

**LEGISLATIVE ASSEMBLY OF MANITOBA**  
**THE STANDING COMMITTEE ON STATUTORY REGULATIONS AND ORDERS**

**Tuesday, 9 July, 1985**

**TIME — 10:00 a.m.**

**LOCATION — Winnipeg, Manitoba**

**CHAIRMAN — Mr. C. Santos (Burrows)**

**ATTENDANCE — QUORUM - 6**

*Members of the Committee present:*

Hon. Ms. Hemphill, Hon. Messrs. Penner, Kostyra

Messrs. Birt, Harper, Kovnats, Mercier, Santos, Steen

**WITNESSES: Bill No. 19**

Mr. A. Cerilli - Canadian Brotherhood of Railway Transport and General Workers

Mr. Roland Painchaud - President, Manitoba Trucking Association

Bill No. 8

Mr. Norman Rosenbaum - Manitoba Association for Rights and Liberties

Bill No. 19

Mr. Jack Penner - Keystone Agricultural Producers Association

Mr. Bill Siemens, President, Manitoba Sugar Beet Association

Mr. Ed Connery, Manitoba Vegetable Growers Association

Mr. Jim Moorhouse - Manitoba Vegetable Growers Association

Mr. Lorne Henry - Manitoba Vegetable Growers Association

**MATTERS UNDER DISCUSSION:**

Bill 19 - An Act to amend The Highway Traffic Act (2); Loi modifiant le code de la route (2).

Bill 8 - The Ambulance Services Act; Loi sur les services d'ambulance.

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**MR. CHAIRMAN:** Committee, please come to order.

The Committee on Statutory Regulations and Orders is being called now into order. I have here a list of bills and a list of people who want to make presentations. Anyone else who wishes to appear before this committee, whose name is not recorded, may please advise the Committee Clerk so that your name may be added on the list.

I shall proceed by calling the bill in the order in which they are presented and if there are people to make presentation, let me know.

The Member for Lakeside.

**MR. H. ENNS:** Mr. Chairman, going over the list of representations from the public, I note there are not many but several out-of-town people present to make presentations. While it's not a hard-and-fast rule, it has been our custom to acknowledge the fact that they are from out of Winnipeg and generally do the courtesy to them of hearing them first. If you proceed along the basis that you're going, they may not come here for quite awhile on a bill-by-bill basis.

I think the committee is prepared to hear the presentations from, I think, it's all the out-of-town presentations on a particular bill with respect to Bill No. 19. I see people from the Keystone Agricultural Producers Association, from the Manitoba Sugar Beet Producers and so forth. We called that bill. I think that cleans up our out-of-town representations and I would ask the committee to give that some consideration.

**MR. CHAIRMAN:** The Attorney-General.

**HON. R. PENNER:** Mr. Chairperson, I would agree with that. At the same time, I think that we should indicate to the persons waiting to give briefs some indication of where we will likely be. I don't think it's possible for us to hear all of the delegations by 12:30. Now, it's hard to draw the line. We would have to do so, I guess, by guess, but at least persons waiting should know that the committee will rise at 12:30 and will reconvene I think tomorrow morning at 10 o'clock. No? Tonight? — (Interjection) — Apparently, even the committee members have to be informed. That's just being checked but at least we should have that information and people waiting to give briefs should have some idea of whether or not they are likely to be heard this morning or whether it's this evening or tomorrow morning, we'll find out in a moment.

**MR. CHAIRMAN:** What I propose to do if the members of the committee would agree is to go by the order they are presented here and then in every bill ask whether those who are out of town are present and then I'll call them first, so that there will be at least order, because there is no information of the Chair as to who are the presenters who are out of town. Is that agreed? (Agreed)

Bill No. 3 - are there any presenters?

**A MEMBER:** What's the name of the bill?

**MR. CHAIRMAN:** An Act to amend The Vital Statistics Act.

Hearing none, we go to the next bill, Bill No. 8, The Ambulance Services Act.

**A MEMBER:** Manitoba Association for Rights and Liberties.

**MR. CHAIRMAN:** Mr. Norman Rosenbaum.

**MR. N. ROSENBAUM:** That's correct.

**MR. CHAIRMAN:** Anybody else who's out of town? Hearing none, Mr. Rosenbaum please.

Excuse me. Mr. Rosenbaum has the floor, but there seems to be some disagreement in committee.

The Member for Niakwa.

**MR. A. KOVNATS:** Mr. Chairman, I think to advise the people from out of town, it wouldn't hurt to just ask who are out of town, and ask them to make their presentation.

**MR. CHAIRMAN:** The Chair should be informed which bills have the out of town people? There is no such information available here.

**MR. A. KOVNATS:** Why don't you ask, Mr. Chairman?

**MR. CHAIRMAN:** That's why I'm calling through the bills. Okay, I will not call anyone until there is one out of town as I go through the list of bills. Is that agreed? (Agreed) So I will defer Mr. Rosenbaum since he is not out of town.

Bills No. 14, 16, 17, The Transboundary Pollution Reciprocal Access Act.

Okay, let me proceed again. Bill No. 3, An Act to amend The Vital Statistics Act; is there an out-of-town presenter? None.

Bill No. 8, The Ambulance Services Act; is there an out-of-town presenter? None.

Bill No. 14, An Act to amend The Community Child Day Care Standards Act; are there any out-of-town presenters? None.

Bill No. 16, The Heritage Resources Act; are there any out-of-town presenters? None.

Bill No. 17, The Transboundary Pollution Reciprocal Access Act; are there any out-of-town presenters? None.

Bill No. 18, An Act to amend The Highway Traffic Act; are there any out-of-town presenters?

**MR. N. ROSENBAUM:** I'm sorry this is 19.

**MR. CHAIRMAN:** No, I'm calling 18. Bill No. 19, An Act to amend The Highway Traffic Act (2).

**MR. N. ROSENBAUM:** Yes, Mr. Chairman, we have a number of people that are from out of town. We would, however, prefer to appear as stated on the agenda.

**MR. CHAIRMAN:** On the list?

**MR. N. ROSENBAUM:** On the list, yes.

**MR. CHAIRMAN:** Thank you. So let me now call the first person on the list, Mr. Roland Painchaud. Anybody else from out of town on Bill No. 19, An Act to amend The Highway Traffic Act (2)? Hearing none, I call on the first person on the list, which is on Page 3 of the schedule. Okay, let me defer Mr. Painchaud because I have to know all the other out-of-towners from other bills as well, so that I can schedule the list of bills.

Bill No. 36, The Mortgage Dealers Act, are there any out-of-town presenters? Hearing none.

Bill 37, An Act to amend The Public Schools Act, are there any out-of-town presenters? Hearing none.

Bill 40, The Workplace Innovation Centre Act, are there any out-of-town presenters? Hearing none.

Bill 47, The Infants' Estate Act, are there any out-of-town presenters? Hearing none.

Bill 55, An Act to amend The Liquor Control Act, are there any out-of-town presenters? Hearing none.

Bill 57, An Act to amend The Law Society Act, are there any out-of-town presenters? Hearing none.

Bill 59, The Statute Law Amendment (Family Law) Act, are there any out-of-town presenters? Hearing none.

Bill 62, The Charter Compliance Statute Amendment Act, are there any out-of-town presenters? Hearing none.

Bill 67, An Act to amend The Registry Act, are there any out-of-town presenters? Hearing none.

Bill No. 70, An Act to amend The Agricultural Credit Corporation Act, are there any out-of-town presenters? Hearing none.

Bill 72, An Act to amend The Teachers' Pensions Act, are there any out-of-town presenters? Hearing none.

Bill 73, An Act to amend The Special Survey Act, are there any out-of-town presenters? Hearing none.

Bill 78, An Act to amend The Amusements Act, are there any out-of-town presenters? Hearing none.

Bill 81, An Act to amend The Co-operatives Act, are there any out-of-town presenters? Hearing none.

Bill 82, An Act to amend The Real Property Act, are there any out-of-town presenters? Hearing none.

Bill 84, An Act to amend The Public Schools Finance Board Act, are there any out-of-town presenters? Hearing none.

Bill 86, An Act to amend The Consumer Protection Act, are there any out-of-town presenters? Hearing none.

Bill 98, An Act to Validate an Expropriation Under The Expropriation Act, are there any out-of-town presenters?

It would seem that only on Bill 19 are there any out-of-town presenters. I will call them in the order in which they are in the two categories: first, those who are out of town under Bill No. 19; and after we have finished them all, those who are within the City of Winnipeg on Bill No. 19.

The Member for Lakeside.

**MR. H. ENNS:** Mr. Chairman, I wonder, just on a matter of committee procedure, it might be of interest to committee members that this committee will reconvene at 8 o'clock tonight and again at 10:00 a.m. tomorrow, if needed.

### **BILL NO. 19 - AN ACT TO AMEND THE HIGHWAY TRAFFIC ACT (2); LOI MODIFIANT LE CODE DE LA ROUTE (2)**

**MR. CHAIRMAN:** Mr. Cerilli, are you out of town, sir?

**MR. A. CERILLI:** No, I'm not, Mr. Chairman, and I would request the indulgence of the committee if they would allow me to present the Brotherhood views on Bill 19 to amend The Highway Traffic Act as I'm going

it of town this afternoon to Montreal. I would really appreciate it if I could present my views.

**R. CHAIRMAN:** Is there leave by the committee? (greed)  
Mr. Cerilli.

**IR. A. CERILLI:** Mr. Chairman, and committee members, my name is Albert U. Cerilli. I'm a representative of the Canadian Brotherhood of Railway Transport and General Workers. Our union is affiliated with the Canadian Labour of Congress and also to the Manitoba Federation of Labour, of which I am an executive member of the council.

I'm here today to express our agreement to the amendments to the act as well as some of our concerns; and certainly I want to thank the committee members for allowing me the opportunity of speaking when I see a room full of people. I'm not going to take too much of your time.

I want to commence by saying that regulatory reform in trucking must include the safe transportation of hazardous and dangerous goods, as well as durable goods, food stuffs - any other commodity is general freight. The purpose of our presentation to you today is to ensure that the regulatory effects scheduled for over the road service exists for all communities of Manitoba, as well as reasonable truck costs to the consumer - transportation costs to the consumer, with stability of the industry, with adequate remuneration for the services performed by the legitimate trucking companies, to ensure adequate traffic volumes for the competing trucking companies, and for safe and reliable trucks on the highways of our province and Canada.

The proposed changes to Bill 19 to amend The Highway Traffic Act could significantly alter the points I've just outlined. The amendments dealing with the owner-operators in our view has a detrimental effect on the trucking industry, if implemented, in its present form to make it legal for the present situation that exists under the act.

The present Highway Act requires that individuals, truck companies or corporations to hold the operating authorities. The owner-operators or lease operators do not hold operating authorities. Under the present act the company cannot legally transfer the operating authorities, the whole to owner-operators or lease operators.

The amendments proposed will legalize the situation and I guess, to a degree, will in fact be in step with the rest of the country. However, we are concerned that it may have a detrimental effect, an adverse effect, not only on the companies, but as well as the owner-operators and lease operators and the company employees who drive company trucks, and that's the point that I want to make to this committee for amendment to the present situation to be included in the amendments to the act.

We concur with a number of amendments to the act, and before I go to the amendments to the owner-operators or lease operators, I would like to give our support to the amendments in regard to the change that will make all trucks handling exempt commodities come under the public service vehicle provision that is shown in the amendments.

We also concur with the minimum tolls or tariffs that are going to be implemented, for the simple reason that it'll do away with the cutthroating by illegal truckers, who are involved in this very important industry to the province and to Canada. We are informed by the Trucking Association of Ontario that 40 percent of the traffic volumes are carried by illegal truckings. We suggest that that is a significant amount of money being eroded from the tax base of each province in the country.

A minimum tariff rate will, in fact, allow the board to control this kind of a situation and it will act the same as a minimum wage or any other minimum rate situation that exists in society today, and we support that wholeheartedly. We also support the amendment which will allow the board to enforce the fines; and the increase in the fines, we support that as well.

Dealing with the owner-operators under sections now of the act that are 284, we strongly recommend to this committee that unless a formula exists within the amendments to call for that 60 percent of all trucks of any company or individual that have running authorities issued by the Manitoba Board be controlled and driven by company highway drivers, we will not have the stability that is anticipated in the amendments. We say that 40 percent of all authorities or trucks, that amount can only be the owner-operators or lease operators. To allow any further formula or erosion or 100 percent of owner-operators will certainly destroy the good intent that the amendments are trying to provide.

If we do not have this kind of a formula in the act, good companies with all the legitimate concerns of the economic stress and pressures that they're experiencing will, in fact, pressure their present company drivers to purchase a company vehicle with the authority to work for them, and in fact all he's doing is buying a job for approximately anywhere from \$60,000 to \$80,000 which a highway tractor unit costs. In this day and age, when people are trying to pay for mortgages and raise a family, society cannot tolerate this infringement on society, who in turn, if it's allowed, these owner-operators will in fact go broke and be residents of society by forms of welfare or any other form.

So, Mr. Chairman, committee members, we are not asking for one great deal of amendment toward the act, we simply ask you to consider and place in the amendments of section 284 of the proposed amendments to include the formula I have outlined to you.

Without it you are stepping into the worst kind of deregulations that have existed in the United States. Owner/operators have a right to exist, however, not at the cost of other employees that are working for any trucking company or any corporation. So, Mr. Chairman, I would hope that is included in the amendments to ensure jobs for everyone in the industry.

We are told that there are 600,000 people in the industry in Canada. Basing it on a formula of job loss of around 5,000, equalling \$45 million, we can see that kind of deduction from the economy of this province if we allow a total leaser/owner operation to exist from the present provisions of the act.

Thank you very much, I'll stand for questions.

**MR. CHAIRMAN:** Thank you, Mr. Cerilli. Are there any questions directed to Mr. Cerilli by members of the committee?

The Member for Pembina.

**MR. D. ORCHARD:** Thank you, Mr. Chairman.

Mr. Cerilli, I apologize, I wasn't here for the first part of your presentation, but your last point was indeed of interest. I have a couple of questions regarding your concerns as you expressed in the necessity of an amendment to limit owner/operators under a franchise to 40 percent.

Do you have any examples, presumably within the Canadian trucking industry, where there are franchise holders who operate above the 40 percent owner/operator?

**MR. A. CERILLI:** I don't know if it's permissible, Mr. Chairman, to name specific companies, but there are companies in this very province that, if you drive around the highways, you'll notice that they have a constant sign saying owner/operators wanted. The reason for that sign remaining, or other companies asking in the papers for owner/operators, is simply that because of the cost of truck units, as I said at \$60,000 or \$80,000, trying to raise a family, pay a mortgage or rent, it's impossible for them to meet their commitments, and this is why we say that there are companies that have more than 60 percent of owner/operators, at least, that's our information at the time when we had it. It makes it difficult for those owner/operators because there's no limit as to the numbers a company can put on, that it depletes the number of trips or revenue that they could make on a trip-to-trip basis; so there are companies in the city here that have more than 60 percent right now, or 40 percent, or 50 percent.

**MR. D. ORCHARD:** Mr. Cerilli, the point you're making is that without this limit that there is the possibility of a franchise holder engaging - and let's just pick theoretical numbers - 100 owner/operators when he probably has business which would provide a living for only 50 full-time operators and he's using the numbers, if you will, to bargain lower lease agreements with the owner/operators; that's your concern.

**MR. A. CERILLI:** That's right, that's part of it, as well as eroding the ability of retaining company drivers on a mileage rate, for example, because they get paid on a mileage basis to make a living because there were too few trips to spread around and the freight, it gets thinner all the time. You're correct.

**MR. D. ORCHARD:** In order for your amendment to work would we not then have to restrict overall the number of vehicles a given firm would be allowed to license to undertake their transportation business, however big or small it is?

**MR. A. CERILLI:** I don't really think so. I think that those are the mechanics that are going to be relied on for the industry, the organization that represents the owner/operators, as we do, and employees as well - to have some kind of a mechanism on that. The authorities that are going to be issued, I hope, are not going to be issued by the bushel to a particular company to say there's no restriction on the number of trucks they can buy, but it's possible that the erosion of the

number of trips could come by flooding the number of trucks. At the same time, I think that the industry itself - and you'll be hearing from them - will want to be able to have some control of stability by having some formula set in with regard to the owner/operators versus company trucks.

**MR. D. ORCHARD:** Mr. Chairman, that's an interesting concept that Mr. Cerilli is proposing and when we get to clause-by-clause on the bill, it will be of a great deal of interest to myself and others to see whether the Minister can conceive of a method of making this work. I can see some problems just off the top of my head in terms of how do you mandate for 40 percent or a percentage of a number of trucks without getting to an overall restriction as to the number of vehicles and I don't think that exists now.

**MR. A. CERILLI:** That's right.

I think the other point that has to be tied in with that is the fact that there will be a minimum. The board will be able to control the maximum and the minimum rate at tariff rate. I think that this is part of the problem where there is cut-throating existing right now and this will eliminate that as well as the possibility of price fixing.

**MR. D. ORCHARD:** Just one final question to Mr. Cerilli, then.

The minimum rate will eliminate, possibly - it depends on where the minimum rate is set - eliminate one aspect of your concern, but you view the necessity to completely get at the problem to limit the number of owner/operators because they can limit their revenues not only on the rate they pay but on the number of trips they offer.

**MR. A. CERILLI:** Yes, his assumption is correct. It's the number of trips that brings in the amount of revenue for any individual. He may be a lease operator, owner/operator or a company driver driving a company unit. I think it would be foolhardy for any company to overflow their operation with owner/operators because they simply won't stay, and what'll happen is that the gypsy part of it will be more prominent and exist. I think that the companies themselves will allow some form of control in this because certainly if an owner/operator is going to invest \$80,000 in a unit, for example, and he's only getting four trips a month from here to Toronto, he's not going to be able to make it. He's going to go broke.

What we're saying is to alleviate the number of people that are going broke, the individuals that are buying jobs, then this kind of a formula has to exist so that at least there is some sensibility and some sensitivity from the companies to ensure that they make a living through this kind of a set-up. I'm relying on the trucking industry to co-operate with this situation, otherwise, any amendment that you propose is not going to work. If you are going to allow the amendment to exist as it is, to legalize what the heck is happening out there now, then what you're going to have is 300 owner/operators with a particular company not making a living. They're all going to lose their trucks and what is fearful is that there'll be 300 more people picking up the tab

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and investing that kind of capital for the company. I think the companies themselves want to ensure that there's stability in the industry, not instability.

I hope that has clarified some more of your points you were making.

**MR. CHAIRMAN:** Thank you. Are there other questions?

The Minister of Highways and Transportation.

**HON. J. PLOHMAN:** Thank you, Mr. Cerilli.

I note in the bill that the Transport Board may prescribe certain other terms with regard to the lease arrangements. Do you feel that that would provide some protection? They may be able to prescribe certain minimum requirements in the contracts that are set up if there is abuse of the owner/operators, and therefore provide some protection. It seems that you're concerned about that aspect of it.

**MR. A. CERILLI:** Yes.

**HON. J. PLOHMAN:** We have a provision in there, if necessary, that could be developed by the Transport Board as the situation evolves. I just want to point that out to you.

**MR. A. CERILLI:** I realize that, Mr. Chairman, but I think that it's important in our presentations not only to the task force which I'm sure the committee is well aware of and the recommendations the task force that was appointed. I think that the findings there are well researched. However, meeting with you as well as the trucking associations of the province meeting with you, we have been consistent in suggesting that if there is going to be a movement to legalize the owner/operators and lease-operator arrangements any company, that there has to be a built-in formula. The companies themselves have suggested this 60/40 formula that presently exists out there now. I haven't seen it but that's what I grab my figures on. Unless we have that kind of a formula in there, the other mechanisms, in our view, won't work and won't protect the workers.

**HON. J. PLOHMAN:** Mr. Chairman, we'll be asking the Trucking Association their views certainly, of that.

I just wanted to ask one question about the maximum tolls. That is the intent of the Transport Board to set maximum tolls and then allow negotiations below that, really recognizing a practice that is, in fact, widespread at the present time with the provision that if there are particular situations that result in predatory pricing or cutthroat pricing, as we may call it, that the Transport Board could step in to set minimum tolls. Do you agree with the maximum toll concept in terms of allowing for negotiations between the shipper and the authority . . .

**MR. A. CERILLI:** I would suggest that the maximum be relieved from the act because the maximum can be built up. It's a protection to have a ceiling and if it stays, that's great. I think that the minimum should be specified in the act in regard to the minimum wage concept that I mentioned in my presentation. I think that's important. I think that then the applications for negotiations to the boards will be minimized with the guidelines already set out for them.

**MR. D. ORCHARD:** Mr. Chairman, following on the last couple of comments now, right now as the industry exists, although it may not be entirely clear-cut, but basically the industry right now allows an individual to make a decision as to whether he wishes to become an independent trucker, if you will, and own his own outfit and attempt to make a living out of the ownership of that truck-trailer - well out of that truck and trailer unit - would not the proposal you're making in the long run tend to restrict the opportunity for individuals to make a decision as to whether they want to become an independent owner-operator and vie for an opportunity to work for some of the major franchise holders? If we put this 40 percent limit in place, we're going to restrict the entry into the marketplace at the bottom end of the owner-operator and restrict individual decision.

**MR. A. CERILLI:** No, I don't think that that's the case. What we're talking about is that the present act does not allow the transferring of authorities issued by the board to companies to transfer over to owner-operator. It's being done, but it is not legal. What happens is that an owner-operator, under the present amendments as I understand them, will not become independent as such. He still will be working for a particular company, so he will be dependent on the particular company whom he will have that contract or arrangement with, and the rate there is negotiated; but the rate is not much good to him if he's only going to get, as I said earlier, four trips to Toronto instead of his six, or the allowable under the hours of work under the federal regulations. So there is more to it than just simply that, and I think that it would enhance their position to have the number under a formula into a company, so that they are assured a living, rather than grasping, like at an auction, as to the number of trips they may get.

**MR. D. ORCHARD:** In some degree I can see the point you're making for existing owner-operators but, given that your proposed amendment, on a 40 percent maximum of owner-operators under any franchise holder, that could have severe implications and restrictions placed on anyone making the decision tomorrow, after say the act becomes law, to become an owner-operator because theoretically that void will be filled by your 40 percent maximum.

**MR. A. CERILLI:** Well so be it, because I think that you've got to have the other side of the coin protected and you have to protect the people that are presently in the industry, as company drivers driving company trucks, and that's the whole basis of the formula is to protect both sides - the company employees on one hand, and given the owner-operator's legitimacy to make a legitimate living; not at the off cuff of a particular company that may want to have an influx of owner-operators so that they can have, at their beck and call, a number of people that they can ship out at any time. I don't think that's what should happen.

Any company in any other industry, for example, if they can only handle 100 employees, they're not going to have 150 on the payroll because they've got them on an hourly rate, so they're only going to control themselves with 100 employees. In the trucking industry,

because of this change, there's a possibility of that kind of flooding of owner-operators that has to be controlled so that they all make a living and not lose their investment of the \$60,000 or \$70,000 or \$80,000 that they're investing for a particular company, instead of the company investing the capital to buy the trucks. So they have to be protected.

**MR. D. ORCHARD:** What we are really talking about then is a condition, by legislation, whereby legislation will decide whether an economic opportunity exists, rather than individual choice as to whether he can survive in that profession?

**MR. A. CERILLI:** The individual choice right now, if you do some research - and I beg this committee to do the research - is that for every owner-operator that goes into the business now two go out of business because they're losing their truck. Two more come on and it's a wheel that keeps turning. I think that what the amendment is trying to do is to have some sensibility and some stability in the industry with owner-operators and lease operators.

Right now the people that go bankrupt that are owner-operators is tremendous and I think that's unfortunate; and hopefully this kind of a formula included in the amendments will eliminate that. Because, without it, all you're going to have done is that, instead of the company investing \$60,000 or \$70,000 on a tractor unit, they get some individual because there's another one down the road waiting to take his place. I think that that's what we're trying to say to you, that we must control so that is alleviated.

**MR. CHAIRMAN:** Thank you, Mr. Cerilli. Are there any other members of the committee who want to ask questions? Hearing none, the Chair thanks Mr. Cerilli.

**MR. A. CERILLI:** Thank you, Mr. Chairman. Thank you, members of the committee.

**MR. CHAIRMAN:** Mr. Roland Painchaud, representing the Manitoba Trucking Association.

**MR. R. PAINCHAUD:** Good morning, Mr. Chairman, members of the committee. I am Roland Painchaud, president of the Manitoba Trucking Association and I'm here on behalf of the association this morning which is a voluntary trade association for hire and private trucking firms who operate within, into and out of the Province of Manitoba. It is a non-profit corporation which was incorporated under Part VIII of The Companies Act in 1958. The association is governed by a board of directors elected by the members pursuant to its by-laws and constitution.

Unlike most other industries, trucking in Manitoba is not dominated by a few giants controlling an overwhelming proportion of the business, but rather it is comprised of a large number of small to intermediate size companies. The Manitoba Trucking Association endeavours to represent the diverse interests of such companies; however, because of its diversity, there are member firms who may not always agree with the stand taken by the association on a particular issue and, in these instances, we make it quite clear that they are

free to intervene in proceedings before any audience as they see their own individual interests require - and you will have such presentations possibly this morning.

The Manitoba Trucking Association, as the Minister is aware, has been vitally involved in discussions with the Task Force Review of Motor Carrier Regulations and it is from those recommendations of the task force that the proposed amendments to The Highway Traffic Act, as contained in this Bill 19, emanated.

A major area we wish to discuss this morning with the committee today relates with the proposed tolls which may be charged for shipments within Manitoba. Frankly, we were quite surprised to see this included, as it is our understanding this subject is currently under review by a contract let to special consultants. We are not aware that the study has been filed with the government and we, as an industry segment vitally concerned with the study recommendations, have received no opportunity at this stage to comment upon it. We think it's perhaps a little premature.

Of further concern to us is that the copy of Bill 19 was not made available until Thursday, July 4th, and we want to emphasize there are new concepts presented in this bill which we believe deserve more attention and certainly not quite as rapid a response as what is anticipated. We know the dynamics and the problems of the Legislature in trying to get away for the summer and what have you, but notwithstanding that, we think that there should be a larger time frame involved here. Also, with respect to tariffs, there is a scarcity of information, particularly with regard to the manner of application, and without this information it is difficult for us to address the issue specifically.

The existing requirements for intra-provincial movement of goods is that a standard tariff of tolls, as dictated by the Manitoba Transport Board, be applied unless a different tariff has been filed and accepted by the board. In practice, because of a rate regime which does not relate to the reality of the times and competition, this standard tariff has been largely ignored. For many years the common carrier did abide by the statutory rate, with the result that traffic was lost in huge volumes to private carriage, specialized carriers, not to mention illegal carriers, until, to protect the remaining freight, the carriers had no choice but to cut rates if they were to stay in business. It is of only very recent vintage that the Manitoba Transport Board has sought to enforce filing requirement, but they have been most inconsistent in their enforcement efforts. Carriers have chosen to resist filing to protect whatever competitive edge has remained to them. Those are the facts.

It is with this background that the Manitoba Trucking Association recommended the aforementioned Task Force on Motor Carrier Regulations in Manitoba that the Transport Board continue to determine a schedule of freight rates but that these be of a maximum nature to protect shippers and consignees and consumers, particularly the small ones located in rural areas and that the requirement to file for rates lower than the published rates be discontinued. The system doesn't work; there's no point in prolonging it. Subsequent recommendations from the task force to the Minister seemed to support this proposal, but Bill 19 in section 292.1(2) proposes filing requirements and public disclosure of rates charged, other than those set as a maximum or minimum fixed by the Transport Board.

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We see it as an inconsistency there, certainly from the point of view of the recommendations of the task force and indeed what has been happening in the industry. We can readily understand the need to guard against predatory pricing. This is a concern of ours, particularly after watching the experience in the United States, when their common carrier industry was largely deregulated; but the powers proposed for the Motor Transport Board are, in our view, far in excess of what is reasonable under the circumstances. To give to the Transport Board the sole right to determine detriment to the public interest - and these are the key words - "detriment to the public interest" without any guidelines within which carriers may act, could be open to discriminatory practices for which there's no clear avenue of appeal; and the bill amendments do not allow for any appeal. This quasi-judicial board, the Motor Transport Board, would have complete authority and their authority would not be subject to question.

Throughout the recommendations of the task force, much was made of competitive capability within the industry. It was proposed in the task force report to give rural carriers wider operating authority to create competition. It was proposed to give one-truck operators the ability to create competition. It was proposed to broaden the list of ease-of-entry commodities to create competition. These are commodities that are not subject to the regulatory regime. Further, it was proposed that to amend the statutory rates to maximum rates to create competition, to allow for small carriers the ability to adjust their rates as they saw fit, within the maximum rate so that they could compete with perhaps some of the larger carriers. We ask then, why the Manitoba Transport Board is to monitor the rates in the industry to determine the average rates being charged and why it is proposed that rates accorded by carriers to shippers are to be open to public scrutiny and, in particular, to the competing carriers? We don't understand the rationale here. No one pretends that a major shipper will not obtain a price advantage over another, who has infrequent demand and smaller volumes. That's the reality. This is competition and it is no different than the government itself expects when it tenders for its own requirements.

We are somewhat, indeed, mystified by the new section captioned "Fixed or minimum tolls established by transport board". We stand to be corrected, but we think the drafters of this legislation may have had in mind the movement of beer, but even if we are wrong, this commodity is useful perhaps as a discussion of this particular proposal. This is an area, gentlemen and ladies, in which we have a very serious concern, the establishment now of fixed and minimum tolls, which is really a retrogressive step.

The prime purpose of regulatory reform regulation and examination in the country and, indeed, in Manitoba, has been to simplify, has been to modify, has been to rationalize, to move away from the past practices which were unworkable and were perhaps not in keeping with the times. This particular section deals with, in essence, almost retaining part of the past, while at the same time, moving with the future. I would describe it as akin to trying to be half pregnant and I'm not sure that works. At one time, and in some cases still, beer is the mainstay of the rural general carrier

industry and it was considered to be a captive type of market.

Associated Beer Distributors, which is the company dealing with the distribution of beer products across the province now, are perhaps the single largest general freight commodity shipper in Manitoba and they have an obligation to their patrons to minimize expenses in the transportation of their products, and that's understandable. This has been resisted by the Motor Transport Board for years with the argument that cross subsidization of freight was a necessity in Manitoba because of the geography of Manitoba, and it's indeed a principle that to some degree the trucking association has agreed with. However, whether it is right or wrong, we have our reservations as to its correctness. It would be unreasonable to expect such a philosophy would be acceptable by a private company. Direct taxation is one thing, but forced support of a segment of the population is another.

Therefore, not too surprisingly, Associated Beer Distributors sought ways to curb their expenses and opened recently a warehouse in Brandon where they shipped their product to Western Manitoba via a carrier who was prepared to negotiate freight rates. If the brewers are further harassed by prescription of a fixed or minimum toll for the movement of their product, they have available to them the alternative of carrying their own product, on their own vehicles, and shutting out the common carrier completely. If we have any concern as an association, it certainly is for those small radial carriers who need more freight, not less. We should do nothing, as a result of these amendments, which will destroy the ability of the small carrier to garner more access to more freight; and this very mechanism may well do that. We have a very serious concern here. In fact, none of the amendments that are proposed here will create any more freight and that's really the problem of the small rural carrier and indeed of the carriers, generally, in Manitoba and indeed in the country, to some degree.

None of these initiatives create more freight. We should be very cautious that whatever initiatives are undertaken, they do not further destroy the ability of existing carriers to continue providing legitimate services to the areas that they're mandated to serve.

In this case we ask if the public interest has been served particularly as it is the mandate of the Motor Transport Board to establish and maintain a viable freight distribution system in Manitoba which will promote the public convenience, and I refer you to section 263(2) of The Highway Traffic Act which says that.

Our recommendation is that The Highway Traffic Act allows for the setting of maximum rates by the Manitoba Transport Board and that carriers be allowed to operate within these rates at their discretion unless they justify and file for a higher rate. There should be no need and, in the spirit of competition, no requirement to place for public scrutiny the rates which are accorded to various shippers.

Section 292 provides that the Transport Board may prescribe fixed or minimum tolls, and this is the section that really concerns us. But this is not a general tariff of tolls for all carriers or all commodities. The proposed section particularly provides that such tolls may be: (a) for the transportation of a particular commodity or

class of commodities or (b) those which may be lawfully charged by a particular motor carrier or class motor carriers. Discrimination. This is what is contemplated here, outright discrimination. We find that offensive. As an industry and as an association we could never support any kind of discriminatory practice enshrined in legislation which would allow unfair advantage between various classes of carriers; that cannot be a principle that we can support.

We ask why the reference is made to a particular commodity or a particular motor carrier, or to a class of commodities or to a class of motor carriers, recognizing that there needs to be more access by small rural carriers to freight. We just do not see the rationale behind this.

We submit that the tariff of tolls, no matter how legislated, should apply equally to all commodities and, in particular, to all carriers equally. Especially there should be no discrimination between carrier "A" and the rest of the carriers, no matter who carrier "A" is. The jurisdiction to legislate a tariff of tolls must be fair and equitable to all carriers and for all commodities.

As we have indicated to you previously, this is as it is today. The tariff now applicable is on a weight and cube basis depending on the mileage, and it is applied uniformly. It's a system which has worked for Manitoba, which still has some of the lowest freight rates in the country. It has worked. Now there's been an impetus, if you wish, to reform, an impetus to change but, as I've said so many times, let's not throw out the baby with the bath water, I think we've got to be cautious.

We urge you not to implement section 292, as we believe it is basically a discriminatory section which gives the Motor Transport Board the powers to apply sanctions on a selective basis. Our major concern there is that there could then be a division within the trucking fraternity in terms of how it operates and how carriers are treated. We feel that would be unfair and not to the general good of the transportation network and, indeed, the viability of the transportation network, which is important to the viability of the Manitoba economy in so many ways.

Indeed the White Paper, an excellent White Paper presented by the Minister in the House, while it dealt with these matters in a general sense was not specific enough, so that we could not, at that time, be particularly upset with the White Paper. Having now seen the amendments we feel that the amendments go a little bit beyond what is at least implied in the White Paper. The White Paper was generally a good document because it dealt with the reality of the times while, at the same time, trying to fix, clean-up, adjust, modify, the things that weren't working so well.

So we have some real concern now that these particular amendments will go beyond what was contemplated, indeed go beyond what the task force review recommendations both implied and suggested - a task force which, by the way, worked for some three years, with which the association and the industry worked very actively with. We critiqued where we felt it was necessary; we added where we felt it was advantageous, both from the industry; we tried to keep a balanced perspective from a point of view of what was good for our membership while, at the same time, what would be good for the Manitoba economy, because we have to continue to live within this context, we have to continue operating within it.

So all of those things are critical to us as an industry, although we make no bones about having some vested interest, but we also have a vested interest in making sure that the Manitoba economy remains strong. So we feel that, since transportation is a very major segment of the business activity in this province, things must regime, the environment must be conducive to making it grow, to making it stable, to making it prosper, which I think provides the kind of employment figures which my friend, Mr. Cerilli, quoted this morning. It's a large industry, we've got to be careful we do not tamper with its basic viability.

The trucking industry, Mr. Chairman, has been through some chaotic times the last two, three years; it's been through some uncertain times. We would have hoped that this particular bill would have quietened some of this uncertainty and allowed entrepreneurs to go on with the business of creating employment, creating economic activity. For the most part, we are in reasonable agreement with the majority of the sections amended as they are proposed here.

We do have, as I indicated throughout my brief and try to repeat now at this time, we do have some very major concerns with section 292. We have some concerns with sections 292(1) which talks about 292.1(2) ". . . board may require to be filed." We think one of the objectives of the Task Force Review, and indeed the process that has been going on throughout the country, has been to simplify, to make this industry more accessible; to cause the necessity for filing really does not assist in that simplification process, it really just retains a little of the past while, at the same time, not addressing the issue of trying to deal with the reality of today.

So if maximum rates are to be set, then that is probably all that is required at this time. Filing is just another administrative burden which both the carriers will have to deal with and, at the same time, the Motor Transport Boards will have to start making subjective judgments about the reasonableness of all this filing. So if one of the objectives was to simplify, to rationalize, then this particular section doesn't deal with that.

Section 292.2(2), our major concern there is the determination of what will detrimentally affect the public interest. That is such a subjective matter and, with all due respect to the competence of quasi-judicial boards such as the Motor Transport Board, if they were staffed with the expertise of Solomon they could not make what I call, in the final analysis, anything other than a subjective judgment. If it is to be a subjective judgment, then it should have some kind of right of appeal, and that's not contemplated in this section.

What else have we got here? Fixed minimum tolls, again this is to repeat section 292, we find offensive. We really feel that there is no purpose, no need being met by going back to a fixed minimum toll system. We think that it would be important for the Motor Transport Board to perhaps monitor so that there isn't a serious predatory practice happening, especially if that predatory practice was to emanate from outside of our borders.

But having said that, this power far exceeds what is required. What it does is it just takes away any flexibility that any carrier might have to give X, Y, Z shipper a break today, because he's got an empty truck and he can haul Commodity B from Boissevain to Winnipeg



and he says, well I can do it for this today. He offers that small shipper that advantage. Under the prescribed toll he couldn't do it legally, although it has been done in practice for years and let's not kid ourselves, it is one of the reasons why these amendments are contemplated.

If we are now going to give the Motor Transport Board, through this amendment, again the authority to fixed or minimum tolls, we retain the status quo. We have been wasting our time for the last three years. The Minister has devoted tremendous attention to this particular issue and legitimately so.

I think, if we are going to update the bill, let's update it; let's make it reasonable; let's make it desirable; let's make sure that it doesn't detract from the central objectives which were to rationalize, while at the same time recognizing the fragility of the transportation market in Manitoba, recognizing that no more freight is created by any of these initiatives, recognizing that what is desirable in the long term is viability which will impact on the viability of the communities we serve and, indeed, will impact on the viability of the Manitoba economy which by the way - and I will repeat this - is very much dominated by the transportation sector.

The task force report isolated that information very clearly, and the Minister in his White Paper quotes again this particular statistic that in Manitoba, by proportion of population, has more transportation activity per capita than any other province in the country.

Gentlemen and ladies, this is my presentation and I am open to any questions that are reasonable, although I do not intend to get involved in any kind of a debate.

Thank you.

**MR. CHAIRMAN:** The Minister of Highways and Transportation.

**HON. J. PLOHMAN:** Thank you, Mr. Chairman. I want to first of all thank Mr. Painchaud for his presentation.

I should bring to his attention that the act doesn't come into force until proclamation, and it is the intention with some of these sections certainly to develop guidelines in consultation with the trucking association before they are implemented. So the provisions are apt to be there but they would not be proclaimed until we are ready to proceed. Of course, before the decisions would be made with regard to any enactment of the minimum toll concept where it could be necessary, guidelines would be established in consultation to determine what constitutes something detrimental to the public interest. Generally, it would be noncompensatory predatory prices.

I think that the presenter should be aware that there are large portions of his organization, including small rural carriers, certainly the CITL, the Canadian Industrial Traffic League, representing shippers, are very concerned about the new concept of simply having maximum tolls. So this was actually put in place as a compromise to ensure that there would be some protection, if predatory or noncompensatory pricing did occur in certain instances, that the board then could proceed to enquire into those situations and in fact set a minimum toll.

If this procedure is one that the Manitoba Trucking Association, through its president, would not like to

see in place, I would ask what kinds of protection he would propose so that there would not be predatory or noncompensatory pricing in certain instances that indeed could result in a tremendously adverse effect to some of the small rural carriers in certain instances. That's why this is in here. It's not as a general rule; it's to compromise - the maximum toll as is indeed the policy, and that's what we have discussed on many occasions.

But this is a protection in there, and I am saying, does the Manitoba Trucking Association feel there is no need for that kind of protection?

**MR. R. PAINCHAUD:** Well, Mr. Chairman, through you to the Minister, we have no problem with the concept of attempting to deal with the matter of predatory rates. We have no problem with that concept.

What we have a problem with is this overwhelming amount of power that is being given to the Motor Transport Board to act in whatever way it sees fit without having had the benefit at this present time, or this committee having the benefit at this present time of seeing the guidelines under which those kinds of criteria decisions may be made.

So with all due respect to your suggestion that these guidelines will flow after the bill has been passed and may or may not be proclaimed without being tampered with, we say we have been at this process for three years; we can wait another six months if necessary so that these guidelines can be developed.

**HON. J. PLOHMAN:** It takes longer than that.

**MR. R. PAINCHAUD:** Well, if it requires longer, then perhaps that's what needs to be done. I indicated in my presentation, that this industry has been through a hell for the last number of three or four years of uncertainty. It doesn't need more of that; it needs some certainty.

Under the present regime, it is operating as the rules mandate, not very well and certainly it needs to be changed, there is no argument there, but with regard to your suggestion that there perhaps needs to be some protection for the small rural carriers, yes, we concur with that. We have said this over and over again. We don't want to see predatory pricing.

We suggest to you that predatory pricing is not likely going to emanate from inside of our own borders to any great extent. We think it will happen from outside. So perhaps there needs to be some, if you wish, definition of what is a predatory practice, how it will impact and what are likely to be the criteria for a decision as to when and if the board is to act on these and would then have the authority to prescribe a rate or to prevent or to cease and desist, to call upon a particular carrier to cease and desist a particular practice.

Well, we think that those rules need to be known before the Motor Transport Board is given, through this amendment and legislation, such broad authority. We have some real concerns, notwithstanding the expertise and the competence of the board, and we are not questioning that here. What we are questioning is that the rules of the game must be known. We have to get away from so much of this subjectivity that we have

in so much of our legislation. Let's be a little more specific. It's a pretty specific industry; you have to transport that piece from there to there. Let's not make the rules that make that happen so flexible that no one understands, or no one understands how they should run their operation to conform. So that's my point, Mr. Chairman, through you to the Minister.

**HON. J. PLOHMAN:** Well, Mr. Chairman, I agree there has been a great deal of uncertainty, and naturally that is something that has taken place right across the country with regard to the deregulation fad that is going on. Of course, what we are trying to do, and I think we have succeeded over the last number of years, is work closely with the industry here in Manitoba to reflect some of the reality of today without moving too fast on a number of areas. We want to have the provisions in the act to combat any potential predatory pricing. At the same time, we have, I think, an excellent record of consultation.

I wanted to ask another question, Mr. Chairman.

**MR. CHAIRMAN:** There is a point of order being raised. Can the member state the point of order?

**MR. H. ENNS:** Well, Mr. Chairman, the Minister is coming very close to debating what should and what should not be in the bill or how we arrived at whatever is in the bill. It's been our practice to use the time of the public making presentations to this committee to solicit further information from them. We are not really particularly interested in how the Minister arrived at the bill that is before us. We can discuss that among ourselves in committee.

I would simply ask you, Mr. Chairman, to follow the rules of the committee and ask the Minister to restrain himself from editorializing on why a bill is before us, what form it is before us, or how he arrived at the decisions that he and his department have arrived at. The purpose at this stage of the committee is to solicit information from those who are appearing before us.

**HON. J. PLOHMAN:** Yes, Mr. Chairman, I think that chastisement comes from an individual who breaks the rules as much as anyone, but I will agree that I should not go on at length.

I would just like to ask, Mr. Chairman . . .

**MR. CHAIRMAN:** No imputation of motive.

**HON. J. PLOHMAN:** . . . whether Mr. Painchaud has any comments on the 60/40 proposal that was made by Mr. Cerilli with regard to owner/operators and whether he has any comments as to how that could work.

**MR. R. PAINCHAUD:** My first reaction, Mr. Chairman, through you to the Minister, is that it's an interesting concept. Of course, we hear of interesting concepts all the time. The interesting part about interesting concepts is that in the final analysis, will they be workable? That would be our major concern.

I think that responsible trucking companies, as we have many in Manitoba, try to establish some kind of balance between the amount of freight that is available

and the number of carriers they employ to haul that freight, whether those carriers be salaried drivers or whether they be contract drivers. It has been our fundamental principle, if you wish, not to interfere with the right of companies to make those determinations. I think that is a sound principle for an association.

Having said that, however, the major concern that we would have with the formula would be that there would then be some kind of body - I don't know who - that would sort of make those determinations, not having the benefit of the knowledge of the particular operational aspects of that particular firm. So while formulas may sound - it sounds reasonable that there should be. Those kinds of balances are now established in companies, probably along the lines of what Mr. Cerilli has suggested. Now, because companies wish to retain a certain amount of control which some of it is released a little when they go to a contract carriage situations with owner/operators, they release some control. However, they wish to retain some of that.

The concern that I would have is that if there were to be those kinds of formulas, what would prevent the company from deciding that most of the desirable freight would all go to their own salaried drivers because that would be in their best benefits and that then the contract carriers would receive the remains? So we think that those kinds of decisions should be left to the marketplace. They should be left to negotiations between the carrier and his contract operator.

The contract operator, by the way, is a contract operator. He is an independent businessman who makes a decision whether to get involved in this particular type of commercial activity or not. He makes that consciously with his banker who is going to lend him that \$80,000 or whatever is required, and he has the right to fail. We cannot legislate against the right to fail. In the retail sector, two out of three retail outlets fail within the first five years. I mean, that's the reality of the marketplace. I'm not sure that the transportation industry should be any different. People should have the right to fail. I don't think that we should enshrine in legislation anything that would remove that right. People also have a right to succeed. That's my answer, Mr. Chairman.

**MR. CHAIRMAN:** Other questions?

The Member for Pembina.

**MR. D. ORCHARD:** Mr. Painchaud, you have presented some interesting critique of legislation that in its introduction we were led to believe was as a result of full and complete consultation with the various parties. Certainly I would expect, having had that understanding from the Minister, that the MTA as a representative organization, would have been one of the foremost ones involved in the consultation. You indicate that you saw for the first time this legislation, Bill 19, on July 4th, some five days ago.

**MR. R. PAINCHAUD:** Yes.

**MR. D. ORCHARD:** Now, Mr. Painchaud, you have identified an aspect in the bill, namely, that of the establishment of a maximum rate as being a reasonable undertaking by the board, that they could establish a

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maximum tariff for movements within the province. Indeed, I believe they even have authority here for extra provincial. That is not an objectionable requirement.

**MR. R. PAINCHAUD:** No, it is not, Mr. Chairman.

**MR. D. ORCHARD:** Where you've got then, some serious concerns, if I followed your presentation correctly, was in the establishment by section 292, of a minimum or fixed toll. Now, that follows through, Mr. Painchaud, into the board's ability, even though it is worded in section 292.1(2) that the Transport Board may require any holder of a certificate basically to file with the board and individual firms or a group of firms, a series of tariffs. If I understood you correctly, you were saying that really all that is necessary is the establishment by the board of the maximum toll and as long as a firm is at or below that maximum toll, there is no need for information sharing with the board?

**MR. R. PAINCHAUD:** Mr. Chairman, that would be correct.

**MR. CHAIRMAN:** Is the member asking a leading question or asking for information?

**MR. D. ORCHARD:** I beg your pardon, Mr. Chairman?

**HON. R. PENNER:** Are you asking leading questions or asking for information? That's what he asked you.

**MR. D. ORCHARD:** Mr. Chairman, now we have the Attorney-General as the Chairman. Did you have a specific concern, Mr. Chairman?

**HON. R. PENNER:** . . . you didn't hear it, so I'm being helpful to you.

**MR. D. ORCHARD:** You kind of help I don't need, Rolly.

**HON. R. PENNER:** Your kind of impertinence nobody needs.

**MR. CHAIRMAN:** Point of order being raised by the Minister of Transportation.

**MR. D. ORCHARD:** Things would go along well if you were in your office.

**HON. J. PLOHMAN:** Mr. Chairman, just a point of order that I think is needed here. It has been alleged that there was no knowledge of this provision made before July 4th, of course, when the bill was distributed. Naturally, bills are not distributed to the public before they are distributed to the Legislature. That is a common practice - not practice, that's the rule.

The second thing is the matter of minimum rates was clearly outlined in the White Paper on Page 7. I think that should be made clear on the record, "That where it is necessary to set a minimum tariff in order to prevent the use of predatory rates aimed at destroying a weaker carrier minimum rates could be set. The amendments to the Highway Traffic Act will therefore provide the board with authority to fix tolls and to set minimum tolls as well."

I just want to put that point on the record because it has been alleged by the Member for Pembina and has been stated by Mr. Painchaud that that was a new concept.

**MR. CHAIRMAN:** That's a point of new information, not a point of order.

**HON. J. PLOHMAN:** Okay, thank you.

**MR. R. PAINCHAUD:** Mr. Chairman, if I might address the first part of the question as to the type of negotiations and discussions that have taken place with the government and, indeed, with the Minister. I think that the record should be straight on that. There has been tremendous consultation and there has indeed been, and to the Minister's credit, a tremendous amount of information flowing. We have no problem with that as an industry association.

What we have a problem with is that the amendments proposed here this morning, especially section 292 go beyond what we understood as the kinds of power that should be given to the board without there being some criteria established as to how those kinds of powers would be used. The Minister is indeed correct when he states that perhaps the words "new concept" are not appropriate. What we meant by that, the words "new concept" we meant that very broad powers will be given to the Motor Transport Board as a consequence of these amendments; and so that doesn't change our perspective that we support the concept of protection from predatory pricing. However, we want to know what the rules of the game are going to be, and to the government's credit - and I think that's important, because it's important from our association's point of view, there has been a tremendous amount of consultation and negotiation and discussions.

Mr. Orchard, I think it's important for you to know that.

I did state at the beginning of my submission today, that it was primarily the five days that we've had notice for this particular bill, is something that happens as a result of you guys wanting to go out and sunshine in a few weeks from now and all of these things taking place at the end of the thing and I don't blame the government for that. I think I'd rather talk about the process which is the problem. I know of other organizations that have been here before these types of committees and made the same complaints. I'm just repeating them.

**MR. CHAIRMAN:** Fair enough; given the weather in Manitoba, you cannot blame the members of the Legislature.

The Member for Pembina.

**MR. D. ORCHARD:** I thank you, Mr. Chairman.

Now part and parcel of section 292.1(2) in (b) is the requirement that the board may ask of a carrier, is not only to file their rate schedule, it gives them the authority to publish that toll publicly. In a competitive environment of the trucking industry, is that a reasonable legislative mandate to give to the Motor Transport Board?

**MR. R. PAINCHAUD:** Mr. Chairman, no.

**MR. D. ORCHARD:** Well, Mr. Chairman, I can't ask Mr. Painchaud any further on that, but will ask the Minister.

Now, did the second area of concern that you have in terms of the minimum rate which can be now fixed by the Motor Transport Board is that the industry has no concept of the criteria that the board may use to establish what indeed is too low a rate or a predatory rate. That, coupled with the ability that you can't appeal any decision, say that your firm was the one that was accused of a predatory rate, you cannot then have any method of justifying why indeed you were able to set those rates and prove that you're operating not in a predatory way, but using new technology or new innovation in the industry, which has over the history of the trucking industry provided the consumers and the public of Manitoba with, as you mentioned earlier, one of the lowest freight schedules in Canada.

So that, Mr. Chairman, to Mr. Painchaud, if the board is going to retain the ability for a minimum rate, you would like to have it strengthened by a criterion for the establishment of a low rate being made public and secondly, have those offenders who are so accused by the board of predatory pricing, to have an appeal ability so that they can justify their case.

**MR. R. PAINCHAUD:** Firstly, fundamentally, we oppose the concept of the Motor Transport Board having the prerogative or legislative ability to discriminate between carriers. We think that that would be a problem in terms of establishing some justice in the system as a fundamental principle. Recognizing that there needs to be some kind of protection for predatory practices, we feel that, if indeed, the criterion was to be established and it was understandable by all those parties involved, that firstly, you might prevent predatory practices from taking place, not having the board all of a sudden calling a hearing and saying, my friend, you have been involved in the predatory practice.

My first question would be, what is a predatory practice? We do not know what that is at this stage and that's the concern. Okay? Secondly, now you've accused me; I've defended myself; I think I need another . . . the Minister or an appeal or whatever, to say, hey, I've looked at the facts in both of these cases, the accuser and the accused, and I feel that you are, indeed, involved in the predatory practice, you must cease and desist as the Motor Transport Board has ordered you or there's some question here as to whether you have been. So, therefore, I allow this appeal.

So we think that if this section is to be implemented, with some very good justification, the prevention of predatory practices which we concur with, we have no problem with that concept - we think that the minimum rate that would be established as a predatory practice with the guidelines for its establishment, must be determined before this amendment is passed so that everyone understands what is involved and that there should be some right of appeal.

**MR. D. ORCHARD:** Mr. Chairman, on the concerns you had on section 292, which allows the board in its sole discretion, to prescribe a fixed or minimum toll.

The example that you brought up was Associated Beer Distributors, your concern here, if I can have my understanding more clear on it, is that if the board

were to come along and say that the radial carriers, for instance, are not receiving sufficient compensation because of the competition in the market, this section allows the board to prescribe a fixed or minimum toll as it would apply, say, from the warehouse in Brandon via radial carriers to Melita, Boissevain, Swan River, if that's the area they serve out of Brandon. Your concern is that if you set that minimum toll to protect the radial carrier, in fact, you may simply take all of the business away from the radial carrier and if the rate's set high enough, give it to ABD who would put more trucks on the road.

**MR. R. PAINCHAUD:** That's exactly our concern, Mr. Chairman.

**MR. D. ORCHARD:** So then, Mr. Chairman, this amendment which is being presumably proposed as a protection to the radial carrier, could act very much in their detriment.

**MR. R. PAINCHAUD:** Mr. Chairman, yes, that's our concern, that because companies have the right and so they should, have the right to determine what mode of transport they may use whether they use their own carriage or whether they use for-hire industry or indeed rail, or bus or whatever, that they would then opt for perhaps away from the for-hire trucker, which this particular section is indeed designed to assist. We think that that would act in a detrimental way towards the small carrier, rather than be of assistance to him.

Further, the other complicating factor is that there would then be the whole process now of policing that and one of the major concerns this industry has had is the tremendous amount of illegal carriers that have been taking place in the province; that would not address that, because the illegal carrier would continue to operate now in a much freer environment to some degree, and he wouldn't be subject to any kind of so-called fixed rates, he just wouldn't apply them. He wouldn't tell anybody about them.

**MR. D. ORCHARD:** Mr. Chairman, in the bill is a newly granted authority to the Transport Board of levying a fine to offending carriers. The Minister indicated that that was something that the industry deemed was necessary. I was somewhat alarmed by giving that power to the board. Does the MTA have any concerns about the ability to levy up to a \$5,000 fine by an appointed board, the Motor Transport Board?

**MR. R. PAINCHAUD:** No, Mr. Chairman, through you, the Manitoba Trucking Association has no concern. This is a recommendation which was proposed by the task force and with one we agree with. If there is to be any kind of a legitimate, operational, viable transportation segment in this province, there needs to be some teeth put into it. We agree with the concept of a fine, and we also agree they should be substantial fines in this particular case. It shouldn't be licence to carry on illegally. The rules should be known. Then people should act accordingly.

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**R. D. ORCHARD:** Mr. Chairman, is Mr. Painchaud satisfied that, within these amendments that confer that power of fine to the Motor Transport Board, there is sufficient ability to appeal those fines to a body independent of the Motor Transport Board, if I may be so blunt, to prevent some predatory practices of the board on an individual carrier?

**R. R. PAINCHAUD:** Well, I'm not sure we have in the association, Mr. Chairman, addressed that particular concern. We think that we have to have some element of confidence in the ability of the board to make some reasonable decisions. What we're concerned about here this morning is that those decisions should be based on some type of criteria, and that legislation shouldn't be overly broad that there could be too much discretion left.

But we think that governments will act responsibly and place people on boards that will make, in most instances, reasonable decisions. In this particular case, there is a prima facie case of a serious infraction, the Motor Transport Board should have to say, we're going to act here and we're going to do what's right and we're going to remedy this by a fine or whatever. We really haven't addressed this - it's not a major concern.

**IR. D. ORCHARD:** I appreciate having Mr. Painchaud share those comments with the committee.

Last point. You've made the point that sections of this, in specific to the tolls and the ability of the board to set minimum tolls in particular, and section 292.1(2), the requirement that the board has to ask for tolls from the carriers, publish those tolls and the requirement for additional information, is it fair to say you believe those sections should not be proceeded with until further discussion with the industry has taken place?

**MR. R. PAINCHAUD:** Mr. Chairman, I'm not sure that there needs to be a tremendous amount of more discussion with the industry. As I indicated to you, there has been tremendous of discussion up to this point. What needs to happen is that, whatever criterion is to be used in the establishment of those particular minimums or those predatory practices, these conditions must be known before the legislation is passed, not after the fact.

**MR. CHAIRMAN:** Thank you, Mr. Painchaud. Are there other questions? Hearing none, the Chair thanks Mr. Painchaud.

**MR. R. PAINCHAUD:** Merci bien.

**MR. CHAIRMAN:** De nada. Mr. Rosenbaum.

**MR. N. ROSENBAUM:** Mr. Chairman, I unfortunately have to return to my business in a few minutes. I would have thought I would have been speaking earlier this morning. I would ask the indulgence of the committee to be able to speak next on this matter.

**MR. CHAIRMAN:** I have to ask the will of the committee, Mr. Rosenbaum. We cannot go at random here. Is that agreed? (Agreed)

Mr. Rosenbaum.

## **BILL 8 - THE AMBULANCE SERVICES ACT; LOI SUR LES SERVICES D'AMBULANCE**

**MR. N. ROSENBAUM:** Mr. Chairman, my name is Norman Rosenbaum, and I represent the Manitoba Association for Rights and Liberties. I am here today to discuss Bill No. 8, The Ambulance Services Act.

The Manitoba Association for Rights and Liberties is a non-profit organization dedicated to the preservation of civil liberties and human rights in the Province of Manitoba.

In regard to Bill 8, I will today present an oral presentation regarding that bill. I apologize for not having a written presentation to present to the committee. However, due to the shortness of time of preparation, we have not been able to present a formally written brief.

Our concerns centre around a few of the sections of Bill No. 8. Regarding section 1, the definitions section, a point of clarification. Section No. 1 defines various provisions and terms in the act, the terms of "ambulance attendant" and "ambulance service." Our concerns regarding the definition of "ambulance attendant" revolve around the definition of that term. In the legislation, it indicates that it means a person who is employed or engaged with or without remuneration on a full-time or part-time basis to attend and assist patients while they are receiving ambulance services.

A point of clarification. We are somewhat concerned that in situations of emergency, persons who do assist on a voluntary basis are not captured within the terms of the act. This is a definitional matter that we draw to the attention of the committee. Our concern regarding the definitions of "ambulance attendant" and "ambulance service" - we wish to indicate that we wish in situations clearly of emergency, where persons on a voluntary basis do assist ambulance persons to provide assistance to injured persons that those persons assisting are not, therefore, caught up in the act and lose their common-law protections as to the ordinary rules of negligence and they are not, in effect, prosecuted under the terms of the act. Certainly, however, the policy reasons for the definitional terms provided in the act are well understood.

Our next matter of concern revolves around section 8 of the act. That section states that "The commission may by regulation prescribe a date for expiry of every licence but may issue a licence for a shorter period than that prescribed where it deems it to be advisable and in the public interest to do so". We have some concern regarding the definition of the term "public interest." We understand that it's difficult to anticipate all situations in which the board may feel it necessary to impose a situation of shorter duration on a licence. However, we feel that there should be some provision regarding "public interest" definition in the act so that persons applying for licences do have some guideline prior to applications. They know that they can't comply with the act.

As well, the use of the term "deems" - we have some concern in that section. We have concerned as there is no provision for appeal of decisions of the commission under section 8. For example, under section 12 of the act, there is right of appeal to the Minister. However,

under section 8 there is no provision for appeal. In that regard, it would appear that the remedy of the applicant would perhaps lie with review through the courts. However, by the use of the term "deems" under section 8, we have some concern that the legislation is cutting out the ultimate review power of the court where, for example, the commission's decisions are unreasonable. To give an absurd case, I suppose an applicant might make application for a licence and it may be stated to him that he can have a licence but for a very short period of time. The applicant wishes some review of that decision. Perhaps he has a representation as to what should reasonably be a longer period of the licence, however, it would appear that under section 8 the applicant has no recourse no matter how short the licensing period. Perhaps in that regard some analogous appeal to the Minister may be indicated under section 8 as is provided for under section 12 and section 13 of the act.

Under sections 12 and 13 of the act, hearings are provided for into cancellation of licences and further appeals are given to the Minister from decisions of the commission after hearings into cancellations. Similarly, we suggest some provision for hearing and for appeal as to decisions of the commission under section 8 of the act as to the term of the licence.

As well, we have some concern regarding the wording of section 8 wherein that part states where the commission "deems it to be advisable and in the public interest to do so". Perhaps it's a small point but there may be some problem regarding the drafting of that section. The question that I have is regarding whether the commission, as soon as it deems it advisable to provide for a shorter licensing period, then can provide for any reason it deems to be in the public interest that therefore they can provide for a shorter licensing period.

The concern revolves around the issue of the commission deeming what is in the public interest, and there should be some objective test rather than simply the opinion of the commission. It's suggested that under law where a provision of a statute simply states that a commission or body can deem a matter, that the courts cannot then substitute their discretion and state what the commission should have deemed. The courts can simply state that the commission follow their own procedures and that they arrive at a decision, but the decision itself is not reviewable.

It's suggested by including the words "deems it to be advisable and in the public interest" the section is not reviewable by the court; decisions by the commission are not reviewable by the court. It is suggested that there be some mechanism for appeal and some clear indication in the section that in the event that a party is aggrieved by the decision of the commission that they can take that matter to the court or to the Minister as provided for in sections 12 and 13.

Regarding section 12 of the act - section 12 of the act provides for hearings by the commission in the event of suspension or cancellation of licences. If you refer to section 13(2) in the event of appeals from the hearing of the commission, the commission itself is a party to its decision. It is suggested that therefore there should be clearly set out under section 12 that hearings are to be held by an independent portion of the commission or by an independent body. It is suggested

that the commission can't both investigate breaches of the act and make the decision that the act has been breached. Therefore, they are combining an investigative and judicial function, and it is suggested that there should be a separation of the two functions.

Regarding section 13(1), Appeal to the Minister, the Manitoba Association of Rights and Liberties is basically in agreement with that provision. However, we suggest a further right of appeal to the courts. It would appear that the decision of the Minister is final and there is no further appeal right provided. It's suggested that it is a principle that where a statute does not provide for appeal, for example to the courts, that no right of appeal does exist, and the only remedy of the party, therefore is to take a mechanism of review by the courts which is in itself an expensive procedure. We suggest therefore, that there be some thought given to right of further appeal once the Minister has made his decision and that the Minister's decision may itself be appealed from.

As well, regarding the provision for hearing an appeal in section 12 and section 13(1), in both of those sections there is provision for submission of evidence. However there is no provision, for example, for the subpoenaing of witnesses, for example, of placing witnesses under oath. Perhaps that is contained within the phrase "may submit evidence". However, it's submitted that it should be clearly spelled out in the act that the appellant and the party to the hearing may call evidence and may receive the protection of the ordinary rules of evidence, i.e., to be able to subpoena witnesses and to be able to cross-examine them. We don't know if that is clearly spelled out under the sections as they are currently provided for.

As well, we suggest that there be a provision under sections 12 and 13 that there be reasons given in writing for the decisions of the commission and for the reasons for decision upon appeal. It's submitted that in terms of procedural fairness, the appellant or the party who had the hearing that wishes to further appeal to the Minister should know what he is appealing against and for what reason his original contention was denied. It is suggested that unless the statute sets out that reasons must be given that, therefore, there is no obligation by the commission and later by the Minister to provide reasons. It is submitted that it is very difficult, for example, to appeal to the Minister under section 13 from a decision of the commission under section 12 unless one knows what were the reasons of the commission originally at arriving at the decision.

Under section 12, it would appear that there is no requirement for reasons to be given and therefore the appellant's hands are, in effect, tied behind his back. It's very difficult to begin to appeal a decision that one doesn't know the reasons for the appeal, the reason for the original decision, whether, for example, the reason that the decision was given was irrelevant or illegal or whatever.

Under section 15 of the proposed legislation, there is a provision for obtaining warrants where a person does not consent to entry upon their property to obtain information by the commission. We commend this provision of the act and we feel that it's, in essence, very well drafted. However, we would suggest a right of the person affected by the warrant to make representations either at the warrant hearing or subsequently upon review of the warrant. It is suggested that, in accordance with the principles of the Charter of Rights and Freedoms of the Canadian Constitution,

that everyone does have the right to determination of their rights in accordance with the principles of fundamental justice. One of the principles of fundamental justice is indeed to be heard prior to one's rights being determined.

If the concern is that, for example, the commission must in certain circumstances, act in emergency situations, which is certainly very valid, perhaps that ability of the commission to proceed upon an ex parte basis to obtain a warrant can be spelled out, but that the onus is upon the commission to show that it's necessary to proceed without notice, i.e., upon an ex parte basis as against the person against whom the warrant has been applied for.

In regard to the issue of warrant, the consequences of the issue of the warrant are fairly severe. For example, if one looks at section 15(5), it provides that no person shall obstruct or interfere with an officer engaged in carrying out an inspection under this section; therefore, where a warrant is obtained and the person against whom the warrant is obtained objects to the issue of the warrant, he can't obstruct the person gathering information and if he tries to do that he's guilty of an offence.

So it's suggested that the affect of the granting of a warrant is serious. It allows for entry upon premises; it allows for the seizure of documents; and it's suggested that where there's not an emergency situation and there may be situations in which no probable emergency exists, that at least the applicant - the person against whom the warrant is being applied for - should have the right to object in initial instance, or at least upon a review of the warrant. For example, there may be situations where an emergency exists for safety of patients and so be it, and therefore the commission can apply for a warrant ex parte. That's all very valid and we certainly accept that.

That's a well accepted principle in much quasi criminal legislation, criminal legislation; however there should be some mechanism, after the fact at least, for review so that, for example, if documents are seized there can be a provision for applying for their return. In fact, I believe there's been a recent Supreme Court case upon that issue. For example, to test the validity of the warrant itself, whether the action was justified - and again, in non-emergency situations and the onus of proof of emergency being on the commission - that the person against whom the warrant is being applied for should be able to be heard, should receive notice of the application and can then make representations, and if the judge decides that person's position is invalid, so be it, the judge can issue that warrant.

Regarding section 16(1), this provides the regime whereby the commission where it deems it to be in the public interest to do so - and again the term public interest props up - it may, by order, exempt a person from the operation of any provision of this Part or a regulation made thereunder, and in that event the provision does not apply to the person notwithstanding anything to the contrary in this Act."

This is a very wide power and I suggest it's not unsimilar to other legislation, however, be that as it may, we suggest there be some controls over that exemption. For example there can be a periodic review required of that exemption, perhaps a yearly review, and we would also suggest that reasons be required

to be given for exemption. In this instance we're talking about basically a public safety issue in which public money goes towards, in one form or another, support of ambulance services and, therefore, the public does have an interest in the reasons for exemption from the requirements of the act.

The reason for exemptions which may, on the face of it, suggest that there may be an issue of public safety involved, I would suggest that the public has a right to know the reason for a particular exemption, that it's not simply a carte blanche given without reason and without any way of the public to know whether the decision of the commission is arbitrary and whether it's influenced by reason of bias or whatever the reason.

As well, this issue comes up under section 16(2), "Exemption and substitution." Again in that section the commission can substitute any provision of the statute for any other provision. Again the term "public interest" is used. It's suggested that reasons be required to be given by the commission as to the exemption and substitution; some provision be given to perhaps regular review, perhaps on an annual basis, or however short a period or longer period that the Legislature considers necessary. However it's suggested that again the principle should be where there's an exemption or there is a substitution of obligations - and obligations that may translate into safety issues - that there be a requirement of the commission to state why they are exempting, to review their decision from time-to-time.

Returning to section 11 of the act, that provision provides that "The commission may suspend, for such a period of time as it may deem necessary or until a specified condition is met, or cancel any licence, where the licence holder" - and there are a number of subsections; and then there's a catch-all phrase - ". . . for any cause the commission deems sufficient."

In other words, it would appear that the commission is given the right to suspend any licence, or cancel any licence, that had originally been valid for any reason that the commission deems sufficient, not that is sufficient, but that the commission itself deems to be sufficient. There is provision for a hearing and there is a provision for appeal to the Minister, however, the commission has been given very wide latitude in this situation to suspend, for any public interest requirement, for any safety requirement, or for any reason that it deems sufficient. There's no criteria specified in the act. Perhaps the policy reason for that catch-all phrase is an intent to protect the public in situations which the Legislature can't initially foresee.

However, I would suggest that this provision is so wide that there can be some thought given to some specific criteria in the legislation; that, in terms of the issue of public safety, that legislation can be drafted with sufficient particularity as to give the licence holder sufficient notice, as to indicate to him what is proper conduct for him, so that he can plan his affairs accordingly; and to give the public reasonable confidence in the actions of the commission; and to prevent the commission from perhaps making arbitrary decisions in the future.

Again I'd suggest one the problems with that section, beyond the fact that they can find any cause to suspend a licence, and there's no definition of what cause is being referred to, that then they can deem any cause to be sufficient. When one deems something to be

sufficient, it may be that the commission properly follows their own procedures and the courts can't complain that any procedure is not properly followed, but the courts can't then turn around, I would submit, and say that necessarily because the commission deems something to be a sufficient cause to cancel licence that they've therefore violated a statute. After all, the statute itself says that where the commission deems a cost to be sufficient, that's it. The commission has properly made its decision.

To move forward in the legislation, we have one further comment on section 20(3) of the act and this deals with benefits under the Northern Patient Transportation Program. Again, certainly a case can be made for the advisability of the section; it's a permissive section. It states that benefits under that program "are available only to or in respect to persons who are residents as defined in The Health Services Insurance Act . . ."

Our question is, what about emergency situations? What about situations in which persons are in need of emergency assistance? If that person doesn't fall within the regulations of the Health Services Commission, are they then to be left high and dry in a life-threatening situation? We suggest that there should be a duty in emergency situations, a provision of ambulance services that, simply on monetary grounds, while in the ordinary case, certainly services should be paid for. However, MARL suggests that there is an overriding duty of the government in providing emergency assistance to residents of the province wherever they may reside, and certainly in the North where transportation is poor and, given the terrain and given the situation, there are often life-threatening emergencies.

We suggest that to make the decision of the commission final and binding in any case as to who does or who does not receive assistance, even in emergency situations, perhaps the Legislature should reconsider that provision to include some requirement of duty on the part of the commission to provide services. In fact, there is enabling legislation for the commission itself to provide services. I'm not entirely sure of the section.

Yes, under section 17, the commission may itself provide ambulance services. The commission may itself, under section 17, subject to the act and regulations, provide ambulance services. So there is an ability of the commission to provide services, however, there's no requirement, and certainly, under this legislation, I'd suggest the commission has no duty to provide ambulance services to any residents in the province. It's suggested in certain well defined situations, in situations of emergency, that there should be a duty of the commission to provide those types of services. If it's a question of cost, there are certain considerations in emergency life-threatening situations, where costs should not be primary consideration.

Thank you. That is my submission.

**MR. CHAIRMAN:** Thank you. Are there questions of the members of the committee?

The Member for Pembina.

**MR. D. ORCHARD:** Mr. Chairman, just a couple of questions. You expressed a concern, Mr. Rosenbaum, on section 8, where the licence could be granted for

such short a period of time and you've got a concern about the "deems to be advisable in the public interest". You want a definition on "public interest". But is your concern that an individual or a company who make the investment in the equipment to get into the ambulance service, plus the investment in training personnel and themselves, that the issuance of a licence for a shorter period of time may discourage entry into the business because of the sizeable investment in monies and in training?

**MR. N. ROSENBAUM:** Our concern in the brief is not at all to touch upon economic considerations; that is not our expertise. We're suggesting that in question of procedural fairness that we accept, as a principle that when a person orders their affairs they should have some idea of the requirements which they'll have to meet. Now it may be that the commission may set requirements that may be completely onerous. We have no fundamental civil liberties objection one way or the other. The question, in effect, is not whether and how many people can enter a profession or an occupation rather, that when they do enter upon a course of conduct that they will know the conditions upon which they are to meet.

In fact, we suggest that it may be beneficial, in terms of the workings of the act itself. After all, in terms of the individual ordering his affairs, that whatever the criterion may be, if they're known firstly, proper notice being given to that person, that person has no cause for complaint if they can't meet those criteria.

**MR. D. ORCHARD:** The second concern that you expressed was that the commission retains the power to license, to set the standards, to set the regulations and is also, if you will, the judge and jury over any violations of the same, and you would like to see an independent appeal mechanism.

**MR. N. ROSENBAUM:** I'd like to hear an independent hearing mechanism. There is a twofold step. One is the hearing of the Commission, the hearing of the decisions of the Commission and then an appeal to the Minister.

We suggest that there should be some independent body to hear the complaint of the commission. After all, under section 13(2), the commission will ultimately become a party to its decision in any appeal to the Minister; so therefore I think it's well contemplated in the act, the way it's structured on the plain reading of the statute that the commission itself has an interest in its decision. Therefore, we suggest that the investigative and prosectorial and, in effect, judicial function be separated. Certainly, the prosectorial and the investigative function can be combined. I would submit that's a matter of common sense. However, in terms of the decision upon the hearing, there should be some independent entity to make that decision.

As well, we would like to point out that there is no appeal from the decision of the Minister and it may be, in any given case, that the Minister's decision is perfectly valid. However, that certainly puts a great decision making power upon the Minister and mistakes can happen. The Minister, in deciding upon appeal, is exercising a ministerial function. The courts have usually



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been loath to interfere with purely ministerial decisions of government officials; and the way the act is set up, without an appeal mechanism certainly, given the nature of the decision making, no further review mechanism by the court, submit that there should be some further recourse set out under this statute.

It doesn't necessarily have to be extraordinarily expensive, but it also is the question of the fundamental rights of the licensee.

**MR. D. ORCHARD:** Mr. Chairman, I'd like to ask Mr. Rosenbaum clarification on one area. I may have misunderstood what he was indicating.

I believe you had concern about the section where the commission may apply for a warrant to enter a licensed provider of service, to enter their place of business to inspect equipment to indeed, if necessary, take records with them. Did I understand you correctly to say that in the application for that warrant, the alleged offending party should be present at the application for the warrant to justify whether it should be granted or not?

**MR. N. ROSENBAUM:** I believe there should be some mechanism under certain circumstances. I think we can consider certain circumstances in which it might not be wise - at least at the application for the warrant stage - for that licensee should be represented. For example, there may be allegations that the licensee is destroying records. Certainly that's well within contemplation; that can happen. We're not suggesting that in those circumstances the licensee necessarily has to be represented. However, the onus, we suggest, should be upon the commission to show to the judge or magistrate.

**MR. CHAIRMAN:** The Attorney-General.

**HON. R. PENNER:** Mr. Rosenbaum, we have an act here which is for the protection of the public and there's an allegation on reasonable and probable grounds that the regulations are not being lived up to. The equipment isn't safe or the equipment isn't proper.

Don't you think that it's in the interests of the public that if that is so, that indeed - and I'll ask two questions - that we, on a proper judicial warrant find out about that so that remedial action can be taken? And don't you think in the normal course, that if a person in fact is violating the rules and is alerted to the fact that there may be a search that they'll immediately take steps to hide the proof of wrongdoing?

**MR. N. ROSENBAUM:** Certainly. I believe that we are suggesting simply a question of onus. For example, in an analogous situation, applications under The Family Maintenance Act for ex parte relief for injunctions and restraining orders against spouses, an allegation comes before the judge that there is an issue of danger. For example, the respondent's spouse, if he is just to be served will, for example, destroy evidence; will leave the province with bank accounts; will attack the safety of the applicant. Certainly the courts have, and will, take that into account in deciding whether a warrant or an injunction or some judicial action should issue without notice to the respondent, but it is also a question

of onus. It's not an absolute prohibition against proceeding without notice to the respondent - for example without notice to the licensee - but it is a suggestion that the burden be placed upon the commission to allege those matters that the magistrate, the judicial official, can consider in deciding whether to issue the warrant.

Then if, for example, prior to the issue of the warrant, the magistrate or the judicial official considers, no this isn't the circumstance, this is not an emergency, it's not a question whether patients would be put into danger; it's simply a question of consent to entry. In that case, we suggest in those limited circumstances the respondent should, the licensee, should have notice prior to the issue of the warrant, or even in emergency situations, subsequent to the issue of the warrant, there should be some review mechanism so that after the fact where action is required prior to notice for safety reasons, after that action is taken, the licensee can then have notice of what was taken, what matters were alleged, to come back to the court or come back to the magistrate or whoever, the judicial official, to present their case.

**HON. R. PENNER:** There's two distinct things. The law does permit applications to quash warrants on a whole number of grounds, I don't think that's the issue. How in the world do you talk about onus? How in the world is it possible to distinguish in advance whether or not someone, about whom there's reasonable grounds to believe that an offence has been committed, will or will not destroy the evidence. So that you can make this distinction, I'll give this person notice, I won't give that person notice. How is the regulatory authorities going to make that distinction and satisfy the onus you propose?

**MR. N. ROSENBAUM:** I think there were comments already given that a warrant must be applied for. Certainly, there must be some material before the judicial officer.

**HON. R. PENNER:** That's in the act - reasonable and probable grounds.

**MR. N. ROSENBAUM:** Too often, it's a matter of rubberstamping.

**HON. R. PENNER:** That's an aspersion on judicial authority, however, I have no more.

**MR. CHAIRMAN:** For the purpose of recording, may I ask the members of the committee and the presenters to please wait awhile until they are recognized so that they will be properly recorded?

The Attorney-General.

**HON. R. PENNER:** No, I'm through.

**MR. CHAIRMAN:** Mr. Rosenbaum. Are there any other questions from the members of the Committee? Hearing none, the Chair thanks Mr. Rosenbaum.

**MR. N. ROSENBAUM:** Good day.

**MR. CHAIRMAN:** Pursuant to our policy of helping those people who are out of town so that they don't

have to pay hotel and stay here in Winnipeg, we are going back to Bill 19, and I'm calling Mr. Jack Penner, President, with Ed Connery, G. Moorhouse and Lorne Henry representing Keystone Agricultural Producers Association.

**BILL NO. 19 - AN ACT TO AMEND THE HIGHWAY TRAFFIC ACT (2); LOI MODIFIANT LE CODE DE LA ROUTE (2)**

**MR. J. PENNER:** Thank you, Mr. Chairman, for recognizing the need we have to get home early to take care of our crops and our livestock. We appreciate the opportunity for appearing before you today and voicing the concerns that we have in the recommended changes in Bill 19, section 185. We do have some concerns in that area where we think that the restrictions being imposed by the proposed changes in Bill 19 would place some severe economic pressures on some of the farm community, especially those younger farmers that are starting out and cannot afford to either buy a double axle or a triple-axle truck as you have recommended that the licensing be limited to.

We have difficulty in knowing why, or finding out why, the Minister would want to change licensing to limit the size of trucks that farmers can use, especially in helping out their neighbours when, in actual fact, the economics of hauling with a larger truck certainly are enhanced. We think that the privileges that farmers have now to haul for other farmers should be maintained because we think that, in the final analysis and in the end, it enhances the food prices on the shelf to the consumer by lowering the cost of the freight on some of those commodities.

In a letter to you, Mr. Minister, we say that we believe that it has always been the intention of governments in Manitoba that legislation dealing with the trucking regulations would continue to permit farm neighbour to assist farm neighbour. We still think that this government would want to recognize that part of farming should be maintained. In the movement of certain agricultural commodities from farm to market the change proposed in 185 contained in Bill 19 will be seriously detrimental to the spirit of that intention for the producers of a number of agricultural commodities.

As you know, many of today's farmers in Manitoba have found it necessary to own and utilize trucks with more than three axles to transport certain commodities to markets in order to minimize costs. Because of the perishable nature of some of these commodities the trailer units used in transporting them have to be highly specialized. The perishable nature of certain commodities, plus the rather erratic nature of market demand for them and the ability to deliver at specific times, have created a situation in which neighbouring producers often assist each other by hauling the other fellow's commodities, being compensated for the costs.

One producer may well have commodities moving in different markets in different directions on a given day. The unpredictable nature of these situations make the requirement to switch licensing to a PSV status totally impractical, yet the proposed change, if adopted, would not permit such mutual assistance arrangements to continue legally without such a switch. The proposed

change, if adopted, will be particularly onerous for smaller producers who cannot afford semi-trailer trucks of their own, and who consequently depend on large producers to transport their perishable commodities to markets.

In all of this it must be pointed out that, owing to the erratic nature of the market situation and the seasonality of them, public carriers for the most part are not prepared, either to obtain specialized equipment required or to meet the schedule of the producer market demand. Producers of these commodities have no choice but to turn to other producers who do have the type of equipment needed. I'd like to add here, Mr. Chairman, that on our specific farm, for instance, given truck in a given year would travel roughly about 6,000 miles to haul the produce of our own farm and assist neighbours in such areas as harvesting sugar beets and those other commodities that we do have and mutually help each other on an ongoing basis.

For that reason, I would suggest to you that the price paid for licences on the average farm, would probably on a per mile basis be higher than most commercial carriers would pay. Again, on a per bushel basis, if you take the hauling of some of those commodities on the longer distances - and I go back to a week ago when we were hauling corn from our farm to another farm with two vehicles, one with a 1,000 bushel unit and the other with a 300 bushel unit. It cost more to haul the 300 bushel load than it did the 1,000 bushel load.

So I would suggest to you again, that for small farmers who have to hire and where neighbours do have large trucks and are able to assist in the hauling of those agricultural commodities, this legislation would certainly be detrimental in those areas. We would recommend that some ways to remedy probably the legislation to change the legislation, that it would actually benefit most people would be to drop the provision of three axles. If you would just drop that provision and not make mention of these three axles, I think would satisfy most producers.

There are some other concerns that I think we have and if you suggest, for instance, as has been suggested to us, that we from time to time acquire PSV plate to haul for other farmers, if that actually occurs, a farmer for instance in some of the vegetable crops and those kinds of areas, might have to haul a load of wheat and if he were required, because of a delivery schedule for plants and so on, to buy a PSV plate specifically to haul that load a week or so for a neighbour, he might in fact, turn around on a haul back actually compete with the local transfers, to haul back such things as groceries, fruits or those kinds of commodities that those farmers could probably make a deal with some of the larger operations in towns and give them maybe half the rates that commercial transfers now employ.

We think that is detrimental because we, as farmers need those local transfers. We want to keep them because in those seasonal type operations or when farmers don't haul and haven't got the time to haul we need those transfers to supply us with the goods and services that we need to operate our farms. We don't want that destroyed.

But I have with me today a number of people that I consider are experts in areas of their specific interests and if you would allow, I would call probably first of all, Bill Siemens of the Sugar Beet Association is or

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your agenda, but I would ask that he appear, unless you have question specifically on what I have said, I would request that we make our presentation and then open to questions, if that's suitable, Mr. Chairman.

**MR. CHAIRMAN:** Is he part of your group?  
Bill Siemens.

**MR. B. SIEMENS:** Mr. Chairman, members of the committee, I am Bill Siemens, president of the Manitoba Sugar Beet Producers.

Of concern to us is section 180 of the bill. The sugar beet industry has some 400 growers with an average size of 65 (sic) acres per grower in Manitoba. So we are what you would call a relatively small producer.

During harvest, harvesting groups share the cost of equipment and trucks by working together. For some areas, there are no country pilers and so by special arrangement with Manitoba Sugar Company, growers from the Carman, Teulon and Steinbach areas haul directly to the factory. Because of distance, semi-trailer trucks are also used. So we have the situation where some growers haul directly to the factory, while others haul to local country pilers.

To get the beets from the country piles to the factory, a three-year hauling contract was agreed to, to accommodate those growers who are not allowed to haul directly to the factory. There is still a two-year period left on this contract and of concern to us is that, should there be an increase in the fuel costs to the carrier, this increased cost would be directly passed on to these particular growers by virtue of a clause in the contract. I have copies of that clause with me if you require evidence of it.

When we called for tender to haul these sugar beets, only two haulers seriously responded and there are reasons for this as well. One, it is a relatively short haul, from about a maximum of 120 days. About 15 special side delivery dump trucks are needed. The contractor also has to perform without cause for delay, 24-hour-a-day, 7-day-a-week service. This is definitely needed in order to keep the factory going.

In the proposed legislation, we would strongly recommend the deletion of the reference to the section in 180(5), "... other than a truck or truck trailer combination with more than three axles ..." as Mr. Penner alluded to.

A change in the cost of hauling is of concern to our industry and would also add to the concerns of the young farmers in our industries. As growers of sugar beets, we are already producing our 1985 crop at a loss in order to retain our industry in Manitoba. We don't need additional expenses and problems added to an industry already in trouble. We appreciate this opportunity to present to you our concerns.

Thank you.

**MR. CHAIRMAN:** Are there other people in the same group who want to make presentations before we open up for questions?

**MR. ED CONNERY:** Yes, thank you, Mr. Chairman, committee members.

My name is Ed Connery and I'm from the Portage la Prairie area and I'm representing the vegetable

growers. I think it's important, if I could very quickly paint for you the picture of the situation that the vegetable industry is in in Manitoba, because it's not in a very strong position; it's in a very fragile position. We're very few in numbers; we used to be at one time, 20 or 30 years ago, you'd find 20 or 30 growers growing one commodity. Now we're down to one, two, three growers growing a single commodity; two parsnip growers, two rutabaga growers, three carrot growers. We can't afford to lose any more growers. Why are there so few? The economics of being small; we're just not there. Individuals quit; others took over and gradually got larger and efficient and have been able to survive.

Also, I'd like to point out that in other provinces of Canada, the assistance that is given to their industry is very significant. These are provinces that we have to compete with. In British Columbia they have an excellent crop insurance program; they had an income insurance program - I'm not sure if it's still in place - but a very substantial one.

In Alberta, last year for their 1984 crop, they gave their vegetable growers \$300 to \$500 per acre, depending on what crop they grew, just because the times were tough. On my farm that would have equated to \$150,000 grant. They also have very cheap fuel and they have a rebate system on fertilizer, which for the agricultural industry, will amount to some \$47 million. This is one of our major competitors.

Saskatchewan has an assorted group of programs; Ontario has an excellent provincial program for storages, crop insurance, and a lot of promotional programs to move their own local product. Quebec also is in a very similar position with storage assistance, crop insurance, and many projects that they call pilot programs to get people into business.

The vegetable industry in Manitoba does not have a crop insurance program. Last year the vegetable growers left some \$400,000 worth of vegetables in the field and we had to swallow the loss. All we have in Manitoba is the 1.5 payroll tax.

I think it's important to know that most of the traffic of vegetables is to Winnipeg and it's convenient for growers to assist each other because we're going to a common area and most of the growers go to the Manitoba Vegetable Producers Marketing Board. We do assist each other, and I think it's important to know that orders in our industry come in very short term and it's not unusual for the marketing board to call at 6 or 7 o'clock in the morning - can somebody pick up two tonnes from another grower to bring into the board because we need it for shipping by 9 o'clock? - and if that order doesn't get into the board by 9 o'clock, the commercial trucker has gone somewhere else and that product hasn't been sold.

I think we should be mindful of the fact that if the growers, the few that are, weren't in production, that product would be coming in from California, Washington, or other American states. Broccoli and green onions, of which I'm the only commercial producer on the prairies - if we weren't in production that product would come through the United States and we wouldn't be employing the labour that we do, which on our farm is some \$700,000.00.

We've tried the commercial truck route; it just doesn't work; they can't give us the service that our industry

requires. We don't get any great advance notice as to when they want product. We can get a notice at 5 o'clock in the afternoon for product to be in Winnipeg at 7 o'clock. These trucks are not always available - very seldom available; they're still unloading beer at the local beer parlour at 9 o'clock in the morning. Our customers are unhappy and if they don't get the service they require, they just say, well look, we can go to California and get what we want.

The charges that we charge to each other are strictly at cost. We're not in the business of making money on hauling. It's a convenience to each other. There are small growers that often have just a little bit of product that has to go in. Most of these trucks have to be refrigerated and it's not common sense for a three-ton truck to be refrigerated to haul products.

I think that we must keep in mind, too, the cheap food policy that people want; that if we have to pay more to have our product hauled in, it's not really going to end up costing the consumers more, because our costs are related to the cost of importing; you're just going to be bringing it all in from the United States, because we won't be viable; we'll just go out of business.

We're in a precarious industry. Don't make it any more difficult for us to survive. We do a lot for the community. We need to have the semi-trailers. We have to be big and we have to be viable. We are big frogs in a little pond. I grow 125 acres of broccoli and I think I'm a pretty big operator and I talked to somebody in California who grows 15,000. He's my competitor. He buys all his inputs cheaper because of the volume. We have to be able to haul our product into Winnipeg at the cheapest rate we can. It is then loaded on commercial trucks and goes all over Western Canada.

Thank you very much.

**MR. CHAIRMAN:** Other members of this same group? This is Mr. Jim Moorhouse.

**MR. J. MOORHOUSE:** Thank you. I'm Jim Moorhouse, Chairman of the Manitoba Vegetable Growers Association. We are the only one vegetable producer that works together but I wanted to explain our situation. We get our vegetables custom washed, graded and trucked to market by Connery-Riverdale farms, as we are not large enough to viably do these tasks on our own.

We produce carrots, parsnips and red beets. Due to the quotas that regulate the amount of deliveries we can make at one time, the lack of lead time in orders, and our vegetables are delivered in small lots, we seldom have a full load to deliver at one time. Connery's truck is going in daily so we are able to deliver these products when they need them.

Due to the small lots and the urgency of the orders, it is impossible to hire commercial truckers as our vegetables are perishable and they cannot be frozen and do not mix well with other cargo. As you can see, the small producer is being hurt rather than helped by this type of legislation. We need to be as viable as the large producer and the only way we can do that is if we work together with other producers.

Thank you very much for your time.

**MR. CHAIRMAN:** Mr. Lorne Henry.

**MR. L. HENRY:** Mr. Chairman, I thank everybody for the chance to present this.

**MR. CHAIRMAN:** Are you representing also the Manitoba Vegetable Growers Association?

**MR. L. HENRY:** That's right. I'm with the Manitoba Vegetable Growers Association. Because of the wind we had a few weeks ago - I'm a potato and grain farmer, and we had to reseed a lot and we are very busy - I haven't had time to make a formal presentation. However, I would read a resolution that we passed at our last VGM meeting which kind of spells out what I would say anyway.

This resolution was sent to the Minister of Highways:

WHEREAS the informational statement outlining the proposed changes which the government plans to make regarding farm trucking regulations will have an extremely detrimental effect on the vegetable and potato industries; and

WHEREAS in the potato and vegetable industries between 80 percent and 90 percent of the growers have found it necessary to use semi-trailers with specialized equipment to haul their produce to market in order to minimize their costs; and

WHEREAS vegetables and potatoes are very perishable and must be hauled in temperature controlled vans especially designed to handle this type of produce only; and

WHEREAS in order to cut costs many small growers are banding together using the same semi; and

WHEREAS in order to meet the scheduling at the different plants on given days, growers haul each other's produce because it is quite often physically impossible for them to make all their deliveries with their own truck; and

WHEREAS deliveries for most growers are stretched out over a 9 or 10 month period, but because of colour and other processing problems at the plant, their weekly and daily deliveries are extremely demanding and erratic and are quite often changed within the day itself, without grower hauling co-operation delivery opportunities could not be met. This would make the short-term PSV licensing, for all intents and purposes, totally impractical; and

WHEREAS specially designed vans that must be used to transport produce to the plants are only available from other growers; and

WHEREAS when a grower finds his produce breaking down in storage he depends on trucking assistance from his fellow growers to quickly haul, and a processor to accommodate deliveries, in order to minimize the disastrous financial losses which would otherwise occur; and

WHEREAS any changes in licensing that would restrict the ability of vegetable and potato growers to help one another with the semi-trailer would, not only greatly increase the cost, but would indeed change the very nature of the co-operative trucking system which is vital in the industry today;

THEREFORE BE IT RESOLVED that the VGM petition the Minister of Highways to exempt vegetable and potato growers from the proposed legislation that would restrict farmers from hauling their fellow growers produce with trucks having more than three axes.

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I will elaborate on that if you like in the question period.

Thank you very much.

**MR. CHAIRMAN:** Thank you, Mr. Henry. Now that all the group members have presented, there might be some questions from the members of the committee.

The Minister of Transportation.

**HON. J. PLOHMAN:** Mr. Chairman, I'd like to thank the members for their presentations.

I just wanted to ask, first of all, for my own information, are most of these specialized trucks that we're talking about, are they leased or are they owned by the individuals, or is it about half and half? Is there a large proportion of leased vehicles being used?

**MR. L. HENRY:** They are mostly owned, but there are quite a number that are leased.

**HON. J. PLOHMAN:** So, as far as these lease arrangements, there's a substantial number you said that are leased.

**MR. L. HENRY:** I should make a difference here, John. We have two things we're looking at here. A lot of trucks are leased, especially in the fall during the harvest period, some during the spring period, then we get to the time when you haul to the plant. More of those trucks at that time are owned than leased. In the harvest period, I would say probably more owned than leased, but getting close to half would be leased.

**HON. J. PLOHMAN:** So, we're not necessarily dealing then with substantial investment, in every case, of the capital put out for these vehicles. They're leased for a short period of time and then turned back again by many operators.

**MR. L. HENRY:** No, I think in the resolution it stated that your deliveries go over a nine- to ten-month period; and you will get notice, say, Friday, that Monday you're on for, say, three or four loads. Your first load can get in there Monday and one or two of the potatoes on the truck don't fry good enough and you're told not to come back, they have to get them from somebody else. They start digging, because the market is so critical they have to meet exactly the requirements in order to fill their commitments, the companies do. So, consequently, if mine don't fry good enough - you have the problem of either frying too light or too dark or somewhere in between.

**HON. J. PLOHMAN:** Just further, Mr. Chairman. Are all of these trucks the larger size than a three-axle truck or are there some that are used frequently that are of the three-axle variety?

**MR. L. HENRY:** Of the growers I would say that most of the ones hauling to the plant, I think I said 80 percent or 90 percent, and I think that figure's right, are of the semi variety, more than three axles.

**HON. J. PLOHMAN:** I guess the principle we're getting at here is that if an individual wants to use the highway

system to haul for compensation, commercially, that they should pay the same registration fees as those who are in the business of doing so. How do you feel that the government should address the problems of those who are abusing that system at the present time? Do you have some suggestions regarding those operators who are not really farmers, they're producers, that have purchased some land so that they can use the farm fuel and the lower registration costs to haul commercially, certain of these specialized products?

**MR. L. HENRY:** I think that answer could maybe better come from Jack Penner.

**MR. CHAIRMAN:** Mr. Penner.

**MR. J. PENNER:** Thank you, Mr. Chairman. Mr. Minister, we've had some discussion on this and we feel that if we put in place a system whereby a farmer could file in the spring of the year, or during time of licensing maybe, could file a Notice of Intent that he would, for instance, haul a certain number of loads or be hauling for a specific neighbour, that that could be done during time of licensing, we think that would probably alleviate some of the concerns that you address here.

**HON. J. PLOHMAN:** Mr. Chairman, what Mr. Penner is saying is that he would have to specify exactly who he's going to be hauling for, which neighbours, and what he's going to be hauling for compensation.

**MR. J. PENNER:** And also probably the amount that he would be hauling.

**HON. J. PLOHMAN:** Would you see then certain restrictions being put on as to the number of people that an individual could haul for then and a restriction on the commodities that he could haul?

**MR. J. PENNER:** Now, for instance, I have probably three or four neighbours that will contact me on an ongoing basis and say, Mr. Penner, would you haul a specific load for me this day? I think we've fairly well set who hauls for who, especially in the sugar beet run and in the vegetable area; we basically know who hauls for who and I think that can be addressed in that manner. I think we can very easily clear that up without putting in place legislation that will restrict the size of trucks.

We have a very large concern there. Farms aren't getting smaller anymore; they're getting larger. If we're going to legislate sizes onto the farms, we have great difficulty with that.

**HON. J. PLOHMAN:** Mr. Chairman, without getting into a lot of discussion, and of course we're recognized that and there's no restriction on the size of farm trucks being proposed at all. Certainly any individual can have, and I just say this for clarification, can register under F-plates, any vehicle, semi-trailer variety or other. The only proposal here, as Mr. Penner is aware, is when we're dealing with the matter of compensation for hauling. There are very few restrictions that are in the act right now, we're not proposing to remove those exceptions with regard to hauling for hire, but the

principle is there, and that's what we are trying to get at, that if you are going to be hauling for compensation that you should pay the same registration fees for use of the highway system.

**MR. J. PENNER:** I understand that; I understand that's the intent. But the reality of it is that those young farmers, those young starting farmers that have not got the ability to purchase, whether it's a two axle, three axle or a semi-trailer unit; have not got the resources to buy those units to haul their commodities for themselves will in effect be forced to pay the higher rates that a commercial trucker will charge them to haul their commodities to market, if you are going to pass this kind of restricting legislation.

It's not the people that own the trucks now that you are restricting; it is the young farmer, the starting farmer, and the person that wants to remain small. We don't all want to be large; some of us are quite content with farming 150 or 200 acres of land. We don't need to own all that specialized equipment. For that reason, we have people that we look upon to give us a hand, and that's the area that you are restricting.

**HON. J. PLOHMAN:** Well, just a couple of short questions then. You are saying that the fellow that is small and has smaller trucks, a three axle or less, cannot haul competitively using F-plates and farm fuel, he cannot stay in business as a small operator using trucks that are smaller to haul his produce.

**MR. J. PENNER:** Well, Mr. Chairman, I gave the example before. We were hauling on our own farm last week with two vehicles on a 70 mile stretch; one was a gas truck, the other was a diesel truck; the gas truck loaded 300 bushels and the diesel unit loaded 1,000 bushels. In actual dollars it cost us less money to haul 1,000 bushels than it cost us to haul 300 with the gas job, with a small single axle gas job. So there again you are limiting the ability for the young farmer or the small farmer to be able to stay in business because you are raising the costs by putting in place the kind of legislation that is going to restrict those uses.

**HON. J. PLOHMAN:** Mr. Chairman, just in terms of the proposal that we had with regard to acquiring a PSV for, say, a 30-day period to haul for the neighbours for compensation, could that work in some instances where they would concentrate on hauling the neighbour's produce during that period of time and then go back to your F-plate to get your own in, or will that just not allow enough flexibility in the system?

**MR. J. PENNER:** Well, Mr. Chairman, I certainly cannot see the viability of that on a long-term period. First of all, it's going to be almost a bureaucratic nightmare to convince licensing to give me a licence for a week, a PSV plate for a week, and then go back to a farm plate again and then back to a PSV plate and back to a farm plate - and that is the kind of situation you are describing. We cannot see ourselves going through that kind of a hassle to do that in a long period of time. For that reason, I would suggest that even if we do, and once I have acquired a PSV plate and I have a son at home that's not doing anything, I am going

to go to town and compete with that local transfer. I am going to try and get a backload, a back haul.

**HON. J. PLOHMAN:** Well, Mr. Chairman, he, of course, cannot do that without special authority to do so, otherwise it has to be exempt commodities that he is hauling. But it's possible that the commercial - I just want to ask this - it was stated, I think, by one of your colleagues that the commercial truckers have not been able to compete or offer the kind of service that you needed. Isn't one of the reasons why they couldn't do that, of course, is because they were competing against farm fuel and F-plated trucks and therefore weren't able to compete?

**MR. J. PENNER:** I think one of the biggest reasons why they were not able to do that was because in a lot of these instances you use your own labour on your own farm; you use your own resources. Either the owner operates it himself, which is the farmer or the son, or those kinds of situations. For that reason, that farmer can haul cheaper than the commercial hauler and should be able to.

But if you are going to force farmers into buying PSV plates, those farmers are going to make application on the basis that it's going to allow them to haul a variety of commodities. They are not going to be specific in their application, they can't be, because I am going to be hauling corn, cereals, pulse, beans, potatoes - whatever I can haul, I am going to haul, and that's the application I am going to make on that basis.

**HON. J. PLOHMAN:** You would not be asking for a special authority; you would be asking to haul for a PSV plate that would allow you to haul all exempt commodities that are on the list and nothing more than that, of course - exempt commodities that are not regulated.

But I just wanted to ask you just in terms of the impact for my own information. There is a proposal by the Federal Government to increase the excise tax by about 20 cents, 18 cents a gallon in effect by September 1st. Is this going to have, if we were to introduce this measure, a greater negative impact on your operations than a 18 cents or 20 cents a gallon increase in your fuel taxes? Do you perceive that as having a greater impact than that 18 cent to 20 cent increase in the excise tax on fuel?

**MR. J. PENNER:** Mr. Chairman, I would see them both as being regressive to the farm community.

**MR. CHAIRMAN:** The Member for Arthur.

**MR. J. DOWNEY:** To Mr. Penner, would it be a fair assessment of the whole situation if we were to look at it in this light that the delicacy and the difficult times that the specialty crops, the vegetable industry, sugar beet industry have had in the last few crops, and the encouragement that should be carried on to keep them in business, that to do that kind of thing they have developed a transportation system using their farm trucks, their semi-trailers to give efficiency to the consumers, to make their operations viable just to make them stay in existence; that the ability to work together

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they have been doing to help one another has been accommodated because there haven't been restrictive regulations or legislation stopping the interchange of giving a product? That's what I am hearing. The Minister is trying to stop the abuse . . .

**CHAIRMAN:** Question, question to the presenter.

**J. DOWNEY:** Mr. Chairman, I am trying to understand it clearly that, if the imposition of this regulations were to be put in place right now, the growers, the commercial industry would not be able to pick up where the farmers were forced to leave off because that's really what is going to be happening, and there will be a cutting off of the farmers helping one another, that the commercial industry is not going to be able to move in; in fact, it isn't a big enough industry to start with to give them any viability in that kind of an industry, that we are going to have a lot of losses. In fact, it will discourage people from continuing with their operations.

**L. EVANS:** Mr. Chairman, on a point of order.

**CHAIRMAN:** A point of order being raised.

**L. EVANS:** What we've got is debate. It is quite clear that the members of the committee are free to ask all the questions they like of the delegates. It's totally out of order; it's never been a practice. If it happens, it shouldn't be permitted - a debate between a particular member no matter how valid his comments may be and how informative they may be. It's totally out of order for a debate to take place between a member of this committee and a delegation. — (interjection) — well, I don't care who does it.

Mr. Chairman, I don't care who was out of order, I'm saying it is out of order. Mr. Chairman, it's totally out of order and the question should be directed to the delegate through the Chairman of the committee.

**CHAIRMAN:** The procedure in this committee is after the presentation for members of the committee to ask questions of the presenter.  
The Member for Arthur.

**J. DOWNEY:** Thank you, Mr. Chairman. I would like to continue with my question. It's a question; it's a direct question - it's a little longer maybe than some of the member would like - the question basically is that really, if they were exempt from this legislation, that they could continue on and assure us that we will have a viable vegetable industry, a sugar beet industry possibly will continue, but with the intrusion of this kind of legislation, in fact, could put in jeopardy the industry. That's really the question and to solve the problem the Minister should take a different approach and deal with those areas in a different manner. But really, to accommodate the industry that an exemption for the specialty crops, in particular, vegetables, is necessary in this particular industry.

**J. PENNER:** Mr. Chairman, in answer to that question, I'm going to make it very brief, I would suggest that the legislation that's been proposed is going to

be detrimental to agriculture, in general, especially the young starting and the small producers. Those are the producers that are really the backbone of our family farms; those are the ones that rely on those larger farmers to give them the benefit of the rates that they can get.

**J. DOWNEY:** Well, I'm concerned about the young beginning farmers. But, as I see it, and this is a direct question to Mr. Penner, would it not put unreasonable strain on those established people who are now using transportation to support one another with the commodities they're producing, particularly in the vegetable industry.

**J. PENNER:** Well, it's always been recognized that in the sugar beet and the vegetable industries that there is a great amount of assistance, one farmer to another, especially in the harvest seasons. Especially in the winter or fall periods, when those perishable commodities must be hauled to market and they cannot be delayed come storm, come rain, come ice; those commodities have to be moved. If farmers can assist each other, as they have, in the future, then those industries will be able to go on. If not, however, it might place some jeopardy in some instances on some farms.

**CHAIRMAN:** It's about 1:00 o'clock now, what is the pleasure of the members of the committee?  
The Member for Arthur.

**J. DOWNEY:** Thank you, Mr. Chairman.

I have one question, I'll make it brief. Are there commercial-type operations that are prepared to move in and pick up where the farmers are now serving one another with the kind of semi-trailers and coolers that they need to continue on with the delivery of Manitoba vegetables, the services that are needed? Is there a commercial industry prepared to take that on right now at this point?

**J. PENNER:** Mr. Chairman, I certainly don't know of any and I would doubt whether any commercial operator would want to put in place the kind of equipment that's needed on an ongoing basis and for a short period of time, would want to go to those expenditures to service that need.

**J. DOWNEY:** Thank you, Mr. Penner.

**CHAIRMAN:** The Member for Pembina.

**D. ORCHARD:** Mr. Chairman, I have a question for any of the members of the Vegetable Growers' Association of Manitoba. That question is, under the legislation that exists today, you are able to co-operate with one another and provide transportation services in whatever small lots are required, and whatever timing is required, and that is currently within the law. What this law is doing is preventing a system that has worked well, without complaint, and is putting undue restriction and cost and bureaucratic nightmares in front of the farm community that have been co-operating to deliver vegetables to market; is that a fair assumption?

**E. CONNERY:** Yes, the growers have worked co-operatively to do this. But I think it's very important

and I realize that you've got to live within an industry to understand an industry, so I don't expect you people to really understand what goes on in our industry. But there's no such thing as orders, two days, three days in advance; we get orders all through the course of the day and that can change at any particular time.

We have to semis on our farm; one is just a standby semi which, in the summer time, runs quite a bit; our other semi we load it at night, it's a reefer truck, it's a special diesel-electric reefer that can be running all night on electricity; the truck is loaded, the man comes in at five in the morning and he's in at the Marketing Board for seven o'clock, which our industry demands.

Now, we've tried to use the commercial truckers. You phone them up and say, have you got a reefer? No, we've got a reefer in Winnipeg and he'll be out by noon. Our produce industry cannot function. They have their delivery trucks that have to go out at a specific time. If they have to make repeat callbacks because their product hasn't been there, they'll turn to an alternate source of supply, and that's down in the States and they can get supply 12 months out of the year, no problem. It's just the same price, because our prices are based on import product. You've got to have a reefer in the summertime or a heated truck in the winter. There's lots of regular vans that are not heated, no reefer on them, they're not suitable to haul our product. Nobody makes money on this and we don't disagree; we agree that the commercial hauler who is using the system should be stopped. We have no qualms about that at all. Stop them; put restrictions, but don't throw the baby out with the bath water. We're a very fragile industry; we're not broke, but we're not rich; keep us in business.

**MR. D. ORCHARD:** Thank you for that answer. Now one other question to Mr. Siemens. You mentioned the existence of a three-year contract of which there are two years left to haul from the piles into the processing

plant in Winnipeg; will this legislation make the current operating structure of that agreement illegal?

**MR. B. SIEMENS:** Mr. Orchard, I don't think it would make the contract illegal. It would, though, transfer the cost of the additional fuel directly to the producer and that provision, as I stated before, is part of the contract and I have made copies of it as evidence for your perusal if you so desire.

I think, though, in fair comment about the arrangement that we have been able to have under the existing legislation, is that it has provided a fair system for our industry. We can't all haul our own sugar beets to the factory, there just are not enough piles at the factory, nor is there room to store all the beets. So, physically, it's not possible. Some have to pile in the country; some can haul to the factory. This is prearranged and by enabling the producer to haul under the same type of costs or handicaps, that at least makes a fair division of opportunity to producers out there and closer in, big producer and small producer.

Also, if we would have a differential in the cost between the farmer and the carrier in hauling this type of commodity, maybe on the long term we could try and enable the producers to haul in. But what would you do with, all of a sudden, 400 trucks in a period of less than a month hauling all those beets on our highways. This creates different problems, additional problems which we don't really have to have. The way we have it now the commodity is hauled, but with good equipment extended over a period of time, and this all adds to the proper organization in our industry.

**MR. CHAIRMAN:** I have been informed that this committee shall continue its deliberation tonight at 8:00 p.m., and it will be duly announced in the House this afternoon.

**COMMITTEE ROSE AT:** 1:03 p.m.