

# **Traffic Enforcement Revenue vs. Public Safety and Manitobans' Constitutional Rights**

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# Presentation Logic

- Winnipeg takes in over \$4 million per month in traffic enforcement revenue
- To do this, Winnipeg violates almost every standard for road signage and amber light timing
  - “just don’t speed” is therefore inadequate and unfair
- Many drivers are fined for driving in reasonable fashion
- Because of this, many accused drivers challenge their tickets legally
- To win these cases, the Province, the City and the Crown have used tactics that undermine and extinguish Manitobans’ rights

## “Speeding” and safety

- In Winnipeg, posted speed limits have been formally separate from safety since the inception of the photo enforcement program in 2003
- January 9, 2003 City Council received an engineering report on the speed limits on Grant and Kenaston that they had requested
- Public Works did a radar speed study and recommended that the city “apply to the Highway Traffic Board of Manitoba to increase the speed limit on Grant Avenue between Stafford Street and Kenaston Boulevard and on Kenaston Boulevard between Grant and Academy from 50 km/h to 60 km/h”

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**Minutes - Standing Policy Committee on Public Works - January 13, 2003**

Standing policy committee motion and decision to ignore engineering  
and give speed limits to politicians

**REPORTS**

**Minute No. 38              Speed Limit on Grant Avenue and on Kenaston Boulevard**  
**File ST-1.1 (Vol. 12)**

**STANDING COMMITTEE DECISION:**

The Standing Policy Committee on Public Works did not concur in the administrative recommendation and therefore did not increase the speed limit.

Further, the Standing Policy Committee on Public Works requested that in the future, consideration of speed limits be referred initially to the Ward Councillor and if necessary to respective Community Committee.

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## **Minutes - Standing Policy Committee on Public Works - January 13, 2003**

### **DECISION MAKING HISTORY:**

Moved by Councillor Steek,

That the administrative recommendation not be concurred in and that in the future, consideration of speed limits be referred initially to the Ward Councillor and if necessary to the respective Community Committee.

Carried

# Complaint regarding poor signing practices

- In 2015 a complaint was submitted to the Association of Professional Engineers and Geoscientists of Manitoba about the poor signing practices in Winnipeg
- On behalf of Winnipeg's traffic engineers, Winnipeg CAO Michael Jack responded

# Winnipeg CAO Michael Jack, June 15, 2015

Speed limits in Manitoba, including the City of Winnipeg, are established by a committee of non-technical people appointed by the Provincial government and authorizations for City speed limit requests are provided by a committee of City Councillors. For this reason, “speeding” is not considered a major safety concern as it relates to a maximum speed, not necessarily established based exclusively on engineering principles. What is considered a surrogate for a safety concern is a large spread of the operating speeds and an operating speed which is higher than the design speed. A large spread of the operating speeds is undesirable because it can lead to collisions due to slower vehicles becoming, in effect, roadway hazards. An operating speed higher than a

- The city's key argument was that, since posted speed limits are not related to safety, poor signing of those limits does not impact safety
- Not dual-signing is creating exactly what Mr. Jack says is dangerous: a large spread of the operating speeds making slower vehicles into "obstacles"
- The engineering aspects Jack refers to are exactly the things that City Council voted to ignore in 2003

# Highway Traffic Board

## Mandate

The Highway Traffic Board was put in place to ensure the safety of the traveling public and protection of highway infrastructure through the administration of the Highways Protection Act and portions of the Highway Traffic Act.

## Activities

The Board establishes and removes control lines adjacent to limited access highways and designates limited access highways. The Highway Traffic Board issues permits for access onto limited access highways and development/structures adjacent to these highways. It also establishes speed limits throughout the Province including the City of Winnipeg. The Board approves traffic control devices and their design, municipal weight by-laws, bridge closures and restrictions, highway classification and by-laws for parking in alley ways. The Board conducts public hearings on all the above as well as on current issues; makes orders and regulations, and provides policy input to the Minister.

# Manitoba Red Tape Reduction Task Force 2018

## 1. CONFLICT BETWEEN THE HIGHWAY TRAFFIC BOARD AND MUNICIPALITIES Department: Infrastructure

**STAKEHOLDER CONCERN:** The Highway Traffic Board (HTB) frequently blocks municipal decisions on speed limits, signage and access. This requires municipalities, businesses and landowners to spend significant time in HTB hearings, and to incur significant costs in relation to those hearings.

**TASK FORCE RECOMMENDATION:** Review the requirement for permission from the HTB when a municipality wishes to lower the speed limit on municipal roads. Adopt a less restrictive policy governing the replacement of signs along highways. The need for more efficient responses to applications was also identified.

**GOVERNMENT RESPONSE:** Government introduced Bill 14, The Traffic and Transportation Modernization Act that dissolves the Highway Traffic Board. Under Bill 14, municipalities, and other local governments, will be authorized to make by-laws setting speed limits on their roadways. The department of Infrastructure, via delegated authority from the Minister, will assume responsibility for setting speeds on roadways under provincial jurisdiction and will issue permits for access roads, signs and structures within highway control areas. This move reduces red tape for industry by streamlining permit processes.

# Eroding the Right to Legal Defense

Provincial and Crown Tactics and the Law Society of Manitoba

# Why Attack Peoples' Right to Defense?

- Due to the large volume of ticket challenges, the courts filled up and they had to cancel a lot of tickets because it took too long to go to trial
- Because of the violations of engineering and other standards for signing, amber times, etc, many of the cases are credible.
- Tickets are the highest in Canada by far and expensive for most people
- So they had two objectives:
  - Speed trials along so they can get them all convicted
  - Prevent credible, precedent-setting cases from winning



# Manitoba Provincial Offences Act (2017)

- Replaces the prior Summary Convictions Act
- Made a number of key changes to legal rights that are targeted at traffic offenses
  - 1) Not receiving the ticket or not replying results in a “default conviction”
  - 2) Defendants must prove their innocence
  - 3) Removed the right to cross-examine the accusing officer
  - 4) Cannot appeal the facts as interpreted by the judge or JJP

# Default Conviction

- Used to be the trial was held in your absence
- Ticket is considered “served” 7 days after it has been mailed, with no proof that you received it.
  - If you didn’t receive it, you are convicted and must prove that you didn’t receive it (proving a negative)

## Serving a photo enforcement ticket

13(2) A photo enforcement ticket may be served on the owner of the vehicle by sending it by regular mail to the owner's last known address as indicated in the records of the Registrar of Motor Vehicles within 14 days after the date of the alleged offence. The ticket is deemed to have been served seven days after the day it was mailed.

# Defendants Must Prove their Innocence

- The POA uses “certificate evidence”
- Officer submits a certificate saying their version of events

Certificate evidence from enforcement officer

63(1) In a hearing on a ticket, a certificate that  
(a) sets out evidence of the alleged offence; and  
(b) appears to be signed by an enforcement officer or other person  
authorized by regulation;  
is admissible as evidence and is proof of the facts stated in the  
certificate in the absence of evidence to the contrary.

For Certificate evidence:

No need to prove appointment or signature

63(2) There is no need to prove the appointment or signature of the enforcement officer or other authorized person who signed the certificate.

# The Right to Cross-Examine

- The Crown has the right to cross-examine the accused or any witnesses they call
- Under the POA:

Limited right to require officer to attend

63(3) The defendant is not entitled to require the person who signed the certificate to attend to give evidence unless the justice is satisfied that the person's attendance is necessary for the matter to be decided fairly.

Decision as to attendance

- 63(4) In deciding whether to require the person who signed the certificate to attend, the justice is entitled to ask the defendant about the nature of the proposed evidence and must decide whether there is a reasonable and legitimate basis for requiring the person to attend.

# Cannot Appeal the Facts

Limited appeal re tickets

79(3) An appeal under subsection (1) or (2) for proceedings commenced by a ticket may be taken only with leave of a judge of the Court of Queen's Bench on a question of law or mixed fact and law.

# Judicial Justice of the Peace Program

- In order to deal with a greater volume of court challenges, the Province began this program in 2006
- JJPs are given the powers of a judge in traffic court
  - They require no legal training and there are no tests to examine their knowledge of the law
  - There is no clear criteria ensuring diversity in their ranks
  - Most of them have historical ties to the Crown's office as employees and in once case a JJP is a relative of a former Winnipeg police chief
- This has led to unprecedented rulings, questionable interpretations of the law and general bias against defendants

# Pre-Plea Triage Program

- To speed cases along
- Partnership between the Crown (prosecution) and the court
- Under the POA, people who wish to fight their ticket must attend 373 Broadway in person
  - Can no longer set a trial by mail
  - The ticket says you can phone a number, but that number just tells you to go in person anyway



### OPTION 3: Dispute the charge and request a hearing

Disputing the charge means that you do not admit the offence you were charged with. To dispute the charge, you may go to a Provincial Court office during the response period, or go to [www.gov.mb.ca/justice/tickets/dispute.html](http://www.gov.mb.ca/justice/tickets/dispute.html) and follow the instructions provided. If a hearing is set, you will be provided with notice of the court date, time and location.

**[www.gov.mb.ca/justice/tickets/dispute.html](http://www.gov.mb.ca/justice/tickets/dispute.html)**

### Disputing the Charge

Disputing the charge means that you do not admit to committing the offence with which you were charged.

If you want to dispute your charge and request a hearing, go to Provincial Offences Court at 373 Broadway in Winnipeg, or any [Provincial Court Office](#) during the [response period](#) shown on your ticket and ask to talk to court staff. Court staff see clients on a first-come, first-serve basis, so wait times may vary.

You can also call the Provincial Offences Court at 204-945-3156 in Winnipeg or toll free at 1-800-282-8069 (ext.3156) to request a hearing.

- If you call the number, it just tells you to go to the court

# Pre-Plea Triage Program Continued

Once you have arrived:

- Must wait to see a magistrate first
- If you want a trial, you must go upstairs and wait again
- Can see a prosecutor or a JJP to make your case
- After all of this you can finally request a trial

# Pre-Plea Triage Program Continued

- The program is designed to get many people through as fast as possible so they don't have to drop tickets that have waited too long for trials
- The program makes it easy to plead guilty (admit) and difficult to plead innocent (deny)
- In effect, the program "weeds out" or "buys off" potential troublesome cases

Assistant Deputy Minister, Manitoba Justice:

"Some of the wait time is simply that people might not fully understand that they would have their matter dealt with more quickly by pleading guilty with an explanation"

- Brohman, E. "Record year for traffic tickets causes backlog at Manitoba courts" CBC, July 22, 2015

## Pre-Plea Triage Program continued

- It is illegal to require this program

If hearing requested

18 Upon receiving a hearing request under clause 15(c) [dispute the charge], the court must set a date for a hearing under Part 6 and give the person notice of the time and place of the hearing.

# Crown Tactics

- Crown prosecutors use a range of tactics in court
  - Ambush attacks
  - Misquoting prior rulings and legislation
  - Disobeying direct judicial orders

# Disobeying a Direct Order

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TRANSCRIPT OF PROCEEDINGS, before Judicial  
Justice of the Peace Desrosier, held at Provincial Court,  
373 Broadway Avenue, in the City of Winnipeg, Province of  
Manitoba, on the 22nd day of May, 2018.

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**APPEARANCES:**

MR. J. WALL, for the Crown

MR. WALL: And realistically, the Crown would be fine with setting it to any of the number of dates I did offer her. I think it was six dates. Any of them would be fine with the Crown. I do understand that their intention is to file a motion which would have to be filed 30 days prior to the hearing. It's currently the 22nd. That would give them 30 plus days even if we did June 28th, which is the earliest date I did offer her. *Offering the earliest*



THE COURT: Here's what I'm prepared to do. I'm

prepared to put it to that date, just to make sure we secure a date. I'm going to leave it up to you to indicate to the defendant that you need to hear from her specifically. Hopefully you'll hear from her in the next few days, hopefully giving you enough time to put it on another docket, but let's secure that date simply because there has been talks, let's say, or, or murmurs about it as you indicated, just so that if this date does work better for her, at least we've secured it and if we have to strike it off at that point.

At this point also I did

MR. WALL: -- to June 28th at 1:30 p.m. in courtroom 4B. So I just confirmed that the address has

remained the same. I would remain in continuous contact with her to ensure she's aware that that's the date it's currently set to. And if that's not possible for her, to select one of the other dates at which point I could contact the courts --

THE COURT: Yeah.

MR. WALL: -- and have a new set sent out to her.

Rather than giving the accused a choice of date options as he was ordered to, the next morning the Crown emailed the accused and forced her to take the date the Crown preferred:

**From:** Wall, James (JUS) <[James.Wall@gov.mb.ca](mailto:James.Wall@gov.mb.ca)>  
**Sent:** May 23, 2018 11:36:58 AM  
**To:** 'Lisa J'  
**Subject:** RE: Ticket 09-831170

Good morning Ms. Eisbrenner,

As I hadn't heard back from you yet, the matter has been set for June 28<sup>th</sup> 2018 at 1:30PM in courtroom 4B. The Justice of the Peace indicated that she was satisfied that indicating this to you via email would suffice, however a hearing notice will be sent to the address on the face of the offence notice you were issued.

As indicated in the email below, notwithstanding the outcome of any motions, do be aware that you should be in attendance on the 28<sup>th</sup>, as if you are not, you may be default convicted.

If you have any questions please do not hesitate to ask.

Best regards,

**James Wall**  
Articling Student at Law  
Manitoba Justice - Prosecution Services

# Excluding Strong Opponents

- Appearance of the defendant
- [53\(1\)](#) A defendant may appear and act personally or by representative in any proceeding.
- Representative may be excluded
- [53\(2\)](#) A justice may bar a person from appearing as a representative if the justice finds that the person is not able to properly represent or advise the person for whom they appear.

On the Ticket:

A justice may order you to appear personally or may refuse to allow a person to act as your representative if, in his/her opinion, the person is not able to properly represent or advise you.

- The Crown likes to go against non-lawyers, and it is the norm in traffic court that people represent themselves, family or friends
- But the Crown seeks to remove opponents that may win critical cases
- When a JJP is presiding, they are often successful
- In the upcoming example, the Crown has no problem going against a non-lawyer, until the Justice says that the non-lawyer is going to get the adjournment they were seeking (ie the non-lawyer will win). The Crown opposed an adjournment, so at that point, the Crown suddenly questions whether the non-lawyer is allowed to be in court. After that, the Justice reverses their plan and instead denies the adjournment and finds the accused guilty.

## July 30, 2018 – Provincial Court (Traffic)

### Plea

MR. DI LORENZO: It's my understanding that we are anticipating a plea of not guilty to the -- to the charge, and will be proceeding by way of certificate evidence.

THE COURT:

Is that correct, counsel?

MR. [REDACTED]  
will be proceeding.

I'm not counsel, but correct. Yes. We

MR. DI LORENZO:

Okay.

MR. DI LORENZO:

summarily dismissed, as it lacks merit.

As a result, we do ask that this motion be

the copy that is there. So the fact that you're saying, Well, your copy as well should be stamped as certified, is that the argument that you want to make?

MR. [REDACTED]

Yes.

THE COURT:

All right. All right. So what I'll do then, is I'll give -- I'll adjourn this then, and give you an opportunity, if you want to present the argument that the Crown is required to give you a copy that's stamped certified as well, I'll certainly give you an opportunity to make that argument.

MR. DI LORENZO:

-- at this point, the Crown is absolutely opposed to an adjournment request of this matter -- for this matter, both in terms of the general delay to be concerned about --



MR. DI LORENZO:

In that case then, Your Worship, then there is another dimension to this case which needs to be dealt with, and the Crown does apologize for not having jumped on this first thing, and that is the fact -- that under the *POA*, [REDACTED] if he in fact is here in his own personal capacity, and not acting under the guidance or under the -- the law society insurance of a practicing lawyer, then he must satisfy the Court that he does have some authorization in terms of either being a close family friend or -- or something of the sort to show that he does have the authority to speak to this matter. Again, this is specific -- of specific concern to the Crown as the *POA* has been -- the *POA* is designed to allow friends and family to speak to matters, but just friends and family, not anyone --



THE COURT:

All right. I'm going to make a ruling  
then, I'm not granting the adjournment, the trial will proceed.

and the certificate of registration, and I'm satisfied that the Crown has proven their  
case beyond a reasonable doubt. There will be a conviction entered.

The non-lawyer's employer (a lawyer) then emails the Crown to state that the non-lawyer has been chosen to represent another traffic ticket case. But the Crown makes a strange argument in an effort to prevent the non-lawyer from being allowed in court. The Crown also threatens the non-lawyer using the Manitoba Law Society

Hello and good morning Mr. DiLorenzo,

[REDACTED] is a 2<sup>nd</sup> year law student and he is employed by my law firm part time while he is in school. Some of my family and employees have some HTA matters appearing in court. We desire to have [REDACTED] appear on our behalf.

He has a matter on Monday, October 22<sup>nd</sup>, 2018. I trust there is no problem with him appearing on behalf of one of our employees on this date.

I have reviewed relevant legislation. I am not aware of any legal impediment but please enlighten me if I am mistaken.

Thanks and have a good day ahead.

Yours Truly,

October 18, 2018

Mr. Davis:

In my capacity as a Senior Supervising Crown Attorney, Renato asked me for advice on the issue outlined below. My understanding is that [REDACTED] does not have an arrangement with the Law Society to be covered under your insurance. As such, he is in the same position as any other person who is not in law school. On August 3, 2017, Darcia Senft of the Law Society of Manitoba advised Manitoba Prosecution Service via email:

If you are asking whether a family member or friend could in effect conduct a Highway Traffic Act trial, I would think not. Lending a helping hand to someone is different from conducting a trial.

I understand that it may have been your intention to argue that [REDACTED] be allowed to conduct a traffic ticket trial for an employee of your firm. If the trial had proceeded and the Court gave [REDACTED] permission to act, this would have placed [REDACTED] in the unfortunate position of potentially facing charges by the Law Society. The reason is that compliance with the legislation is not avoided simply because the Crown or the Court may allow a certain course of action.

I would kindly ask that yourself and [REDACTED] obtain input from <sup>Law Society</sup> Ms. Senft before making any requests that [REDACTED] be allowed to conduct a trial. To be fair, that may very well be exactly what you had planned (you were both there, so perhaps you had planned on acting while [REDACTED] observed). This safe course of action avoids a difficult dilemma for [REDACTED] in terms of choosing to act in accordance with his employer vs. choosing to act in accordance with the Law Society.

On November 26, I understand that you personally have two tickets on the docket. I assume you are not going to ask [REDACTED] to speak to them. Please advise whether I assume correctly or not.

Craig

June 6, 2018 – Provincial Court (Traffic). The Justice systematically eliminates an accused's chosen legal representatives, each of whom have been successful in prior legal proceedings

THE COURT: All right. So I'm going to ask you to have a seat over at counsel table.

MS. EISBRENNER: Okay I, I did authorized a representative last year, can they not represent me?

THE COURT: And who's the representative?

MS. EISBRENNER: Chris Sweryda and also my father Glen Eisbrenner.

THE COURT: Okay. So who are you, who are you asking you -- first off, who are you asking to assist you with this?

MS. EISBRENNER: Chris Sweryda can.

THE COURT: All right, so what's the point of your father now, authorizing him to do what?

MS. EISBRENNER: Oh I was just noting how it went.

THE COURT: Okay, so are you calling your father to testify as a witness?

MS. EISBRENNER: No.

THE COURT: Okay, so your father's here just in the gallery to support you?

MS. EISBRENNER: Yes.

THE COURT: All right. So -- and then you've got, sorry, who's the other person?

MS. EISBRENNER: Chris Sweryda.

THE COURT: Mr. Sweryda, come forward.

All right, and so I understand the Crown wants to make some submissions with respect to his representations; is that correct?

MS. YAN: That's correct.

MS. YAN: Thank you.

So the Crown respectfully submits that there's no legal authority for Mr. Sweryda to represent Ms. Eisenbrenner (sic) today unless he is a practicing legal counsel or an agent who complies with the regulations of the Legal Profession Act.

MR. SWERYDA: Now, Your Worship, with regards to serving this notice the --

THE COURT: Okay, I'm not even talking to you about the brief. What I want to know is why you think you have any authority here to represent --

MR. SWERYDA: Yeah, okay.

THE COURT: -- to assist Ms. Eisbrenner.

THE COURT: So Ms. Eisbrenner, do you know Mr. Sweryda?

MS. EISBRENNER: Yes I do.

THE COURT: How long have you known him?

MS. EISBRENNER: About seven or eight years.

THE COURT: Okay.

MS. EISBRENNER: He worked with my father and he babysat my kids.



THE COURT:

And I could tell you that I do not think it's in your best interest to have Mr. Sweryda represent you today.

So I am not allowing you, Mr. Sweryda, to represent you. I believe that you have ulterior motives, which are not beneficial to Ms. Eisbrenner and therefore I'm not allowing you to assist her today.

I allow family members because I believe family members are doing it within the best interest, or perhaps the person that was driving. I do not believe that's the case here today.

So, Mr. Sweryda, I'm telling you have, you have no standing here today.

MS. EISBRENNER: Can, can my dad assist me? I'm not a good public speaker at all.

THE COURT: All right, I thought we made this clear already at the outset that your father is here for emotional support essentially.

MR. EISBRENNER: I'm not here just for emotional --

MS. EISBRENNER: Yes but he could --

THE COURT: Well she actually said that --

MR. EISBRENNER: -- support.

THE COURT: No, no, hold on. I cleared, I asked her that the beginning and she in fact told me that that's what you were here for. So I will allow you to sit in the gallery and be here for emotional support.

A SHERIFF'S OFFICER: Have a seat.

THE COURT: Thank you sheriff.

So you clearly indicated to me your dad was here for emotional support. He can certainly sit in the gallery and do so. So --

MS. EISBRENNER: Oh, well because I thought this was --

THE COURT: Well we made that, so that's what you told me and so that's what I'm allowing is him to sit in the gallery to support you emotionally.

So you're ready to proceed today; is that correct?

MS. EISBRENNER: I have no documentation because I gave it all to them.

THE COURT: No, no, no, no Ms. -- Sheriff if you can have him removed if he can't --

MR. EISBRENNER: I was giving her -- she asked me for the --

THE COURT: That's not in fact what I said.

A SHERIFF'S OFFICER: (Inaudible). Just have a seat there sir.

MR. EISBRENNER: Okay.

THE COURT: Thank you.

And, sir, if you disrupt this court one more time I will have you removed from the court.

MS. YAN: Thank you. The Crown will be proceeding by documentary evidence and tendering the

# Law Society Threat to a Law Student who won traffic cases in court

In light of the foregoing, until you become authorized to act under the Legal Profession Act as a lawyer, articling student, registered student, or agent under Part 5, we request that you immediately cease and desist from representing individuals, corporations, or other entities in court or otherwise acting for them in a legal capacity. In the event that you do not comply with our request, the Law Society of Manitoba will consider further action in accordance with the provisions of the Legal Profession Act. Please be advised that the Law Society may also take a failure to cease and desist such activities into consideration when determining any future applications from you to register as a student, articling student, or lawyer.



Questions Welcome