MANITOBA

LAW REFORM COMMISSION
COMMISSION DE RÉFORME DU DROIT

REPORT ON

"THE HIGHWAY TRAFFIC ACT"

Report #20

June 16, 1975

The Manitoba Law Reform Commission was established by "*The Law Reform Commission Act*" in 1970 and began functioning in 1971.

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CHAPTER I

INTRODUCTION

Of all the statutes of Manitoba none presses upon the daily lives of people from youth to old age with more frequency than *"The Highway Traffic Act"*. Driving a motor vehicle has, in our society, become almost as much a part of growing up as toilet training and learning to dress oneself. Possession of a driver's licence is a badge of adulthood, the first formal recognition of maturity before that mystical moment at the age of eighteen when one is suddenly and magically metamorphosed from a juvenile into a fully responsible adult. As the first major privilege to be accorded young people by our society the ownership and operation of motor vehicles can have an extraordinarily important role to play in their development.

Driving, like all privileges, is very open to abuse, but unlike some other and more personal privileges, the consequences of its abuse can be literally fatal, not only for the foolish driver, but more importantly for other persons, the innocent victims of his stupidity, arrogance and recklessness. Tens of thousands of people are annually slaughtered on the streets and highways of North America, and hundreds of thousands more injured, maimed or crippled, and in the vast majority of cases it is human failure which is directly to blame. If not exercised with the care and attention befitting the handling of a lethal weapon, the privilege of driving can become a passport to eternity, or worse still the living hell of permanent disfigurement and disability. Modern highway driving is not for the weak in mind or body, nor is it for the emotionally immature. Survival demands courtesy and cooperation, timing, judgment and alertness, all qualities characteristic of the responsible, mature adult. It is no quirk of fate that the accident and violation statistics should swell so visibly at the lower end of the age scale. The peak of physical energy and efficiency is unfortunately not coincident with the arrival of emotional control, and like nuclear energy, when unrestrained, such physical exuberance is all too easily subverted to foolish purposes. Learning to drive responsibly is in many ways an exercise in how to live responsibly.

Although common sense and restraint are the most important ingredients in the art of driving safely, knowledge of, and compliance with, the rules of the road, the standards for equipment, the procedure to follow in the event of accidents, etc., is also essential. The smooth flow of vehicles on our highways is the result of obedience to a set of standardized rules and patterns of behaviour. A green signal light means that one may proceed through an intersection, ideally without worrying about vehicles coming from the intersecting highway. A red light means that one must come to a halt before the intersection and either remain stopped or cautiously make a right turn, assuming there is no direction prohibiting such a turn. When driving at night, one's vehicle should display the lamps required under the equipment provisions of the Act. If carrying passengers they should not all

be squeezed into the front seat. Such directions, multitudinous as they unfortunately are, all serve a purpose — the promotion of a safe, coordinated, orderly flow of traffic.

The efficient use of our highways is not only an economic necessity, it is also a human and social necessity. Traffic jams cause confusion, frustration and anger, all prime ingredients in the loss of self-control, and it is the failure of the mechanisms of self-control that is the major cause of accidents with all of their attendant misery, damage and heartbreak. If we were all blessed with unlimited common sense and self-restraint, then highway travel might be safe without the need for hordes of regulations, but it probably would not be very efficient and ultimately not that safe either. Most problems can suggest a variety of acceptable solutions, but when two vehicles are approaching an intersection at high speed, with no means of communication between the drivers, a choice of different solutions could prove calamitous. Prearranged, mutually understood approaches to particular situations is the only realistic way of coping with the problem of coordinating the movement of large numbers of independent, self-controlled driving units. And putting such approaches in the form of laws, with penalties provided for their breach, is the only way of compensating for the fact that not everyone has the decency or the sense to comply with them out of understanding and respect for their function. Law, in all of its pervasive complexity, is the consequence of, and the price we must pay for, the failure to achieve moral self-restraint. Human imperfection means human regulation, and imperfect as that regulation may be, the alternative is clearly unthinkable.

Although the sheer bulk of "*The Highway Traffic Act*" is, we fear, largely unavoidable, the confusion, misplacement and redundancy of many of its provisions is not. Years of incessant and piecemeal alteration have weakened the fabric of the Act to the point where it resembles a weakly stitched patchwork of odds and ends. A body of laws it may be, a coherent code it is not.

In the succeeding pages of this Report we have outlined a rearrangement of the Act which we believe attains in far greater measure than the present conglomeration, the virtues of being rational, coherent and consistent, despite the fact that it is based almost exclusively on the same unredrafted sections. In so doing we have managed to eliminate a considerable number of redundant and, in our opinion, often superfluous provisions. The plethora of offence and penalty sections, in particular, has been drastically reduced.

In addition to the general restructuring we have made a number of recommendations for substantive reform in, for example, the areas of accident reporting, licence and registration suspensions, the guest-passenger limitation, minimum fines, impoundments, police detention of vehicles, etc. All of these are discussed as they arise in the course of developing the rearrangement.

It will be noted that the section numbers grouped under each heading and subheading (and which are taken from the present Act) are in what appears to be a random order. This is not an attempt to deter anyone from

checking the content of the sections cited. Rather this is the order in which we would like to see these various provisions printed in a reorganized Act, in which they would, of course, be renumbered in the proper sequence. Many of these provisions could, we are sure, in the hands of an experienced draftsman, be amalgamated, redrafted or eliminated, to a much greater extent than we have been able to accomplish. It is indeed our earnest hope that by doing the initial job of grouping together in a rational manner, the various sections of similar content and direction, that those persons in charge of legislative drafting in Manitoba will be able to work a more extensive consolidation.

We considered the possibility of splitting "*The Highway Traffic Act*" into a number of smaller statutes, each covering a more or less self-contained subject. For example the provisions governing Public Service Vehicles and Commercial Trucks could probably be excised as a separate code for commercial users of highways, but the split would still involve some cross-referencing, and it would mean that persons affected would have to consult two statutes instead of one. We think the statute books of Manitoba are replete enough as it is, without adding more complication. "*The Highway Traffic Act*" may be large, and in the eyes of some, unwieldy, but if properly organized and equipped with a comprehensive table of contents and an accurate index, there should be no difficulty in locating particular provisions. A comprehensive code is, in our estimation, superior to a string of smaller statutes, each with its own index and list of cross-references. Chapter II of this Report, accordingly, constitutes our recommendation for the new, comprehensive, and rationally sequential Table of Contents for "*The Highway Traffic Act*" as we foresee it re-organized.

Since the operation of Public Service Vehicles and Commercial Trucks is regulated by "*The Highway Traffic Act*", we pondered whether Taxicabs and Snowmobiles should not also be included. "*The Taxicab Act*", however, applies only to the City of Winnipeg, and "*The Snowmobile Act*" prohibits the operation of snowmobiles on highways. For these reasons we decided against their inclusion, although logically, the provisions of "*The Taxicab Act*" at least, if not "*The Snowmobile Act*", should be part of "*The Highway Traffic Act*". If those provisions were applicable on a province-wide basis we would have had no hesitation in recommending their inclusion.

Finally it should be remarked that in the proposed rearrangement we have not maintained the Public Service Vehicle and Commercial Truck provisions as a separate part, but have integrated them into the general organization of the Act. This was done because it was considered important that the Act should have a logical, overall pattern to its development, with as few exceptions as possible. If there is to be a part dealing with Licensing, then all licensing should be included in that part, with distinct subheadings to cover the different kinds of licences, etc. We also deemed it important that the Act be read as a whole by those persons affected by it. The driver of a Public Service Vehicle or a Commercial Truck, must have a proper driver's licence just as the average motorist must have a proper driver's licence, and he is just as subject to the Rules of the Road, or the Equipment provisions,

or the general prohibitions. The only provisions that warrant treatment in a separate part are those dealing with the commercial aspects of highway transport, and even these are deployed along with provisions regulating other and different kinds of commercial activity.

In the course of formulating our recommendations on this subject, we consulted with Mr. Peter Dygala, Registrar of Motor Vehicles; Chief Provincial Judge Harold ff. Gyles; Provincial Judge Gordon MacTavish; Magistrate George C. Parkin; Mr. Rae H. Tallin, Legislative Counsel; Mr. R.A. Hadfield, Superintendent of Motor Vehicles for British Columbia; Mr. J.O. Dutton, General Manager and Mr. R.D. Blackburn, Assistant General Manager, the Manitoba Public Insurance Corporation; Traffic Superintendent A.N. Clarke, City of Winnipeg Police Department; and C.G. Hall, retired Staff Sergeant, R.C.M. Police. We acknowledge their advice and assistance, and in particular we acknowledge the contributions of Mr. Dygala and Chief Provincial Judge Gyles.

We also received submissions from the Manitoba Motor League, the Greater Winnipeg Safety Council, and the following members of the legal profession: Mr. Robert A. Mayer, Thompson; Mr. A.C. Hamilton (now Mr. Justice Hamilton of the Manitoba Court of Queen's Bench), Brandon; Mr. Sidney N. Lachter, Neepawa; Mr. Karl E. Dzinkowski, Winnipeg; Mr. William Stordy, Brandon; Mr. S. Cohan, Winnipeg; and Mr. Winston Smith, Winnipeg. We acknowledge the concern and advice of these organizations and persons.

And finally we acknowledge the endeavours of our first project director, Mr. Mark Schulman, a Winnipeg solicitor, who did much valuable basic research for us, and the work of our Research Officer, Mr. Peter Cole.

CHAPTER II

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DECLARATIONS AND AFFIDAVITS

Sections 301; 302.

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PART II – OPERATION OF VEHICLES ON HIGHWAYS

We consider it of the utmost importance that all provisions relating to the operation of vehicles on highways be contained in one consolidated part of the Act. If the motoring public is to be expected to know the law, then it should at least be entitled to find that law in a readable form which encourages rather than hinders comprehension. Part II of the reorganized Act includes the entire range of rules and directions aimed at owners and drivers, from licensing and registration, to the "Rules of the Road" and the procedure to be followed in the event of an accident — the whole organized in a consistent pattern of divisions and subdivisions, with detailed headings to guide the reader, with a minimum of searching, to the specific provisions sought. Our remaining concern is that when the reader does find the particular section he wishes to consult, he may be stymied by the convoluted language which mars so many of the provisions in *"The Highway Traffic Act"*. In this regard, we refer our readers to Appendix "A" to this Report, which contains a few examples of how the present wording of certain sections could be improved in the interest of intelligibility and economy of words.

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*These recommendations should be read with close reference to *"The Highway Traffic Act"*, cap. H60 of C.C.S.M. Present section references are presented in the reordered sequence which the Commission recommends. Note that not all of the present provisions of the Act are mentioned because those considered to be redundant have been eliminated, or amalgamated in some instances.

DIVISION (A) – QUALIFICATION OF DRIVERS

There are two major and indispensable components in every unit of motor transport, the driver and the vehicle, and before either can be allowed to function as an operational part of such a unit, they must meet certain prescribed standards of physical efficiency and be formally identified and qualified. These requirements are preliminary to all other regulated aspects of driving, and in a Highway Traffic Act they should form the opening division, the logical introduction to the rather lengthy and complicated process of exercising the privilege of using a motor vehicle. The qualification of drivers comes first, because of the two it is the most important.

Age, Health and Competence

The most basic of all qualifications for the exercise of the privilege of driving is that one be physically capable of operating the equipment used. Adequate sensory perception and reasonably rapid reflexes are essential to safe driving and of equal and perhaps greater importance is the maturity and intelligence that people must bring to the operation of their vehicles. Driving in today's traffic would be an intolerably dangerous and frustrating exercise were it not for the spirit of cooperation and courtesy that animates the vast majority of motorists. Because of these requirements which are characteristic of mature, healthy adults, the law has restricted the privilege of driving to persons sixteen years of age or over, and who are free from any disease or physical disability that would impair their judgment, coordination and strength.

Since these conditions are antecedent to a successful licence application, they are appropriately placed ahead of the licensing provisions.

(a) In general

Sections 165 (1) (2); 167 (4).

(b) P.S.V. Drivers

Section 279 (1).

The relevant part of this section has been extracted and reads as follows:

> The driver of each public service vehicle shall be at least eighteen years of age, of good moral character, and fully competent to operate the vehicle under his charge.

Drivers' and Chauffeurs' Licences

The second condition to be fulfilled by a prospective driver before venturing forth on the highways of Manitoba is the obtaining of a driver's or chauffeur's licence. The sections included under this heading have been grouped in a manner which approximates the sequence of events which an applicant for a driver's licence would actually undergo. The main division is between resident drivers and non-resident drivers and the formal requirements demanded of each. It was felt that this was a natural division to make, especially in view of the increasing number of people from other jurisdictions who visit Manitoba by car, or drive through on their way to other destinations.

(a) **Residents**

(1) **Licences required**

(i) **In general**

Sections 164 (1); 23 (1) (4) (5) (12); 25 (10).

It is suggested that subsection (4) of section 23 should either be eliminated as a redundant relic of the days when trolley buses plied the streets of Winnipeg, or else be combined with subsection (5).

(ii) **Motorcycle operators**

Section 23 (2).

(iii) **Public Service Vehicle drivers**

Section 279 (1).

The relevant part of section 279(1) has been extracted and reads as follows:

> The driver of each public service vehicle shall hold a chauffeur's licence under this Act, and is subject to all the provisions, and shall comply with all the requirements of this Act and in the case of the driver of a passenger-carrying motor bus, shall hold a driver's licence issued by the traffic board for the current licence period.

(2) **Application for licence**

Sections 25 (1); 27 (4); 25 (3); 31 (2); 25 (5) (6) (7).

(3) **Examination**

Sections 29 (1) (2) (3) (4) (5) (6) (6.1) (7) (8); 27 (1) (3).

(4) **Issue of licences**

Sections 23 (6) (9) (7) (7.1) (8); 164 (2); 25 (2) (8) (9); 23 (10) (11).

(5) **Issue of Instruction Permits**

Section 24 (1) (3) (2) (4) (5).

(6) **Change of name or address**

Section 25 (4).

(7) **Licence period**

(i) **In general**

Section 30 (1).

(ii) **P.S.V. Drivers**

Section 279 (2).

(b) Non-residents

(1) In general

Section 31 (1) (3).

(2) P.S.V. drivers

Section 279 (1).

The relevant portion of this section has been extracted as follows:

> A non-resident driver of a public service vehicle shall hold a chauffeur's licence under the relevant law of the state or territory of the United States or of the province or territory of Canada of which he is a resident, and is subject to all the provisions and shall comply with all the requirements of this Act, and in the case of the driver of a passenger-carrying motor bus, shall hold a driver's licence issued by the traffic board for the current licence period.

Insurance

In addition to a driver's licence, all residents of Manitoba are required to obtain a certificate of insurance under "*The Automobile Insurance Act*" if they wish to operate vehicles for the driving of which a driver's licence is needed.

(a) Residents

Section 201.1 (2) (3).

For the purposes of this subheading subsection (3) includes only the present clause (b) and not clause (a), which relates to vehicle insurance.

(b) Non-residents

Section 201.1 (7).

Only the latter half of this section, beginning "Subsection (2) does not apply . . ." etc. have been included under this subheading.

DIVISION (B) – QUALIFICATION OF VEHICLES

The other half of the driving unit is the vehicle, and just like the driver, it must meet certain physical standards as well as be registered and identified. Unlike drivers, however, vehicles come in a variety of models, types and mechanical configurations, and can be put to a variety of uses, many of which require specialized equipment or rules of operation in addition to those prescribed as standard for all vehicles. We have, therefore, organized the vehicle qualification provisions to reflect this diversity of design and function, commencing with those provisions common to all vehicles, and then proceeding to the more unique provisions according to the type of vehicle involved, and irrespective of whether the distinctive nature of that type be physical or formal.

In General

(a) Equipment, Weights and Dimensions

The matters included under this heading are to vehicles, what the age, health and competence provisions are to drivers. They are the necessary physical prerequisites to safe motoring, and are placed ahead of registration both because they should be antecedent to that formal requirement, and because they need to be emphasized as on-going responsibilities extending over the entire useful life of a vehicle and applying both to drivers and owners.

(1) Equipment

Sections 54 (1); 55; 186 (1) (2); 33 (12); 186 (3).

These are the general sections requiring that no vehicle shall be driven on a highway unless it is equipped as required under the Act, and is mechanically and otherwise fit to be driven safely. The most basic criticism of these provisions is that they are far too long and repetitious. Why, for instance, should it be necessary to spell out in section 186(1)(a) and (b) that the lamps and brakes of a motor vehicle must comply with the requirements of the Act and regulations when the blanket provisions of clause (d) already provide the necessary direction? The same could be said of section 33(12), which simply repeats the requirement as to compliance with the Act in regard to lamps and lighting. We recommend that such redundancies be eliminated in favour of one general direction.

(i) Lighting equipment

Of all the equipment provisions in the Act, these are the ones which most commonly draw the ire and fire of critics. Their tangled arrangement is reminiscent of the Gordian knot of antiquity, but unlike the end of that classic ravel there is no quick and easy solution to compare with the single slash of Alexander's sword. The complexity and variety of the lighting equipment of modern vehicles makes for complex regulation, and regulation there must be. At night-time the only means we have of identifying a vehicle and determining its travel and direction is by the number and type of lights that are visible to the observer. Standardization is critical. To carry red lights on the front of a vehicle, to have bright lights at the rear, to allow the indiscriminate use of flashing lights, of any colour, would be to invite disaster on our highways. The placement of lights, their size, colour and beam, the message they convey, are all matters which have to be carefully controlled in the interests of safety and convenience. Having said that, however, we must hearken back to the complaint of unintelligibility levelled at the present provisions and acknowledge that it is a well founded complaint. The lighting sections could be better organized and better drafted. The reorganization which follows should make the sections a lot easier to find and understand and we recommend its adoption as a format within which to redraft the lighting provisions. We have not attempted any major redrafting ourselves except where such proved necessary to accommodate the new grouping of sections, but we recommend that the wording of all these sections be given a thorough overhaul.

– general

Sections 36 (1) (2) (3); 37 (2); 35 (6) (7); 37 (1).

– headlamps

Sections 33 (1) (where relevant); 34 (1),(2); 33 (4.1) (4).*

Section 33(4) is amended by adding at the end the following passage taken from section 33(3): ". . . and, in addition shall cast a light visible under normal atmospheric conditions from a distance of five hundred feet".

– taillamps

Sections 33 (1) (3) (5) (8) (13) (where relevant); 36 (1.1); 35 (10).

The directions contained in the above-cited subsections of section 33 have been rearranged and redrafted as follows:

(1) Every motor vehicle other than a motorcycle, and, when it is upon a highway at a time when, under s. — lamps on vehicles are required to be lighted, every tractor and special mobile machine, shall carry

(a) at least one lamp, and where the motor vehicle is, or has been advertised to be, a motor vehicle of the model or make of the year 1968 or of any subsequent year, at least two lamps, which, or each of which shall cast a red light to the rear of the vehicle; and

(b) a lamp or lamps, which may be the lamp or lamps required under sub-clause (a) and which, or one or more of which, illuminates with a white light, the rear number plate.

(2) Every motorcycle shall, in lieu of the lamps required under sub-clause (a) of subsection (1), carry one lamp only at the back of the motorcycle, which

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*Section 33(1) is an all inclusive provision covering the minimum lighting equipment required on motor vehicles. Our re-arrangement breaks this section down into its various components, by providing for separate subheadings for each type of required light, e.g. headlights, taillights, etc. The phrase "where relevant" as used here and elsewhere in regard to other provisions, simply means that the section to which it refers has not been included in its entirety under the particular subheading in question, but has been included only to the extent to which it is relevant to that subheading.

lamp shall conform to the requirements for the lamps required under subsection (1) and shall illuminate the number plate at the back of the motorcycle as in the case of a lamp to which sub-clause (b) of subsection (1) applies.

(3) Every trailer attached to a motor vehicle and every trailer or other vehicle attached to a tractor, or, if more than one, the rearmost of them, shall carry at the back thereof at least one lamp which or each of which shall cast a red light to the rear of the trailer or other vehicle.

(4) Every piece of equipment being towed by a motor vehicle on a highway, other than on a portion of a highway to which subsection (4) of section 72 applies, or, if more than one piece of equipment is being towed, the rearmost of them, if it is being towed at a time when, under section — lamps on vehicles are required to be lighted, shall carry at the back thereof, at least one lamp, which or each of which shall cast a red light to the rear of the piece of equipment.

(5) Every vehicle in respect of which no other provision is made in this section shall carry at the back thereof or at the back of any other vehicle that may be attached thereto

(a) a reflector which shall be so placed as to be illuminated by the lights of any vehicle approaching from the rear and shall cast a red reflection; or

(b) a lamp casting a red light.

(6) The lamps required under clause (a) of subsection (1) and subsections (2), (3) and (4) and the lamp or reflector required under subsection (5) shall be of such kind and so constructed that the lamps, when lighted, or the reflector, casts or reflects, as the case may be, a light visible under normal atmospheric conditions from a distance of five hundred feet in the rear of the vehicle and in addition the lamps required under subsections (1) and (3) shall be at least three candle power, and the reflectors required under subsection (5) shall be of a type approved by the traffic board and shall be not less than three and one half inches in diameter.

— stoplamps

Sections 33 (1) (13) (where relevant); 33 (6).

The relevant portions of subsections (1) and (13) of section 33 have been rearranged and redrafted as follows:

(1) Every motor vehicle other than a tractor shall carry a "stop" signal lamp so constructed and placed at the back of the vehicle as to show a "stop" light, red in colour.

(2) Every trailer attached to a motor vehicle, and every trailer or other vehicle attached to a tractor, or, if more than one, the rearmost of them, shall carry at the back thereof, a "stop" signal lamp, as described in subsection (1).

(3) Every piece of equipment being towed by a motor vehicle on a highway, other than on a portion of a highway to which subsection (4) of section 72 applies, or, if more than one piece of equipment is being so towed, the rearmost of them, if it is being towed at a time when under section — lamps on vehicles are required to be lighted, shall carry at the back thereof, a "stop" signal lamp as described in subsection (1).

— turning signal lamps

Sections 33 (1) (3) (where relevant); 35 (5).

The relevant portions of subsections (1) and (3) of section 33 have been rearranged and redrafted as follows:

(1) Every motor vehicle other than a motorcycle shall carry, at the front and the back thereof, and every trailer shall carry at the back thereof, lamps that may be lighted intermittently or in flashes as a signal that the vehicle is about to be turned to the right or the left according as the lamps are lighted on the right or the left side of the front and rear of the vehicle; and any such lamp that is affixed to the back of the vehicle shall cast a red or amber light and any such lamp that is affixed to the front of the vehicle shall cast a white or amber light.

(2) The lamps required under subsection (1) shall be of such kind and so constructed that the lamps when lighted, cast a light visible under normal atmospheric conditions from a distance of five hundred feet.

— clearance lamps

Section 33 (1) (3) (where relevant); (8) (9).

Subsections (8) and (9) have been amalgamated and redrafted as follows:

The lamps required under subsections (1) and (2) and the lamps or reflectors required under subsection (3) shall be of such kind and so constructed that the lamps when lighted, or the reflectors, cast or reflect, as the case may be, a light visible under normal atmospheric conditions from a distance of five hundred feet, and in addition the reflectors required under subsection (3) shall be of a type approved by the traffic board and shall not be less than three and one half inches in diameter.

– alternative lamps

Section 35 (2) (3).

– volunteer fire fighters' lamp

Section 36 (4).

– fog lamps

Section 35 (11) (11.1)

– emergency lamps

Section 35 (12) (13).

– parking lamps

Section 35 (1).

– ditch lamps

Section 35 (4).

(ii) Braking Equipment

Section 39 (1) (2) (2.1) (2.2) (3) (4) (5).

(iii) Tires

Section 41 (1) (1.1) (2) (3) (4).

(iv) Splashguards or fenders

Section 46.

(v) Bumpers

Section 46.1 (1) (4).

(vi) Speedometer and odometer

Section 44 (1) (2) (3).

(vii) Muffler

Section 43 (1) (2).

(viii) Horns and sirens

Section 42 (1) (2).

(ix) Mirrors

Section 40 (1) (2).

Since there are no longer any trolley buses in Manitoba, it might be expedient to remove mention of them from subsection (2). The present subtitle "Rear View Mirrors on Trolley Buses", is misleading since the section also applies to trucks and truck tractors.

(x) Seat Belts

Section 49 (1) (3) (4).

(xi) Glass in windows

Sections 47 (1); 47.1; 47 (3); 48 (1) (2).

(xii) Obstruction of view

Sections 52 (1) (2) (3) (4); 53.

(xiii) Suspension system

Section 54 (2) (3).

(xiv) Marks resembling police insignia

Section 193 (1) (2) (3).

(xv) Radar detection devices

Section 185 (3).

(xvi) Radio and television receivers

Section 192 (1) (2) (3) (4).

(xvii) Warning device on slow vehicles

Section 168 (1) (2).

(xviii) Warning device on right-hand drive vehicles

Section 117 (2).

(xix) Emergency flares and lamps

Section 38 (3).

(2) Weight restrictions

Sections 63 (1) (2) (9) (3) (4) (5); 65; 64 (1) (2); 166 (1).

(3) Dimensions of vehicles

Section 62 (1) (2) (3) (5) (4) (6) (7) (8) (11).

There appears to be a conflict between subsections (4) and (6), in that subsection (6) purports to apply to all vehicles, while subsection (4) provides an exception in the case of trolley buses and motorbuses operated by the City of Winnipeg. It is recommended that subsection (6) commence with the words, "Subject to subsection (4). . . ".

(b) Vehicle Identification Numbers

Sections 184 (1) (where relevant); 6 (12).

It was considered best to give this matter a separate main heading since it is not only a prerequisite to registration but another and more permanent form of vehicle identification. The relevant portion of subsection (1) of section 184 has been extracted as follows:

> No person shall drive upon a highway a motor vehicle of which the manufacturer's serial number or other identifying mark has been obliterated or defaced or is not easily recognizable.

(c) Registration

Just as a person must be licensed before he can exercise the privilege of operating a vehicle on our highways, so must the vehicle he intends to drive be registered, and formally identified with numbered plates. Again, the primary division under this heading is between residents and non-residents, with the sub-categories being arranged in a manner that approximates the actual progression of an application for registration.

(1) Residents

(i) Where required

– vehicles in general

Sections 6 (1); 183.1; 6 (2) (3.1) (4) (10); 166.1 (1); 6 (9).

– newly purchased vehicles

Sections 17 (1); 11 (4).

– vehicles in transit

Section 16 (3).

(ii) Application for registration

Sections 6 (5); 169.1 (1); 161 (1) (2); 6 (14) (16) (15); 19 (4) (5) (6).

(iii) Issue of registration cards

Sections 6 (6) (7) (20) (21); 234; 6 (11) (17) (18) (19).

(iv) Issue of interim registration stickers

Section 17 (2) (3) (4) (5) (6).

(v) Number plates

Sections 7 (1) (2) (3) (4) (5) (6) (7) (8) (9); 8; 305.

(vi) Transfer of ownership

Sections 10 (1) (1.1) (2) (3) (4) (4.1) (5) (6) (7) (8) (10) (11); 11 (1) (1.1) (1.2) (1.3) (1.4) (1.5) (2) (3) (5) (7) (8).

Not only do we find it rather unusual that sections such as 10(11) and 11(8), which deal with "refunds to the nearest dollar" should be included in a statute, but that these two in particular should actually be different, the one deeming 50 cents to be 49 cents and the other deeming it to be 51 cents. Surely this sort of minor irritant could be avoided in a statute which is already complicated enough.

(vii) Change of address, vehicle type, etc.

Sections 6 (8); 13.

(viii) Termination of registration

Section 12.

(2) Non-residents

(i) Vehicles in general

Section 14 (1) (5) (2) (6).

(ii) Student vehicles

Section 6 (3).

(iii) Business vehicles

Section 14 (4).

(iv) Public Service Vehicles

Section 14 (3).

(d) Insurance

(1) Residents

Sections 201.1 (1) (8) (3); 201 (3) (4).

Subsection (4) should, we presume, refer to subsection (3), not subsection (2), as is presently the case.

(2) Non-residents

Sections 201.1 (7); 201 (6).

Motorcycles

Sections 172 (1) (2) (3) (4) (5); 186.4; 186.3; 46.3 (1) (2) (3).

Dealers and Repairers Motor Vehicles

(a) Registration and identification

Sections 15 (1) (2) (3) (4); 16 (1) (2).

(b) Restrictions as to use

Sections 185 (1); 15 (5); 207 (1) (2) (3).

(c) Equipment of repair vehicles

Sections 196.1; 33 (14).

Drive-Away Units

Section 9 (2) (3) (4).

Schoolbuses

Sections 128 (1); 35 (8); 128 (2) (4) (4.1); 35 (9); 128 (3); 184.1.

Road Construction and Maintenance Vehicles

Section 33 (15) (16).

Farm Trucks

Section 169.1 (2) (3) (4) (5) (6).

Antique Cars

Section 306 (1) (2) (3).

Propellor-driven Snowmobiles

Section 46.2.

Air Cushion Vehicles

Section 181 (1) (2) (3).

P.S.V. and Commercial Vehicles

(a) Registration and identification

Sections 287 (1) (2) (3) (4); 276 (1) (2); 259.

(b) Equipment of Passenger-carrying P.S.V.s

(1) Fire extinguishers

Section 278.

(2) Emergency exits

Section 282 (5).

DIVISION (C) – RULES FOR THE SAFE USE OF VEHICLES

The provisions gathered together under this heading are distinguishable from the "Rules of the Road" in that they relate to the operation of vehicles as independent units, rather than as part of the flow of traffic. The manner in which a vehicle is loaded may be critical to its safe operation irrespective of the presence of other vehicles on the road, although if there is other traffic then the loading becomes doubly significant. Because these provisions are applicable both antecedent to, and together with, the Rules of the Road, they are properly placed ahead of the latter rules.

Carriage of Passengers and Other Loads

(a) In general

(1) Obstruction of view

Section 170 (1) (4).

(2) Loose loads

Section 56 (2) (3) (4).

(3) Projecting loads

Sections 62 (9) (10); 56 (1) (5).

(4) Hazardous loads

Section 190 (1) (2) (3) (4).

(5) Livestock

Sections 208; 51; 182.

(6) Passengers

(i) Seating

Section 170 (2) (3) (5) (6).

(ii) Dangerous riding

Sections 136 (5) (6); 171 (1); 137 (1) (2); 171 (2) (3) (4).

(b) Trucks

Section 281 (1) (2).

(c) Public Service Vehicles

Sections 282 (1) (2) (3) (4); 284.

Towing and Pushing

(a) In general

Sections 57 (1) (2) (3); 196 (1) (2) (3); 58 (1) (2); 59 (1) (2).

(b) Public Service Vehicles

Section 283 (1) (2).

Locking Wheels

Section 180 (1).

DIVISION (D) – RULES FOR THE SAFE DRIVING OF VEHICLES

This is the Driver's Code, the body of rules that governs the flow of traffic on our highways in a safe and orderly manner. Substantial compliance with these rules is absolutely essential to the smooth functioning of a transport system composed of hundreds of thousands of independently directed vehicles. Chaos would reign were it not for the largely self-imposed discipline of "driving by the book". Fortunately the vast majority of Manitoba's motorists have the good sense to realize that obedience to these rules is the best possible protection they can give to themselves and their families from the truly awesome dangers of highway travel. We think that the organization of these rules into a single Division of the Act (which can be

extracted and reprinted in an independent format) would go a long way towards making *"The Highway Traffic Act"* as a whole more understandable and approachable to the general public.

Application of Rules

(a) In general

Sections 69 (1) (2); 111; 99.1.

In line with former suggestions in this regard, it is suggested that section 111, which deals solely with trolley buses, be removed from the Act.

(b) Emergency vehicles

Section 99 (1) (2) (3) (4) (5) (6).

Rules

(a) Compliance with traffic control devices

Sections 81; 100 (1); 205; 84 (1); 112 (7).

It is recommended that sections 100(1), 205, 84(1) and 112(7) be eliminated leaving the single general direction contained in section 81.

(b) Compliance with directions of Peace Officers and Flagmen

Sections 71 (2); 72 (8) (7).

(c) Manner of driving

Sections 173 (1) (2); 174 (1).

(d) Where driving of vehicles prohibited

Sections 175 (1) (2); 178 (1) (2); 179 (1) (2); 110.

(e) Operation of required lighting equipment

(1) When lamps to be lighted

Section 33 (11).

It is questionable whether the use of a specific distance as the trigger point for the application of a particular rule or regulation accomplishes anything more than unnecessary complication in the drafting of sections. How many drivers could estimate with even mildly approximate accuracy a point two hundred feet in front of them? It is suggested that section 33(11) for example could be redrafted with no loss in effectiveness, as follows:

> The lamps carried on a vehicle pursuant to section — shall be lighted when the vehicle is on a highway after sunset and before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on a highway at a safe distance in advance of the vehicle.

(2) Operation of high and low beams

Section 104 (1) (2).

(3) Procedure where lamps disabled

Section 38 (1) (2).

(f) Speed restrictions

(1) As to highways

Sections 91 (1); 91.1 (1) (2); 93 (4) (6); 91 (3); 95; 167 (1).

We consider subsections (4) and (6) of section 93 to be largely redundant in view of the general direction contained in section 91(1)(b) that vehicles shall not be driven at a rate of speed greater than that "... designated by signs erected as herein required or authorized". Both of the subsections in question relate to special speed limits which must be indicated to drivers by means of signs in order to be effective. It is of interest to note also that section 93(4) wrongly refers to section 71; it should refer to section 72. We recommend that these subsections be repealed.

(2) As to certain vehicles

Section 167 (2) (3).

(g) Driving on right side of roadway

Sections 101 (1); 107 (1) (3) (4); 103 (1) (2) (3); 101 (2) (3) (4); 102.

Section 101(3) is, in our opinion, superfluous. We recommend that it be removed.

(h) Overtaking

Sections 105 (1) (2); 106 (1) (2); 107 (2); 91 (2).

The direction in section 91(2)(b) that no person driving a vehicle shall overtake or pass another vehicle while the other vehicle is driving past a school building or grounds "within fifteen minutes before the opening of morning classes or afternoon classes" etc. is surely carrying regulation too far. How is the driver of a vehicle possibly supposed to know when classes begin or end at a particular school? The complete prohibition of passing in the vicinity of schools or school grounds would make more sense, and we so recommend.

(i) Following

Sections 108 (1) (2) (3) (4); 109.

(j) Signals

Sections 116 (1) (2); 117 (1); 115 (2); 118 (1) (2) (3).

(k) Special stops

(1) Approaching railway crossing

Sections 125 (1) (2); 126 (1) (2) (3) (4) (5).

(2) Approaching school bus

Section 128 (5) (6).

(l) Right of way

Sections 119; 127 (1); 121; 127 (2); 124 (1) (2); 122 (1) (2) (3) (4); 120; 123.

We consider section 122(3) to be overly technical and recommend its removal in favour of a general section worded in a manner similar to the present section 122(2).

(m) Turning

Sections 112 (1) (2) (3) (4) (5) (6); 176; 112 (8).

(n) Traffic Control Signals

Section 84 (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (18) (19).

(o) Starting

Sections 115 (1); 177.

(p) Stopping, Standing or Parking

Sections 113 (1) (2); 114 (1) (2) (3); 198 (1) (2); 197 (1) (2) (4) (3); 187.

(q) Pedestrians rights

Sections 132 (1) (2) (3) (5) (8); 130 (1) (3); 133.

DIVISION (E) – ACCIDENTS

Gathered together under this heading are all the sections relating to accidents involving motor vehicles — the procedure to follow when involved in an accident; who is liable for the damages; who must bear the burden of proof; the maintenance and proof of financial responsibility, etc. Also included are sections dealing with suspension pending proof of financial responsibility and suspension for failure to satisfy a judgment. It was felt that these latter provisions would be more appropriately placed in the accident division than with the other forms of licence suspension, since they are directly related to the question of civil rather than criminal or quasi-criminal liability.

Liability

Sections 144 (1) (2) (3); 145 (1) (2).

Reverse Onus

Although section 144(1) is a reverse onus clause, and therefore worthy of close and suspicious scrutiny, it is, in our opinion, a justifiable reversal of the onus of proof because in accidents involving pedestrians or objects other than motor vehicles it is usually the case that only the driver or owner of the motor vehicle involved has any real knowledge of what happened. When a motor vehicle collides with a mute object or animal, the immediate inference is negligence on the part of the driver. If he had been in proper command of his vehicle at the time, then in the absence of unusual circumstances such as

an animal unexpectedly bolting across the right of way, a collision should not have occurred. But without witnesses and without another party to whom negligence or contributory negligence, if any, can be imputed, there is no means of establishing civil liability other than through the testimony of the driver or owner of the motor vehicle involved, and he can hardly be expected to testify against himself.

As for pedestrians, they do not normally run into motor vehicles, unless intent on committing suicide, and since it is the motor vehicle and its driver that will inevitably cause rather than suffer the damage or injury in an accident with a pedestrian or cyclist, the duty to take care must rest most heavily on the driver. Those who wish to pilot such a potentially lethal weapon as the modern automobile, must do so with the very greatest of care and attention. The damage that could and does ensue from carelessness in their handling is just too great to allow of any lowering of standards in this regard.

The section states that the onus of proof shall rest on the driver **or** owner, and this is so because the non-owner driver of a vehicle involved in an accident may abandon it, leaving no evidence of his identity, or may be a person under age, or intoxicated or otherwise impaired, to whom the owner should never have entrusted the use of his vehicle, if he had been aware of such disability. Formal ownership of a vehicle, as evidenced by a valid registration, is a privilege just as driving is a privilege, and as such it must necessarily entail a duty of care to take all reasonable steps to prevent foreseeable harm to the lives and property of others. The ultimate responsibility for an accident could rest, if not entirely with the owner, at least as much with him as with the driver. The reverse onus is necessary because proof of responsibility may be a matter uniquely within the knowledge of the owner or driver, and without that initial presumption of negligence the truth might never reach the light of day and justice never be effected.

Subsection (2) of section 144 provides two exceptions to the applicability of the reverse onus, (a) in the case of a collision between motor vehicles, and (b) in the case of an action brought by a passenger in a motor vehicle other than a public service vehicle for injuries sustained by him while a passenger. The reason for exception (a) is clear. If there are two drivers involved then both must share equally in any initial inference of negligence. To put an onus of disproving negligence on both drivers would simply be a roundabout way of arriving at the usual procedure of having each driver attempt to prove the other's negligence. The reasons for exception (b), however, are not so clear. Indeed, after reviewing the history of this provision (or at least what little can be ascertained in regard to its history) and the jurisprudence, we can find no valid reason for its present existence. Perhaps it was an early legislative response to the insurance company lobby, which later led to the introduction of the limitation against guest passenger actions contained in section 145. Our recommendation is that section 144(2) be amended by eliminating the exception in regard to actions brought by passengers. It should, accordingly, end with the word 'highway'.

Guest Passengers

Section 145 restricts a guest passenger's right of action against the owner or operator of a motor vehicle to situations in which the injury, loss or death involved, occurred through the "gross negligence or wilful and wanton misconduct of the owner or operator". Guest passengers are thus effectively hamstrung in their efforts to secure damages for injuries, death or loss occasioned by motor vehicle accidents, even though they constitute about one third of those who are accidentally killed or injured by automobiles in Canada. The common law originally allowed of no such discrimination against guest passengers, but following a 1926 Supreme Court decision* to this effect, the insurance industry mounted an intensive and successful campaign to persuade legislatures to pass statutes making drivers immune from liability to their guest passengers. The result was legislation in every Canadian province except Quebec, and in some of the provinces the statute even went to the extent of denying guest passengers the right to sue under any circumstances, no matter how reckless the driver.

Among the reasons advanced in support of the legislation were (a) that it was unjust that a guest passenger should be able to sue the driver who had so generously provided him with a lift, especially since many drivers at that time (c. late 1920's and early 1930's) did not have liability insurance, (b) that insurance companies had been badly damaged by earlier legislation which made owners as well as drivers responsible for losses occasioned by use of the owner's motor vehicle, and which put the onus of proof on the owner or driver in accident cases involving pedestrians, (c) that collusion between driver and passenger was not only a distinct possibility but a "notorious fact", and (d) that during the period in question insurance companies were faced with an alarming rise in the ratio of losses paid to premiums earned, a situation which could not be realistically tackled in a depression by raising premiums and had to be contained by narrowing the risk insured. The latter situation is indeed the most likely motivation for the insurance companies' intensive lobby, but whatever the reasons may have been for originally instituting and subsequently maintaining the guest passenger legislation, it seems clear today, that to deny compensation to a group of accident victims as numerically significant as guest passengers is a harsh and unnatural interference with those persons' civil rights, and an unjustified hiatus in the modern law of negligence, which as a rule has abandoned special relationships or the receipt of compensation as requirements for the establishment of liability.

The seriousness of personal injury is not determined according to the seriousness of the negligence which causes that injury. Even ordinary, garden-variety negligence can cause extraordinarily serious injuries. The jurisprudence which the gross negligence provisions generated over the years is marked by imprecision of prognosis and contorted reasoning. The point is,

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**Armand v. Carr* [1926] S.C.R. 575.

that serious injuries should be actionable and compensable, even though inflicted through ordinary negligence. This proposition is all the more poignant when the victim requires expensive and extensive care in excess of Autopac's no-fault maximum, presently fixed at $75 per week.

Although an extension of liability insurance to cover guest passenger claims in situations involving ordinary negligence as well as gross negligence, would likely mean an increase in premiums, we do not think that this is sufficient reason to maintain the present discrimination against guest passengers, and accordingly recommend that section 145 be repealed.

Recovery of Damages

Section 146.

Reports

(a) Accident Reports

Section 149 (1) (2) (3) (4) (5) (6) (8) (9).

At present all accident reports are made to police officers who then forward the information required under section 151(2) to their Chief of Police, or if an R.C.M.P. officer has taken the report, to the senior officer of that force. From there a copy of the report is sent to the Registrar of Motor Vehicles.

Accident reports provide information that is useful to a number of different agencies, for example:

(1) Some police forces use the information for selective enforcement programs, concentrating their efforts on high accident locations and during the time of day and week when accidents occur most frequently.

(2) Engineers use the information to identify high accident locations, and the kind of accidents that occur at such places, so that they can improve the design and construction of highways and bridges, etc.

(3) The Manitoba Public Insurance Corporation (Autopac) uses accident reports in adjusting claims.

(4) The Motor Vehicle Branch of the Department of Highways uses accident reports in its driver improvement program, and also for developing a variety of statistical data that is useful in measuring trends in accidents and accident-prevention programs.

While there is no question that the reports serve a useful purpose, there has been considerable criticism of the manner in which the reports are made ie. to a policeman within 24 hours of an accident. It is contended that this system

(a) ties up police constables when they could be better employed elsewhere, and

(b) involves the making of statements, without the advice of legal counsel, that may be quite incriminating to the individual involved, and although confidential and inadmissible in any subsequent prosecution, make it very difficult for the maker to say anything different when he does have to make an admissible statement.

It has been suggested that accident reports should be of the mail-in questionnaire type and that they should be submitted to the Registrar of Motor Vehicles, and not to the police. If the Registrar was of the opinion that a report disclosed a possible offence, or any other abnormal circumstance, he could then refer the matter to the police for investigation. This would certainly eliminate the problem of having to make inadmissible but incriminating statements to the police, and it would relieve them of considerable paperwork. The apparent simplicity and utility of this solution, however, is unfortunately largely theoretical because of the problem of designing an accident report that would be sufficiently thorough to provide meaningful information, yet simple enough to be completed legibly and accurately by the general public. Mr. Peter Dygala, the Registrar of Motor Vehicles, succinctly states the problem as follows:

> Inasmuch as we have already had some experience with the "do-it-yourself" completion of accident reports, we do not have to rely on mere speculation to know what the consequences of this kind of system would be. A very significant number of accident reports now received are so illegible and poorly completed that they are for all practical purposes of little worth. Indeed every month we have to return some accident reports to the police because we cannot even identify the drivers involved or the location of the accident, to say nothing of other information. As an example of what happens under the "do-it-yourself" approach, two drivers involved in an accident report such accident at different police stations. One driver will record the accident as having occurred on one street, while the other driver will record it as happening on an entirely different street. The time of occurrence may also vary. As a consequence it is virtually impossible to subsequently identify these two separate reports as dealing with the same accident.
>
> Moreover, if one of the objectives of accident reports is to collect certain data which is useful and helpful to a variety of people in developing programs designed to reduce accidents on our highways, that information becomes extremely important, and its accuracy is, of course, of paramount importance. Given the fact that drivers are not trained to complete accident reports, or to weigh the importance of the information being sought, it is often omitted or incorrect information is recorded, not because a driver is dishonest or evasive, but merely because he does not understand. It would, of course, be possible to devise an extremely

simple accident report which would merely indicate that an accident had occurred. I think it will be agreed that such an accident report would be of little worth to anyone.

Mr. Dygala reports that the Motor Vehicle Branch is currently endeavouring to develop a new accident report that would be simpler for the police, the public, and everyone else who uses such accident reports, to complete and use. He comments that, "In the event that we are successful in evolving an accident report form which would give us and other users the information we need and must have, and which would permit the average motorist to complete it with a reasonable degree of accuracy and completeness, I would then have no great hesitation about permitting drivers involved in property damage accidents only to report directly to the Registrar. However, I would be unalterably opposed to any such reporting respecting accidents resulting in death or injury to any person". Until such an improved accident report form is developed, it would seem that the agency of a trained interviewer is going to remain a necessary prerequisite to the provision of accurate accident reports, but this does not necessarily mean that the police have to be the ones chosen for the task of conducting the interviews and filling in the reports. There are two other alternatives, the Motor Vehicle Branch and the Manitoba Public Insurance Corporation. The former can be eliminated on the grounds that it does not have a province-wide distribution of offices and agents to whom accident reports could be made. That leaves the M.P.I.C. which does have a fairly comprehensive network of claims adjustment offices located in Winnipeg, Brandon (Head Office), Dauphin, Flin Flon, Portage la Prairie, Selkirk, The Pas and Thompson, as well as claims adjusters travelling on circuit to the smaller centres.

We consulted with Mr. J.O. Dutton, the General Manager of M.P.I.C. and it was his opinion that transferring the reporting of accidents to the Corporation would have a detrimental effect on the enforcement of traffic laws. He commented "I am of the firm view that shifting the area of reporting of traffic accidents from the police authorities to any other agency would necessarily minimize the enforcement of laws affecting traffic accidents. If my conclusions as to this are correct (and I think this is a crucial issue in determining where the responsibility of receiving accident reports should lie) then it is my firm conviction that to minimize the enforcement of law in this area would have an adverse effect on the proper administration of this Corporation's activities". The enforcement of traffic laws is indeed an important consideration, but we do not think that it would necessarily suffer any setback through a change in the agency receiving accident reports. The contents of such reports are, as already pointed out, confidential, and inadmissible as evidence at any subsequent prosecution, so that if the police intend to lay charges they will have either to obtain evidence by way of investigation, or produce an admissible statement from the accused. There is no reason why the compulsory accident reports submitted to Autopac could not be forwarded to the police on a daily basis for their perusal and possible investigation. This would save the police from

having to keep officers on hand to receive accident reports as they come in during the day, but would not hamper them from making such investigations as they deem necessary. It would also save the public from having to report to both the police and M.P.I.C. Our recommendation therefore is that the compulsory reporting of accidents involving **only** property damage (in excess of $200.00) be made to M.P.I.C., but that accidents involving personal injury or death continue to be reported to the police. We would also suggest that since M.P.I.C. claims offices are located only in the major centres and the travelling claims adjusters may only spend a day at the most in the smaller communities, the present time limit of twenty-four hours contained in section 149(4) be changed in regard to accidents involving only property damage, to "immediately following the accident, and in any case not later than seven days after the occurrence of the accident".*

(b) Reports by Garage Owners

Section 150 (1).

(c) Access to Reports

Section 151 (1) (2) (3) (4).

In view of our recommendations in regard to the reporting of accidents these sections would require modification.

(d) Supplemental Reports

Sections 152 (1) (2); 222 (1).

Financial Responsibility

(a) Proof of Financial Responsibility

(1) Residents

Sections 153 (1) (2 (a) (b)) (3) (4) (5) (6); 154 (1); 158 (1) (2) (3) (4); 154 (2) (3) (4).

(2) Non-residents

Sections 153 (2 (c)); 154 (5) (6) (7) (8) (9) (10) (11).

(b) Suspension Pending Proof

(1) In general

Section 244 (1) (2) (3) (4) (5) (6).

We recommend that in regard to s. 244(5) the six month period for maintaining proof of financial responsibility be extended to one year so that it will accord with the limitation period for civil suit in relation to motor vehicle accidents.

(2) Non-residents

Section 159 (3).

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*The Chairman considers that this provision should be expressed: "as soon as possible after the accident and in any case not later than . . . " .

(c) Deposit of Money or Security for Money

Sections 155; 156; 157 (1) (2) (3) (4) (5) (6).

(d) Suspension for Failure to Satisfy Judgment

(1) Residents

Section 243 (1) (2) (3) (4) (5) (6) (7).

(2) Non-residents

Section 159 (1).

PART III – OPERATION OF BICYCLES AND PLAY VEHICLES

These sections form a natural division of their own, a fact which is recognized in the present statute, and which we think should continue to be recognized.

QUALIFICATION OF BICYCLES

(a) Identification Marks

Section 142 (1) (2) (3) (4) (5) (6) (7) (8) (9) (10).

(b) Equipment

Sections 140 (1); 33 (9) (where relevant); 140 (2) (3); 141 (1) (2) (3).

The relevant part of section 33(9) has been extracted as follows:

> The reflectors required under clause (b) of subsection (1) *[of section 140]* shall be of a type approved by the traffic board and shall be not less than one and one half inches in diameter.

It is recommended that subsections (2) and (3) of section 141 be repealed since they are virtually carbon copies of subsections (1) and (2) of section 60. *[See Part VI, Division A, Vehicles, (a) (1) (ii)]*.

USE OF BICYCLES AND PLAY VEHICLES

Sections 136 (1) (2) (3) (4); 138 (1) (2) (3); 139; 141 (4).

PART IV – PEDESTRIANS

Sections 84 (2); 131 (1) (2); 130 (2); 132 (4); 129; 134 (1) (2); 70.

Included here are sections which pertain to the **duties** of pedestrians walking along or across highways. The responsibilities of drivers of motor vehicles towards pedestrians have already been covered under Division (D), "Rules for the Safe Driving of Vehicles", part (q).

PART V – GENERAL PROHIBITIONS

This Part is a miscellaneous grab-bag of provisions which could not properly be included under any of the other main headings. They do,

however, share the common feature of being prohibitions, each beginning with those three fateful words "No person shall . . .".

USE AND ABUSE OF REGISTRATION CARDS, LICENCES, ETC.

Sections 162 (1); 206; 210 (1); 163 (2) (1); 163.1 (1); 201 (1) (a) (b) (c).

MISREPRESENTATION OF MODEL YEAR

Section 163.1 (1).

DRIVING MOTOR VEHICLES OWNED BY ANOTHER

Section 184 (2) (1).

PERMITTING OTHERS TO DRIVE VEHICLE

Sections 183 (1) (2); 201 (1) (d) (e) (f).

LIQUOR IN VEHICLE

Section 191 (2).

FALSE STATEMENTS

Section 200 (1).

TAMPERING WITH MOTOR VEHICLE

Section 188.

REMOVAL OF TRAFFIC TICKETS, ETC.

Section 209.

DRUNKEN DRIVING OF VEHICLES OTHER THAN MOTOR VEHICLES

Section 202 (1).

UNNECESSARY NOISE OR SMOKE

Section 169.

INTERFERENCE WITH TRAFFIC CONTROL DEVICES

Sections 189 (1); 78 (1) (2) (3); 79.

OBSTRUCTIONS ON HIGHWAYS

Sections 194 (1) (2) (3) (4); 195 (1) (2) (3).

DAMAGE TO HIGHWAYS

Section 180 (2).

PART VI – THE OPERATION, SALE, REPAIR AND WRECKING OF VEHICLES FOR COMMERCIAL GAIN

This Part regulates the commercial use of vehicles and highways, and many would argue that it should be removed from "*The Highway Traffic Act*". In keeping, however, with our general desire not to add further to the plethora of statutes already weighing upon Manitobans, and our conviction

that a single code composed of properly and logically arranged divisions is just as understandable as several smaller statutes, we feel that it should stay in *"The Highway Traffic Act"* as a related but clearly defined part. This would also have the virtue of familiarity since those involved are already attuned to reaching for this statute when in need of direction.

THE OPERATION OF COMMERCIAL TRANSPORT

(a) Licensing and Certification

(1) Residents

(i) Where required

-- licence to operate commercial trucks

Section 291 (1) (6) (7) (5).

-- certificate to operate P.S.V.'s

Sections 258 (1) (2); 261 (1) (2); 271.

-- permit to lease vehicles

Section 258.1 (1) (2) (3) (4).

-- permit to use dealers vehicle

Section 291 (10).

(ii) Application to the board

-- commercial truck licence

Section 291 (2).

-- P.S.V. certificate

Section 263 (1).

-- lessee's permit

Section 258.1 (5) (6).

-- fees and insurance premiums

Sections 274 (1); 256 (2.1); 291 (3).

(iii) Issue of Licences and Certificates

-- commercial truck licence

Section 291 (4) (where relevant).

-- P.S.V. certificates

Sections 263 (2); 262 (1) (2) (3) (4) (5) (6) (7).

-- lessee's permit

There is no section specifically covering the issue of these permits, although section 258.1 (6) dealing with the Board's discretion to deny a permit should probably be included here.

– quarterly authority

Section 256 (1.1) (1.2) (1.3) (1.4) (1.5) (1.6) (1.7).

– single trip certificate

Section 255 (3).

(iv) Renewal of certificate

Section 267 (1) (2).

(v) Transfer of certificate

Section 266 (1) (2) (3).

(vi) Termination of certificate where service abandoned

Section 272 (1) (2).

(2) Non-Residents

(i) Issue of certificates, etc.

Section 261 (3) (4) (5).

(ii) Single trip certificates

Section 255 (2).

(b) Insurance

(1) Residents

Sections 268 (1) (1.1) (2); 269.

(2) Non-residents

Section 268 (3) (4).

(c) Annual Statement

Section 274 (2).

(d) Operation of Public Service Vehicles

(1) Condition of vehicle

Section 277.

(2) Tolls and charges

(i) Authorized tariff

Sections 264 (1) (2) (3); 265 (1) (2) (3).

(ii) Action for unpaid charges

Section 288 (1) (2) (3) (4).

(3) Bills of lading

Section 286 (1) (2).

(4) Carriage of passengers

(i) Solicitation

Section 285 (1) (2).

(ii) Obligation to carry

Section 280.

THE MANUFACTURE, SALE AND WRECKING OF MOTOR VEHICLES AND MOTOR VEHICLE COMPONENTS

(a) Permits, Returns and Reports

(1) Permits

Section 18 (1) (2) (3) (4) (5) (6) (8) (9).

(2) Returns and Reports

Section 20 (1) (2) (3) (4) (5) (6) (7).

(b) Sale of Motor Vehicles and Component Parts

(1) Safety Standards

Sections 186.1 (1) (2) (3) (4); 49 (2); 47 (2); 46.1 (2); 186.2 (1) (2) (3).

(2) Dealers Certificate of Condition

Section 19 (1) (2) (3) (7) (11).

(3) Sale of Wrecked Vehicles

Section 19 (8).

THE RENTAL OF MOTOR VEHICLES

Sections 21; 22 (1) (2) (3).

If a separate Taxicab Act is to be maintained in addition to "*The Highway Traffic Act*" then we recommend that section 22(1)(2)(3) which deals with municipal regulation of taxicabs and liveries be transferred to "*The Taxicab Act*" where it properly belongs.

THE OPERATION OF DRIVING SCHOOLS

Section 32 (1) (2) (3).

THE SALE OF SECOND-HAND BICYCLES

Section 143 (1) (2) (3).

PART VII – ENFORCEMENT PROVISIONS

No law is effective unless it can be adequately enforced, and in the case of a statute as complex and all-embracing as "*The Highway Traffic Act*", the problem of enforcement can become truly formidable. The range and

diversity of the subjects covered is awesome, and nowhere is this reflected more than in the offence and penalty sections, which as presently constructed, are an attempt to tailor justice to the same awesome level of particularity as the subject matter. The unique gravity of each particular direction is not, however, the only problem to be perceived in regard to penalties. Deterrence is a major headache and especially so in view of the fact that for most of the offences, a breach is not significant enough to warrant the current ultimate in penalties, a prison sentence. Thus "*The Highway Traffic Act*" is well larded with fines ranging from two dollars to five thousand dollars and where these are deemed insufficient as deterrents, there is a liberal sprinkling of automatic and discretionary licence and registration suspensions, disqualifications and vehicle impoundments. We will have a great deal more to say about the effectiveness and necessity of such a wide range of penalties as we progress through the different parts of this division.

Penalties are not the only enforcement provisions, though, to mirror the diversity of the Act. Long before the stage is reached where an accused may be sentenced, there is the problem of discovering whether or not an offence has actually occurred, and if it has, the ensuing problems of how to charge the accused, how to describe the offence, how to prove its occurrence, and finally what sentence to impose, whether a sentence should be imposed at all, and whether the convicted person's driving privileges should be suspended or disqualified, and if so, how to make sure the licence or registration or plates will be impounded, and the Registrar, and if necessary, other jurisdictions, notified of the suspension or disqualification. Each of these different areas imports its own complexity and detail, and unfortunately a great deal of it is unavoidable if the system is to function with any semblance of efficiency and despatch, and if it is to effect substantial justice. Complexity of subject matter, however, is no excuse for the present jumbled arrangement of sections, which takes no mean intelligence and endeavour to master. The rearrangement that follows is an attempt to reintroduce a semblance of order and progression to this vital area of the Act.

DIVISION (A) – INSPECTION AND DETENTION

The powers of peace officers and others to arrest and examine drivers, and to weigh, inspect, remove and detain vehicles are gathered together in this Division as a convenient code for the use of those charged with enforcement of the Act.

Arrest and Examination of Drivers and Others

(a) Arrest without warrant

Sections 215 (1) (2); 216 (2).

(b) Examination of Drivers

(1) Where medical certificate required

Section 26 (1).

(2) Reports by doctors and optometrists

Section 150.1 (1) (2) (3) (4) (5) (6).

By this section doctors and optometrists are put under a duty to report the name, address and clinical condition of any person sixteen years of age or over, attending upon them as a patient, who, in their opinion, is suffering from a condition that may make it dangerous for that person to operate a motor vehicle. While we can appreciate the necessity of identifying people who suffer from ailments or disabilities that might cause serious accidents, we question whether the above approach is the most desirable or suitable answer to the problem. Not only are doctors and optometrists placed in the difficult position of having to inform on their patients, but they are, in effect, made an extension of the Registrar's driver testing programme, albeit an unpaid extension. Considering that it is only those people who actually attend on a doctor for examination or treatment that are likely to be reported, the effect of the section is very haphazard indeed. If there is to be a mandatory onus on anyone to disclose potentially dangerous diseases or disabilities, it should be on the person seeking to obtain or renew a driver's licence, not on his or her physician. Such an onus is already provided in section 25(5) which requires an applicant for a licence to make a declaration as to whether or not his ability to drive might be affected by disease or disability. In addition section 26(1) allows the Registrar to require any driver or applicant for a driver's licence to produce a certificate from a duly qualified medical practitioner as to his physical condition, etc. If we are really serious about catching drivers who are potentially impaired by physical or mental infirmity, then a medical examination should be a required part of every licence application, and it should be repeated at regular intervals as such licences come up for renewal. Such a system is already partially in force with the new classes of drivers licences which came into effect on April 1st, 1975. To impose a statutory duty on doctors and optometrists to report their patient's afflictions is not the answer, and we accordingly recommend that the mandatory onus be removed, leaving the protection from suit to cover those doctors who feel it their responsibility to report disabled patients. This, in effect, returns s. 150.1 to the form of its original enactment in 1970.

Vehicles

(a) Inspection of Vehicles

(1) In general

(i) By registrar

Section 299 (1) (3) (4) (5) (7) (8).

(ii) By peace officer

Sections 60 (1) (2); 61 (1) (2).

(2) Public Service and commercial vehicles

Section 270 (2) (3) (4).

(b) **Weighing of Vehicles**

(1) On order of traffic authority

Section 82 (5) (5.1) (6) (7).

(2) On order of peace officer

Section 67 (1) (6) (1.2) (1.4) (2) (3) (4) (5) (7).

(c) **Removal and Detention of Vehicles**

(1) In general

(i) Where unlawfully parked

Section 217 (1) (2) (3) (4).

(ii) Pending final disposition of prosecution

Section 216 (1) (3) (4) (5) (6) (7) (8).

This section gives a peace officer virtually carte blanche to detain any vehicle with which an offence has been, or is alleged to have been committed. To obtain the release of his vehicle, an owner must post security and produce a mechanic's certificate to the effect that the vehicle complies with the equipment provisions of the Act, and is safe and fit to be driven on the highway. We are informed by the City of Winnipeg Police Department, Traffic Division, that this section is used quite rarely and principally in the following situations:

(a) where a hit and run accident has been reported and the police discover a vehicle, either abandoned or in its owner's possession, they may detain it until either the driver or the owner is located, or until the owner can determine who the driver was;

(b) where an equipment offence is suspected but cannot be immediately established the vehicle may be detained for inspection by the police department's mechanics;

(c) in the event of a fatal accident the vehicle may be detained for a mechanical inspection to determine its roadworthiness.

The owner is liable for the costs of towing and storage which are a lien on the vehicle enforceable under "*The Garagekeepers Act*". This is so, even if the alleged charges prove to be unfounded. There is also no provision made for the protection or removal of any personal property which may be left in the detained vehicle.

The section certainly appears to be very sweeping in the powers which it confers on police officers who may detain a vehicle for the alleged commission of any offence under "*The Highway Traffic Act*", and who may then examine it carefully for other breaches of, for instance, the equipment provisions, etc. In addition the section is worded such that the vehicle may be detained "until the final disposition of any prosecution" unless the owner posts security, etc., i.e. it could be used almost as a form of bail to persuade alleged offenders to show up for the hearing of the charges against them.

As far as detaining the vehicle for evidence is concerned the police already have adequate authority to detain a vehicle with which they believe an offence has been committed, since *"The Summary Convictions Act"* provides that sections 443, 444 and 446 of the *Criminal Code*, which deal with search warrants and the seizure of evidence, also apply in respect to provincial offences.

Section 443 provides for the issue of a search warrant authorizing the seizure of anything that may have been used or is on reasonable grounds suspected of being intended for use, in committing an offence and anything that may afford evidence with respect to the commission of an offence. The warrant must set out specifically what is to be searched for, and only those things enumerated may be seized. If the things outlined in the warrant are located and seized they must be brought before a justice, who shall, unless the prosecutor otherwise agrees, detain them or order that they be detained, taking reasonable care to ensure that they are properly preserved, etc. The maximum period of detention is three months, although this may be extended by court order or the institution of proceedings for which the things may be required.

Although no specific cases of abuse have been brought to our attention, section 216 does have a potential for abuse which ought not to pass unheeded. Our recommendation is that the police be required, within two juridical days of seizing a vehicle, to go before a judge or justice to obtain leave to continue the detention beyond the two juridical days. As under the *Bail Reform Act* the onus should be on the prosecutor to establish sufficient grounds for depriving the accused of the use of his vehicle, or for requiring him to post security. A clause should also be added to the effect that the police must notify an owner that his vehicle has been seized.

We recommend, in addition, that the payment of towing and storage charges should be made automatically by the Province, with the owner reimbursing the Province if found guilty of any alleged offences. Personal property should be returned on request except where needed for investigation in which case it should be subject to the same two juridical days requirement as the automobile.

(iii) Breach of special vehicle permit conditions

Section 83 (4) (5).

(2) Public Service and Commercial Vehicles

(i) Upon suspension of C.T. licence

Section 291 (9).

(ii) Upon suspension of P.S.V. certificate

Section 273 (6).

Commercial Premises and Records

(a) Dealers and Wreckers

Section 18 (7).

(b) **Repairers**

Section 150 (7).

(c) **P.S.V. and C.T. Operators**

Section 270 (1).

DIVISION (B) – OFFENCES AND PENALTIES

One of the major areas of complication and repetition in the present Act, is the proliferation of penalty sections specifying a wide variety of fines, suspensions, impoundments and jail terms. We are of the firm opinion that a great deal of this complication is entirely unnecessary and should be eliminated, by (a) removing minimum fines, (b) abolishing impoundments, (c) abolishing discretionary court suspensions and (d) reducing most of the fine penalties to three standard categories delineated by maximums only. Before we tackle these suggestions in detail, however, there is one other possibility which would be better disposed of at this point in the discussion, and that is the elimination of fines altogether and the introduction of a point system such as is used in British Columbia. Mr. R.A. Hadfield, the Superintendent of Motor Vehicles for that province, kindly provided us with a description of their point system and the reasons for its introduction. Very briefly the system provides that for the commission of offences other than non-moving offences and very serious offences (such as dangerous driving or criminal negligence), the offender is provided with a Traffic Violation Report and instead of having to pay a fine, has points assessed against his licence much as such points are assessed under our own driver control programme. The alleged violation can be disputed within one week of the issue of the Violation Report, upon payment of a deposit of ten dollars. The matter is then heard before a Provincial Court judge with all the normal rules of evidence, etc. applying, the only difference being that no fine is assessed if the violation is established. The judge simply forwards the Traffic Violation Report, with his findings noted thereon, to the Superintendent of Motor Vehicles, where it is added to the driving record of the individual involved. As with other point systems, including our own, the accumulation of a certain number of points can result in licence suspension or limited driving privileges, or involvement in a Defensive Driving course, etc.

Mr. Hadfield reports that the "no-fine" law was developed for two purposes: "One was to remove from the usual court process the handling of the vast number of driving offences, offence citations which were using a great deal of productive court time. In the vast majority of incidences, persons were pleading guilty and the courts were assessing fines and other sanctions.

The second purpose was to shift the emphasis on driver control completely into the area of the administrative process by means of licence suspension or other ways. It had long been found that licence suspension on the basis of court convictions was considerably hampered by the attitude persons developed after they had paid court fines. Drivers felt that they had paid their penalty to court and any other action was what might be called double jeopardy."

The number of highway traffic related court appearances has, indeed, dropped dramatically since the introduction of the point system in 1968, but this would appear to be the system's only major accomplishment. In April, 1973, the British Columbia Automobile Insurance Board issued a report entitled "Effectiveness of No-Fine System", which concluded that (1) there were no measurable changes in accident rates that could be attributed to the no-fine system, and (2) there was an increase in violation rates which was attributable to the system. Among the reasons postulated for the latter finding was the minimized deterrent effect of the Traffic Violation Report, and the fact that many alleged violations were not contested because of drivers feeling that it was not worth their while to go to court. Under the fine system, such alleged violations would in all likelihood have been contested. The authors of the report comment that "... the N.F.S. is a rather painless system for the infrequent offender. Under the earlier system even a first conviction would have resulted in a fine. Under the N.F.S. the first few offences, unless they are severe, are in a sense 'free'. If a driver was previously deterred from violating traffic laws by the prospect of a fine, he may now be violating them more frequently. There seems to be a general consensus among enforcement personnel that something like this is occurring, but we have no data which will measure the extent of the problem." There is also the prospect that peace officers could be more inclined to give out Traffic Violation Reports in greater numbers than informations and summonses were previously issued because of the relatively painless effect of such Reports on the driver, and because of the lower likelihood of their being contested. Because of the disturbing possibilities raised by the Insurance Board's report, and the lack of any real evidence of improvement in British Columbia's accident and violation statistics, we do not think that the point system has as yet proved itself to be an effective replacement for the present system of both fines and demerit points. We recommend against its adoption at this time.

(a) Minimum Fines

Among the policy reasons advanced as justification for minimum fines are the assertions that they act as a deterrent to would-be offenders, that they serve to delineate the relative degrees of turpitude between different offences, and that they are a guideline to justices of the peace and Provincial judges as to how severely the Legislature wishes the perpetrators of particular offences to be penalized. The latter reason is probably indicative of some distrust of the judicial personnel assigned to hear highway traffic cases, that they are not sufficiently astute or stern to do justice with the firmness deemed necessary by the Legislature. There might have been ground to such fears in the days when there were many untrained lay justices of the peace, but with the calibre of the men and women being appointed today, it seems inappropriate that the public and its representatives should be lacking in confidence in their judicial appointees. We are of the opinion that there is enough guidance now being provided through the Annual Provincial Judges Conference to ensure that penalties will be imposed with the requisite severity and uniformity, and that consequently there is little reason for the additional safeguard of statutorily prescribed minimum fines.

As for the argument that minimum fines act as a deterrent, there is, to the best of our knowledge, no convincing evidence that this is so.

The remaining contention is that minimum fines serve as an indicator of the seriousness of particular offences and with this we have no quarrel. The point to be made, however, is that differing maximums could serve exactly the same purpose, just as they do now in the *Criminal Code* of Canada, and without the serious drawbacks associated with minimums. We also question whether the many offences of similar or relatively similar gravity in *"The Highway Traffic Act"* should be given the kind of detailed attention they presently receive in this regard. Surely a simplified range of two or three standard penalties would achieve all that is required, without the confusion and complication of the present variety of minimums.

Apart from indicating different degrees of turpitude, minimum fines really serve little purpose, indeed there are some noteable side-effects that do much to reduce their usefulness and desirability. For one thing they give *"The Highway Traffic Act"* the appearance of a revenue or taxation statute, a fact which does nothing to encourage public confidence in and respect for the law, the police and the courts. This was one of the reasons which prompted British Columbia to move away from fines altogether and establish a point system, which ironically enough seems, itself, to be generating even greater disrespect for the law. Of more serious import than the appearance of a tax in disguise, however, is the fact that minimum fines remove the judge's discretion in sentencing and leave him with no option but to levy a fine where the accused is found to have technically committed the prohibited act. Since guilty intent *(mens rea)* is not an element in provincial summary conviction offences the mere commission of the prohibited act *(actus reus)* is sufficient to render the accused guilty. In an effort to ameliorate the harsher aspects of this, section 230 was introduced into *"The Highway Traffic Act"* allowing the judge to either acquit or reprimand the accused if he is "satisfied from the evidence that the offence charged occurred through accident or under circumstances not wholly attributable to the fault of the accused . . . ". The addition of the word "wholly" in 1971, considerably broadened the effect of this section, and although it still does not give the judge a complete discretion, as the accused must come within the given wording, it does, to some extent, remove the rationale behind minimum fines. However, unless the accused specifically mentions that he wishes to rely on the provisions of section 230, there is no guarantee that the judge will refer to the section himself. This becomes particularly critical when one considers that a great many of those accused of an offence under *"The Highway Traffic Act"* are not represented by counsel when they appear in court, and unless they are remarkably astute laymen, will never have heard of section 230, let alone understand the effect of its provisions. And finally, it should be remarked that despite section 230, minimum fines can still involve unequal punishment in that a minimum of fifty dollars to one man may be the equivalent, in terms of the economic sanction involved, of a five hundred dollar fine to another man. Without discretion, a judge is severely restricted in the degree to which he can take into account the economic circumstances of those brought before him.

For the reasons given above we believe that the interests of justice, both perceived and actual, would be better served by the removal of minimum fines, altogether, from *"The Highway Traffic Act"*, and we accordingly so recommend.

(b) Impoundment

Sections 237.1 (1) (2) (3); 201 (7) (8) (9) (10) (11) (12) (13).

These sections provide for the impoundment of vehicles used in the offences of driving while suspended or driving while disqualified from holding a licence or registering a motor vehicle or when the issue of a licence to the individual involved is prohibited. Impoundment is also used against an owner who permits an unqualified, disqualified or suspended driver to operate his vehicle. While there is no question that this could in certain circumstances be a very effective penalty, in many cases it accomplishes little and could indeed work great injustice if it involves, for instance, a commercial vehicle or a vehicle used by a convicted person's spouse to travel to and from work, etc. Only in situations involving vehicles owned and driven exclusively by one individual would it operate as an effective penalty without causing harm to others.

Impoundment also creates a number of administrative problems with respect to towing over great distances, and storage, where the vehicle involved is of questionable value. There would be little point in removing a two hundred dollar jalopy from a farm yard in rural Manitoba and towing it to a garage some considerable distance away, where the owner could then conveniently forget about it.

The offences to which impoundment applies are serious offences for which an effective deterrent has not yet been found. Some jurisdictions have reported that approximately fifty and perhaps even as much as seventy percent of suspended drivers continue to operate motor vehicles after their licences have been suspended. The Registrar of Motor Vehicles, Mr. Peter Dygala, informs us that an attempt was made in Manitoba to ascertain the numbers involved, and while insufficient data was forthcoming to make any accurate estimates, the information that was obtained tended to confirm the findings from elsewhere of approximately forty to fifty percent of suspended drivers continuing to drive despite the suspension of their licences. It seems apparent that licence or registration suspension, as presently enforced, is an exercise of limited utility, and that the use of impoundment as an additional backup penalty does little to rescue its effectiveness. Distasteful as it may be the only way to reach people who insist on ignoring the removal of their driving privileges, is either through stiff fines or jail sentences, and of the two, only the latter has any real claim to equality of application. Our recommendation is that impoundment be abolished because of the haphazard and potentially unfair nature of its operation, and that serious consideration be given to the imposition of jail sentences for persons convicted of driving while suspended or disqualified. We recommend a mandatory fourteen days in jail without the option of paying a fine, but subject to a specific finding by the judge of compelling circumstances that would render such a sentence inappropriate and unfair.

(c) Discretionary Court Suspensions

Sections 83 (8); 130 (4); 132 (6); 149 (10); 162 (2); 163 (3); 166 (2); 173 (3); 174 (2); 191 (3); 200 (2); 201 (5); 212 (1) (3); 213 (1); 237 (1); 240; 291 (11).

Discretionary court suspensions of either drivers licence or registration or both, and disqualification of drivers from applying for either a licence or registration or both, are imposed as part of the penalty for a specific offence. The Registrar of Motor Vehicles informs us that in 1974 there were 448 court suspensions, an increase from the previous year in which 393 were recorded. These are not significantly high figures, however, when compared with the total number of drivers suspended during 1974, a figure in excess of 25,000. Our concern with discretionary judicial suspensions is that they are not well understood by the public who normally regard suspensions as a matter for the Registrar of Motor Vehicles.

Certainly the vast majority of suspensions are imposed under his aegis, and some may indeed have occurred in cases where the court, although it had the discretion to suspend, chose not to do so. This is not to imply that the Registrar is exercising his powers arbitrarily and in conflict with the court, but rather that in some cases, a specific offence, while not warranting suspension at the court level, may render the accumulated weight of a driver's record such that the Registrar deems it necessary to suspend. Unfortunately such overlapping jurisdiction is not conducive to public understanding or sympathy and bears an uncanny resemblance to double jeopardy. We think that suspensions, if adequately backed with stiff penalties for subsequent violations, should be, and should be regarded by the driving public to be, the ultimate deterrent, the one penalty that most drivers would sincerely wish to avoid. Suspension, if it is to be effective, would be much better utilized as the end penalty for a succession of driving offences, ie. as a weapon against persistently bad drivers whose records show a heavy accumulation of demerit points, than as part of the penalty for a specific offence, without regard to the convicted person's driving record.

We recommend, therefore, that discretionary court suspensions and disqualifications be eliminated, and relegated entirely to the Registrar's driver control programme.*

In order, however, that there should be no public misunderstanding of the dual nature of the jurisdiction of the courts and the Registrar, we recommend that there be a statutory direction to the judge to warn a convicted offender. The warning should be to the effect that the Registrar may, in addition to any fine or reprimand imposed by the court, and on a review of the convicted person's driving record and other particulars, suspend that person's driving and registration privileges, or disqualify the offender from applying for such privileges.

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*One Commissioner, Mrs. Bowman, dissents from this recommendation. She considers that discretionary court suspensions constitute a salutary and flexible option in dealing with an offender, which promote public safety.

Before leaving this subject and as a postscript to the above recommendations, we wish to make some specific observations in regard to section 237, which if not eliminated in line with the aforesaid recommendations, should be done away with on other and more intrinsic grounds. This section provides for disqualification in the judge's discretion of a person found guilty of an offence against "*The Highway Traffic Act*" or sections 233, 234, 235, 238, 239 or 295 of the *Criminal Code*, who is shown by the evidence given at the hearing, or subsequently before sentence is passed, to have been, at the time the offence was committed, driving a motor vehicle without being duly licensed or permitted. It is no doubt salutary from the point of view of public opinion that a person clearly guilty of driving without a licence or permit should be suitably punished, and that justice should be seen to triumph in such an effective and speedy manner, but for all of its summary despatch, this procedure is lacking in due process. It is a time-honoured and worthy principle of our law that a person should not suffer a penalty in legal proceedings which are not directed to the exaction of such a penalty. If a person is to be punished for an offence then he should be properly charged with that offence, tried, and only if found guilty of that specific offence, penalized in the manner prescribed by law. To allow otherwise is to dilute our customarily high standards of justice with the meaner ends of efficiency of despatch and uninformed public approval.

(d) Standard Categories of Fines

Including minimum fines the present "*Highway Traffic Act*" contains the following range of fine penalties (excluding weight and speed fines):

$ 0	— $ 100	ss.	213 (1) (general penalty section)
0	— 1000	ss.	150 (2)
0	— 2000	ss.	290
20	— 100	ss.	130 (4); 132 (6)
20	— 200	ss.	212 (1)
25	— 50	ss.	202 (2) (a); 291 (11)
25	— 100	ss.	19 (10); 66 (2) (a); 67 (8) (a); 82 (2); 83 (8) (a); 166 (2) (a); 166.1 (2); 263 (8) (a); 289
25	— 500	ss.	149 (10)
50	— 100	ss.	163 (3); 202 (2) (b); 291 (11)
50	— 200	ss.	83 (8) (b); 166 (2) (b); 173 (3); 189 (3); 263 (8) (b)
50	— 300	ss.	32 (4); 191 (3) (a); 210 (2)
50	— 500	ss.	162 (2); 200 (2); 201 (5) (a)
75	— 200	ss.	202 (2) (c)
75	— 500	ss.	18 (10); 19 (10)
100	— 200	ss.	66 (2) (b); 67 (8) (b); 291 (11)
100	— 500	ss.	163.1(2); 166 (2) (c); 174 (2); 186.2 (4); 191 (3) (b); 201.1 (9); 263 (8) (c); 289
200	— 500	ss.	19 (10); 66 (2) (c); 67 (8) (c); 83 (8) (c)
200	— 1000	ss.	46.1 (3) (a); 186.1 (5) (a); 210 (3)
1000	— 5000	ss.	46.1 (3) (b); 186.1 (5) (b)

If we remove the minimum fines, and exclude the $2,000 and $5,000 penalties which apply solely to commercial or corporate offenders, the following range of maximums presently provided in the Act will be obtained:

$50 — 100 — 200 — 300 — 500 — 1000

We have already recommended the elimination of minimum fines and we now recommend that the range of maximums be reduced to three standard penalties in the amounts of $300, $600 and $1,000, with full judicial discretion to levy any amount from zero to the maximum depending on the circumstances.* As pointed out earlier, there is a considerable degree of coordination effected by the Provincial Judges Conference, in establishing recommended levels for the average case, so that inordinately wide deviations between different judges, in the amounts of fines levied, are not very likely. Since removal of discretionary court suspensions is recommended in addition to removal of minimum fines, it would be possible to reduce virtually all of the penalty sections listed in the table above, to three standard penalty sections embodying the three suggested maximums which could then be contained in the Offences and Penalties Division of the reorganized Act with either a list included of the sections to which they apply (such as is presently done in section 212(1)) or a simple direction underneath the sections involved to "See Penalty 'A' or 'B"' etc., or both, the latter probably being the most convenient for users of the Act.

We also recommend that in cases of second and subsequent convictions for offences under the same section, the maximum fine be increased for each recurrence until the upper limit of $1,000 is reached. This would not necessarily mean a higher fine for a repeat offender, but rather that the judge would have the discretion to levy such a fine up to the maximum provided for the next highest category of fine. Once the upper limit was reached, it would remain in effect, subject to the present section 228 which provides that the words "first", "second", "third", or "subsequent" relate only to offences committed within the same period of thirty-six months. It should be noted that we are recommending the application of the escalating maximum to all offences in the first two of the three proposed categories, and not just those to which the present escalator provisions apply.

Standard Offences and Penalties

Under this heading would be placed the three standard fine penalties recommended above.

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*One Commissioner, Mr. Werier, would go further. He would have a specific direction to the judges included in the statute, to the effect that they must always take into consideration the economic circumstances of those whom they convict in assessing the penalty to be imposed for disobeying the statute.

Automatic Suspension for Certain Offences

(a) Residents

Sections 238 (1) (2) (3); 239.

We recommend that section 238(1) be altered to eliminate the possibility of life-time suspension of driving privileges by providing that third and subsequent offences bear suspensions for five years and that after a period of time (ten years) from a previous conviction as mentioned in section 238, a subsequent conviction would be considered as a first offence for licence suspension purposes. The Commission considers that a life-time suspension, despite the opportunity for appeal to the Licence Suspension Appeal Board every three years creates such despair that it is in effect a life-time temptation to breach the law. It is considered especially so since the chances are that the "qualifications" to be disqualified for life might all be earned early in life, in which case, in terms of modern transportation, communication and society, the disqualified offender has very weak prospects indeed. It is felt that the law ought not to be so unrealistic and harsh as to make desperados of young people in relation to the driving of vehicles. It is for this purpose that we recommend that third and subsequent offences import five year suspensions, and that unless the offender can fill in ten years without a conviction, he will continue to be liable to the five year suspension periods; if, however, he can get over that period of ten years without conviction, then if in later life he is convicted of one of the specified offences, it will be treated as a first offence in regard to licence suspension.

(b) Non-residents

Section 159 (2).

Offences in Parking Lots

Section 211 (1) (2) (3).

Benefit of Fines

Section 225.

DIVISION (C) – SUSPENSION AND CANCELLATION FOR CAUSE

With this Division it will be possible for drivers and others to see at a glance the offences and causes for which they may lose their privileges under the Act. The only suspensions not included are the automatic suspensions which are placed in the Offences and Penalties Division because they are part of the punishment specified for conviction of certain serious offences, and the suspensions which relate to accidents and the proof of financial responsibility, which, it was felt, were better kept in the Accidents Division of Part I so that there should be a complete code in regard to that particular subject.

By Registrar of Resident's Privileges

(a) Drivers' Licence and Registration

(1) In general

Section 246 (1) (2).

(2) Conviction for certain offences

Sections 235 (2); 23 (13).

If section 235(2) is retained, it will be necessary to alter the wording which is presently to the effect that the section applies to convictions for "offences for which a motor vehicle may be impounded under this Act". Since impoundments are recommended for abolition, the specific offences would have to be spelled out by section number. A better solution would be simply to remove this section and section 23(13) altogether, and leave such cancellations to the Registrar's discretion under section 246 above. We recommend that this be done.

(3) Non-payment of fees

Section 242.1 (1) (2).

(4) Failure to pass examination

Section 29 (6) (8) (where relevant).

The relevant parts of these two subsections have been redrafted as follows:

> (1) Where any person fails to pass the examination required by the registrar under subsection (6) of section 29, the registrar shall cancel the licence issued to the person or refuse to renew the licence.
>
> (2) Where under subsection (8) of section 29, a person is required by the registrar to attend and successfully complete a defensive driving course and the authority administering the defensive driving course will not issue a certificate stating that the person has attended and successfully completed the defensive driving course, the registrar shall cancel the driver's licence of the person.

(5) Failure to produce medical certificate

Section 26 (2) (3) (4) (5).

(6) Failure to present motor vehicle for inspection

Section 299 (2) (5.1).

(7) Unfit motor vehicle

Section 249 (1) (2).

(8) On request of parent or guardian

Sections 28; 161 (3).

(9) **Suspension of driving privileges elsewhere**

Section 160 (1).

(b) Permits of Dealers, Wreckers and Others

Sections 248 (1) (2); 299 (9).

By Minister of Non-residents' Privileges

Section 245 (1) (2) (3) (4).

By Traffic Board of Motor Carriers' Privileges

Sections 279 (1) (where relevant) 291 (8); 273 (1) (2); 260; 273 (3) (4) (5).

Section 279(1) is extracted as follows:

> The Traffic Board may, for cause, suspend the licence of the driver of a passenger-carrying motor bus for a period not exceeding one month, or, after notice to the driver and giving him an opportunity to be heard, may revoke the licence.

DIVISION (D) – PARTIES AND PROCEDURE

The first part of this Division, dealing with parties to offences and their prosecution in the courts, will be of interest primarily to judges, lawyers, policemen and those accused who prefer to defend themselves without the advice and cost of professional counsel. Included are the sections concerned with limitation periods, informations and summonses, proof by evidence from machines and official certificates, the process of sentencing, etc. The second part deals with the procedure to be followed in regard to licence and registration suspensions, beginning with notification of suspension and proceeding through in chronological order to appeals to the Licence Suspension Appeal Board and from there to the County Court. Again it is our hope that this consolidation of related provisions will make "*The Highway Traffic Act*" more accessible and understandable, not only to those who must use it in their daily occupations, but to those members of the public whose contact with the statute is perhaps less frequent but much more intimate.

Parties

Sections 204 (1) (2) (3); 37 (3).

As presently worded, section 204 provides that the owner of a motor vehicle may be found guilty of a violation of **any** provision of the Act or the regulations unless he can satisfy the court that the motor vehicle was in the possession of a person other than himself or his chauffeur without his consent. By subsection (2) none of the above in any way relieves the driver of the motor vehicle from liability to conviction. Consequently, it is possible for any owner who lends a vehicle to another to be convicted of any offence committed by the latter while operating the vehicle. Although the potential for abuse is very wide, in practice this section has rarely been used. Nevertheless such potential is quite sufficient to give more than enough food for thought.

The policy behind this section is the prosecution of owners who refuse to yield the names of persons who may have been driving their vehicles, and have been involved in, for example, hit and run accidents or parking offences. In such cases the police may have no way of identifying the driver other than through the testimony of the owner as to who he allowed the use of his vehicle. If the vehicle was taken without his consent then the owner is protected from prosecution. The danger is that an owner who reasonably allows another person to use his vehicle, and does not withhold that person's name from the police may still find himself charged with a traffic offence for which he is really in no way to blame, and for which he has no defence other than the saving provisions of section 230 which unless raised by the accused may not be applied.

We recommend that the defences available be expanded to include such things as taking due precaution to prevent the commission of an offence. One example of such a provision can be found in section 161(1) of the English *Factories Act* which reads as follows:

> A person charged with an offence under this Act shall be entitled, upon information duly laid by him and on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person whom he charges as the actual offender brought before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence has been proved, the first-mentioned person proves to the satisfaction of the court (a) that he has used all due diligence to enforce the execution of this Act . . . and (b) that the said other person has committed the offence in question without his consent, connivance or wilful default; that other person shall be summarily convicted of the offence and the first-mentioned person shall not be guilty of the offence. . . .

It is suggested that section 204(1) read, ". . . the owner of the motor vehicle may be charged with commission of the offence and, subject to subsection (2), if the judge or justice before whom the charge is tried is satisfied that the offence was committed, the owner is guilty of the offence and is liable, . . . " . Subsection (2) would be phrased in a manner similar to section 161(1) of the *Factories Act, supra.*

This provision in section 204 may permit a finding of vicarious guilt, just as section 144 permits vicarious liability. The legislative policy of both provisions seems clear: because the motor vehicle is a potentially dangerous machine, and because through careless and irresponsible operation it can inflict such grievous injury and damage, whoever owns a motor vehicle must be held responsible for its operation and, therefore, lends or gives possession of the vehicle at the risk of incurring liability and penal sanctions. So, if a negligent or irresponsible employee or borrower causes injury or damage, the owner cannot shrug off the responsibility. We concur with this social policy.

However, conviction for a penal offence seems to us a much more serious matter than vicarious civil liability. The risks importing civil liability

are taken into account, for example, in automobile insurance underwriting. Therefore, to diminish somewhat the potential harshness of the vicarious guilt provided in section 204, we conclude that, in the relevant circumstances, the law should provide as follows: the owner of a motor vehicle should be entitled to charge the operator/borrower, and the latter should be entitled to charge the sub-operator/borrower, and so on in turn, to the end that all those so charged be tried simultaneously. Where, however, a simultaneous trial cannot be held (ie. some accused is a juvenile and cannot be transferred to ordinary traffic court) then upon the owner satisfying the judge that he did not commit, consent to or connive at the offence, the owner may be acquitted. Such acquittal would not relieve the owner of civil liability.

As the Commission has often stated, we are not statutory drafters, but we can suggest some nearly-statutory expression of the above recommendations, for the guidance of Legislative Counsel, in the event that our recommendation be accepted.

> An owner of a motor vehicle charged with an offence under this Act other than an "equipment" offence shall be entitled, upon information duly laid by him and on giving to the prosecution reasonable (not less than 3 days?) notice in writing of his intention, to have another person whom he charges as the actual offender brought to trial before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence involving the owner's motor vehicle has been proved, the owner persuades the court (a) that he has used all due diligence in assisting the authorities to identify the person who committed the offence, and (b) that the offence was committed without the owner's consent, connivance or wilful default, the owner shall be found not guilty of the offence and the other person or persons may be summarily convicted of the offence.

Some explanation of the above should be given here. Perhaps for the purpose of this type of provision the other person should be accorded the same privilege as the owner to charge the person, if any, to whom possession of the vehicle was in turn yielded. Perhaps the expression about "wilful default" would, through judicial interpretation, bring the conviction of the owner who at a party or in a pub tosses the ignition key on the table and invites "anyone who wants to", to borrow the vehicle. The judiciary being the third branch of government, should be enabled to respond to social conditions in such a way.

Finally, the expression "other than an 'equipment' offence" appears in the recommendation. This provision would preserve the continued and expanded operation of section 37(3) of the present Act. Two reasons, among others, we assert for such an exception. First, the owner and the driver are easily, or much more easily, identified in an employer/employee relationship. Secondly we have heard of credible instances where the owner/employer operates faultily equipped vehicles, and it is worth the

driver/employee's job to protest about it or to refuse to drive the vehicle. The police know of this and, when it appears to be the case, they exercise their undoubted common-sense discretion and charge only the owner/employer, but not the driver/employee. We think that equipment maintenance is primarily and ultimately the owner's responsibility. We think that an owner/employer of the kind above described should not be entitled, in the described circumstances, to have his driver/employee prosecuted to conviction for equipment violations.

Procedure as to Prosecution for Offence

(a) Commencing Prosecution

(1) Jurisdiction of justice of the peace

Section 218.

(2) Limitation periods

Sections 219; 20 (8); 149 (7); 200 (4); 10 (9).

It is recommended that sections 20(8); 149(7); 200(4) and 10(9) be amalgamated into one section or subsection.

(3) Information and summons

Sections 221; 220 (1) (2).

(4) Description of certain offences

Section 226 (1) (2) (3).

(5) Place of offence

Section 222 (3).

(6) Consent payment of penalty

Section 224 (1) (2).

(b) Proof of Certain Facts

(1) By evidence from machines

(i) In general

Section 231.1

(ii) As to speed

Sections 93 (1); 231 (1) (3) (5).

(iii) As to accuracy of speedometers

Section 45 (2) (3) (4).

(iv) As to weight of vehicles

Sections 67 (1.1) (1.3); 68.

(2) By certificate

(i) As to convictions

Sections 233 (4); 235 (4).

(ii) As to suspensions

Section 238 (4).

(iii) As to accident reports

Section 222 (2).

(iv) As to registration

Section 231 (2).

(v) As to matters of record in Registrar's office

Section 296.

(c) Sentencing

Before proceeding with the topics listed under this heading, there are three preliminary matters to be discussed: (a) the imposition of costs; (b) the awarding of damages under sections 147 and 148; and (c) endorsements on certificates of conviction, where there has been an accident involved.

(a) Costs

The power to award costs to either informant or defendant is provided by section 744 or the *Criminal Code* which is incorporated by reference into "*The Summary Convictions Act*" under section 9(1) of the latter statute. Failure to pay a fine and costs can result in the defendant having to serve a term of imprisonment, and where costs but no fine are levied, failure to pay the costs can result in imprisonment for one month. The only costs that may be awarded are such costs as the court "considers reasonable" and that are "not inconsistent with such of the fees established by section 722". A schedule of fees and allowances is attached to the latter section, and by subsection (2) it is provided that "the Lieutenant Governor in Council of a province may order that all or any of the fees and allowances mentioned in the schedule to this Part shall not be taken or allowed in proceedings before summary conviction courts and justices under this Part in that province".

It seems to us that the imposition of nominal costs in quasi-criminal proceedings is an exercise of limited utility. The amounts collected are hardly sufficient to defray the expenses of the court and the added bookwork does nothing to improve efficiency. Chief Provincial Judge Gyles commented that "they create in the public mind the suspicion that the money is going into somebody's pocket and they think they know who but they are not sure and it is an additional aggravation. You could probably add $5.00 onto the fine and they would be happier. . . " . If the costs awarded bear little relationship to the actual expense of the court hearing, and have no deterrent value, then it is hard not to agree with Chief Provincial Judge Gyles that they are little more than an "additional aggravation" and should be eliminated. We so recommend.

(b) Sections 147-148 — Damage Award

These sections were intended to provide a summary and cheap method of recovering damages amounting to less than $100.00 and that arose from or as a result of the commission of an offence under the Act. According to

Chief Provincial Judge Gyles this procedure is very rarely used, indeed so rarely that he comments " . . . to my way of thinking it could be eliminated completely". He is also of the opinion that ". . . if it was used regularly it could create quite an abuse of the civil process". It should be noted in this regard, for instance, that there would probably be no proper evidence as to quantum and even if there was, which rules of evidence would apply, civil or criminal? An aggrieved party seeking damages now has adequate recourse under Part II of *"The County Courts Act"*, which allows for a proper hearing with opportunity to both sides to make a full presentation of their case. The defendant also has the right to elect to go before a County Court in which case he may avail himself of such pre-trial procedures as examination for discovery, etc., none of which are available to him under section 147. In addition an accused party ordered to pay damages under that provision is liable to have his licence and registration suspended, if he does not pay the order in full within ten days, a penalty that would not be possible under either Part II of *"The County Courts Act"* or section 243 of *"The Highway Traffic Act"*, which is restricted to judgments in an amount exceeding one hundred dollars.

In conclusion we would submit that the trial of quasi-criminal charges in concert with a determination of civil liability, involving different rules of evidence and procedure, is not that happy combination of circumstances that would lead one to have an overabundance of confidence in the quality of justice being meted out. The provision of a summary remedy for civil wrongs is a fine thing but not when it is forced on one of the parties in such a manner as to possibly thwart him from properly setting forth his cause, and not when there is provision elsewhere of an almost equally summary remedy to which both parties have the opportunity of consenting. We recommend that sections 147 and 148 be repealed.

(c) Endorsements on Certificates of Conviction

Section 227 provides that where a person has been charged with one or more specified offences and admits that property damage occurred in excess of one hundred dollars, or that some person has been injured, the judge making the conviction must endorse on the certificate the fact of the accident, the amount of damage or the name of the person injured and the nature of the injury. If the person charged does not admit the damage or injury, the judge must inquire into the question of whether or not the person charged caused such damage or injury, and if he did, the judge must then make the endorsement outlined above. It is our understanding that the principle purpose of this section was to give the Registrar notification of the occurrence of circumstances for which there was an automatic suspension of driver's licence and registration under section 242, which section was repealed in 1971. Subsection (4) of section 242 provided that the Registrar was to make the suspension ". . . on receipt by him of a certificate, transcript or certified copy of the conviction, issued by the proper officer of the court by which the conviction was made". Since section 242 has been repealed, we can see no rationale for the maintenance of section 227, indeed it is even out of date in regard to the amount of property damage, which

should, we surmise, be two hundred dollars and not one hundred dollars. We recommend that section 227 be repealed.

(1) Reduction of penalty

Section 230 (1) (2).

(2) Graded penalties

Sections 228; 229.

(3) Impoundment of licence where suspended

Sections 232; 238 (5).

These two sections should be amalgamated into one. In view of the recommendations made above in regard to discretionary court suspensions these sections (or section) would apply only to automatic suspensions for conviction of certain specified offences. (See section 238)

(4) Temporary permit on suspension of licence

Section 241 (1) (2).

(5) Stay of suspension pending taking of appeal

Section 238 (10) (11) (12).

(6) Stay of suspension where appeal taken

Section 238 (6) (7) (8).

(7) Certification of conviction to Registrar

Sections 235 (1); 233 (1) (2) (3); 235 (3).

We recommend that sections 235(1) and 233(1)(2) be amalgamated, and that sections 233(3) and 235(3) be repealed in line with our recommendations in regard to costs.

(8) Notification to other jurisdictions

Section 233 (5) (6).

(9) Where convictions quashed

Sections 203; 236.

In accord with our recommendation that impoundments be abolished, section 236 should be repealed and section 203 should be amended.

Procedure as to Suspension and Cancellation

Having dealt with courtroom procedure in regard to the prosecution for an offence, including the handling of automatic suspensions, we now come to the general procedural provisions in regard to all suspensions, from notification by the Registrar to appeals to the Licence Suspension Appeal Board.

(a) Notification of Suspension

Section 250 (1) (2).

(b) **Surrender of Registration Cards and Licences**

Section 251 (1) (2).

(c) **Appeals to Licence Suspension Appeal Board**

(1) **Restoration of licence or registration**

Section 253 (1) (3) (1.1) (1.3).

(2) **Temporary licence from Appeal Board**

Section 253 (1.2).

(3) **Time within which appeals may be heard**

Section 253 (2).

(4) **Impoundment of licence on refusal**

Section 253 (3.1).

(5) **Remission of permanent cancellation**

Section 253 (4) (4.1) (5).

(6) **Submission of appeal by mail**

Section 253 (11).

(7) **Appeal to County Court**

Section 253 (6) (6.1) (7) (8) (9) (10).

(d) **Term of Suspension**

Section 201 (2).

PART VIII – CONTROL OF TRAFFIC

With this Part we move away from the provisions of the Act affecting drivers and other members of the public, and enter the area of administrative control and procedure, commencing with the jurisdiction of the various traffic authorities to, for example, establish speed limits, erect traffic control devices, classify highways, designate P.S.V. routes, etc. As with the other parts of the reorganized Act the sections gathered together under this heading come from every corner of the present Act. It is to be hoped that their centralization will make life a little easier for municipal authorities and others involved in the regulation of highway traffic, and will at the same time reduce the clutter in those areas of the Act principally directed at the driving public.

AUTHORITY OF PEACE OFFICER

Sections 71 (1); 94 (4).

SPEED RESTRICTIONS

There has been some criticism levelled at the inflexibility of Manitoba's speed restrictions, that they are in fact based on a number of false premises. It has been suggested to us, for example, that speed limits are treated by

enforcement authorities as sacrosanct and any violation of them almost as a moral wrong, when in fact their breach is merely the technical breach of an arbitrarily prescribed standard. It has also been contended that the risk factor in driving at high speeds varies considerably depending on such things as weather conditions, the type of road, the volume of traffic, the mechanical condition of the vehicle, etc., and that it is unfair that someone driving in excess of the speed limit on a paved highway, in clear weather with no other traffic in sight should be penalized to the same extent as someone driving at the same speed in heavy traffic and with adverse weather and road conditions. Although there may be some truth in these arguments we do not consider that they warrant the abolition of fixed speed restrictions in favour of whatever is "reasonable and prudent in the circumstances". To begin with it would make Manitoba completely at variance with the other provinces and with virtually all of the American States. Secondly, it would remove the deterrent provided by the sure knowledge that to exceed a posted speed limit is to breach the law. We suspect, from personal experience, that posted speed limits do act as a reminder to drivers to check their speedometers every now and then. In today's plushly upholstered and well insulated automobiles, the sensation of road speed has been reduced to a barely audible swoosh, and the combination of excellent macadamized roads and finely tuned suspensions virtually removes all "feeling" for the surface of the road. In such comfortable surroundings it is very easy for a driver's foot gently and gradually to bear down on an accelerator pedal, and almost without sensation, push the speed of the vehicle up and up, until it is well over the established speed limit and beyond the point where the driver has control in the event of an emergency, and no matter what the conditions, emergency situations can and do develop at any moment and at any place.

We also considered, and ultimately rejected, the approach adopted by the Province of Nova Scotia and by a number of American jurisdictions, an approach that combines the features of both fixed speed limits and whatever is "reasonable and prudent in the circumstances". Briefly this approach provides that it is *prima facie* unlawful to exceed certain fixed speed limits, but that it shall be a defence if the driver can show that the rate of speed at which he was travelling was reasonable and prudent under the conditions prevailing at the time. In Nova Scotia, notwithstanding the above, no person shall drive at a speed in excess of sixty miles per hour, so that the defence would only apply up to that maximum, and only in regard to certain specified speed limits, which become in effect suggested speed limits. Considering the very limited application of the defence (it would not apply in restricted speed zones or above the standard highway maximum of sixty miles per hour) it is our opinion that any advantages to be obtained are more than offset by the disadvantages inherent in such a scheme. For one thing there is the possibility of increased litigation over speeding charges, with a consequent escalation of expenses for both the accused and the public, and a further drain on the limited time available to our provincial judges' courts for the hearing of summary conviction offences. Given the amorphous nature of "reasonable and prudent in the circumstances", any accused contesting a speeding charge, and with the burden of proof upon his

shoulders, would in all likelihood have to lead evidence as to the nature of the road, the weather conditions at the time of the alleged offence, the amount of traffic, etc., all of which could add up to a fairly lengthy hearing. In addition there would be problems for the police in enforcing speed restrictions, knowing that in many cases the driver may be legitimately exercising his option to exceed a speed limit. Given these drawbacks we wonder whether fixed speed limits are really such a burden to the Manitoba motorist, that he should be allowed the privilege of determining for himself the extent to which he may exceed them. Is travelling that few extra miles per hour faster really worth the additional cost and complication? In our opinion, it is not.

Having opted for the retention of fixed speed limits, there remains the question of deciding what those limits should be. There has been a great deal of discussion in recent months of the experience of the United States over the winter of 1973-1974 when due to an apparently dire energy shortage, speed limits were reduced by five or more miles per hour and there was a subsequent and significant reduction in traffic fatalities. Whether the two are related and to what extent, or whether other factors were more influential in the saving of lives has been an issue of considerable controversy, with no clear conclusions yet derived from the data that has become available. One Canadian province, British Columbia, has since reduced its speed limits, and another, Ontario, has initiated a detailed study of the relationship between speed and accidents. The preliminary Ontario study, issued in August, 1974, concluded that it was doubtful that any reductions in accidents would be achieved by a reduction in speed limits, but the authors are careful, throughout their study, to emphasize the insufficiency of the available data. Among the controversial factors discussed are the questions of the effect of speed limits on drivers' choice of speed and speed as a cause of accidents. In regard to the first the authors report that there is a general consensus, among all studies, that speed limits are disobeyed on a large scale, and that revising the existing limits may have little effect on the speed selection of an experienced driving population, except where enforcement is very heavy. As for the second contentious issue it seems that the literature on speed and accidents raises more questions than it answers, although there are some conclusions to be drawn, in particular the obvious one that speed is an important determinant of accident severity. Thus the greater the speed, the greater the risk of serious injury or death in a collision. It is also generally accepted that the faster a vehicle is travelling the less control its driver has in the event of an emergency. Such driver-vehicle capabilities as driver reaction time, vehicle handling, acceleration capability, braking, tire and headlight functions, all suffer diminished effectiveness as speed increases.

The relationship between speed and the frequency of accidents is not so clear cut because of the many other factors that must be taken into account, but it would appear that speed distribution and in particular the amount of deviation from the average speed, may be related to accident rate.

Although a reduction in the number of accidents may not be realistically forecast as a long term effect of reduced speed limits, we think

that there is a distinct possibility of decreasing the severity of the injuries and damages suffered. It is noteworthy that the only conclusions to be universally proclaimed in regard to lower speed are a lessening in the severity of accidents and an increase in driver control of vehicles. For these reasons, and despite the gloomy findings of the Ontario report in regard to driver compliance, we recommend that speed limits in Manitoba be reduced to 55 miles per hour on highways to which section 91(1)(c) applies, and 65 miles per hour on highways to which section 93(1) applies.

The difference between a lower night time speed limit and the general speed limit was eliminated by an amendment to the statute enacted in 1974 (S.M. 1974, cap. 61, section 31). Because we are now recommending an across-the-board reduction of maximum speed limits, we can perceive no good reason to restore the former disparity between day and night speed limits. We therefore recommend that the 55 m.p.h. and 65 m.p.h. limits be respectively the same for both day and night.

(a) Restricted Speed Areas

Section 92 (1) (2) (3) (4) (5).

(b) Modified Speed Zones

Section 93 (5) (7).

(c) Higher Maximum Speed on Certain Highways

Section 93 (1) (2) (3).

As recommended above, the higher maximum speed which may be designated by the Traffic Board should be reduced to 65 miles per hour.

(d) Minimum Speed

Section 94 (1) (2).

(e) Speeds Fixed by By-law

Section 96 (1) (2) (3) (4) (5).

(f) Speed Limit in Parks

Section 97 (1) (2) (3).

(g) Speed Limit on Bridges

Section 98 (1) (2) (3) (4) (5) (6) (7).

(h) Signs Where Speed Restrictions in Effect

Sections 72 (1) (1.1) (2) (3); 94 (3).

GENERAL JURISDICTION OF TRAFFIC AUTHORITY

(a) Permissible Traffic Rules

Sections 86 (1) (1.1) (2) (3) (4) (5) (6) (7) (8) (9); 85 (1) (2).

Section 86(6) and the last three lines of Section 86(8), commencing "and drivers are under the same obligation . . ." should be removed, as being

out of place and redundant. Section 81 (Part I, Division (D), **Rules**, (a)) is sufficient in its application to obviate the need for any other directions to the same effect.

(b) **Erection of Traffic Control Devices**

Sections 77; 76; 75 (4) (5) (6).

(c) **Signs Where Construction Work in Progress**

Sections 72 (4) (5) (6); 189 (2).

(d) **Stop Signs**

Section 75 (1) (2) (7).

(e) **Direction of Traffic**

Sections 80 (1) (2); 100 (2).

(f) **Stopping, Standing and Parking**

Sections 75 (3); 89; 199 (1) (2) (3) (4).

(g) **Bridges**

Section 88 (1) (1.1) (2) (3).

(h) **Funeral Processions**

Section 108 (5).

(i) **Bicycles**

Section 142 (11).

(j) **Pedestrians**

Sections 73; 132 (7); 87; 135.

(k) **Classification of Highways**

Section 63 (6) (7) (8) (10) (11).

(l) **Inspection Stations**

Sections 82 (4); 299 (6).

(m) **Designation of P.S.V. Routes**

Section 275 (1) (2) (3) (5).

(n) **Restrictions on Use of Highway**

Sections 82 (1) (3) (3.1); 66 (1).

(o) **Vehicle Permits Where Operation Otherwise Restricted**

Section 83 (1) (2) (3) (6) (7).

(p) **Rewards**

Section 90 (1) (2).

PART IX – ADMINISTRATIVE AND MISCELLANEOUS

TRAFFIC BOARD

Sections 298 (1) (2) (3) (4) (5) (6) (7) (8) (9) (16) (17) (18) (19) (20); 256 (3); 255 (1); 298 (13) (14) (15) (10) (11) (12); 256 (1) (2); 257.

LICENCE SUSPENSION APPEAL BOARD

Sections 252 (1) (2) (3) (4) (5) (6) (7) (8) (9) (10).

REGULATIONS AND ORDERS

Sections 292 (1); 63 (3.1) (3.2); 19 (9); 292 (2) (3) (4); 292.1 (1) (2) (3) (4); 293 (1) (2).

APPOINTMENT OF OFFICERS

Sections 295 (1) (2) (3) (4) (5); 45 (1); 295 (6); 231 (3.1); 231.2; 16 (1) (2) (3).

DELEGATION OF AUTHORITY BY MINISTER AND REGISTRAR

Sections 297; 27 (5); 6 (13) (13.1); 295 (3.1); 304 (1) (2).

GRANTS FOR DRIVER EDUCATION

Sections 300 (1) (2) (3) (4).

RECORDS OF REGISTRAR

Sections 294 (1); 231 (4); 294 (2) (3).

Sections 231(4) and 294(2) should be amalgamated.

DRIVER MERIT MARKS

Section 307 (1) (2) (3) (4) (5) (6) (7).

CHAPTER IV

SUMMARY OF MAJOR RECOMMENDATIONS

1. That the reorganization of "*The Highway Traffic Act*", as detailed in this Report, be adopted, along with the Table of Contents outlined in Chapter II.

2. That all of the sections in the Act be given a thorough review by those responsible for legislative drafting, with the purpose of consolidating redundant sections and, wherever possible, rendering the language more understandable for the general reader.

3. That section 144(2) be amended by removing the exception in regard to actions brought by passengers in motor vehicles. This will have the effect of extending the application of the reverse onus contained in section 144(1) to all actions brought by passengers, and not just those brought by passengers in public service vehicles, who have been injured or otherwise suffered damages in accidents involving only the vehicle in which they were travelling.

4. That section 145, which restricts a guest passenger's right of action against the owner or operator of a motor vehicle to situations in which the injury, loss or death involved, occurred through the "gross negligence or wilful and wanton misconduct of the owner or operator" be repealed. The standard of proof should be that of ordinary negligence and not gross negligence (Page 36).

5. That section 149 be amended to provide that the compulsory reporting of accidents involving **only** property damage (in excess of $200.00) be made to the Manitoba Public Insurance Corporation (Autopac). Accidents involving personal injury or death should continue to be reported to the police. We further recommend that the time period for reporting accidents involving property damage only should be changed to "immediately following the accident, and in any case not later than seven days after the occurrence of the accident" (Page 37).

6. That section 150.1(1) be amended to remove the mandatory onus on doctors and optometrists to report to the Registrar the names of patients who are suffering from a disease or disability which might affect their ability to safely operate a motor vehicle. The protection from suit accorded in subsection (2) should be left as it is to protect those doctors and optometrists who believe it their responsibility to report disabled patients (Page 47).

7. That section 216 be amended to require the police, within two juridical days of seizing a vehicle, to go before a judge or justice to obtain leave to continue the detention beyond the two juridical days. We also recommend that the police should be required to notify an owner of

the fact that his vehicle has been seized, and that any personal property seized with the vehicle should be returned on request except where needed for investigation in which case its detention should be subject to the same two juridical day requirement as the detention of the vehicle. We further recommend that all towing and storage charges should be automatically paid by the Province, with the owner of the detained vehicle reimbursing the Province if found guilty of any alleged offences (Page 48).

8. The removal of all minimum fines contained in "*The Highway Traffic Act*" and the establishment of a number of standard categories of fine penalties, based on escalating maximums (see Recommendation #12 below). The amount of the fine levied in any particular case should be entirely within the discretion of the judge, up to the maximum provided for the offence in question (Page 51).

9. The abolition of impoundment of motor vehicles as a penalty (Page 53).

10. That persons convicted of driving while suspended or disqualified be subjected to a mandatory sentence of fourteen days in jail without the option of paying a fine, unless a specific finding is made by the judge of compelling circumstances which would render the imposition of such a sentence inappropriate and unfair (Page 53).

11. That discretionary court suspensions and disqualifications of driving and registration privileges be abolished. We also recommend that judges be required to inform convicted offenders that their driving and registration privileges may be suspended by the Registrar, in addition to any sentence imposed by the court (Page 54).

12. That there be three standard fine penalties for all offences in the Act other than those involving corporate or commercial offenders. The range of maximum fines recommended is $300, $600 and $1,000. We further recommend that subsequent convictions for the same type of offence import the next highest category of fine up to the maximum of $1,000, and that the provisions of section 228 should continue to apply, so that a three year period free of convictions for any particular offence, would have the effect of making any conviction subsequent to the three year period a first offence, and so on (Page 55).

13. That section 238(1) be amended to provide that second and subsequent offences of the kind mentioned therein bear suspensions for five years and that after a period of ten years from a previous conviction a subsequent conviction would be considered as a first offence for licence suspension purposes (Page 57).

14. That section 204(1) be amended to provide that an owner charged with an offence committed through the use of his vehicle by another person should be entitled to charge that other person with the offence, and the

latter should then be entitled to charge any other person to whom he may have lent the vehicle, and so on, to the end that all those so charged may be tried simultaneously. Where, however, it is not possible to have a simultaneous trial (ie. because some accused is a juvenile and cannot be transferred to ordinary traffic court) then upon the owner satisfying the judge that he did not commit, consent to, or connive at the offence, the owner may be acquitted. We also recommend that section 37(3) be maintained as an exception to the above, and expanded to cover **all** equipment offences (Page 59).

15. That the imposition of costs in summary conviction proceedings under "*The Highway Traffic Act*" be abolished (Page 63).

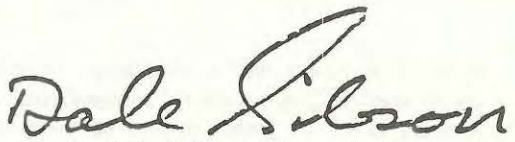
16. That sections 147 and 148 be repealed. The effect would be to remove a little used provision allowing for the recovery of damages amounting to less than $100.00 and that arose from or as a result of the commission of an offence under the Act (Page 63).

17. That section 227, dealing with the endorsement on a certificate of conviction of the fact of an accident and the occurrence of property damage in excess of $100.00 or personal injury, be repealed (Page 64).

18. That speed limits on Manitoba highways be reduced to 55 miles per hour on highways to which section 91(1)(c) applies, and 65 miles per hour on highways to which section 93(1) applies (Page 66).

This is a Report pursuant to section 5(2) of *"The Law Reform Commission Act"*, signed this 16th day of June, 1975.

F.C. Muldoon, Q.C., Chairman



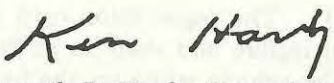
R. Dale Gibson, Commissioner

C. Myrna Bowman, Commissioner

R.G. Smethurst, Q.C., Commissioner

Val Werier, Commissioner

Sybil Shack, Commissioner



Kenneth R. Hanly, Commissioner

APPENDIX "A"

One of the Commissioners, Mr. Werier, undertook during our deliberations to produce some examples of simplification of the statutory language in which *"The Highway Traffic Act"* is expressed. He produced the following three random examples from the early sections of the Act. After intensive discussion* and some re-casting of the proposed simplifications, we present them here as an additional fillip to our plea for a statute which will be more understandable to the general public.

6(1) Subject as herein otherwise expressly provided, a motor vehicle or trailer shall not be driven on a highway in any registration year, or portion thereof, unless the owner thereof has registered it for that registration year or portion thereof with the registrar, and has paid to the registrar the fee prescribed for the registration year, or portion thereof, and such insurance premium as is prescribed under the regulations made under The Automobile Insurance Act, as amended from time to time.

En. S.M. 1971, c. 71, s. 7.

6(1) Unless otherwise stated in this Act, no motor vehicle or trailer shall be driven on a highway unless the owner has registered that vehicle or trailer with the registrar and has paid the registration fee, and the insurance premium for the current registration year or portion thereof according to the regulations made under The Automobile Insurance Act.

6(9) The registration card issued for a registered motor vehicle or trailer shall be kept clean and legible and shall at all times, while the vehicle is upon a highway, be in the possession of the driver thereof or carried in the vehicle and subject to inspection by a peace officer, and the driver shall produce and display it to, and permit it to be examined by, a peace officer, the registrar, a justice, or other person entitled to production thereof, for his inspection when required to do so by any such person.

6(9) The registration card for a motor vehicle or trailer shall be kept legible and shall be in the possession of the driver or carried in the vehicle while on the highway, and the driver shall produce this card for examination when requested by a peace officer, the registrar, or justice or other persons entitled to inspect it.

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*One Commissioner, Mrs. Bowman, dissents from the presentation of these examples on the ground that it is not the Commission's role to draft statutory provisions. She asserts that we do not have the specialized competence to produce these examples as recommendations for acceptance and enactment by the Legislature.

7(1) Except in the case of a motor vehicle that is being towed by another motor vehicle, every motor vehicle that is required to be registered under this Act, and every trailer that is required to be registered under this Act, while on a highway, shall have attached thereto, and exposed thereon, one or more number plates for the current registration year as herein required, furnished by the registrar, the traffic board or The Taxicab Board, and of a design, type, and a material prescribed by the registrar; and in the case of a motor vehicle being towed as aforesaid, compliance shall be made with section 9.

En. S.M. 1970, c. 70, s. 7.

7(1) Except for a motor vehicle being towed by another motor vehicle, and subject to section 9, every motor vehicle and every trailer which are required to be registered under this Act, while on the highway, shall have the number plates required by this Act.