



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

*...from the
director's chair*

Shaping up the shipper

You never know what's going to fall onto the table at a North American Cargo Securement Harmonization Public Forum. This twice-yearly gathering, coordinated by a committee of CVSA, identifies cargo securement regulatory issues and enforcement differences between Canada and the U.S. with the ultimate, if somewhat elusive goal of harmonization.

Participation is open to all stakeholders including law enforcement, regulators, shippers, carriers, and industry associations, so you can imagine the variety of opinions around the table.

At the November meeting in Montreal, two seemingly different items on the agenda sparked discussion that went well beyond cargo securement and ultimately zeroed in on one point: shipper responsibility.

The first issue was actually raised by a shipper. The safety manager for a major shipper of dressed lumber outlined his concern at watching trucks leave the yard with lumber not properly strapped down. He has been advised by his company that "it's all on the carrier" and that he shouldn't even "strongly suggest" that the driver secure the load legally, because then they, the shipper, could be held responsible. How is this possible, he challenged regulators, that we knowingly allow drivers to leave our property illegally, risking the lives of others on the road?

While regulators were still dithering over that one, the intrepid Patrick Delaney, V.P. health and safety for the Calgary-based Petroleum Services Association of Canada (PSAC), brought up the issue of access or swamp matting being hauled on public highways from the drill site, back to the shop for repair or recycling. This stuff is generally hauled by a third-party carrier, at the direc-

tion of the oil and gas or the drilling company.

When a driver picks up these mats, they're typically laden with clumps of mud, rocks, and chunks of wood, and if he or she mentions the shipper's responsibility to clean the matting so it can be secured properly, they get the "take it or you won't work for us again" response. When that conversation takes place at two o'clock in the morning with no one else around, guess what the driver does? And guess who get charged when debris falls off the truck, creating a hazard for road users?

I won't say that regulators weren't sympathetic, but there was a lot of shoulder-shrugging and fumbling about, and it came down to "when a truck leaves the premises, it's the carrier's or the driver's responsibility; it's not the shipper's problem."

Then things really got interesting. Several incidents were brought to light where the shipper does, or should, share responsibility if they're involved in, say, loading or unloading the vehicle. What about the driver who doesn't even see the inside of a trailer with a Customs seal? Or the all-too-common overweight stories: shipper-loaded trailer with nary a scale in sight? Even ELDs came up: are carriers and drivers going to take the hit when kept unduly waiting at the shipper's dock? The common theme that emerged was "we need to address the question of shipper responsibility."

When enforcement put forth the defense that they didn't have any authority to regulate shippers, Patrick drew attention to the Alberta Traffic Safety Act (section 144 on vicarious liability if you're checking) that outlines where persons other than the carrier are jointly liable for non-



**Joanne
Ritchie:
OBAC
executive
director**

compliance, unless they can satisfy the court that non-compliance occurred without their consent, either expressed or implied. With his sardonic wit, Patrick pointed out that unless the driver pulled over after they left the site and stuffed the mud and rocks into the mats, it would be pretty hard for the shipper to claim ignorance that the load was unsafe.

In fact, regulators in many jurisdictions do have authority under various pieces of legislation to charge someone other than the carrier, but it's rarely done. It's simply less messy to pass out a ticket at roadside than to charge the absent shipper, do the investigation, and bring them to court.

The awkward hemming and hawing confirmed that some of the regulators in the room really weren't clear on what regulatory authority they have to hold shippers accountable for either traffic safety violations, or indeed for coercion and driver harassment.

As my friend Patrick observed, perhaps it's time regulators got out from the comfort of their little offices to witness firsthand the pressures that are applied to carriers in the field; they may not feel quite so safe the next time saying "it's not our problem." Well said Patrick, but I'm not holding my breath.

Joanne Ritchie is executive director of OBAC. E-mail her at jritchie@obac.ca or call toll free 888-794-9990.