

# Manitoba Court Acquits Driver of Killing Flagger on Road Project



There have been countless tragedies in which workers have been killed while working on road construction projects, often because they've been hit by passing drivers who fail to slow down in construction zones. That's why so many jurisdictions launch road safety awareness campaigns in the summer when such construction is at its peak.

Jurisdictions are getting on tougher on drivers who fly through road construction zones, stepping up enforcement of speed limits in these areas. But a recent case from Manitoba undercuts these efforts to hold drivers responsible for the consequences of their speeding and disregard for the safety of workers on the roads.

In that case, a driver struck and killed a flagger working on a repaving project. There were orange cones and signs posted in the construction zone indicating the presence of workers and limiting the speed limit to 60 km/h.

The worker had been wearing an orange safety vest and carrying a sign that said stop on one side and slow on the other. But she may also have been wearing an iPod at the time, which was against the employer's rules. (It also violated OHS law. On Feb. 1, 2013, changes to the *Workplace Safety and Health Regulation* regarding 'flagperson' requirements took effect that specifically bar flaggers from using personal electronic devices, such as cell phones and MP3 players.)

When the driver saw the flagger suddenly appear in the middle of the lane, he said he slammed on his brakes but they locked. The police estimated he was going at least 112 km/h. He was criminally charged with dangerous operation of a motor vehicle causing death.

The court concluded that excessive speed alone wasn't enough to prove a marked departure from the driving of a reasonably prudent person, ruling that there was no other evidence of anything unusual or potentially dangerous about his driving. So the court found the driver not guilty [*R. v. Blostein*, [2013] MBQB 159 (CanLII), June 28, 2013].

A driver in Saskatchewan faces similar charges after his SUV struck and killed an 18-year-old flagger working in a construction zone. The RCMP charged him with criminal negligence causing death and dangerous operation of a motor vehicle causing death [*Keith Dunford*, Oct. 23, 2012].

His trial has been scheduled for Feb. 2014. Let's hope it's more successful than the *Blostein* case.

In the meantime, you must take steps to protect your workers when working on the roads and highways, such as by implementing a traffic control plan. And here's a safety talk on staying alert while driving in construction zones. Not a Safety Smart subscriber? Sign up for a free trial.