a wide range of factors in determining this.<sup>131</sup> While Mr. Guimond argued that the Manitoba system allows calculating for things that a point system may not take into account, such as heavy drug or alcohol use,<sup>132</sup> an advantage can clearly be perceived in having drivers know exactly when their actions will be given consequences. For example, one may be much less inclined to pick up their handheld device while operating a vehicle if they know it will lead to

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<sup>127</sup> CBC News (13 April 2015), *supra* note 37.

<sup>128</sup> Crown Corporation Committee, *supra* note 60 at 120 (Kelvin Goertzen).

<sup>129</sup> British Columbia, Insurance Corporation of British Columbia, *Fines and Points for BC Traffic Offences* (2016), online: <[www.icbc.com](http://www.icbc.com)>.

<sup>130</sup> British Columbia, Office of the Superintendent of Motor Vehicles, *Driver Improvement Program Policies and Guidelines* (2016) at 12–14, online: <<http://www2.gov.bc.ca>>.

<sup>131</sup> *Ibid.*

<sup>132</sup> Crown Corporation Committee, *supra* note 60 at 120 (Dan Guimond).

a license suspension, as opposed to someone who is unsure of the penalty. In addition, if one is on the verge of losing their driving privilege, they may become more aware of the procedures of the road, including who is legally at fault for an accident. This information is very pertinent and very few members of the public are familiar with it. Without the information, one can be declared wrongfully at-fault for an accident, and this can lead to someone being incorrectly penalized, or even having their license revoked. A system with more publicly available information can certainly be a benefit, and would be useful to complement the amendments made by Bill 34 to help ensure individuals are not incorrectly losing their privilege to drive.

## 2. *The Appeal Process*

When an individual's driving privilege has been removed, they are entitled to an appeal. The review process can be undertaken in two different ways: a driver may apply for a review by the Registrar of Motor Vehicles of the license suspension and disqualification order within one year from the date of being served, or appeal the decision of the registrar to the License Suspension Appeal Board (LSAB).<sup>133</sup> Where a license remains suspended following a review by the registrar, the avenue of appealing to the LSAB is still available to the driver. The LSAB is established pursuant to s. 278(1) of *The Highway Traffic Act*, and is an independent administrative tribunal at arm's-length from MPI.<sup>134</sup> The board considers public safety and exceptional hardships caused by the suspension, and must ensure that "in all cases a remission of the suspension would not be contrary to the public interest and that no exceptional hardship will result if the suspension remains in effect."<sup>135</sup> There are a number of situations where one may need to utilize the appeal process, such as where errors were made by police, or individual reasons for leniency, including one experiencing exceptional hardship from the suspension of a license. Currently, an appeal to the LSAB costs \$130.<sup>136</sup>

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<sup>133</sup> *Highway Traffic Act*, *supra* note 5, ss 263.2(1), 279(1).

<sup>134</sup> *Ibid*, s 278(1).

<sup>135</sup> Manitoba, Minister of Transportation and Government Services, *Annual Report of the Department of Infrastructure and Transportation* (2015) at 69 [Annual Report].

<sup>136</sup> Licence Suspension Appeal Board (LSAB), LSAB Application Form (Rev 2007),

The decision of each appeal is made on a case by case basis. In 2015 alone, there were 1,244 driver license suspension appeals.<sup>137</sup> Based on this information, it can be seen that the appeal process is necessary in ensuring not only that drivers are not incorrectly penalized, but that the penalty imposed is not severely damaging to any individuals.

### 3. *Loophole in Reporting Scheme (Buyback a claim)*

One more concern was raised during the Crown Corporations Committee for MPI meeting, regarding MPI allowing individuals to buy back their claims, and the effect of this on the Driver Safety Rating Scale. Buying back a claim is generally done to keep individuals' "vehicle premium and driver's licence premium discounts[,] to avoid additional driver's licence premiums [or] to maintain a claim-free record before moving out of the province".<sup>138</sup> Mr. Goertzen pointed out that MPI allows drivers to buyback their accident claims, essentially paying MPI back for their "at fault" portion of an accident, and having that accident taken off their record.<sup>139</sup> This signifies that the accident would no longer be reflected on a Driver Safety Rating Scale, the scale used in assessing whether a driver is determined to be a risk to others on the road, and should have their driving privileges removed. When questioned about this, Mr. Guimond stated that the percentage of people who have the wealth to buy back their claims constitutes a very small proportion of the overall population.<sup>140</sup> In addition, he emphasized that it is only accidents that can be bought back, and all other *Highway Traffic Act* infractions will show up on the Driver Safety Rating Scale.<sup>141</sup> The concern that arises from this is that the Driver Improvement and Control Program, and subsequently the show-cause hearings, are determined based on the actuarial analysis of the Driver Safety Rating Scale. By allowing drivers to buy back their accidents,

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Manitoba Transportation and Government Services, online:  
<<http://www.gov.mb.ca/mit/boards/pdf/lsabappform.pdf>>.

<sup>137</sup> Annual Report, *supra* note 135 at 69.

<sup>138</sup> Manitoba, Manitoba Public Insurance, "Buying Back a Claim" (accessed 19 July 2016), online: <[https://www.mpi.mb.ca/en/Reg-and-Ins/Insurance/Rates/Record/Pages/rf\\_buyback.aspx](https://www.mpi.mb.ca/en/Reg-and-Ins/Insurance/Rates/Record/Pages/rf_buyback.aspx)> [MPI Buying Back a Claim].

<sup>139</sup> *Ibid*; Crown Corporation Committee, *supra* note 60 at 122 (Kelvin Goertzen).

<sup>140</sup> Crown Corporation Committee, *ibid* at 122 (Dan Guimond).

<sup>141</sup> *Ibid*.



and essentially their points on the scale, the measure used to determine when an individual is no longer fit to safely operate a vehicle on the road is no longer accurate. While Mr. Guimond's argument is true, and chronic bad drivers will show up in the system in other ways, such as *Highway Traffic Act* infractions, the buyback system allows them to stay out of MPI's dangerous driver alert system longer, and this can cause danger to the public in the interim.<sup>142</sup> This directly contradicts the objective of *The Safer Roads Act*, which is to get dangerous drivers off the road and eliminate the potential harm to the public. Collision claims are bought back each year. Any number of the cases that occurred over the past years could have been the at fault collision which led to an individual's license being suspended, or to some other form of driver improvement. As Mr. Goertzen said, "it only takes one" to create a tragedy and this program is allowing potentially dangerous drivers to remain on the roads, and be a risk to the public.<sup>143</sup> In addition, a driver can buy back a claim at any time in the future.<sup>144</sup> This could be used as a tactic to avoid a punishment, such as license suspension, if the driver becomes aware they are close to receiving such a punishment. The use of this system could effectively be keeping these dangerous drivers on the road, which goes against the spirit of the *Safer Roads Act* and the ability for the Registrar to instate driver improvement programs at the correct time.

## VI. CONCLUSION

Bill 34 - *The Safer Roads Act* received wide ranging support throughout its legislative process. Although there were concerns with some aspects of the legislation, the bill passed as it had the right intentions to reduce dangerous driving, including distracted, impaired and chronic bad driving.<sup>145</sup> After a strict analysis of the amendments produced by Bill 34, the background of why these amendments were brought about, and its journey through the legislative process, it is evident that while it is a step

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<sup>142</sup> *Ibid* (Kelvin Goertzen).

<sup>143</sup> *Ibid*.

<sup>144</sup> MPI Buying Back a Claim, *supra* note 138.

<sup>145</sup> Third Reading, *supra* note 36 at 2358.

in the right direction, more needs to be done in the field to achieve the objective sought.

In regards to impaired driving, Bill 34 increased the penalties by extending the roadside license suspension, and made it mandatory that offenders participate in the ignition interlock program.<sup>146</sup> A vast amount of research demonstrates that increasing the harshness of penalties alone is not likely to be effective as a deterrent. To ensure dangerous and impaired drivers remain off the roads, the penalty increase must be coupled with a more visible policing presence that gives the subjective impression that there is a real possibility the offence will be detected. One way this may be done is to expand the Community Safety Officer program to a variety of rural areas, where there is a very small policing presence due to the large landmasses covered by each RCMP detachment.

Bill 34 made it necessary for law enforcement officers to report serious driving offences to the Registrar of Motor Vehicles. It also gave the registrar power to take immediate driver improvement action (such as a license suspension) based on these charges and other factors including at fault accidents and infractions against *The Highway Traffic Act*.<sup>147</sup> While this immediate driver improvement action will meet the bill's objective of taking dangerous drivers off the road more quickly than before, it is important to remember that due diligence and extreme caution should be taken in this process. Removing someone's driving privilege based on a presumption of what the courts will decide can be a slippery slope, and adequate measures need to be taken to ensure that drivers are not incorrectly penalized. One measure of due diligence that must be taken is making the process of how an individual can come to lose their license much clearer for the public. While MPI's three-pronged approach may be effective, it is quite arbitrary. Drivers would benefit from a clearer point system which would make them aware of when punishments and consequences are coming, based on their driving behaviour. Hopefully they would adapt their driving behaviour accordingly. This knowledge would perhaps influence bad driving behaviour and make the roads safer for everyone, which is, after all, the spirit of the *Safer Roads Act*.

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<sup>146</sup> Explanatory Note, *supra* note 10.

<sup>147</sup> *Ibid.*