involved in the actual operations of the railway system, may, in fact, come under such designated positions.

In my view such physicians or optometrists ought to be independent of the railway companies. In terms of the requirement to report such conditions to the chief medical officer of the railway company concerned, I submit that it would be preferable that such information be forwarded to the Minister of Transport in his capacity as a more neutral and independent party.

There is concern about the use to be made of the confidential information between a patient and his doctor, which may be released by a patient's physician in accordance with the requirements set out under clause 35 of the bill. Why should a physician be allowed to release information to the company? Undoubtedly the doctor-patient relationship would suffer.

I believe there is potential for abuse in this requirement as set out under the aforementioned clause.

Subclause 35(3) states:

> A railway company may make such use of any information provided pursuant to subsection (1) as it considers necessary in the interests of safe railway operations.

Subclause 35(1) makes it a duty of a physician or optometrist to report any condition of a private patient who is a designated employee that is likely to pose a threat to railway operations by notice sent to the chief medical officer of the employing railway company. The association is not comfortable with the concept of legislation that interferes with an employee's confidential relationship with a private physician or optometrist. There is, however, a longstanding precedent, in the interests of public safety, in the airline industry. Our association strongly objects to the provisions of subclause 35(5), which makes medical and optometric information privileged information for disciplinary purposes.

Every three years an employee has to undergo a strict medical examination. If that employee has booked off sick for a week or two, the company has the right to send that employee to the CNR doctor; if the doctor is not satisfied, that employee is sent to a specialist. That employee is not permitted to work until the report from the doctor or specialist has been received. If the company is not satisfied with that, it has the right to send the employee to a medical CNR clinic. Why does the government want to put excess baggage into this bill?

Subclause 35(3) permits the railway company to use the medical or optometric information as the railway company considers necessary in the interests of safe railway operations. This, in practice, could be in the form of demotion or dismissal. Demotion and dismissal are both situations subject to the grievance procedures contained in all railway collective agreements with the railway unions. Subclause 35(5) makes the medical information privileged and specifically states that the information so provided by the physician or optometrist shall not be used in any proceedings, including disciplinary matters. In fact, none of the provisions of this clause of the bill provide for advice or notice to the employee by the physician or optometrist or the medical officer of the railway company of the medical or visual condition which may be used by the railway company for demotion or dismissal.

Pursuant to that clause, an employee could be advised by a railway company that he had been demoted or dismissed for alleged safety reasons, based on medical or visual grounds, without ever being given the specific information on which the demotion or dismissal was based. Is this Canadian law?

The grievance procedure and any subsequent arbitration process would also be frustrated by the privileged information status created by subclause 35(5) of the bill. Our association submits that this is a completely unacceptable provision. The employee would be deprived of his right to a fair hearing and the basic tenets of natural, Canadian justice. In fact, subclause 35(5) strictly construed would prevent an employee from using the information in his defence in a disciplinary proceeding for demotion or dismissal, even if he were in possession of the information, since the subclause states "and the information so provided shall not be used in any such proceedings." Even a person taken to court is allowed to defend himself!

The Canadian Railway Labour Association can reluctantly accept that, to ensure the highest degree of public and employee safety of railway operations, a medical or visual condition that could result in public risk should be corrected as soon as detected, even if it means, as proposed by the legislation, an exception to patient-doctor confidentiality. However, there must be adequate safeguards to protect railway employees from mistake or abuse. The right to know and the right to due process provided by the grievance procedure and arbitration in the collective agreement cannot be avoided by legislating as privileged the information on which demotion or dismissal is based. An employee has a right to know specifically why he is being demoted or dismissed. There can be no more basic right in our system of justice.

In our view, if a railway employee in a designated position—for safety reasons—on the basis of a medical condition or visual deficiency is unfortunately unable to meet the required standard as set out by the regulation to perform his duties safely, then clearly some action must be taken by the railway in the interests of public safety. There is, however, no need to proceed in a clandestine manner. If the facts support the action, there is no reason why the facts should not be disclosed, and, if necessary, tested by the normal collective agreement provisions.

The Canadian Railway Labour Association requests that the committee recommend amendments to clause 35 of the proposed act as follows:

> (1) to provide that when a Physician or Optometrist sends a notice to the Chief Medical Officer of the Railway the employee be so advised and be given a copy of the notice sent to the Chief Medical Officer of the railway.

We thank the minister for accepting that amendment.

Clause 39 appears to define an "authorized search" in very wide and ambiguous terms. In our respectful submission, this clause is much too general and appears to provide too much power and not enough protection of the rights of the individual