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MHCA presents industry priorities to new Infrastructure minister

Ron Schuler to give 'minister's address' to association awards breakfast Nov. 17



From left, MHCA Chairman Greg Orbanski, Infrastructure Minister Ron Schuler, MHCA President Chris Lorenc - Oct. 10, 2017

MHCA board chair Greg Orbanski underscored the importance of early release by Manitoba Infrastructure of the department's tender schedule and timely contract awards for the heavy construction industry at a meeting Tuesday with the new Infrastructure minister, Ron Schuler.

Orbanski said that the release of provincial MI tenders in the preceding fall is the best hope to make full use of the short construction season. It is also crucial to the industry's ability to plan its human and equipment resources.

Early planning brings maximum value to the department budget in any given year, MHCA President Chris Lorenc added. "This, ultimately, works in the taxpayers' best interests."

Schuler said he was eager to learn in his new portfolio. He was appointed Infrastructure minister in August, taking over from Blaine Pedersen who moved to Growth, Enterprise and Trade.

Schuler has agreed to address the MHCA's awards breakfast, prior to its Annual General Meeting in November. He said he will focus largely on the broad strokes of his agenda for the department, and welcomed suggestions the industry can bring to the table.

Other items the MHCA outlined as priorities were: a stable MI capital budget, rising to meet inflation each year; release of Manitoba's infrastructure investment deficit so the public knows the condition of its assets; and making full use of the funds remaining in the federal New Building Canada Fund and the new Trade and Transportation Corridor Initiative.

Lorenc once again highlighted the need for open, competitive bidding for public infrastructure works. Tenders should be free of any 'local preference' clauses.

Recently, the provincial government took MHCA's concern over the use of exclusionary and local preference language in Saskatchewan public tenders to that government. As a result, SaskPower has committed to recognize that Manitoba contractors qualify under the New West Partnership, a free trade agreement among the western provinces.

Canada needs regulatory stability to capitalize on natural resources

Stop moving the goal posts for approval of petroleum projects: producers



CAPP President Tim McMillan

The demise of TransCanada's Energy East pipeline project punctuated the message local business leaders heard at a Manitoba Chambers of Commerce breakfast this week.

Tim McMillan, president of Canadian Association of Petroleum Producers, said that regulatory hurdles that development of natural resources projects, such as pipelines, must jump are getting higher. As well, proponents are frustrated that goal posts continually get moved and the approvals process prolonged.

TransCanada's decision to scratch its Energy East project to carry oil from Western to Eastern Canada had many factors, McMillan noted. But TransCanada also faced the "shifting goal post" issue in that application. The National Energy Board has decided that upstream greenhouse gas emissions would have to be worked into the "social costs" of such projects.

It has been pointed out in public commentary that basic economics weighed against the case for Energy East, including the fact that the approval of the Keystone XL pipeline, south into the U.S., increased pipeline capacity out of Western Canada.

McMillan, a former Saskatchewan cabinet minister, said pipeline applications will always face various hurdles, including the need to find common ground with intervenors. Canadians who are

interested in strong, environmentally responsible development and marketing of their natural resources should speak up – don't let the detractors take up all the public space in this national discussion.

Oil and gas, as commodities, are too important to Canada's economy – making up 14% of Canada's exports and 12% of the Toronto Stock Exchange – to allow one side to monopolize the debate, he stressed. Petroleum producers are the country's largest investment block, at \$44 billion in capital expenditures.

He noted that environmentally sustainable development of this energy product will continue to be needed alongside the rise of alternative sources, such as wind and solar. Due to global population growth and the rising middle class, by 2040 the number of vehicles, for example, is expected to double. The growth of renewables, while rising by 400%, will still make up only 12% of the world's energy mix.

This country must take its place in that market, for the global good, the speaker said.

"Canada has the third largest energy reserves." Canada, because of its stable government and human rights record, is regarded as a responsible producer.

"We're also well-positioned to help the world with its carbon energy transition" due to innovations in the way oil and gas are produced, McMillan added. Canadian producers share 900 patents in innovative environmental technologies.

"It's a future that will come with higher technology and lower carbon."

Ottawa has authority to impose carbon price, legal opinion says

Constitutional expert Bryan Schwartz's legal opinion of the federal government's carbon pricing "backstop" program is that Ottawa is within its jurisdiction to legislate a carbon tax nationally.

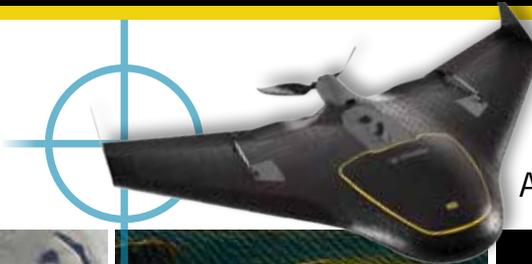
With the opinion in hand, Premier Brian Pallister is saying now that Manitobans will see the provincial "Made in Manitoba" proposal within weeks, as the government moves to settle on a carbon tax to implement in 2018.

Schwartz, a University of Manitoba law professor, told the Pallister government that there is a "strong likelihood that the Supreme Court of Canada would uphold the proposed carbon tax/levy." The province commissioned the opinion from Schwartz earlier this year, having proposed to develop its own "Made in Manitoba" climate change policy and program.

"The 'backstop' nature of the proposed measure, in and of itself, is unlikely to render an otherwise valid federal carbon tax/levy unconstitutional," Schwartz said, in the opinion released by Justice Minister Heather Stefanson Wednesday.

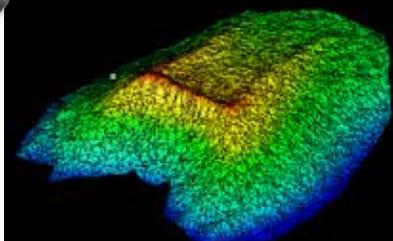
The Trudeau government has told the provinces that it wants a carbon price set initially at \$10/tonne of GHG emissions in 2018 in each province and if they don't adopt it themselves, it would impose the tax – the "backstop," in other words. While the federal government's plan is to raise that price every year by \$10/T, up to \$50/T, Manitoba is talking about introducing a carbon tax at \$25/T, and leaving it there.

"Manitobans will soon be asked to consider a choice between an imposed 'made-in-Ottawa' plan with high carbon taxes and federal spending of Manitoba-raised revenue, or a 'made-in-Manitoba' climate and green plan that fits Manitoba's needs and priorities," Stefanson said Wednesday.



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Awards Breakfast & Annual General Meeting

Friday, November 17, 2017 8 am - 11:30 pm
RBC Convention Centre, York Ballroom 2

Greetings from: Honourable Ron Schuler,
Minister, Manitoba Infrastructure

Awards, Year in Review, Membership and Future Priorities presentations

Tickets: \$49 +GST (per person)

No. of tickets: _____

Annual Chairman's Gala



Friday, November 17, 2017

An Enchanted Forest

RBC Convention Centre – York Ballroom

Cocktails 6:30 pm

Dinner 7:30 pm

All Inclusive Tickets \$210 ^{+GST} per person

Winnipeg

Tickets available as individual or tables of 10

No. of tickets: _____

Company: _____

Contact Person: _____

Phone: _____

Please Invoice: _____

Credit Card #: _____

Exp. Date: _____ **3-Digit Security Code:** _____

Card Holder Name: _____

Signature: _____

Delta Winnipeg, reservations: 1-844-294-7309 - room rates starting at \$135

Quote: Manitoba Heavy Construction Association

Fill out this form in full and fax to Christine Miller at the MHCA office at 204-943-2279 or email christine@mhca.mb.ca. To request a special meal, to accommodate any food allergies and/or dietary restrictions, please call or email Christine at 204-947-1379.

Province reappoints Chair to Manitoba Labour Board

Manitoba government news release, October 10

Manitoba Growth, Enterprise and Trade advises it has reappointed Colin Robinson as the chairperson of the Manitoba Labour Board for a term of 5 1/2 years, effective Nov. 1.

Robinson was first appointed to the board as vice-chairperson in 2003 and chairperson in 2012. He was called to the bar in Manitoba in 1995 and practiced primarily in the fields of labour and administrative law prior to joining the board. Robinson is well respected in the labour relations community, with his reappointment receiving support from both labour and employer representatives including the Manitoba Federation of Labour and the Manitoba Employers Council.

The Manitoba Labour Board is an independent body with a wide range of responsibilities under provincial legislation including resolution of labour matters, certification or decertification of bargaining agents, and the review of alleged unfair labour practices or violations of employment standards.

The Labour Board is composed of a full-time chairperson, one half-time vice-chairperson, five part-time vice-chairpersons and 30 board members. MHCA President Chris Lorenc is an employer representative on the board.

LEGALIZED MARIJUANA ARE YOU READY?

WORKSAFELY™ will be hosting two seminars on substance abuse in the workplace.

Recreational marijuana will be legal next year across Canada. This heightens the need for strong workplace policies on impairment on the job.

Led by experts in the fields of labour law and substance abuse, these seminars will answer your questions.

Addressing Substance Abuse in the Workplace

FOR COMPANY OWNERS AND SENIOR MANAGERS

Nov. 1 – MHCA Office
12:00 - 2:30 PM

**FOR HR/SAFETY PROFESSIONALS/
SUPERVISORS**

Nov. 6 – Holiday Inn Airport-Polo Park
8:30 AM - 12:00 PM

To register contact Kristen Ranson at
204-947-1379.

WORKSAFELY 

MHCA welcomes new members

The MHCA is pleased to welcome its newest members **Zydex Inc.** and **Under Pressure Mechanical**.

Zydex Inc. provides sustainable eco-friendly chemical technologies for the agriculture sector, textiles sector, roads sector and the Construction sector.

Under Pressure Mechanical is a full service shop located in Northern Manitoba specializing in servicing, hauling, ore, chips, logs, gravel and grain trucks.

Zydex Inc. can be contacted at:

Doug Zuberer
106 Kitty Hawk Dr.
Morrisville, NC 27560
Ph: 1-919-342-6551
C: 1-508-280-1785
F: 1-919-544-3784
E: dougzuberer@zydexindustries.com
www.zydexindustries.com



Under Pressure Mechanical can be contacted at:

Daniel Kaufmann
Box 2998
The Pas, MB R9A 1R7
Ph: 1-204-999-0313
Ph2: 1-204-870-0559
E: underpressuremechanical@gmail.com

Upcoming MHCA Meetings

Rental Rates Committee
MHCA Office
October 20 - 12:00-2:30

MHCA Executive Committee
MHCA Office
October 25 - 12:00-4:00 PM

SAFE Roads
MHCA Office
October 27 - 12:00-1:30 PM

Rental Rates Committee
MHCA Office
November 3 - 12:00-2:30 PM

WORKSAFELY Committee
Brandt Tractor Ltd.
November 8 - 9:30am-10:30am

MHCA Board of Directors
RBC Convention Centre
November 17 - 10:00am - 12:00

MHCA Executive Committee
MHCA Office
November 21 - 12:00-4:00 PM

Rental Rates Committee
MHCA Office
December 1 - 12:00-2:30 PM

MHCA Executive Committee
MHCA Office
January 17, 2018 - 12:00-4:00 PM

MHCA Board of Directors
Location TBD
January 24, 2017 - 12:00-4:00 PM



Canada's Centre for Global Trade
WINNIPEG, MANITOBA

North America's
LARGEST
Tri-Modal Inland Port

Nearly 50 new companies

\$230 million private capital investment in our economy

Hundreds of new jobs

WE'RE A **BIG** DEAL
(AND WE'RE JUST GETTING STARTED)



75 in 2018

The MHCA is turning 75 in 2018 and we're telling our story. The heavy construction industry has helped build this province, its economy and foundational infrastructure: roads, highways, bridges, and water/sewer. As part of the commemoration, which will include celebratory features throughout 2018, we are asking for your memories, your photos or any archived materials that can help tell this tale in displays at our marquee events next year.

Do you have something to share? Please email Katie Pfeiffer at katherine@mhca.mb.ca

Thank you,



Greg Orbanski
Chair, MHCA



Chris Lorenc
President, MHCA



You're invited to attend our next COR™ meeting!

AGENDA:

- WORKSAFELY™ Update:
 - substance abuse in the workplace
 - WSH Act/Regulation review
 - COR™ as a condition of contract
- Workplace Safety & Health Update
- SAFE Work Update

DATE: November 8, 2017
WHEN: 8:00 am - 9:30 am
WHERE: Brandt Tractor Ltd
3700 McGillivray Blvd, Winnipeg,
Manitoba



Please RSVP on or before November 1 to
Kristen Ranson; kristen@mhca.mb.ca





Third-party litigation funding: a new tool for construction disputes

Angela Gismondi, October 4

Third-party litigation funding is a relatively new tool growing in popularity that can be used to assist owners and contractors in the construction industry in managing the costs and risks associated with significant disputes and claims.

Gowling WLG recently held a panel discussion at its Toronto office billed Third-Party Funding: A Risk and Cost Management Tool for Commercial Claims as part of an educational session on international and domestic arbitration.

"Up until the last couple of years litigation funding has been little known in Canada and where there has been activity in the litigation funding space in Canada has been personal injury and class action realms," explained Tania Sulan, chief investment officer of Bentham IMF Canada.

"On a very high level, third party funders typically cover all or part of the legal costs and disbursements associated with litigation or arbitration." "It's a smart way for a company to pursue litigation or an arbitration which is inherently risky without any risk to cash flow, or if the case is ultimately unsuccessful because the funder will pick up any adverse costs. Secondly, it really assists companies with their resource allocation," said Sulan.

She explained 80 per cent of applications for third-party funding come through law firms. Funding companies conduct a primary analysis of the case and enter into a non-disclosure agreement early on to protect privilege and confidentiality.

Emily Slater, director of Burford Capital's underwriting and investment arm in New York, explained companies in the construction and mining industries may have multiple cases and third-party funding allows them to get certainty on what their litigation spend is going to be. She added both construction owners and contractors are using the third-party funding services.

"On mega contracts where there may be a dispute between a subcontractor and contractor we're seeing parties come to us that are major companies that may be the main contractor on the project or may be the subcontractor," said Slater. "To us, what makes a difference is the strength of claim and the potential recoverability. In those construction disputes there is almost always a counter claim so it's just looking at the whole package together."

Slater discussed the due diligence process in which a third-party funder will decide whether or not to support the dispute based on the merits of the case, the value of the claim, the relative budget, time to completion and recoverability from the other party.

"When a party is seeking litigation finance, one of the most important pieces to put in place is getting an assessment of what we think the cost of litigation is going to be and what the potential upside is since the funder will provide non-recourse capital for fees and expenses, but of course wants in return a recovery from potential proceeds from the case," said Slater.

"We need to get a sense if the case is big enough to support the payback of our investment in the case. We really want the client to have a substantial return if the case goes well for us and if the lawyers are participating in risk sharing, for the lawyers to have a good return as well."

Fighting litigation is costly, especially if you are paying lawyers by the hour which is still the norm for litigation and arbitration, explained Tom Price, a partner at Gowling WLG in the U.K.

"There are relentless bills and uncertainty and litigation funding effectively takes that away from you," he noted.

Mark Crane, a partner at Gowling WLG in Toronto, explained sharing risk with a third-party funder allows parties to fully participate in the arbitration process without needing to be concerned about risk, costs and other funding pressures.

"Sometimes it's not so much about the cost of litigation but the transparency and the certainty of it," Crane noted. "I think it provides an opportunity for accessing justice because for some, litigation funding may be about ironing out monthly cash flow, for others it would just be they otherwise would not be able to robustly participate in the process."

In terms of disclosure, Crane said there is an expectation in the courts in Ontario that if a party enters into a third-party funding agreement, it is brought to the attention of the court.

"You want to have transparency and be open that there is a third party funder involved," he stated. "In the event you don't disclose it and you get an award and you seek to enforce it, I think it gives rise to a potential argument from a losing party that the award shouldn't be enforced because there wasn't disclosure."

75  MHCA™



Winnipeg, snow clearing, date unknown