



Owner-Operator's Business
Association of Canada
Association professionnelle des
routiers autonomes du Canada

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Dear Peter and Benoît:

This is further to Peter's letter of December 1, 2008 concerning enforcement of Ontario's speed-limiter legislation. Peter outlined in his letter how the Ontario and Quebec governments have been working very closely to harmonize enforcement, communications, and implementation of the speed-limiter legislation in both provinces. I am therefore addressing this letter to both of you. Although the consultation and legislative processes differed in each province, our concerns apply equally to any government-mandated speed-limiter law.

We're no more comfortable with this legislation than we were three years ago when Ontario's Ministry of Transportation first sought our comments on a proposal by the Ontario Trucking Association (OTA) to mandate speed-limiters for all heavy trucks operating in Ontario.

In the ensuing period, all of OBAC's concerns, expressed and documented in a number of briefs, studies, reports, and letters, to both governments have been largely ignored by Ministry personnel and by legislators in both provinces. The one exception (apparently disingenuous) was an agreement by Quebec Transportation Minister Julie Boulet not to enforce speed-limiter legislation in that province unless similar legislation was enacted in the rest of Canada.

It is especially disconcerting that important information in the Transport Canada studies was ignored as well. These studies outlined several downsides to the legislation, including some clearly outlined safety concerns, and they corroborated our views on a wide range of issues that OBAC and a significant number of other trucking associations and individuals have also raised.

Transportation Minister Jim Bradley decided to proceed without airing any of these concerns with other members of the Ontario Legislative Assembly, and we feel very strongly that this information was deliberately withheld in debates during Second Reading of Bill 41 (April and May 2008), as well as during the Standing Committee hearings. In Quebec, legislation was passed in the National Assembly in December 2007, prior to results of the Transport Canada studies being released to provincial governments (early April 2008), but Minister Boulet is now also proceeding without taking any of these concerns seriously.

Notwithstanding other grave concerns with the legislation in both provinces, our immediate questions centre on privacy and liability issues. We raised these issues with Ontario officials when they were drafting the regulation, and they have not been addressed.

We are particularly concerned about access to proprietary historical data and trip record information stored in an unprotected layer of the engine ECM's memory. This data resides alongside the road speed limit setting enforcement personnel would seek during verification.

As confirmed in comments by both the Engine Manufacturers Association and the Truck Manufacturers Association to Transport Canada, and as illustrated in an article by Jim Park in *Today's Trucking* magazine (October 2008, attached), this data is accessible to anyone able to interrogate an ECM in search of a road speed limit setting.

We strenuously object to Ministry inspectors viewing and possibly downloading that information for their own purposes. We assert that data contained in an engine ECM is in fact the property of the owner of the vehicle, and should not be available to anyone else, including the Ministries, without permission or a warrant. Since the verification process is done electronically, no one but the inspector would be aware that a data download had occurred.

As you know, ownership of engine data is a question many others, including the enforcement community, are grappling with. According to CVSA President Darren Christle in an interview aired yesterday (*Today's Trucking* "Truck Talk" podcast), the question of who actually owns engine data, how it can be controlled, and whether enforcement needs permission from motor carriers or truck owners to access it, has not been answered.

We are advising our members and other truck owners to take whatever steps are required to protect this data until some policy is forthcoming from the transportation Ministries in Ontario and Quebec regarding its recovery and use.

OBAC has also raised questions of how enforcement will be carried out, and these have not been answered. In particular, we would like to hear from you promptly regarding hook-up and verification procedures. We know from discussions with the various engine manufacturers that corruption of ECM data – though unlikely – is possible as a consequence of improper connection procedures, as is the real potential for damage to the ECM itself. We wish to know if your Ministries are prepared to warrant the process and stand behind any future warrantee or data corruption issues arising from an inspector not following procedures.

We are recommending to our members that they do not assist inspectors in making the connections or participating in any way in the verification process so that should any damage occur, the responsibility would rest solely with the Ministries of Ontario and Quebec.

Thank you for your consideration.

Yours truly,

(original signed by)

Joanne Ritchie
Executive Director