ISSN 0542—5492

Second Session — Thirty-Second Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

31-32 Elizabeth II

Chairman
Mr. S. Ashton
Constituency of Thompson

MG-8048

VOL. XXXI No. 2 - 8:00 p.m., THURSDAY, 21 July, 1983.

Printed by the Office of the Queens Printer, Province of Manitoba

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS, 1983.

Thursday, 21 July, 1983

Time — 8:00 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Steve Ashton (Thompson):

ATTENDANCE — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cowan, Kostyra and Storie, Hon. Ms. Dolin

Messrs. Ashton, Enns, Mercier, Nordman, Scott, Steen and Ms. Phillips.

WITNESSES:

Representations were made to the committee as follows:

Bill No. 87:

Mr. John Walsh, Manitoba Federation of Labour

Mr. Jack Benedict, Canadian Manufacturing Association

Mr. Jim Wright, Winnipeg Chamber of Commerce

Mr. Murray Smith, Manitoba Teachers' Society

Mr. Ralf Kyritz, Mantitoba Teachers' Society

Bill No. 88:

Mr. Richard Rybiak, Canadian Manufacturers' Association

Mr. Bruno Zimmer, Manitoba Federation of Labour

Mr. Sidney Green, Q.C., Manitoba Progressive Party

Mr. John Huta, Injured Workers Assoc. of Manitoba, Inc.

MATTERS UNDER DISCUSSION:

Bill No. 54 - An Act to amend The Payment of Wages Act

Bill No. 87 - An Act to amend The Workplace Safety and Health Act

Bill No. 88 - An Act to amend The Workers Compensation Act

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MR. CHAIRMAN: I call the committee to order. The Minister has a statement to make first.

Ms. Dolin.

BILL 54 - THE PAYMENT OF WAGES ACT

HON. M.B. DOLIN: The statement I have to make is, of course, in regard to Bill 54. In the course of this Session of the Legislature, Bill 54 was introduced for the purpose of improving and strengthening procedures for the collection of unpaid wages. This action was prompted by the inability of my department to collect unpaid wages due principally to the low priority that is given to these wage claims relative to the claims of other creditors.

Since we firmly believe that wages worked for and earned by employees should be paid in all circumstances, we felt it imperative to take some form of legislative action. This was done in the form of Bil 54. Since the bill was introduced we have discussed its provisions with various interested parties including employer representatives and spokespersons from the banking and financial community.

Throughout these disucssions, there was consensus on the fact that some means had to be found to ensure that wages earned by employees were, in fact, paid to them. Having agreed upon this common objective, various alternative means of achieving this objective were advanced.

For example, as an alternative to elevating the priority of wage claims it was suggested that a small levy be imposed on all employers and that the money collected in this fashion be put into the Payment of Wages fund. Subsequently in cases where my department has been unable to collect wages on behalf of employees the unpaid wages could be paid out of the fund.

Since an alternative such as this one could achieve the same objective as elevating the priority of wage claims and would, it appears, be more acceptable to employers and the financial community we think it is worthy of further consideration.

For this reason we are, at this time prepared to ask this committee not to report Bill 54, in effect to withdraw it, so as to allow sufficient time to explore a number of alternative means of ensuring the payment of unpaid wages and to introduce appropriate legislation at the next sitting of the Legislature. For this purpose I will be asking representatives of the various interested parties to meet as an advisory board to inquire into, and to provide advice to me as to an appropriate mechanism for collecting monies from employers and for the use of such monies to satisfy all claims for unpaid wages.

The parties I refer to include employer and employee representatives, as well as representation from the financial community and from the government. The advisory group will be asked to proceed with its inquiries without delay so that the necessary legislation can be developed and introduced early at the next Session of the Legislature.

Thank you.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, with respect to the Minister's statement, I simply want to go on record as saying that there is no reason on earth why the Minister

could not have made that statement in the Legislature this afternoon.

The people who are here tonight could have been phoned by the Clerk's Office and told that it wasn't necessary for them to come down here tonight to hear this statement by the Minister. The Minister is correct in asking that the bill not be reported; I'm not sure whether her reasons and her consideration of future action is appropriate. That's something we can examine later on, but I simply want to go on record as saying the Minister should have made this statement in the House today or prior to then, so that the people who are here tonight could have been notified prior this evening's meeting so that they didn't have to come here tonight.

HON. M.B. DOLIN: Perhaps I could answer that briefly. I did seek the advice of various parties to find out the best way to handle the withdrawing of a bill once it has been referred to committee. I was advised that this is the appropriate way. I believe that many of the parties were informed.

MR. CHAIRMAN: What is the will of the committee in regard to public presentations on Bill No. 54?

MR. G. MERCIER: Hopefully we'll have the same kind of statement from the Minister - the other Minister who is responsible for the other two bills.

MR. CHAIRMAN: What is the will of committee in regard to public presentations?

HON. M.B. DOLIN: Mr. Chairman, as far as I'm concerned the parties did choose to be here, even though as I say some of them were aware that I was going to suggest that the committee not report this bill. If they wish to say something anyway, I would say that we should leave it up to them, whether they have something to say. I don't know. I would certainly be ruled by the will of the committee. I want you to know that I have no objections.

MR. CHAIRMAN: Is it the will of the committee to hear the presentations?

Mr. Storie.

HON. J. STORIE: Well I was going to recommend that if there is anyone here that would like to make their presentation, in any event, that they're certainly welcome to do so. I would hope the committee would feel that way.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I frankly don't see any necessity to hear them on the bill when the bill is not going to be reported out of the committee. Perhaps the compromise would be if they have written submissions, which many of them probably will have, that they wish to leave them with the committee for future reference. I think that would be satisfactory.

MR. CHAIRMAN: Mr. Nordman.

MR. R. NORDMAN: But I do think, Mr. Chairman, that we do owe them a vote of thanks for coming down and showing the interest in at least appearing. They were prepared, no doubt, to make a presentation and being as how it's being withdrawn, I don't see any point in them making that presentation. I agree with Mr. Mercier that if they have written presentations, that they leave them with us and we'll go through them and use them in future referencing.

I might suggest that maybe they should become part and parcel of the committee that is looking into this, the advisory committee that you are going to have in the future. That's all I have to suggest, Mr. Chairman.

MR. CHAIRMAN: Are there any other comments? If there are no objections, we will proceed to public presentations on other bills. If members who had planned to make presentation on Bill 54 would like to leave written briefs, they can do so.

BILL 87 - THE WORKPLACE SAFETY AND HEALTH ACT

MR. CHAIRMAN: Proceeding then to the next bill in terms of public presentations, the first person making presentation on Bill 87 is John Walsh, Manitoba Federation of Labour.

MR. J. WALSH: John Walsh, should I proceed?

MR. CHAIRMAN: Sure, please, Mr. Walsh.

MR. J. WALSH: John Walsh, as secretary of the Manitoba Federation of Labour. Mr. Chairperson, people who came to speak on Bill 54 were not allowed the opportunity to say anything. You had suggested that written briefs be submitted.

I just wanted to publicly register our concern that for one more year this matter is being left over and that the interests of the business community are being accommodated at the expense of workers. We understand that discussions have been held and a compromise proposal on this question has been reached; but for one more year this question is being put over and I wanted to publicly register our concern about that.

On Bill 88, I had hoped that Mike MacIsaac, the Chairperson of our Safety and Health Committee, would be here. He wasn't able to be here — (Interjection) — Pardon? - 87, sorry.

MR. CHAIRMAN: Mr. Walsh, could we have some indication? We have presentations on 87 listed first. Could you possibly make your views on this first.

MR. J. WALSH: Yes, thank you. I had hoped that our Chairperson of our Safety and Health Committee, who happens to be on vacation, could be here. He's not available. I just wanted to register that we are generally favourable to the amendments that are being suggested here: The strengthening of the right to refuse; and, secondly, the increased penalties in the act where violations have occurred, that increased penalties are called for in the event that employers are found to have violated the act. So generally, on this bill, we are in favour of the amendments as proposed by the government.

MR. CHAIRMAN: Thank you, Mr. Walsh. Perhaps if you could return for your comments when the other speakers address strictly Bill 88, on your comments on Bill 88. Are there any questions for Mr. Walsh? There being no questions, thank you.

Mr. Cowan.

HON. J. COWAN: I just want to, if I can, thank Mr. Walsh for coming out on a hot summer evening to make those comments, and we look forward to the comments from his organization on Bill 88 as well.

MR. CHAIRMAN: Thank you, Mr. Walsh. On Bill No. 87 next, the public presentation is from Jack Benedict of the Canadian Manufacturing Association.

Mr. Benedict.

MR. J. BENEDICT: Thank you. My name is Jack Benedict. I make you a submission on behalf of the Canadian Manufacturers' Association, Manitoba Branch, to the Industrial Relations Committee re Bill 87, An Act to amend The Workplace Safety and Health Act.

As a foreword, this submission is made as a result of:

First, a letter to the Manitoba Branch of CMA from the Minister, dated November 23, 1982, in which he asked for our comments and suggestions concerning the accompanying paper, entitled "Proposed Amendments to the Workplace Safety and Health Act."

Second, a reply to the above-mentioned letter in the form of our letter, dated December 17, 1982, over the signature of the chairman of the Manitoba branch of CMA.

Third, a meeting was called by the Minsiter at 9:00 a.m., Monday, May 2nd. It was attended by Messrs. Elliott, Horner, Sutton and J.L. Ross, representing CMA; and

Fourth, a letter from the Minister, dated June 16th, advising that Bill 87 had been introduced and would probably come before the Law Amendments Committee within ten days.

During the period of time under review, it appeared that most matters had been dealt with to the satisfaction of both parties. However, examination of Bill 87 revealed that this is not the case, as discussed in the few pages we have. There are three or four items included in our comments:

1. Recipient of Report to Carry Out Inspection

This is covered under the new Section 43(3) and reads as follows: "The person receiving a report under Subsection (2) or a person designated by him shall, together with the worker and at the option of the worker, another person representing the worker, make an immediate inspection of the work site and take or cause to be taken such action as is necessary to remedy the dangerous conditions."

We see no reason for creating a two on one situation and recommend that the words "and at the option of the worker, another person representing the worker" be removed.

The old comparable section was Section 43(2) which reads: "Where a safety and health officer receives a report under Subsection (1) he shall forthwith make an examination and inquiry and make such order as he deems necessary to achieve the remedying of the condition." We feel this is perfectly satisfactory.

2. Relates to Disciplinary Action Against Worker.

In the existing act this is covered in Section 43(7) and reads as follows: "Where a worker takes unfair advantage of this section for frivolous reasons, he may be subject to such discipline as is available to be imposed upon him by his employer subject to the contractual relations between the employer and the worker, or a bargaining agent on behalf of the worker."

Bill 87 contains no such clause whatsoever and leaves the door open for frivolous activity in very sensitive areas.

Bill 87 must contain an equivalent of the old Section 43(7).

3. "Worker"

Bill 87 contains no definition of "worker" and therefore we must conclude that it is has not been changed from the original act, which means that "worker" as defined in the definitions 1(t) is as in the present act.

This then means that some establishments, such as restaurants, bars, banks and many others may have staffs of considerably less than 50 full-time employees which at times are augmented with part-time employees, so that the total number of workers will at times be in excess of 50. We can also see problems existing in the same sort of establishments where the quantity of 50 is exceeded possibly with week-end work or holidays. I think that should be looked at.

4. Supply of Trained Safety and Health Officers

We are continually advised that th department lacks a sufficient number of well-trained safety and health officers. Introduction of this legislation along with almost simultaneous introduction of regulations for hearing conservation and first aid regulations can do nothing but add to a set of conditions which is anything but good.

5. Timing of New Legislation and/or Regulations

The Canadian Manufacturers' Association is concerned about the short length of time which is being given to the private sector to introduce new and usually costly changes in legislation and regulation. It appears the recession has bottomed out. However, this does not mean that cash flows, profits, inventories and balance sheets are back to what was considered normal. Labour, management and government still have a lot to do, particularly in the area of reestablishing our place in the global village. Ours must be a reasonably planned recovery with priorities carefully considered and established.

That is our submission.

MR. CHAIRMAN: Thank you Mr. Benedict. Are there any questions from members of the committee? There being no questions, thank you for your presentation.

Mr. Cowan.

HON. J. COWAN: Personally, I want to thank Mr. Benedict and his organization for not only coming out this evening and making this presentation, but also for being involved for nigh on six, seven months now in the development of this particular piece of legislation and these amendments to The Workplace Safety and Health Act.

I think the record should be clear that as a result of those consultations, changes have been made, and I think Mr. Benedict would agree that there have been a number of changes made from the proposed legislation to the legislation which you have before us.

When I spoke to this in the House, I said very clearly, while it is apparent that not a complete consensus has been reached, I think we have moved a long ways towards clarifying a lot of the difficult parts of the legislation where there was no consensus previously. For that reason, I want to reiterate my earlier comments of appreciation for his assistance.

To comment on the specifics - comments in his brief - he will recall that there was a change in respect to the reporting of a right to refuse, and that there was some concern in the first instance that that right to refuse could shut down an entire operation. We certainly did not want that to have happened, so we made changes on the recommendation of various organizations in that regard.

This particular section, as it stands now, was a compromise between having a full committee attend with that worker, which would have tied up a significant number of individuals in the workplace, and having one individual, at the request of that worker, attend to that site investigation. I can assure you it was not intended to create a two-on-one situation, and there is no decision-making authority given by the act in that regard so that it would not create that sort of a situation where two people could overrule one individual.

What it is there for is so that a worker who is not well-versed in his or her rights or not well versed in the legislation or not well-versed in safe procedures can draw upon expertise of someone in the workplace whom they trust. There is nothing to prevent the supervisors from bringing along as many individuals as the supervisor would wish and that is certainly a managerial prerogative, but we did feel it was necessary to entrench the right of the worker who does not have that same managerial prerogative to direct other individuals in the workplace to have an opportunity to have someone with them.

The reason we removed the clause dealing with frivolous reasons was twofold: Firstly, it had never been used, but that is not a good enough reason to remove a clause but secondly, we felt that the act contained the same protections implicitly contained within the act as were contained in this particular section. In other words, if a worker abuses the rights and responsibilities which accrue to them under the act, then they are in violation of the act. So we felt that it went without saying that if they were frivolous in their purposes, then they were not in fact within the law. So we see no real difficulty with having removed that section and did so accordingly.

In regard to the number of workers and the definition of workers, this is an area where we have some real concern and share your concerns. For that reason, we have attempted to say that we will develop regulations around some portions of the act where we have threshold limit values for committees. Those regulations, I hope, will be fine-tuned enough to take into account the kind of considerations which you have.

I can give you this assurance; that in the development of those regulations, we will be consulting with the different organizations, both employer and employee representatives, and try to clarify any of those specific problems by way of the regulations. I can't guarantee you that we'll reach a full consensus, but I can guarantee you of our co-operation and, hopefully, we can address it in that way.

MR. CHAIRMAN: Thank you, Mr. Cowan. There being no further comments or questions related to Mr. Benedict's presentation, the next presentation is from Mr. Jim Wright of the Winnipeg Chamber of Commerce.

Mr. Wright.

MR. J. WRIGHT: I am Jim Wright, President of the Winnipeg Chamber of Commerce. The Winnipeg Chamber of Commerce appreciates this opportunity to speak to the Industrial Relations Committee about Bill 87. As you are probably well aware, the Winnipeg Chamber of Commerce represents over 1,500 businesses and 4,000 business and professional members.

As drafted, the amendments proposed to The Workplace Safety and Health Act will enhance the safety of employees on their worksite or workplace. This is a very credible objective and one which all members of The Winnipeg Chamber of Commerce certainly support. It has been said on numerous occasions that we cannot place a dollar value on safety. However, as employers, we urge the government to recognize that if regulations and legislation burden employers too heavily, businesses will be forced to close their doors in Manitoba and even more people would be out of work.

With those remarks as our preamble, I wish to advise you of some of the specific concerns the Chamber has about Bill 87. We must say that we have had an excellent relationship with the department and have had input to this date, but we still have a few concerns that we wish to speak about.

The proposed wording under Section 40(1)(a) requires further clarification of the word "workers." It is difficult to understand whether "workers" includes the full-time or full-time and part-time employees. Just simply a clearer definition, we feel, is needed.

The proposed exception or limitation in Section 40 (1.1) may apply to a workplace until the numbers of workers exceeds 50. We question why this exception could not be increased to exempt a workplace where the number of workers exceeds 100 workers, where applicable, because it could be rather onerous, some of the regulations that would apply to companies employing less than 50 people.

Under the proposed Section 43(3), we recommend deletion of the words "and at the option of the worker, another person representing the worker." The Chamber would prefer that the "person" be defined as a member of the safety and health committee of the company concerned.

The proposed wording under Sections 43(6) and 43(7) imply that there are a sufficient number of safety and health officers to respond to investigations in a timely manner. If the department does not intend on increasing the number of safety and health officers, the Chamber fears there could be a considerable backload of investigative work. This could act to the detriment of both the business and the employee.

The proposed deletion of Section 43(7) from the existing act causes employers very serious concern. Section 43(7) as it currently exists permitted an employer the right to take disciplinary action against an employee who took unfair advantage of this section for frivolous reasons. The proposed removal of this section from the act will make disciplinary action far more difficult to proceed with in either an arbitration setting or in a court of law. Frivolous action could substantially increase during periods of labour-management unrest, and management will bear most of the unjust effects of a frivolous claim.

Section 43.1(2) proposes there be two normal working days allocated to educational leave. The Chamber would recommend that the words "up to" be inserted before "2 normal working days" to coincide with "to a maximum of 16 hours" to prevent unnecessary expenditures in retraining of employees.

Section 43.1(3) proposes 30-minute safety meetings every two weeks for the construction industry. The Chamber questions who is responsible for providing this training. Would it be the general contractor, or each sub-trade? The portability of manpower, that is being on the job site for short periods of time, could create a problem in this area.

Section 43(9) discusses supervisory liabilities. The Chamber cautions the government that the imposition of these liabilities might have the effect of decreasing the desirability of having a supervisory position.

In conclusion, the Chamber encourages the government to pay particular concern to our comments about the removal of the existing section dealing with frivolous claims. The removal of this section could have particularly negative effects on employers, and could leave the judgment of unsafe workplaces wide open to abuse.

Thank you for the opportunity to present our views.

MR. CHAIRMAN: Thank you, Mr. Wright.

Mr. Mercier.

MR. G. MERCIER: Mr. Wright, do you see any necessity to impose the blanket requirement for workplace safety and health committees that this legislation brings with it versus the situation as it exists now where the Cabinet can require a workplace safety and health committee in a workplace or in a class of workplaces where it is deemed to be appropriate? A blanket requirement?

MR. J. WRIGHT: Well I think our submission certainly indicates that we don't see the necessity for a completely blanket requirement.

MR. G. MERCIER: In fact, Mr. Wright, I don't believe you said that.

MR. J. WRIGHT: It is the removal of the existing section dealing with frivolous claims. Some of the other is a bit of housekeeping or rewording that we would like to see done, so there is a better understanding by both the employee and the employer.

MR. G. MERCIER: Mr. Wright, would you see under this legislation the imposition of workplace safety and health committees where, up until now, there hasn't seemed to be that requirement for them, and a resulting cost implication to the concerned businesses?

MR. J. WRIGHT: I don't think that we have really addressed that concern particularly.

MR. CHAIRMAN: Are there any further questions for Mr. Wright?

Mr. Scott.

MR. D. SCOTT: Mr. Wright, in your preamble, you make reference to the cost of regulations and legislation, a burden on employers to have a business and be forced to close their doors in Manitoba, even more people would be out of work. Are you aware of any situations where safety legislation in Manitoba, or in other jurisdictions, has forced companies to close; and would you say that the main reason for companies ceasing operations is because of - I don't know what to call it, I don't want to make an allegation or whatever - but far more often it is lack of good management skills, in keeping up-to-date with the marketplace, that the business is in today, rather than due to safety legislation?

MR. J. WRIGHT: Well, I didn't realize I was here to probably engage in a philosophical debate. I think what we're saying is that if regulations and legislation do become too onerous and burdensome it would be like anything else, it would have an effect of causing business to either close or leave this province.

MR. CHAIRMAN: I would remind members of the committee that questions are for clarification. We can debate merits of the bill at a later stage.

Ms. Phillips.

MS. M. PHILLIPS: Thank you, Mr. Chairperson. Mr. Wright, in your brief in Section A, you're concerned about whether "workers" is inclusive of both full-time and part-time employees?

MR. J. WRIGHT: We're simply asking for a clearer definition.

MS. M. PHILLIPS: Thank you, Mr. Chairperson. I guess I'm wondering what difference it makes if a worker is at the work site and is injured, does it matter whether that person was there half a day, or a whole day, or part of the week, or the whole week?

MR. J. WRIGHT: Well, I think it's our understanding that we really wish to have simply a clearer definition of the Section 41(a) to really clarify what you mean by the word "workers" in that section; and does that include all workers, and we'd just like that definition to be quite clear.

MS. M. PHILLIPS: Mr. Chairperson, through you to Mr. Wright, it seems to me that workers would mean all workers, regardless of their status under this. It seems that you are indicating it should be broken down and be very specific about which category workers should be covered. Is that what you're suggesting?

MR. J. WRIGHT: Yes.

MS. M. PHILLIPS: Okay, my question then to you is, what difference does it make whether they're full-time or part-time workers, in your opinion, if a person is injured?

MR. J. WRIGHT: It probably doesn't make any difference, but we still feel that that clarification is necessary.

HON. J. COWAN: I personally thank you, Mr. Wright, for coming out, as others have, on a hot and muggy evening. As well, thank you for the participation of your organization throughout the development of the legislation and, again, I don't think we reached a full consensus but I think we moved a lot closer from where we started, in the beginning, through that sort of work.

I want to make a few comments in regard to the brief, very quickly. — (Interjection) — Well, the Member for St. Norbert asks if I have a question and I could phrase it by way of a question, but that would be transparent. I would just rather thank him for his comments and try to answer some of his concerns while we have an opportunity. I think that information may benefit members of the committee in their deliberations on the bill when we go clause-by-clause, line-by-line, word-by-word, or page-by-page, whichever we decide to do, at whatever time we decide to do it.

Firstly, again on the definition of workers, we hope to be able to fine tune some of those questions in the regulations and, again, we will be consulting. I'm not certain exactly what we will be able to do in that regard, but we certainly intend to review the situation.

The reason we chose 50 vs 100 was because we felt that when dealing with offices - and this particular section was designed primarily to deal with offices - that once you got up above 50 individuals in a particular work site, and that's really what we're attempting to do is, say, if there are 50 individuals in a work site, that you are getting into a relatively different type of office than a small office, and you were into a lot of the higher technology and into much more of an assembly line process than you have in your small offices. We chose that number because there are not that many work offices of that sort that would fit in the definition which we have in our mind that would require a safety and health committee; but there are some which we believe should have a safety and health committee because of the new technologies that are being used there and because of the style of the office. So we didn't want to impact upon the smaller offices and that was, I think, a very good suggestion that was given to us by the employer organizations, specifically the Chambers, during a meeting a number of months ago.

So we believe that 50 will meet those needs. If it's found that it doesn't and we take a look at this in an evaluative way in the future, then we would be prepared to review that number, but we've looked at the stats and we don't think 50 will be an onerous obligation.

In regard to your suggestion that a person be defined as a member of a safety and health committee under Item C. We had considered that, but the difficulty was that on certain job sites there may not be a member of a safety and health committee there. If the act required that that person be a member of the safety and health committee, then one would have to be brought in, which might be a difficulty on remote sites; or there would have to be a time delay, and we didn't want to impose that sort of burden on the employer, in waiting for a safety and health individual to be brought in, sometimes on overtime. So we felt that the recommendation would be that it is a member of a safety and health committee, but to mandate it in the legislation would be too restrictive and would be a burden on the part of the employer, in most instances. So that is why we have it loosely defined but our recommendation is certainly that it be a safety and health committee member.

We would like more safety and health officers. I've heard the best arguments for them this evening and over a number of months now, perhaps even a couple of years, and I would just hope that members of the oppostiion will recall those comments when we come back forward to the Legislature, during an estimates procedure in the future asking for more safety and health officers.

In regard to Section 43(7) in frivolous purposes. I'm prepared to take a look at that and I indicated earlier why we felt it was not necessary. I'm not prepared to make a commitment at this time to bring it back into the act, but I'm prepared to look at it in a reasonable fashion. We may decide that it is not necessary, but I would not make that definitive categorial statement now. If we can be disabused of that notion we'd certainly be prepared to review its inclusion.

In regard to F, which proposes that there two normal working days allocated to educational leave, and you're asking that we clarify that to be up to two normal working days. I'm afraid I would have to reject that suggestion. We want it to be at least two normal working days, and that's why we had it very clearly stated that it should be two normal working days. Now we know that some individuals work up to 12 hours a day, and we felt that it would be unfair to them to have them required to provide 24 hours educational leave in a year, so we put the restricting "up to 16 hours" in to cover that sort of a situation, but we certainly want it to be two normal working days.

The 30-minute safety meetings; it has been something that has very thoroughly discussed with the construction industry and, quite frankly, it's their suggestion more than ours. We're prepared to go along with it as being a workable solution. I am not saying they are saying that educational leave is necessary, but if there be educational leave, that is the solution they would like to see.

The supervisory liabilities that are imposed in 43(9) are the same that are imposed elsewhere in the Act in that a supervisor should not and is required by law not to allow a worker to work under unsafe or unhealthy conditions if they know of it or ought to know of it. So it's no more a burden than what is already in the Act.

So I hope that provides some further insights and some assurances to you and again thank you very much.

MR. CHAIRMAN: Thank you, Mr. Cowan. There being no further questions or other variations thereof, the next presentation is from Murray Smith and Ralf Kyritz of the Manitoba Teachers' Society.

Mr. Smith.

MR. M. SMITH: Thank you, Mr. Chairperson. In the absence of Dr. Linda Asper the President of our society, Mr. Kyritz and I are here tonight representing the Manitoba Teachers' Society, the professional organization of the province's 12,000 teachers.

I am Murray Smith, a teacher in the Winnipeg School Division and Vice-President of the Society. My colleague is Ralph Kyritz, who has been President of the Manitoba Teachers' Society, most recently a teacher in the St. James-Assiniboia Division and now a staff officer for the Society.

The Teachers' Society appreciates this opportunity to address the Standing Committee on Industrial Relations on the amendments proposed by Bill 87 and on some other amendments which we feel should be considered. We do not intend to address all the proposed amendments, instead we shall restrict ourselves to those which directly affect teachers and those which, though not yet included in the bill, are, in our opinion necessary to ameliorate a situation that has already significantly diminished the rights of the teacher.

Because this one case so sharply focused two concerns, I shall deal with it first. The situation referred to occurred in the Swan Valley School Division. A teacher, who was about two-and-a-half months pregnant, was informed by her principal that a child infected with rubella or German Measles had atended the school. According to the Department of Health and virtually anybody else you ask, when a woman in her first three months of pregnancy is infected with rubella, there is a high risk that the child will be born malformed. In this instance, the teacher consulted her doctor immediately but, as she was a recent immigrant to Canada the doctor did not have the results of any test taken to determine her immunity to the disease. He ordered another test and advised her not to attend that school until the results of that test would be known in about four days. The woman immediately informed her superintendent who agreed she could take the time off school but stated that she would lose the salary normally earned during those days. This loss of salary will also affect her pension. When it was determined she was immune, the teacher returned to work.

The Society requested the Workplace Safety and Health Division to investigate the matter. We discovered we were unable, on two grounds, to lay a complaint under Section 43(3); or that if we laid it, it would be unlikely to succeed. First, it was uncertain from the definitions in Section 1(t) that "worker" includes a female worker's unborn child. The Workplace Safety and Health Branch requested an interpretation from the Attorney-General's Department and relayed to us orally that there was some doubt that the unborn child would be protected by the act. If a distinction were to be made that the danger in the school was to the health of the unborn child rather than to that of the pregnant woman, an action under 43(3) might not succeed. Admittedly, there is a precedent in our neighbouring province, in Ontario, where the Minister of Labour stated in a Globe and Mail article that there was no distinction between a worker and her unborn child for purposes of the Ontario Act.

This is a quote of the report that we received.

"In response to an editorial in the Globe and Mail of December 10th, R.H. Ramsay, Ontario Minister of Labour wrote a letter to the editor of that newspaper on December 22, on the question as to whether or not a pregnant worker could refuse unsafe work under section 23 of The Occupational Health and Safety Act, if the reason for the refusal was concern for the health of her unborn child. In his letter the Minister stated that he '. . . obtained a legal opinion from the Ministry of the Attorney-General dealing with this important issue.

"I", that is the Minister of Health in Ontario, "I am adivised that there is no distinction between a pregnant worker and her unborn child for the pruposes of Section 23 of the act. In other words, assuming one of the hazards enumerated in the section is present, the protection conferred by the section to the pregnant worker would include her unborn child. Risk to the fetus is attributed to the mother and, thus, the Act in its present form provides the necessary protection. Consequently, the amendment of the statute is not required.'"

That may indeed be the case in Ontario, but no such statement has been made in this province and one can only wonder how much this province would be bound by the statment of the Minister in another province.

Second, our legal counsel, after discussions with an official of the Labour Board, informed us that there is no provision in the Act for the payment of salary of a worker who was absent from work due to a dangerous condition in the workplace. Now, that sentence was so surprising to us that I can only repeat, we were informed that there is no provision in the act for the payment of salary of a worker who was absent from work due to dangerous condition in the workplace.

Frankly, we found this incredible, but we could get no reassurance that the act did provide that a worker so absent would be paid. If anyone is in a position to assure us of that, we would be the first to applaud.

I should inform you that in view of the difficulties with proceeding under the Workplace Safety and Health Act, the Society has taken the teacher's problem to arbitration. The board has been appointed but has not yet met.

In order to stop similar discriminatory actions on the part of school boards or other employers against female employees, the society proposes two amendments to the act. These amendments are not included in the bill which has been tabled, but we have communicated them to the Minister responsible in a letter on June 9th.

First, the Society proposes that the Act be amended to guarantee that there be no distinction between a pregnant worker and her unborn child. This could be accomplished by stating, in Section 1(t), that in the instance of a pregnant worker, the term "worker" includes her unborn child.

In support of this position, the Society indicates that if this section is not amended, there would be serious conflicts between this act, other acts and the federal Charter of Rights. The Employment Standards Act gives a worker the right to work during a part of her pregnancy. Therefore, she is in legal attendance at her workplace. Since the unborn child cannot be separated from the mother during working hours, or indeed at any other time, the unborn child must also attend the workplace. The Society considers it unreasonable to give the worker the right to attend the workplace under

the provisions of one act, the Employment Standards Act; but to allow the employer to leave the workplace in an unsafe condition by the provisions of another act if it does not include the unborn child in the definition of "worker."

The Society also notes that Section 28 of the Charther of Rigts provides for equal rights to both male and female persons and that, once is enacted, Section 15 guarantees the equal benefit of the law to all persons. Since men cannot conceive a child, it could be argued that the current act contravenes both these sections of the Charter of Rights.

Second, the Society proposes that the act be amended to ensure that a worker, absent from work due to an unsafe condition, does not lose pay. We may note that there is little onus on the employer, even with the proposed amendments in Bill 87, to correct unsafe conditions if the worker is the only one to suffer a financial loss. The amendment to Section 43 proposed does not address this issue. In fact, if anything, the amendment makes conditions worse in this respect for the worker.

Under Section 43 of the current act, a worker is able to report an unsafe condition directly to a Safety and Health Officer. Under the proposed amendment the worker must report to the employer first. Upon receipt of the report, the employer inspects the premises and, assumedly, corrects the condition; only if the condition is not remedied will the Safety and Health Officer be informed. During this whole time the worker is off the job and, by our understanding, may not receive remuneration.

We shall consider Section 43 in more detail later. At this time, we would raise only one question. Under these conditions, why would any worker absent himself, or herself, from work and, in so doing, risk losing salary for an indeterminate amount of time? It seems to us to be a rather vacuous right to say that you have the right to refuse to work because the conditions are unsafe, but then you lose pay for as long as you're absent. We believe the revised act should give more protection to workers than this.

The society is aware that under Section 1(g) of the current act, the section defining discriminatory action, it may be argued that the words "reduction in wages" could be interpreted as "loss of pay" and, therefore, handle our problem. However, there seems to be a significant difference between these two terms. "Wages" usually refers to the scale or rate of remuneration - so much per hour, so much per week; "loss of pay" refers to the non-earning of income for a specific period and for a specific reason. For example, in many collective agreements there are provisions for a personal leave of absence. A worker, taking advantage of such a provision, may be absent from work but will lose the salary earned for that period. The provisions of collective agreements do not consider this loss to be a "reduction in wages"; this is clearly a loss of pay.

Therefore, the society proposes that Section 1(g) be further amended to include the words "loss of pay," and that a new subsection be inserted in Section 43 which would ensure that a worker, refusing to work due to unsafe conditions, will continue to receive his/her regular pay. Of course, it's understood that, instead of paying wages for work not done, the employer has the right to transfer the worker to a safe workplace; however, this issue is already addressed in the amendment to Section 1(g).

The Society would not wish to address the specific amendments to Sections 42 and 43. In general, with respect to Section 43, the Society believes the new streamlined procedure significantly clarifies what, in the present Act, is a rather confusing set of conditions. If the employer cooperates, the new procedure should guarantee the quick resolution of any dispute respecting unsafe conditions. Unfortunately, there is little legal or financial onus on the employer to act quickly. In the proposed Section 43(5), the Safety and Health Officer is informed only if the dangerous condition is not remedied. There is no specified time limit, thus the employer could easily stall under the pretext that the condition is being remedied, or that studies are being carried out to determine whether and how it can be remedied. Some members of the committee may recall a situation in the Winnipeg School Division in which removal of an asbestos ceiling took rather longer than most people expected it would.

Section 43(5) also states that the persons carry out the inspection will notify the inspector. Since these persons are the worker and the immediate supervisor, and since in any stalling action, should there be one, the opinions of these two parties may well differ, one must question whether the agreement of both parties is implied before any report is made, or can the worker make a report on her own.

Thus, the Society proposes that in Section 43(5), after the words "if the dangerous condition is not remedied", there be inserted the word "immediately". If the company cannot immediately remedy the situation the inspector would be notified. If the company is not stalling and has bona fide reasons for some delay the officer would no doubt be agreeable to such a delay. The Society also proposes that the worker have the right and duty to inform the Safety and Health Officer, without necessarily first receiving the mutual agreement of the supervisor as proposed in Section 43(5). These amendments we consider are essential to protect the worker's rights in this difficult situation.

Furthermore, if Sections 43(6) and 43(7) are invoked, and if the inspector issues improvement orders, which are appealable, still further time delays may occur. During this whole time the worker might be off work and under present provisions, as we understand them, might not be receiving any pay.

The Society also proposes that the intent of Section 43(1) of the current act be continued in a new subsection of the proposed Section 43. This intent was that the worker directly report an unsafe condition to a Safety and Health Officer where such conditions is not corrected after being reported to management. Under the proposed Section 43, even if the Society's recommendations immediately above were accepted, the worker must first refuse to work before any such report is made. Considering that such refusal to work may mean a loss of pay, we hope the Government will continue to provide the worker with direct access to a Safety and Health Officer without that condition of refusal to work.

With respect to Section 43(1), the Society expresses some concern over the change in wording from that contained in the current act. The words "in or about a workplace" have been changed to "at a workplace".

The word ''at'' is too constricting and could be interpreted as meaning specifically within the workplace, that is, within a building, within a facility. We believe that the neighbourhood of the workplace should also be protected, and we've had examples within the City of Winnipeg of that problem. Therefore, we request the words ''in or about'' be re-substituted for the word ''at''. Furthermore, the words ''a condition exists that is dangerous'' have been changed to ''the particular work is dangerous''. Again, we believe the new words are too restrictive. Teaching, by itself, is not a dangerous occupation; however, if the ceiling were about to fall down, or poisonous fumes were present in the room, a condition would exist which is dangerous, while the ''particular work'' of teaching still continues to be safe. Therefore, we propose that the words ''a condition exists which is dangerous to his/her safety and health or'' be inserted before the words ''the particular work is dangerous'' in that proposed section.

With respect to Section 42(1), the Society would make two comments on the proposed changes. This section deals with protection for workers who are involved with Workplace Safety and Health Committees, or who take certain actions regarding the safety of the workplace. In subsection (a), the words ''or in any way associates with'' have been deleted from the current act and replaced with ''exercising any right or carrying out any duty in accordance with the provisions of this act or the regulations''. We believe the new wording restricts the rights of workers to rights and duties directly specified in the act. The wording of the current act is much preferable, since it allows workers to be associated with the committees, even where such association is not specifically spelled out in the act.

Moreover, we note that the words ''regarding workplace conditions affecting the safety, health or welfare of that person or any other workers'', which under the current act were attached to subsection (c) only (the one about giving of information), now applies to all three subsections. This may be a small point but, in our view, it is a restriction upon the rights granted in sections (a) and (b). For instance, the application of the noted words to subsections (a) and (b) could restrict the workers in this way. The wording used is ''that person or any other workers'' and, therefore, a person involved with a Workplace Safety and Health Committee would have to be directly involved in the matter. The Society notes that in Section 2(1)(b), the object and purposes of the Act are to extend to ''other persons'', not necessarily only workers. Therefore, a person acting with a Workplace Safety and Health Committee under subsection (a), or testifying under subsection (b), or on a matter affecting persons who are not workers (perhaps visitors), could no longer be protected against discriminatory action. The Society submits that, unless there is a specific reason for applying those words to all three subsections, they be applied again only to subsection (c).

The Society is pleased to see the retention of students as workers under Section 1(t)(iii). We believe it is imperative that students be protected under the same rules and regulations as are paid workers. We know that there's a difference of opinion on this issue, and we're very pleased to see that the present provision is being retained. It is our view that the students in a school or a university or a community college are very much affected by the environment in which they study, just as much as the teachers or non-teaching personnel are affected by the environment in which they carry out their paid work.

We further believe that students should be represented on the Workplace Safety and Health committees, and we have a precedent for that in the Winnipeg School Division where a student has participated on the committee and been most useful.

In addition to protecting the rights of students, we see this as an educational device in that if students participate in such committees, they and their friends and their classmates are more likely to understand how acts such as The Workplace Safety and Health Act or The Labour Act affect employees and others in the community.

We are also pleased to see that under Section 40(1), Workplace Safety and Health Committees will be required at all workplaces meeting the criteria of that section unless exempted by the Lieutenant-Governor-in-Council. This is consistent with the Society's policy, and the policy is quoted in the Appendix along with all the other policies on this issue in our books; that Workplace Safety and Health Committees should be required in every school division or district without being specifically designated in regulations.

Perhaps all members of the committee are aware that at present there are only five school divisions required to have Workplace Safety and Health Committees. It has been our view for some time that there is now sufficient evidence of the usefulness of these committees in school divisions as in universities and community colleges and City of Winnipeg and Manitoba Hydro and other large employers that they should be required in all jurisdictions.

I might comment on the question of how these committees are developed within a school division. Generally, the committees in the five divisions that are required to have them have been established on a division-wide basis, so that there is one committee for the Winnipeg School Division, one committee for the Lord Selkirk Division, one committee in River East, one committee in Kelsey and one committee in Swan Valley.

It was our view in Winnipeg, however, that it would be more effective if there were committees for clusters of schools, perhaps a group of four to six schools centred around one of the larger institutions. Then you could have teachers and non-teaching employees and management people involved with the conditions in that geographical area, that region, that feeder cluster, whatever you wish to call it, without having to deal with all of the other 140-odd workplaces in the Winnipeg School Division.

When that was proposed by the Teachers' Association, it was not acceptable to management, and we have ended up with two committees, one involving teachers and management and one involving non-teachers and management. At present, they are rather surprisingly meeting concurrently, but they are still logically distinguished as separate committees and they have separate minutes.

In Lord Selkirk School Division, there is a division-wide committee, and there is also at the initiative of the people in that particular school, a committee for the Lord Selkirk Regional Secondary School. However, it's on their own initiative. Although they were not

required or asked to have a committee, they developed one, no doubt because of the special concern over vocational areas including many industrial areas. That committee, I understand, has been working very effectively.

I have checked within the last 48 hours with representatives from all of the school division committees in existence, and the feedback that we have is that they are all functioning, though some better than others. There are no teachers who would like to see them discontinued. They all recommend that such committees be established in every school division. They gave me examples of how the committees had been useful in remedying unhappy situations. They believe that there had been significant improvements made, and that the teacher representatives and management representatives had found ways of working together amicably.

I haven't for you, an example of a teacher who refused to work because of unsafe conditions, but I have an example of one who certainly considered it. If you can imagine a foods laboratory, that is a cooking room, which has no windows; is equipped with air conditioning which is currently not functioning, you can imagine that the temperature in that laboratory would be even higher than it is here. You, at least, can open a window and have a fan. The temperature was well over 90 degrees, I am informed. The teacher decided that under those conditions, although she was still prepared to work in that room, she would not undertake to cook anything. That is, she would not turn on any stoves in that classroom.

I have another example of a teacher employed at the Health Sciences Centre, though on the payroll of the Winnipeg School Division, who was moved to another location because the conditions were aggravating her asthma.

The Society also supports the provisions in the bill for educational leave or for educational programs on construction sites. As educators, we are naturally interested in people coming to understand better how the conditions in which they work can be improved and their role in so improving them. As an individual who has attended workshops presented by the Manitoba Federation of Labour and also presented by the Workplace Safety and Health Branch, I am well aware of how useful these seminars are and how much they increased my understanding of what is involved in the work of a committee to improve conditions in the workplace.

In summary then, the Society would propose the following:

1) That subsection 1(t) be amended to ensure that no distinction be made between a pregnant worker and her unborn child.
2) That Section 1(g) and Section 43 be amended to ensure that a worker, absent from work due to an unsafe condition, does not lose pay.
3) That the proposed Section 43(5) be amended to ensure that the Safety and Health Officer is informed if an unsafe condition is not corrected immediately and that the worker have the right and duty to inform such officer without prior consultation or without the approval of the superior.
4) That a new subsection be inserted in Section 43 which would ensure that a worker has the right and duty to inform a Safety and Health Officer of an unsafe and uncorrected condition without first having to refuse to work.
5) That the proposed restrictive words and phrases in the proposed Section 43(1) be amended to reflect the less restrictive words of the current act.
6) That the proposed Section 42(1) be amended to reintroduce the worker's right to association and to apply the last paragraph only to subsection (c).
7) That students continue to be covered by the provisions of this act.
8) That Workplace Safety and Health Committees be required in every school division or district.

With respect to No. 7, there's one point I didn't mention. That is that as we read the proposed requirement for having a committee, it refers to a specific number of workers being employed. Now in the definitions for this act, the word "worker" specifically includes anybody undergoing an education or training program and, therefore, includes school students, college students, university students. We would ask whether it is intended that in the number of 20 or 50 or 10 as it applies, the count is to be only of workers who are employed and not of workers as defined in Section 1 of the act.

The Society thanks the committee for its attention to these matters, and draws your attention to the policies which we append.

Thank you, Mr. Chairperson.

APPENDIX TO MR. SMITH'S REMARKS

POLICY OF THE MANITOBA TEACHERS' SOCIETY ON WORKPLACE SAFETY AND HEALTH

That the Society advocate that each school division/district be required by legislation or regulation to have a Workplace Safety and Health Committee.

That the Society advocate that students continue to be classified as workers under The Workplace Safety and Health Act.

That the Society advocate the regulations under The Workplace Safety and Health Act be amended to ensure that all provisions apply as the minimum requirements for all school jurisdictions.

That pursuant to Policy B4.07.4 the Society urge the Province of Manitoba to inspect gymnasiums and further to upgrade safety regulations regarding gymnasiums.

That pursuant to Policy B4.07.4 the Society urge that Workplace Safety and Health Committees include in their responsibilities the monitoring of the health and safety aspects of working with computers.

That the Society conduct a study on the implications of The Workplace Safety and Health Act for the school system with a report, including recommendations, to be presented to the 1984 Annual General Meeting.

That the Society advocate the following health and safety standards relative to the use of computer hardware:

(a) That teachers who work with Video Display Terminals for significant amounts of time be provided with eye examinations on a routine basis;

(b) That computer hardware be routinely checked for readability, general comfort level and radiation emission; and

That pursuant to the above policy the Society urge the Provincial Government to immediately prepare, distribute and publicize a report on the possible effects of Video Display Terminals radiation on students and teachers in the Province of Manitoba.

That the Society advocate that provincial labour standards include safety standards relative to computer hardware; and

That pursuant to this policy the Society approach the Minister of Labour to seek amendments to provincial labour standards relative to health and safety standards for computer hardware.

MR. CHAIRMAN: Thank you, Mr. Smith. Are there any questions from members of the committee?

Mr. Mercier.

MR. G. MERCIER: Mr. Smith, on the example that you cited at the beginning of your brief, would teachers not consider it fairly normal that in an average-sized elementary school, there is bound to be, throughout the course of a year, the presence of a child with measles?

MR. M. SMITH: No, cases of German measles are not all that common anymore. Most children experience the disease before they get to school and the situation of a woman who is within the first three months of pregnancy, is not at all a situation as you, Mr. Mercier, or I might see it. She is immediately and seriously concerned. She consulted her doctor and her doctor advised her - I have seen the note - the doctor advised her that she must stay away from work until her immunity was established.

Normally, teachers are entitled to rely upon the advice of their physicians and normally school officials accept the advice of physicians. In this case the superintendent accepted it, with respect to her being absent from work, but said, you're going to lose four days pay, and that's what we consider to be inequitable.

MR. G. MERCIER: You wouldn't consider it to be a usual or normal risk of an elementary teacher, teaching in an elementary school . . .

MR. M. SMITH: No.

MR. G. MERCIER: You wouldn't?

MR. M. SMITH: No. If I were in that position, I would wish to be out of the building. That is, as you realize, a hypothetical statement.

MR. CHAIRMAN: Mr. Storie.

HON. J. STORIE: I gather, Mr. Smith, you're suggesting that conditions such as this, where an individual is in effect, forced to isolate themselves in that situation, would be the only type of situation where this kind of provision would be imposed?

MR. M. SMITH: The provision that there be pay despite the fact the worker . . . I imagine that there are other situations, in which the employee might have to be away from work.

The case of the teacher I quoted, who is a severe sufferer from asthma, the conditions in the building changed radically for a period of time because of construction being carried out. So that a building which was perfectly acceptable to her, at one date, was not acceptable a week later and her situation was resolved by having her work in another building, where the air was satisfactory. But if the only place where she could have done her work was in her normal place of work, then she might well have had to refuse.

MR. G. MERCIER: Mr. Smith, is it your position that workplace safety and health committees should only exist for school divisions and not individual schools?

MR. M. SMITH: That's a question on which we don't have consensus. I have heard concerns about having them at the school level. I have heard that in a division of moderate size, where perhaps there were 10 or a dozen schools, that having one at the division level makes good sense.

Where it doesn't make sense, in our view, is where you have a large division with a large number of work sites. In the Winnipeg School Division it's patently impossible for six teachers on a joint teacher management committee to carry out inspections of all the workplaces, which is what the act tells them they should be doing. So we would suggest, perhaps, a regional one or an area one and we'd certainly be open to trying them at a school level and seeing how that functions.

One thing we would like, in general, is to ensure that if it's done at a local level or an area level, that teachers and non-teachers be involved in the same committee. We're having difficulty with that at the divisional level in Winnipeg, but a local level, that makes a great deal of sense because the teachers and non-teachers all know each other and work together in the same environments.

MR. G. MERCIER: Mr. Smith, I asked you the question because the amendments that are before us, in Section 40(1) read: "Every employer shall cause a workplace safety and health committee to be established at a work place where at least 20 or more workers are regularly employed," and workplace - and I'm not reading the whole definition - means any building, site, etc., in which one or more workers are engaged in work or have work.

MR. M. SMITH: Are you asking me whether we . . .

MR. G. MERCIER: No, we're going to have to ask Legislative Counsel. The Minister of Labour is offering me an interpretation which I don't really accept. There's a prima facie interpretation here that a workplace safety and health committee could be required in every school, in which there are more than 20 workers. That doesn't mean 20 teachers, but all of the people who work in the building.

MR. M. SMITH: Yes, and we raised a question whether the count included students. We agree that that's the

way it appears to read and if that's the way it is passed, teachers will certainly co-operate with it. All I'm reporting to you is that we're not agreed that is essential.

MR. G. MERCIER: You're saying then, Mr. Smith, that initially, at least, perhaps there should be consideration given to amendments, which would require a workplace safety and health committee for every school division, but not for every school within the school division, which complies with this act with more than 20 workers.

MR. M. SMITH: I suggest that there be latitude within the legislation so that different divisions could try it in different ways. That for some, a central committee may be entirely effective; for others, individual schools might well have committees.

MR. CHAIRMAN: Are there any further questions for Mr. Smith? Mr. Cowan.

HON. J. COWAN: In this instance, I'll start with a question and that is in regard to the situation which you outlined respecting the pregnant teacher and her unborn child. Did that case go to the Manitoba Labour Board?

MR. M. SMITH: No.

HON. J. COWAN: The reason I asked that question is that I believe that the act may have been interpreted that the health of that individual was effected, "health" being defined in the act as being fairly broad and making some reference to psychological conditions of the worker. I think that might have been a good way to clarify that. I certainly wouldn't want to impose my opinion on the Labour Board, but I think that person may have enjoyed protection under the act from the definition of the word "health," and if that is the case, then there would be no need for the type of amendment which you have suggested is necessary. Would that not be true?

MR. M. SMITH: If there is a definitive ruling to that effect, certainly, but the advice that we got, after the Attorney-General's Department had been consulted, was that we couldn't rely on that. Of course, there would still remain the question of whether she's paid.

HON. J. COWAN: Well, I would suggest to you that if a worker is found to be exercising the right to refuse under the act, that, in fact, they are protected, far more so than you seem to indicate in your brief.

MR. M. SMITH: That's very good news.

HON. J. COWAN: Well, a person is protected against discrimination for exercising a right under the act and the right to refuse would be one of those rights.

Now, the definition of discrimination is very far-ranging and while it does make reference to a reduction in wages, it also makes reference to any term or condition of employment and includes, without limiting the generality layoffs, suspension, dismissal, loss of opportunity for promotion, demotion, transfer of duties, change of location or workplace reduction of wages or change in working hours. So I would think that it would tend to cover any sort of discrimination which could be imposed.

With that information, are you still of the opinion that we are too restrictive in the use of the word "wages"?

MR. M. SMITH: With respect to your first point, I can quote from a letter of April 14th in which we were told that a member of the Workplace Safety and Health Division consulted with the departmental solicitor from the Department of the Attorney-General about what legal profile the division could assume, that is the Workplace Safety and Health.

We wanted to know whether this teacher, on behalf of her unborn child, could exercise the right to refuse to work in a workplace where a condition existed that was known to be dangerous to the fetus. We have been informed that The Workplace Safety and Health Act does not give us any legal standing in this case.

HON. J. COWAN: What I understand that letter saying is that you are asking if the worker had the right to refuse on behalf of another being, in this case the unborn child, according to your letter. I indicate very clearly that's your interpretation in your letter. What I am saying is that if the worker had refused to work on her own behalf, in other words refused because she felt it would have a negative impact on her health and her health being defined very definitively in the act, you might have gotten a different answer. I think in this instance, with all due respect, you asked the wrong question.

MR. M. SMITH: Teachers are supposed to be trained to ask the right ones.

In respect of the other point, Mr. Cowan, where it refers to reduction in wages, would it not be natural to say, loss of pay, if there is to be any distinction between those two things? I mean, what I understand by reduction in wages is the manager coming along and saying, because you have laid a complaint before Workplace Safety and Health, you are no longer going to be paid $5.60 an hour; you're going to be paid $4.95 an hour.

HON. J. COWAN: If I can just interject because I think it might be helpful, if you read the act, it says, discriminatory actions means, "any act . . . " which that would be, "or mission by an employer or any person acting under the authority of the employer or any union which adversely affects any term or condition of employment." That would certainly be adversely affecting a term and a condition of the employment, a change in wages of that nature.

MR. M. SMITH: Again you see, we think of terms and conditions as being what hours the person works; where she works; what kind of breaks there are, morning and afternoon; what you have for lunch period and so on, rather than whether you got paid for Monday, Tuesday, Wednesday and Thursday.

HON. J. COWAN: I am of the opinion that terms and conditions would include all benefits. I think it has been interpreted that way consistently. Now perhaps a court

would interpret it differently but, until that's the case, I wouldn't see a need for a change.

MR. M. SMITH: Your reassurance is very helpful.

HON. J. COWAN: To make a couple other points to try to clarify some, what I believe to be, misunderstandings, the right to refuse provision does not in any way restrict the rights of the individual which are available to that individual in other parts of the act. So an individual can call on a Workplace Safety and Health Officer at any time, whether there is a right to refuse situation or not. So I don't think that we are restricting an individual or an employer from calling in a Workplace Safety and Health Officer where a right to refuse has not been exercised.

MR. M. SMITH: Thank you.

HON. J. COWAN: So I believe that's one of the rights under the act.

The subsection in Section 43 which you ask would ensure that a worker has a right and duty to inform a Safety and Health Officer of an unsafe and uncorrected condition without first having the right to refuse, and I would look to the Member for St. Norbert very quickly for a brief encounter here. If we were to change that to read that a worker . . . that any of the persons carrying out the inspection may notify a Workplace Safety and Health Officer, I think that would be more in keeping with our intent and not significantly change the objective of that particular section, 43(5). I think we can consider that when we go through the clause-by-clause.

I think that the proposed wording which you find to be more restrictive is, in fact, broader for this reason. You say that because we have left out the word "associate with a Workplace Safety and Health Committee," we have provided a restriction and limited it more. What we have said though in its place is that, "a worker exercising any right under the act," and one of the rights under the act is to associate with Workplace Safety and Health Committees and to associate with Workplace Safety and Health activities, so it is included in the generality. For that reason, I would suggest, it would be broader than what is there at this time.

I think that answers most of them. Have I neglected to address any of the other matters which you brought forward?

MR. M. SMITH: You certainly provided reassurance on several of them. Thank you very much.

HON. J. COWAN: Thank you for your assistance and your advice.

MR. CHAIRMAN: Are there any further questions? There being no further questions, thank you, Mr. Smith.

MR. M. SMITH: Thank you, Mr. Chairperson.

MR. CHAIRMAN: Are there any further presentations on Bill 87? There being no further presentations on Bill 87, we move now to presentations with regard to Bill No. 88.

BILL 88 - THE WORKERS COMPENSATION ACT

MR. CHAIRMAN: The first presentation is from Mr. Richard Rybiak of the Canadian Manufacturing Association.

MR. R. RYBIAK: Thank you, Mr. Chairman. Can you hear me all right?

MR. CHAIRMAN: Proceed.

MR. R. RYBIAK: I'm Richard Rybiak. I am Chairman of the CMA's committee addressing itself to Workers Compensation matters. Before beginning a reading of our written submission, I would like to express our appreciation for this opportunity to address comments with regard to proposed amendments to Bill 88.

I am particularly appreciative of the degree of attention which members of this committee are paying to the submissions made and in particular, I think, the attention brought to this matter by the Minister sponsoring the proposed amendments. It gives me some confidence, I think, to expand a little on our written submission by commenting perhaps on a number of things that were said during the debate, said by the Minister sponsoring the amendments at the time that he closed the debate on Thursday, July 14th.

Perhaps I would like to begin by quoting one paragraph from Hansard. The Minister indicated, "I have not received any large number of complaints on the assessment increases. As a matter of fact, it has probably been brought to my attention more in this House by the Member for St. Norbert and his colleagues than it has outside of this House. That is not to say that there is not concern about it because most likely there is, but it is not the type of concern which has been manifested by calls of a significant nature or correspondence of a significant nature to my office.

That raises a couple of concerns, Mr. Chairman. First, the concern that perhaps the Minister sponsoring the amendments believes that there are no concerns in Manitoba's industry regarding the increases in assessments of late. Second, we are somewhat concerned I think, that the Minister believes it is appropriate in matters of concern between industries and the Workers Compensation Board to bring those concerns directly to his attention either by way of a telephone call or by letter.

I think the Minister is probably aware that it is in the nature of professional business people to take their concerns directly to the agencies and the individuals who create those concerns or are perceived to have created those concerns. Certainly it is in the nature of the Canadian Manufacturers' Association to go directly to the Workers Compensation Board with any concerns that it may have.

Indeed just recently, the CMA has written to and has received a positive response to a letter asking for regular meetings between a committee of the CMA and the Workers Compensation Baord.

I trust that any concerns expressed by the Canadian Manufacturers' Association in any meetings that occur will be brought to the Minister's attention through the board, through whatever regular communications that

do exist between the board and the Minister. If however, he wishes to be kept directly informed of concerns either by telephone or by letter, that too I imagine, can be arranged.

I would like, if I may, to read this submission and of course if there are any questions thereafter, I am perfectly prepared to respond to them. By way of forward, the Canadian Manufacturers' Association, Manitoba Branch, is pleased to make this submission in response to a letter from Mr. C.R. Cormack, Liaison Officer.

In response to a similar request from Mr. Cormack, The Winnipeg Chamber of Commerce has asked that it be recorded that their organization supports and is in accord with the recommendations of the CMA.

INTRODUCTION: The CMA has reviewed the proposed amendments to the Workers Compensation Act contained in Bill 88 in detail. Generally, where Bill 88 provides for increases in Workers Compensation benefits to reflect increases in the cost of services and the costs of living, that is, where the amendments are of a housekeeping nature, the CMA makes no comment. We accept the board's judgment in the handling of recommendations made by senior staff people. However, where Bill 88 proposes changes which are not merely of a housekeeping nature but provide for adminstrative changes as well, we make the comments which follow.

1. With respect to Amendment 6(14)(1). The CMA find laudible the government's stated intention to require injured employees or their dependants to report accidents as soon as possible to their employers. The requirement for immediate reporting of an accident was, until relatively recently, one of the basic criteria for the acceptability of compensation claims, and employers in the Province of Manitoba have felt that the loosening of this requirement has resulted in some loss of control in cases in which there was questionable delay in reporting.

The CMA suggests that the objective of a reasonable degree of control can best be achieved by changing the words "but in any case not later than 30 days" to "but in any case not later than 3 days" rather than by deleting a reference to a time limit altogether. This would provide the Workers Compensation Board with positive direction when reviewing any case with regard to a delay in reporting, and, in the event of a dispute, provide a concrete standard against which to judge any delay in reporting.

2. Amendment 14(33). The CMA notes that, in addition to increasing levels of compensation, this amendment provides for a substantial change in the basis of payment by deleting the words: "but this section does not apply in respect of a person who was receiving compensation for a partial disability where the impairment of the worker is less than 10 percent."

The position of the CMA is that, in view of the fact that most impairments compensated by the Workers Compensation Board are less than 10 percent, the deletion of these words could lead to cost increases heretofore not experienced by industry when increases in compensation levels are determined. The CMA feels this proposal would provide increases to those who are only minimally, if at all, disabled from working as a result of the impairment. Further, cost increases resulting from a change in a principle of payment should not be handled as a simple housekeeping chore, but a substantial opportunity for interested parties to offer input and debate should be provided.

3. Amendments 17 and 18, Sections 37, 37.1. The CMA feels that this amendment, which deletes the statement of the amount of maximum annual earnings from the legislation and provides that increases to the maximum annual earnings should be made annually and routinely by the Workers Compensation Board without reference to the Legislature for guidances, would serve to remove an extremely important decision-making function from the scrutiny of the legislators and the Manitoba public. The CMA feels that increases in the maximum annual earnings, the basis for the majority of the board's day-to-day decision making, should properly be the subject of public debate.

4. Amendment 19(50(1). The CMA feels that the deletion of the words "subject to the approval of the Lieutenant-Governor-in-Council" will serve to remove an important decision-making function from the scrutiny of the Cabinet. It is the view of the CMA that the Workers Compensation Board, in particular, should not be allowed to operate too far beyond the control and the scrutiny of the elected representatives of the Manitoba public.

I would, Mr. Chairman, like to at this point digress just slightly and again refer to comments made by the Minister sponsoring these amendments in the debate. He referred to a similarity between the Workers Compensation Board and in particular, the MPIC. He stated, they don't have to go to the Lieutenant-Governor-in-Council in order to seek approval to effect a classification; they don't have to do that nor does any other agency of that sort, so we are attempting to bring Workers Compensation in line with that particular provision in other organizations of a similar nature.

Mr. Chairman, there is very little that is similar between the Workers Compensation Board and MPIC. MPIC receives its funds directly from the people that it serves to provide benefits to. As you are well aware, the Workers Compensation Board receives its funds from industry and disseminates them to others; whereas MPIC has a kind of built-in policing mechanism in if that the Manitoba public feels that the assessments are too high, they can choose to accept a lower level of benefit. In the case of The Workers Compensation Act, an increase in benefits automatically leads to an increase in assessments without any of that similar policing mechanism.

The CMA feels that the Workers Compensation Board should be accountable to the Legislature for achieving the objective of providing reasonable and adequate compensation for work-related injuries and conditions of health as an entitlement to employees at reasonable cost to the employer.

The CMA believes that this objective will be jeopardized if the Workers Compensation Board is allowed to make its own decisions, without requiring the approval of the Government of Manitoba, about the limits of money it can spend. The best interests of the people of Manitoba will not be served if control over the Workers Compensation Board is relinquished by the Government.

5. Amendment 21 Section 52.3

The CMA agrees that the procedures of the Workers Compensation Board should become more open to

those it serves. Since the Workers Compensation Board also has a responsibility to employers, the CMA suggests that this section be further amended by providing access to employers, in addition to claimants, to medical records in any case in which the employer sponsors an appeal of the board's decision to provide compensation. Such access to medical information would allow the employer to make good judgment about continuing or discontinuing an appeal. Further, such an amendment would serve the basic principles of justice by making all relevant information available to the parties involved in the appeal procedure.

Finally, 6. Amendment 21 Section 52.3(3)

The CMA suggests that the committee designated by the Minister to hear applications for the disclosure of medical information without the written consent of the persons who provided the information be a reliable and impersonal medical body, such as the Complaints Committee of the College of Physicians and Surgeons.

Thank you, Mr. Chairman. Those are our submissions.

MR. CHAIRMAN: Do any members of the committee have questions?

Mr. Mercier.

MR. G. MERCIER: Mr. Rybiak, in your opening comments you talked about the concern about the increase in assessments without really indicating whether or not you had any concern. I would like to settle it once and for all. It could perhaps end the debate that has gone on for some time between me and the Minister. Are you, or are you not concerned, as the representatives of your group, and in this case representing the Chamber of Commerce, with a Workers Compensation Board which the Minister appointed, which took over a large surplus, and which increased in 1982 administrative expenses by some 30 percent, and at a time when the number of accidents decreased by over 4,000, have increased the assessments against employers by some 9 percent to 27 percent. Is that or is that not a concern for your association?

MR. R. RYBIAK: Do we have a concern? I guess the short answer is yes.

Let me expand if I may, Mr. Chairman. When I first entered the industry in this province, looked over the particular books of my company, and for the record that's the Manitoba Rolling Mills, we noted that our experience in terms of assessments paid as compared to the amount of money paid out by the Workers Compensation Board for our claims, indicated that the Workers Compensation Board was collecting at that time. And I should point out that was about three years ago, it was certainly under the previous government. We approached the Workers Compensation Board at that time with a concern. Our concern was primarily with regard to our own experience and we were looking to see how it would be possible, if it were possible, to reduce the assessment at that time.

I should point out that at that time economic conditions were not what they are today. Then we were doing reasonably well. In terms of business today, of course things are considerably different and our concern about assessments has changed accordingly.

At that time, Mr. Chairman, it was indicated to us by the previous board that indeed our assessments were among the lowest in the country, and that was because the administrative practices of the Workers Compensation Board were particularly efficient, they did their business in a very efficient, and cost-saving kind of way. More recently, indeed just prior to the start of this year we received an indication that, in our particular case our assessments would go up, in real dollar terms, actual dollar terms some 20 percent. This was couched in a document which indicated that, in fact, the assessment rate was only going up by 9 percent, but there was also an increase in the ceiling and therefore we would be paying an additional 20 percent, I believe it was, in terms of our assessment, 18 percent to 20 percent. We again spoke to the board, particular individuals within the board, received pretty much the same answer. At that time business conditions had changed. We were looking wherever we could, as most businesses in this province were, and are, to affect whatever reasonable cost savings we could.

I think there's a frustration expressed in your question, Mr. Mercier, how can the accident frequency in this province go down and the case load go up? We have another concern with respect to that. Clearly, the Workers Compensation Board is of the view that virtually every claim made ought to be paid. They have changed the criteria, or added criteria for decision making with regard to conditions of health that had not previously been compensable within this province.

I think that over the years to come, we are going to experience tremendous increases in assessment. We feel that we've only begun to see the increases. We are as equally concerned, I would think, about the increases to the extent that they have occurred already and we are concerned about the extent to which increases are likely to go, given the current practices of the Workers Compensation Board.

MR. G. MERCIER: Thank you.

MR. CHAIRMAN: Are there any further questions?

Mr. Cowan.

HON. J. COWAN: First I have a clarification, and then a question.

When I indicated, in the House, that I have not been made aware of any significant complaints about increases in assessments by employers, I was also speaking from the perspective of one who is in contact with the Workers Compensation Board.

I'm informed that they've received less than 10 letters, one of which was from the CMA, and for that reason represents a large number of employers, but certainly less than 10 letters about the increase in assessments, and not that many more calls. So there wasn't a significant number of letters or calls coming to the Workers Compensation Board itself about the increases in assessments. So when I indicated that I was not aware of them, that is not only speaking from the personal perspective, and the perspective of my office, but also from the information which I had been provided by the Workers Compensation Board itself.

You indicate that you have some concerns about your assessment having gone up. What you suggest is about 20 percent. Have you had an increase in your accident rate in that industry as of these?

MR. R. RYBIAK: As a matter of fact the notification of the increase in the assessment came to us as we were completing a relatively good year as compared to previous years.

HON. J. COWAN: As an industry?

MR. R. RYBIAK: As an industry or as a company? Well, as an industry, I can't comment. As a company, certainly the news came to us at a time when we felt that our experience had been improving. I recognize that there is a shared liability in terms of the way the assessments are developed. Nevertheless as a company we had felt, and our approaches to the Workers Compensation Board had been on the basis of particularly good experience over a long period of time, being the basis, being a rationale for reduced assessments, where those reduced assessments would be indicated.

HON. J. COWAN: Would you not agree that the assessment in Manitoba should be fairly similar to assessment in the other western provinces, B.C., Alberta, Saskatchewan, if one is to maintain a competitive edge?

MR. R. RYBIAK: Well, you ask your question without regard to the level of services that the assessments are to pay for. I don't believe that the level of services need necessarily be the same from province to province. There certainly wouldn't be a necessity to provide a level of services in Manitoba, which exceeds the level of services provided elsewhere; therefore, certainly there should not be a level of assessments greater than elsewhere.

In terms of the level of assessments providing us with a competitive edge, as you put it, Manitoba as a place to conduct a business, requires the greatest degree, I think, of competitive edge possible. Certainly assessments equal to or greater than other provinces would reduce a competitive edge in the business, certainly.

HON. J. COWAN: And assessments, therefore, less than other provinces would increase the competitive edge experienced by Manitoba industries?

MR. R. RYBIAK: Well, certainly, in terms of that question, you're absolutely right.

HON. J. COWAN: Are you aware of what the average assessment in interest revenue per $100 of payroll is in the other provinces?

MR. R. RYBIAK: I can recall looking at the figures, Sir, and I'm sorry I can't relate them back to you. My memory isn't quite good enough. I do know that Manitoba's assessment levels had been very good, as compared to other provinces.

HON. J. COWAN: For the record then, I think it should be made clear that Manitoba's average assessment and interest revenue per $100 payroll, I'm informed, is $1.08. Now that's including the interest, so it's not full assessment. In Saskatchewan it's $1.66, so there is a significant difference between here and Saskatchewan where conditions are similar in a lot of ways. In Alberta it's $2.03 and in British Columbia it's $2.28.

So if your argument is correct, then Manitoba industry does enjoy a very significant competitive edge, by way of this one particular criterion. Would that not be the case?

MR. R. RYBIAK: As one criterion among many, certainly.

HON. J. COWAN: So, then one has to say to themselves, how much has that assessable payroll increased, how much has the increase in assessment interest revenue increased over a number of years, and try to make the comparisons to see if Manitoba has, in fact, been holding its own or if there was a real need for an increase in assessments.

I'm certain you would agree that if it was determined that there was a need for an increase in assessments to ensure that Manitoba workers were receiving their full due as a result of the Workers Compensation system, then there would be no real concern on the part of industry in regard to that increase because you, as well as others, would like to see them get that which is due to them under the Workers Compensation system. Would that be the case?

MR. R. RYBIAK: If your question is whether we, as an industry, would want to see injured employees receive what is due to them in any Workers Compensation case, I can't disagree. But again, if you talk about assessments, I think we're all aware that the assessments are the result of the level of services that are provided, and one of the concerns that Manitoba industry has - certainly the CMA has - is that we have seen a significant change in the basis upon which expenditures will be made. We can see that assessments will rise as a result.

I don't think the jury is on either of two counts - the extent to which the basis upon which expenditures will be made has changed; and we haven't seen the extent to which, in this province, the degree of participation in Workers Compensation will achieve. I think that increases which have occurred to date which still leave, as you indicate, that Manitoba assessment levels at a favourable level as compared to other provinces, may be a very temporary, transitory thing, if these amendments and amendments which we suspect will eventually follow, come into place.

HON. J. COWAN: As an industry, have you experienced an increase in assessment levels over - the past three years you indicated was the first time that you had experienced an increase in your three years' experience - but previous to that, when was the last time you experienced, as an industry, a general increase in assessments from the Workers Compensation Board?

MR. R. RYBIAK: Well, again, without having notes in front of me, I can't recall. I believe that increases came with some regularity. I'm not sure whether it was annually, every year, but there were certainly increases.

HON. J. COWAN: They were increases based on experience rating and based on . . .

MR. R. RYBIAK: That's right.

HON. J. COWAN: . . . increased costs. But the general percentage of payroll, as an assessment, had not increased for a number of years. I think the Member for St. Norbert indicated it was 1977, in his comments.

MR. R. RYBIAK: As a percentage of payroll, I'm not sure that anyone has ever determined that a level of assessment should be based on the size of the payroll. I'm not sure where that leads us.

HON. J. COWAN: What it provides us, though, is with a standard against which we can judge, in common terms, across the board what the increase in assessments may be, because the payroll increases as well as wages get higher and as benefits get better. Would that not be the case? We can have an increase in payroll without an increase in the size of the number of employees.

MR. R. RYBIAK: Sure, but as you yourself indicated, there are many reasons why that figure wouldn't change including more efficient industry and including improvements in accident frequency.

HON. J. COWAN: You indicated in your submission that most impairments compensated by the Workers Compensation Board are less than 10 percent and for that reason you were concerned about the impact of the inclusion of 10 percent disability in the cost-of-living increases. Is that not the case?

MR. R. RYBIAK: Yes.

HON. J. COWAN: I'd ask you if you are indicating that most pensions are under 10 percent or most impairments are under 10 percent?

MR. R. RYBIAK: I believe the amendment indicated an inclusion of individuals whose impairment was less than 10 percent.

HON. J. COWAN: Who are on pension?

MR. R. RYBIAK: Yes.

HON. J. COWAN: It would apply to the pensions. I would ask you if you can agree with my figures, because I want to make certain that they're correct. I'll only ask you to do so in a subjective way because you don't have the direct figures in front of you, but it's my understanding that we - when I say we, the Workers Compensation Board - has 590 pensions under 10 percent at present out of a total of 4,556. So, in fact, it is a small number by comparison. Would that not be the case?

MR. R. RYBIAK: Well, if those figures are accurate and I have no reason to believe otherwise, it's surprising to me and it would be surprising to the CMA, in view of the fact that most industrial accidents are relatively minor. I wonder whether the reason that the number of pensions for impairments at under 10 percent are such a low number, is because there are cash settlements made in the vast majority of injuries. Is that the case?

HON. J. COWAN: I would suggest that is partly the case although it would not make up for the difference, but there are a large number of lump sum payments made out certainly.

MR. R. RYBIAK: Certainly. So that's not reflective of the number of impairments that have occurred in industry, rated at less than 10 percent. Those are those which are left with a pension.

HON. J. COWAN: But it is reflective of the cost of that particular amendment.

MR. R. RYBIAK: Yes, it is.

HON. J. COWAN: The point I am trying to make is that it is not a costly amendment by comparison. As a matter of fact, it is about 1.8 percent of the total increase according to the figures which I have before me. So it's not a significant amount by comparison.

I would, therefore, ask you, given that information which seems to correct the impression that was carried forward in the brief, could you not support making certain that those individuals under 10 percent were provided with the same sorts of increases that all other individuals are provided with?

MR. R. RYBIAK: Our concern included, of course, a consideration of the degree to which individuals who have not been particularly, if at all, disabled from working would also receive pension increases throughout. You indicate that the number is small. I'm not sure that the number of pensions for impairments at less than 10 percent would remain small if, clearly, the financial benefits of accepting a cash settlement would be less than the eventual benefit of a pension which would be increasing from time to time. I don't know how to respond to that.

I have a suspicion again that the inclusion of pensions for an impairment at less than 10 percent would lead to costs that at this point can't be measured. Certainly, if the ratio of cash settlements to pensions would remain relatively the same, then you're right. Then the impact of that would be pretty small.

HON. J. COWAN: You indicated that you've read the Hansards and the comments which we have made. You are aware also that we have made comments respecting an entire review of the act over the next number of months. Are you in support of that sort of a review? Hopefully, you will be participating in it, and making that sort of representation known at that time. We have said very specifically that we want the matter of pension increases to be a major part of that particular review.

MR. R. RYBIAK: Yes, I think we're certainly supportive of that review. In part, I suppose, that was why we were surprised to see changes in the manner in which maximums, for example, were to be changed; the form in which the maximum earnings level was reported within the act were to be changed if there was a review coming up anyway. It seemed rather an awkward time to be making that kind of an administrative change.

HON. J. COWAN: The reason we changed it, in fact, was administrative. Every year, we had to come back and change that ceiling while it was being done by regulation anyway. So, in fact, it doesn't make for a major change in respect to the amendments which are brought forward on a yearly basis. You'll see it included in the inside cover of the act, so they don't have to reprint the whole act. It was a matter of trying to clean it up to make it more adminstratively acceptable.

I don't see how it has any major impact on the way by which those changes have been made, nor does it in any way reduce the ability of that matter to be brought forward to the attention of the Legislature.

MR. R. RYBIAK: Well, it is our concern, of course, that those changes would be made without necessarily referring the matter to a debate within the House. There are few enough, we feel, mechanisms by which the decision-making of the Workers Compensation Board can be brought to the attention of the general public. This removes one more of them.

HON. J. COWAN: Are you aware that the minutes of the Workers Compensation Board are now available to any individual who requests them?

MR. R. RYBIAK: Yes, we received them. When we found out about it, we asked for them and received them.

HON. J. COWAN: Do you receive them on a regular basis?

MR. R. RYBIAK: Yes, now reasonably regularly, certainly.

HON. J. COWAN: Had that been done in the past?

MR. R. RYBIAK: Well, I can answer as a company, as opposed to the CMA. I believe that our director was receiving minutes from time to time. Certainly, as a company, we needed to ask for it before it was submitted to us and we have begun receiving it now with some regularity.

HON. J. COWAN: I can indicate to you that if your company was receiving it, they were not receiving it through official channels because it was certainly not the practice of the previous board of commissioners to circulate those minutes at all. So if, in fact, that did happen, it was unusual and an anomaly.

Do you find that the minutes are helping you in understanding why decisions are being made by the board?

MR. R. RYBIAK: Yes, they help us in determining how decisions are made and why decisions are made by the board. There are times when there is a certain amount of frustration that results from that as well.

HON. J. COWAN: On everyone's part, including mine and the board's most likely, so I can understand that. Are you aware that the Workers Compensation Board, for the first time, during the Estimates review of the department had staff available so that we could provide more detailed answers to questions from the members of the opposition?

MR. R. RYBIAK: I was not.

HON. J. COWAN: Then I am pleased to be able to inform you that is the case. The reason I make those points is because I think we have become much more open over the past year and a half as to how the board is operating. I am concerned that you believe that it may be becoming exactly the opposite, much more closed in the provision of information. So I would hope that by your receipt of the minutes, by the fact that you indicate that you will be striking a small committee to work with the Workers Compensation Board on matters - I believe I interpreted you correctly when you said that - and that that's been made available to you, and by the changes we have made in making certain that members of the opposition have access to staff during the Estimates, and we're reviewing now having the Workers Compensation Board sit before a committee such as the other Crown corporations, Manitoba Hydro in the Legislature, that we are, in fact, becoming quite open. We are quite proud of that. I know we have your support in that regard, and look forward to your participation in those deliberations.

MR. CHAIRMAN: Mr. Johnston.

MR. F. JOHNSTON: Mr. Rybiak, at the beginning of your presentation, you indicated that you had had communications or discussions with the Workers Compensation Board, and that the Canadian Manufacturers' Association were available at all times for discussion on any changes in legislation that the Canadian Manufacturers' Association would be interested in. Was there any discussion between the Canadian Manufacturers' Association, yourself or the directors of the Canadian Manufacturers' Association in Manitoba, regarding this legislation?

MR. R. RYBIAK: Bill 88, amendments to Bill 88?

MR. F. JOHNSTON: Yes.

MR. R. RYBIAK: I'm not aware of any between our organization and anyone with regard to these amendments, prior to today. Indeed, I was talking to our director, and I can ask him now whether that's essentially accurate. In the conversation that I had with our director some time ago, he had called around to other employer organizations and he, too, had some difficulty finding others who might have been consulted prior to these amendments having been introduced into the House.

MR. F. JOHNSTON: Mr. Rybiak, I ask that question because the Minister was asking a lot of questions tonight of the MCA. When he made the presentation on this bill, he indicated very clearly, and it's in Hansard, that there were discussions with industry, between his department and industry, before this bill was presented or before this bill was made up and presented to the House.

MR. R. RYBIAK: I read those comments, and that was the reason that I had spoken to John Ross, our director, to find out when we were involved in that process.

MR. F. JOHNSTON: To your knowledge that you weren't involved in that process that the Minister said that he made the statement in the House that the business was approached. To your knowledge the CMA was not approached?

MR. R. RYBIAK: As far as I know, no. I have that on the basis of consultation with our director.

MR. F. JOHNSTON: Thank you.

MR. CHAIRMAN: Any further questions? There being no further questions, thank you, Mr. Rybiak.

MR. R. RYBIAK: Thank you.

MR. CHAIRMAN: In calling for the presentation of Bill No. 88, I neglected to call John Walsh who was listed earlier for both 87 and 88; perhaps Mr. Walsh would make his presentation at this point in time.

MR. J. WALSH: I would like to introduce Bruno Zimmer who is the Chairperson of our Compensation Committee to make a brief on behalf of the Manitoba Federation of Labour.

MR. CHAIRMAN: Mr. Zimmer.

MR. B. ZIMMER: Thank you. Mr. Chairman, my name is Bruno Zimmer, I'm President of Local 111 United Food Commercial Workers. We represent 3,500 members in our organization, and I'm also the Chairman of the Federation of Labour Standing Committee on Compensation.

I would like to make some general comments on Bill 88. I would like to open up with the increase in the pensions. We are naturally welcoming the increases in the various pensions, and I'm talking about the permanent disability pensions. We think they're long overdue and especially we also welcome the increases in the pensions for those disability pensions which are rated below the 10 percent.

We felt that this section of the act was discriminatory against the people who, in fact, had suffered injuries and had a disability pension which was rated below; it was either at 10 percent or below 10 percent, so we are welcoming those changes. However, we are somehow disappointed that the Minister didn't see fit to bring in further amendments to the act which would automatically give increases to the disability pension under some sort of a formula which is similar to Section 37.1. We feel that by granting increases in the disability pension every two or three years - I know last time we had to wait three years, this time it was two years - these people who are in receipt of a pension are in a catch-up situation. They are at the whim of the Legislature, whenever the Legislature feels like it they're going to get an increase. They feel that's mostly unfair because in the interim these people suffer, and they will suffer loss of income.

So we are somewhat disappointed that this wasn't introduced at this session; that the Minister did not see fit to come up with some kind of formula which would give automatic increases, annual increases, for these disability pensions, either attached to the cost of living or the industrial wage. We have, for instance, a long-standing amendment which we have submitted to the Minister at various times on updating of pensions. We recommend that the pension would be upgraded on a basis of wage rates. Disability pensions are based on earnings at the time of the accident and are only adjusted periodically by the Legislature.

We would recommend that a fair and equitable scheme for all permanent, partial or total disability would be for the pension to be upgraded on a basis of wage rates presently being paid for the classification in which the individual was working at the time of the accident or disability, and that would be adjudicated, it would be looked at by the board annually, and then the pension would be automatically upgraded. As I said, it would be a similar system than under Section 37.1 where temporary total disability, the ceiling is upgraded every year providing that 10 percent of claims are over the ceiling. So we are looking forward to further changes; that these disability pensions will be upgraded annually, and that includes the pensions 10 percent or under.

We're welcoming the change in Sections 14(1) where you delete, "but in any case not later than 30 days." We have a policy in our organization that we urge all workers to report the accident as soon as possible and as soon as practical. We don't encourage anybody to wait even 30 days. We know from experience that if a worker doesn't report his accident immediately, or as soon as possible, he has great difficulties in even establishing a claim, so we feel that there was really no need to have that 30 day provision in the act.

The increases in the compensation for funeral expenses are long overdue and we welcome the changes in that Section 25.2(1).

We are somewhat disappointed in the amendments on Section 25.4, where you increased the one-time payment from $1,050 to $1,305.00. This is a $255 increase; I don't know how that was arrived at, but we feel that is rather a cheap way of getting away from somebody getting killed and having no spouse, and only paying $1,305 to the estate. We feel a sum of $5,000 would be more adequate than $1,305.00.

We welcome Section 37.1, a continuation of the past act, and also any reference under the permanent disability scheme where we had a fixed sum of either $21,000 or $17,000, whatever the ceiling was, you had that fixed sum quoted in the act, and you're now making reference that the maximum average earnings established under Section 37.1. That is really house cleaning, but it certainly clears up any misunderstanding that when the ceiling goes up that everyone else goes up with it. So we're making reference to 37.1 which is only the right way to go.

In Section 52 where the act will allow full access by the claimant or his or her representative, full access to the medical file, we welcome that change in the act. We feel this is long overdue; we would have liked to have it go a little further and make it retroactive, but we understand the difficulties you would have with the Manitoba Medical Association, and so I guess we have to be satisfied for what is put in the act and giving full access of the medical information to the claimant.

We would certainly be violently opposed that medical files should be open to the employers. We feel that when the medical files are open, if the claimant wants to see them, or a person who is authorized by the

claimant, then the files should be open. But we certainly oppose any move in that direction that the employer should have an arbitrary access to the medical files.

I have one question in 52.3(3) where it reads: "Where the consent of a person required under subsection (2) to obtain access to a report made and submitted to the board by the person or to a part thereof, cannot, for any reason be obtained, the person making the request for access under subsection (1) may apply to a committee designated by the Minister, etc." I just have one question to the Minister. Does that include refusal by the particular person? If a claimant requests access to the file and he or she is refused by the respective doctor, is that taken care of in this act or not? You're saying in your 52.3, "where it cannot be obtained." Does that include refusal? If a doctor refuses, can the claimant go to the committee and appeal that doctor's refusal?

With that, Mr. Chairman, I conclude my remarks and I'd welcome any questions.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Thank you for your comments, Mr. Zimmer. I have one question. As a former member of the board, you would be aware that an employer can become a party to a hearing, can he not?

MR. B. ZIMMER: He can become part of what?

MR. G. MERCIER: He can become a party or argue at a hearing with respect to compensation?

MR. B. ZIMMER: Yes, yes.

MR. G. MERCIER: Well, Mr. Zimmer, I took the position during the Minister's Estimates, not knowing what bill he was going to bring in, that I thought it was only fair and equitable to workers that they have a right to receive a copy of the medical information. That's part of a normal, for example, action for civil damages and as a party, they should be entitled to see that and the Minister, to his credit, has brought that amendment forward.

But at the same time, I suggest to you that an employer can also be a party to that hearing and is directly involved because he becomes very involved in the assessment payments. Does it not seem to you, that at the same time that the worker's entitled to see that information, that the party who's required to pay the assessment and become involved in the hearing should also have the right, at least for the purposes of that hearing, to review and see the medical information? What is your objection?

MR. B. ZIMMER: My objection is medical information is certainly privileged; it's my own private information. If the claimant authorized the employer to see the file, by all means. But I feel that my medical file is my own private affair and I feel I have a right to see it and any person I authorize has to see the file. If I feel that the employer should see my file, I will authorize the employer to see my file, but under no circumstances - a medical file is a privileged document between myself and my doctor - under no circumstances would I give a free hand to the employer to see my medical file.

MR. CHAIRMAN: Any further questions? Mr. Cowan.

HON. J. COWAN: Yes, I'll ask the same question to Mr. Zimmer that I asked to the previous individual making representation and that's in regard to the ongoing or the announced review which will be taking place of the entire act. Is the Manitoba Federation of Labour in support of a review of the entire Workers Compensation Act?

MR. B. ZIMMER: Mr. Minister, I am sure you are aware, and I repeat myself, in every brief that we submitted to you, in our opening remarks, we urged you to undertake such a review, and we will be more than willing to take part in it and give you our submission to such a review.

HON. J. COWAN: To how many Ministers have you made that same recommendation?

MR. B. ZIMMER: Well, we've made it to numerous Ministers. I think we go back to the Schreyer Administration, right through to the Minister of Labour at that time and the Minister of Labour under the previous government, and then of course, to the Minister responsible under this administration. So we've gone on record for many many years asking for a review of the act, an entire review of the act.

HON. J. COWAN: Did you make similar representations in regard to access to medical files?

MR. B. ZIMMER: Yes, we did.

HON. J. COWAN: To previous administrations?

MR. B. ZIMMER: Yes, we did. We made a presentation to the Honourable Mr. MacMaster, I believe.

HON. J. COWAN: In regard to automatic increases on an annual basis, I will again indicate that that will be a function, and a very specific function, of that review committee. It is a very costly change, significant change, and one which I think has to be given very careful consideration. I hope, as you've indicated, you'll take an opportunity to make your presentation at that time.

You had two questions, one regarding 25(2), which is the increase made to the widows and I can inform you that that increase is the same percentage by which the pensions are increasing, a 24.2 percent increase, I believe. That's the rationale for that particular figure being used.

Finally, you asked if the provision for a worker to make representation to a committee designated by the Minister, in the event that he or she cannot obtain their medical files, if that would include a refusal on the part of a doctor to provide a file. Yes, it would include that.

MR. B. ZIMMER: Thank you very much.

MR. CHAIRMAN: Are there any further questions? There being no further questions, thank you, Mr. Zimmer.

MR. B. ZIMMER: Thank you.

MR. CHAIRMAN: The next presentation is from Mr. Sidney Green, Manitoba Progressive Party.

MR. S. GREEN: Mr. Chairman, I'm here for the Manitoba Progressive Party and I am making some remarks which happen to arise from my own practice of law, and relate to a specific incident. But I think they are germane to the issue which is here, because there is, Mr. Chairman, a statute now that one can get a medical report. There are some people who believe that if there are no statutes, you can't get it; therefore, if you put it in a statute, it's there. I would like to urge upon the members of the Legislature that you don't need legislation to do everything that has to be done; that if the Minister wishes to give medical reports, you have a policy within the department that you give medical reports. You don't have to go to committee; you don't have to pass laws; you do it; as a matter of fact, it has been done. I wish to deal with a matter which has arisen relative to this matter, whereby it's my view that the citizens of Manitoba were, for a period of time, and I hope it's corrected by the legislation - as I read the legislation it's corrected but I've seen so many interpretations of legislation that I can never be sure.

But I was representing a gentleman who had a back injury; his back injury took place many years ago. I can give you his name, Mr. Chairman, I have no difficulty in giving you that because there's no confidence which will be breached by my giving it to you, his name Reno Ouellette, and his claim number was 7762671. His claim was denied, and for some reason - and I assure you that it's not through any initiative or seeking on my part - he wanted me to represent him, and when I get into those circumstances it's a problem for me because it is time consuming, and yet I don't wish to refuse the man, and it's not a question remuneration, it's an obligation that I felt that I had to him because he was not awarded any compensation, and he had a back injury.

I appealed the question to the Workers Compensation Board and, as a result of representations to the board, they awarded him a 5 percent disability benefit. I can say, and I don't think that there will be any secret from the board, that if you can get 5 percent on a back injury there is room to talk, there is room to talk because it's a very difficult injury to assess. So I took advantage, you know, and there's wonderful literature of all the wonderful things you can do, and how the board will help you out, etc. I said I wanted to appeal - and the board was helpful by the way, the staff of the board told me how to do it, they were helping me with my legal affairs. Then came the question of getting medical reports, so I asked the board for medical reports, and a gentleman who I spoke to said, yes, I think we'll give you the reports. Then I waited for some period, and I hope I'm not being unfair, I think it was at least a month and possibly more. There was not answer so I called back and I received the following information, Mr. Chairman. Are you a workers' advisor? So I said, no, I'm not a workers' advisor, I'm a lawyer, but this man has asked me to work for him. So they said, well, we have a different policy with regard to workers' advisors than we have with regard to lawyers. So I said, what am I able to get? And I got the following letter from the Workers Compensation Board of the Province of Manitoba.

"Your letter of October 13th was directed to me for reply. The boards policy covering disclosure of information for persons other than the workers' advisors is as follows:

"The file is to disclosed solely for the purpose of deciding whether to pursue an appeal, and/or pursuing an appeal under the Workers Compensation Act, and the information gained is not to be used for any other purpose. Disclosure will be provided to a person designated by the claimant upon presentation of a written authorization from the claimant. This policy may apply to the claimant; the claimant's representative, as designated by the claimant; the employer; or the employer's representative, as designated by the employer. The person shall have access to the file, excluding the medical report section."

Now you see there was no legislation at that time but it says - "the person designated shall have access to the file, excluding the medical report section. The claimant, or person designated by the claimant may be required to provide personal identification. If you wish to review the file please advise."

Then I got in touch with them and I said: "It says here that, other than workers' advisors, I will not get the medical reports." He said: "That's right." So I said: "If I'm a workers' advisor will I get the medical reports?" They said: "Yes." The Minister is nodding his head. So a workers' advisor, he didn't need this bill. This bill was in effect before the Minister brought in legislation, but it was available to a government appointed workers' advisor, not to counsel of their choice. So this government told people that if you want access to information under the Workers Compensation Act you have to retain one of our advisors and you cannot get counsel of your choice. This is a government that believes in a Charter of Rights, that an individual cannot hire counsel of their choice, otherwise, he can't get the information that is needed for the prosecution of his claim.

Well I thought, Mr. Chairman, that was a little harsh so I got in touch with a person who I thought would understand the situation. I mean there is an Attorney-General; he knows that people are entitled to their own lawyers and that they don't have to be shifted to workers' advisors, so I wrote the Attorney-General telling him that this is what happened, October 26th. I'd been representing a person and I told him the whole story; I enclosed the following documents, a letter I wrote to the board.

After receiving my call, I made a telephone call to Mr. Carroll, is he here? Mr. Carroll, no. I asked him whether workers' advisors were given information additional to that which was being made available to me. Mr. Carroll confirmed that such was the case and that a worker advisor - you know it almost sounds like Big Brother - worker advisor, has that Orwellian ring, would be given the medical information. It is my position that every man is entitled to counsel of his choice. Mr. Ouellette has engaged me to handle his claim.

I want you to know that by now I am involved in it as if I want the case. At the beginning I would have been happy if somebody else had it, but now I am involved. Mr. Ouellette has engaged me to handle his claim. By virtue of his engaging me he is apparently

being denied information which would be supplied if he were to avail himself of the system of workers' advisors which is provided by this government. Under the circumstances the government is placing a handicap in Mr. Ouellette's path, should he wish to maintain his solicitor-client relationship.

Now, Mr. Mercier, would understand that and I thought that Mr. Penner would understand that. I wish to bring this matter to your attention and to protest the unavailability of information to counsel of Mr. Ouellette's choice. I'm sending a copy of this letter to the Law Society of Manitoba and to the Manitoba Bar Association. I would formally request that the Government of Manitoba permit Mr. Ouellette's counsel to have such information as is available to other persons.

All right, so I got a nice letter from the Attorney-General. This wasn't even a rude one, it didn't say - balderdash. It says here - "Acknowledge receipt of your letter of October 26, 1982. I propose to consult with the Minister responsible for the Workers Compensation Board and hope to be in a position to reply fully to your letter by the middle of November, 1982."

It's almost the middle of November, 1983. Shall I wait 'till the middle of November, 1983? Then you'll have the legislation passed, then you'll give me the information — (Interjection) — Yes, Mr. Chairman, I haven't received a reply from the Attorney-General.

Now you have to understand that this man had a bad back, that he called me, that I was helping him, that I took an appeal, that it's not work that I would ordinarily do. Well, what happened, Mr. Chairman? What would you do under the circumstances? Your client comes first. The client is having a problem, because he's got me as a lawyer. What would you do?

I wrote the man, and what did I say? Hire a workers' advisor. Isn't that what you would do for your client? - which I did. I fully expected at that time - and by the way, the Law Society let him down; the Bar Association let him down. You should know that too, because they didn't do anything. Nobody did anything.

I waited until November. The ides of November came and the ides of November went and December came. On December 3rd, I wrote the Honourable Roland Penner and I wrote Mr. Ouellette and I told him that he should go and get a workers' advisor. But I tell the members of the committee that is not satisfactory in a free society; that a man should be able to hire - and it is not satisfactory that you don't get a reply from the government.

You can go to the office of the Minister of Mines and Natural Resources between 1969 and 1977. You won't find two weeks between a letter and a reply. You won't find it. This is a reply to a serious question, and I never did get a reply. So I sent the man to a workers' advisor.

Now, Mr. Chairman, I hope that this section will change the act, but that doesn't change what the bureaucracy can do. When I'm talking now the bureaucracy, I am not talking about the Civil Service, I'm talking about at the highest level. A citizen is entitled to better treatment than this man received. A citizen is entitled to a response. A citizen is not to be treated so that he is sent away from the counsel of his choice to a workers' advisor. I bring this to your attention to indicate that the legislation is not the end-all, and the legislation is not necessary, and that when people don't wish to recognize the legitimate rights of the people that they not do so. I thought that it having arisen and having arisen with a worker, that it should be brought to the attention of this committee because the act which is now being before you is pertinent to the issue.

That is my submission, Mr. Chairman. That's all I have to say.

MR. CHAIRMAN: Thank you, Mr. Green. Are there any questions?

Mr. Cowan.

HON. J. COWAN: You indicate that you hope that this legislation will deal with the situation which confronted you last year with your claimant. Do you believe that it will do that?

MR. S. GREEN: It looks like it will, but, no. Mr. Chairman, it will only deal with the legal right to get a report. I believe I had that legal right before. I believe that the government, if they were decent people, could have given me the report. They were giving it to workers' advisors. I was counsel for the worker. If they were giving it to workers' advisors, they could have given it to me.

Therefore, the legislation will change the law, but whether it will change what people do when people are making requests, I don't know. The legislation appears to say that Mr. Ouellette will now be entitled to that report. He now has another problem. But it doesn't change the fact that in my submissions, Mr. Ouellette was not fairly dealt with on this question.

It's not me. I don't need the case. Believe me, I don't need it.

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: Mr. Green, I raised the general issue of a lawyer acting for a person making a claim before the Workers Compensation Board last year. Section 9 of the act, as you probably well know, says, "No action lies for the recovery of the compensation, but all claims for compensation shall be heard and determined by the board without the intervention of counsel or solicitors on either side, except with the express permission of the board."

MR. S. GREEN: That's been there a long time. They have never denied the lawyer the right to be there, not in my knowledge. However, that should be taken out. You should make an amendment right there and take it out, right here at this session. I'm sorry I didn't do it when I was there, but that should not be there. But they have never refused it.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: I am somewhat confused, Mr. Green, because you indicate to me that it was always within the power of the board to give you that information.

MR. S. GREEN: If it was within their power to give it to a workers' advisor.

HON. J. COWAN: You are aware though, that medical reports were considered to be privileged communications.

MR. S GREEN: I knew that. I knew that was the case, Mr. Chairman, and I knew that they considered them, but I found out this year that they no longer consider them; that they would give it to a workers' advisor. I say that if they will give it to a workers' advisor, they should give it to counsel of the worker's choice.

HON. J. COWAN: So you are, in fact, pleased and happy with the amendments brought forward.

MR. S. GREEN: Mr. Chairman, I have indicated that the amendments appear to change the situation from what it was, but the situation of not getting the report cannot be changed. I don't know whether that man's position can ever be rectified. There have been changes since then, and it can't be rectified because he was mistreated by the bureaucracy at the highest level. I never did get a reply to the letter.

HON. J. COWAN: I'll bring that to the attention of the Attorney-General.

MR. S. GREEN: Well, he was aware that I told the man that the best way of you getting help is to go to a workers' advisor. The government is requiring you to go there.

MR. CHAIRMAN: Are there any further questions? There being no further questions, thank you, Mr. Green.

Our next presentation is from John Huta of the Injured Workers Association of Manitoba.

MR. J. HUTA: Thank you, Mr. Chairman. Mr. Chairman, honourable members of the committee, ladies and gentlemen. It gives us great pleasure to have this opportunity to bring before this committee the position of the Injured Workers Association of Manitoba Inc. on this most important issue, the access to medical files at the Workers Compensation Board, on Bill 88.

For several years, our association has presented our position at least annually. While some improvement has been made, there is still a great deal to be desired. We trust that our recommendations will receive prompt attention on this crucial matter which, in our opinion, is the crux of most of our problems in trying to achieve a great degree of justice for the victims of industrial accidents, diseases and other disabilities suffered in the course of their employment.

We welcome the recent action of Honourable J. Cowan, the Minister responsible for Workers Compensation, in establishing the Advisory Committee, workers' advisors, and allowing the workers' advisors access to medical files at the Workers Compensation Board. It is a modest step in the right direction. However, this availability does not go far enough. In our opinion, we feel that the injured worker and/or their representative should also have the authority to receive the medical file at the Workers Compensation Board.

We will mainly focus to one issue which we have raised already. We feel it's long overdue. However, we wish to commend the Minister for the few vital changes which have been brought forward to improve the W.C. act. There is one issue in the W.C. act which has been neglected to be dealt with, and that is claimants who have been awarded a PPD, 10 percent or less, should be granted the increases legislated in the same manner as those who receive a PPD over 10 percent. We've been presenting issues, presentations in this regard for several years and nothing has been done and we hope that something will be done in this Session.

The injured workers have suffered far too long with inadequate legislation which does not provide them with the right to access their own medical information, and evidence in their own cases. We believe the time has come that Manitoba legislation should be passed this year before the Session ends. We urge the Minister to act promptly on this crucial issue, ensuring the injured workers submitting claims are dealt with in an efficient, just and humane manner. The recommendations which we are outlining in our brief are aimed at resolving the problems which contradict the intent and spirit of the act itself.

The section of The Workers Compensation Act we are referring to is Section 51(4) which states: ''The decisions of the board shall always be given upon the real merits and justice of the case and it is not bound to follow strict legal precedents.'' The administration of the Workers Compensation Board seem to hide behind this section, for the simple reason the injured workers have no legal access to their medical files. This very important issue causes us a great deal of concern. The restriction to the accessibility to medical reports, which is currently in effect at the Workers Compensation Board, allows the board and its medical department to hide behind the guise of medical confidentiality and privileged communication which is in their favour.

Unfortunately, this situation is a great disadvantage to the injured workers. We feel that, as a result of this restriction, we injured workers receive negative controversies, harassments, bickering, unjustifiable excuses, without references. These are decisions not adequately stated in an objective and reliable method. This puts the board in an unfair position of power and control.

Due to the lack of access to the medical files, the Workers Compensation Board takes advantage of the whole situation. We feel that all medical reports and medical files should be made available to the claimant and his/her representation. With all due respect to the medical profession and its ethics, we believe a worker has a right to know what is in the files. Presently our impression is that the doctor tells one thing to the claimant and another thing to the Workers Compensation Board. There is a typing error - instead of report, it should be one thing instead of the report.

We are also of the opinion that, to avoid any further problems, an amendment to the act should be made, that the doctor shall give, upon request, a carbon copy of the medical report which he or she is sending to the Workers Compensation Board, free of charge to the claimant and his/her representative. This, Mr. Chairman, would avoid any distrustful feeling between the doctor and the claimant which currently exists.

Section 17(b) of The Workers Compensation Act makes provisions that the injured worker has the right to a full medical report if the board requests; otherwise an injured worker, if he/she requests a report to be sent to his/her representative, the doctor charges the worker. The medical profession is reluctant in giving the worker the medical report to which he/she is entitled to, claiming that he/she may misinterpret the medical

report. We strongly disagree with this opinion; surely anybody can tell whether the report is favourable or not, without misinterpreting the contents of the report.

If the Injured Workers Association asks for the medical reports the doctors have been charging for photocopies which have already been submitted to the board, a fee up to $25.00. The injured workers, in many instances, are in no position to pay for the medical report because they have been forced to live below the poverty level. Some doctors have asked $156.80 for a medical report.

Just recently a case had gone before the Manitoba Queen's Bench and it was ruled that the doctors had the right to charge for the medical reports. Now the doctors have been charging up to $300 for the report, and if you feel that the poor injured worker can afford to pay $300 for something that he is entitled to know in his/her own case it's time that the government should look seriously in legislating this freedom of information bill.

Furthermore, when the bill is submitted to the board for reimbursement, the administration states they did not ask for the report and, therefore, refused to reimburse. By this token, further burden is placed upon the injured worker. It is the administration that is denying benefits, and the only way a case may be reopened is if the claimant produces a medical report from his/her doctor. They state, "The board, however, is unable to accept responsibility for the cost involved in your obtaining copies of medical reports and this must remain a matter between you and the doctor."

In December 1975, the Manitoba Law Reform Commission published a working paper making the case for a provincial Bill of Rights. The report makes an important contribution to further developing an awareness of how we might better protect basic civil liberties in a period when they are being diminished and destroyed.

We find further evidence of how the power and influence of large organizations, such as, the Workers Compensation Board, are being used to evade areas of individual privacy. The right to know is a vital requirement for today's citizens. Many decisions are made behind closed doors. Vital information is locked away. Actions are taken on the basis of knowledge that is not available to the ordinary citizen.

As a result, we are faced with a myriad of government decisions that are explained only in a manner to suit the Workers Compensation Board, with no specific reasons given for rejection of a claim. Pardon me, there is a correction, because now they do give the reasons, but still we cannot get the medical reports. The injured workers are powerless in the face of the closed bureaucratic shop. We find it very difficult to understand their attitude towards a segment of society which depends on their assistance.

Under the current legislation, information regarding the case is not made feely available to all who require it. A summary of evidence involving a medical summary is not made available to the parties involved in each case. The complete file including medical reports is made available only on a selective basis, that is, providing the Workers Compensation Board personnel feel the privilege will not be abused and if the representative is deemed to be a responsible person. In our opinion, selectivity in this matter is indefensible. This is a prejudice against the individual. The Workers Compensation Board are prejudging the individual's ability to interpret the medical files.

We believe it is a matter of basic right that each claimant, in the words of Mr. McLure, should be entitled to know on what material a decision involving his rights is based. The current practice of keeping the applicant ignorant of relevant facts regarding the case cannot, in our opinion, be sustained on any justifiable grounds. Mr. McLure's opinion that that section of the Act which describes medical reports to be privileged communication of the person making or submitting the same, and unless it is proved that it was made maliciously, it is not admissible as evidence or subject to protection in any court, in any action or proceeding against such person, is unclear.

We also agree that it fails to affect the intention of the McGillivray Report that medical reports should be made available. We must make it clear that the disclosures of medical information does not necessarily mean the claimant would seek to automatically appeal the board's original decision. Logically, if the reasons for benefit refused are found to be acceptable and satisfactory, the worker's representative or doctor would advise him or her of futility of further appeal. However, open access to medical documents would allow the claimant a concrete foundation on which to build a case for appeal should he or she so choose.

To quote the reports of the Task Force of Workers Compensation in Saskatchewan in 1973: "Lack of adequate communication to individual workmen, about the reasons for acceptance or denial of a claim have been responsible for encouraging a great deal of suspicion and distress which presently seems to exist within certain individuals about the procedures of the board. We feel that all decisions of a tribunal concerning the claim should be in writing, and should contain adequate explanations to the basis on which decisions are made."

The McLure Report further recommends that decisions be made available, not only to the government services but to the public as well. At present, these practices exist in British Columbia, Alberta, Saskatchewan and Ontario. Manitoba is living in the past when it comes to legislation regarding medical reports accessibility.

On December 4, 1979, the Federal Government has released access to the total medical files held by the Federal Government including the National Health and Welfare Canada. It states, "With regard to your appeal to the privacy co-ordinator to have access to your total medical file held in Medical Services Branch, Health and Welfare Canada, please be advised that I have been instructed to make the entire file available to you."

Mr. Chairman, if the federal medical files have been released to the public by the Federal Government, we therefore cannot accept any justifiable excuse why the entire medical files at the Workers Compensation Board cannot also be released to the injured workers.

We hereby urge the Minister to recommend to the Provincial Government to introduce and pass such legislation to have the entire medical file at the Workers Compensation Board be released to the claimant and his or her representative for investigation.

Uniformity of law throughout the country is essential for the uniformity of justice. According to Dr. W.L. Parker, Chief Medical Examiner, who states, "Justice

should be done and should be seen to be done." On November 1st, 1977, Nova Scotia enacted its freedom of information, 139: "Nova Scotia became the first commonwealth jurisdiction to provide a legal right to government-held information. The Nova Scotia Act applies to all government departments and all boards, agencies, commissions or other bodies whose members are appointed by the government or are responsible to the Crown, 140." On January 1st, 1980, New Brunswick proclaimed its Right to Information Act, 148: "The legislation was enacted and received Royal Assent in June of that year. The New England Right to Information Act, 148, was proclaimed in force on January 1, 1980."

On February 24th, 1981, judge orders Workers Compensation to open up secret files: "B.C. Supreme Court Justice John Balk has ruled that the Workers Compensation Board must open its confidential medical files to claimants who wish to challenge the board's disability rulings." On February 4th, 1983, the Manitoba Association for Rights and Liberties states, "The patient has the right to confidentiality of his or her medical records and any other information and/or documents pertaining to his or her case. 'Fully informed' refers to the patient's right to be informed of all information which in the opinion of a reasonable person would be relevant to any aspect of his or her treatment or case including without limiting the generality of the foregoing, the right to know."

"In Saskatoon," on March 14th, 1983, it was stated in the Free Press, "doctors are going to have to improve communications with their patients or face lawsuits,' says Lorne Rathnowski, a Nova Scotia lawyer." On January 23rd, 1982, the Attorney-General Roland Penner said, "Manitobans will soon have better access to legal justice with the introduction of provincial freedom of information legislation and the opening of storefront citizens' advice bureaus," Attorney-General Roland Penner said yesterday. In his first major policy statement since taking office, Penner promised the freedom of information law, likely before the end of the year. He said, "It will be designed to open up the dark pools of government secrecy to public scrutiny."

On February 22, 1983, Mr. B.W. Leach stated that the medical department at the Workers Compensation Board are currently acting, in an advisory capacity, overruling medical evidence. He stated, "The role of the medical department, in reference to adjudication and administration of the worker's claim for compensation, is to act in an advisory capacity in context with the available medical evidence. The medical department is not the ultimate medical authority, and it is not within their scope to supercede the diagnostic practices of the medical profession."

If we had access to medical information at the Workers Compensation Board we are certain that this type of practice by the board's medical department may be remedied and corrected. Fundamental to any system of justice is the requirement that an adjudicating body reach its decision only on the basis of evidence presented where the parties have equal opportunity to cross-examination and reply. When evidence is taken in secret the right to challenge it, by cross-examination and rebuttal is lost; justice is denied. These ideas are as old as the law itself.

A total disclosure of all information received by the Board of Review must be received by the worker and/or his or her representative. Also the worker should receive all information upon which the board based their decisions. It is only then that the worker is given a fair opportunity to correct or contradict the information which is being presented about him. The Board of Review at the Workers Compensation Board must not hear evidence or receive representations from one side behind the back of the other. If this situation occurs, justice is not served.

In Contro Fervensano Napoli, petitioner, versus Workers Compensation Board of British Columbia on January 19, 20, 21, 22 and 23, 1981, presented documented evidence on this very subject, accessability of medical documents, at the Workers Compensation Board and, in summary, stated, Page 42:

"(a) The history of the relevant statutory amendments to The Workers Compensation Act illustrate a clear intention to get a worker, aggrieved by a decision of the WCB, the right to appeal to an independent quasi-judicial tribunal called a Board of Review.

"(b) The common law requirement that such an agency must not hear evidence, or receive representations from one side behind the back of the other, applies to the Board of Review. It has not been abrogated by any expressed language in The Workers Compensation Act or its regulations, nor by necessary implication.

"(c) Since the worker and the WCB are adverse in interest no medical reports are admissible in evidence before the Board of Review, unless S.10 of The Evidence Act is followed. This requires notice to the other side.

"(d) The same law binds the commissioners when they sit as an inquiry panel under S.91 to hear appeals from the Board of Review. They must disclose to the worker any information they receive and upon which they may base their decision. Medical reports must be produced in accordance with S.10 of The Evidence Act.

"(e) Providing a summary of the worker's file is insufficient compliance with the rules of natural justice."

The Supreme Court ruled in favour of the petitioner. Their findings were as follows:

"Where there is a lease or controversy and sides are taken, as they are here, the law is now more inclined to compel disclosure than when there is just one individual complaining about the determination of the board's ruling."

(Satari's International Union of Canada versus CNR and CPR, 1976, 2.(f)(c)(r) 369, 377 and 378)

(f)(c)(a) "As I have concluded, there is lease or dispute between the worker and the WCB at the inquiry before the Board of Review, and the one before the commissioner, all the more reason to demand complete disclosure of the worker and not just a summary of the file."

"Providing a summary of the worker's medical file is insufficient compliance with the rules of natural justice." We hereby urge this committee to encourage the government to pass legislation at this Session to allow the injured workers the accessibility to their complete medical files at the Workers Compensation Board. Other provinces in Canada have The Freedom of Information Bill; why deny Manitobans the privileges which people in Canada already enjoy?

Thank you.

MR. CHAIRMAN: Are there any questions for Mr. Huta?

Mr. Mercier.

MR. G. MERCIER: Mr. Huta, did the new board approve your claim?

MR. J. HUTA: Well it's still under appeal.

MR. CHAIRMAN: Mr. Cowan.

HON. J. COWAN: I personally want to thank you, Mr. Huta, for a very comprehensive and well-put-together brief.

Are you satisfied with the amendments that have been brought forward today, or are being brought forward, in regard to medical reports from the perspective of it being workable? In other words, do you think it is a workable way by which injured workers can obtain those reports?

MR. J. HUTA: Well, it would be workable in a much better fashion if the injured worker, or his/her representative, had access to the medical files in the same fashion as the workers' advisors have. This would alleviate a lot of bad feelings. It's a great step forward, but it doesn't go far enough.

HON. J. COWAN: I think what we are probably going to have to do then is look at it over the next year and determine if, in fact, it is workable and it is obtaining the objectives which it is designed to meet. I imagine that you will be making representation to the review committee when it is struck to undertake a complete review of the act?

MR. J. HUTA: Pardon? I didn't hear.

HON. J. COWAN: As you are aware, we have indicated we will be striking a review committee to undertake a complete review of The Workers Compensation Act once we have received the report of the Rehabilitation Committee. I imagine you'll be making representation at that time and will be indicating your experiences with the new access methods, at that time.

MR. J. HUTA: Well, we will, if we will be notified in plenty of time.

HON. J. COWAN: You'll certainly be notified. Whether or not it's in plenty of time, I guess is a subjective matter, but we'll certainly try to notify everyone through public advertisements and through other methods that the review is ongoing.

Thank you very much for taking the time to put together this helpful and very well-thought-out brief.

MR. CHAIRMAN: Are there any further questions? There being no further questions, thank you Mr. Huta.

That brings the list of public presentations to completion. Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, could I ask the Minister a question? It just occurred to me. Has the College of Physicians and Surgeons received notice of the amendments to the Bill 88?

HON. J. COWAN: Yes. The question allows me an opportunity enough to say two things. One is there seems to a mistaken impression on the part of members of the opposition, including some representatives tonight, that I had indicated that there had been consultation with employers on the Workers Compensation bill. In fact, I have just taken the opportunity to read through the Hansard of all the speeches and true to my recollection, never did indicate that. Now I'm not saying it's good that there was not consultation, but if you take the opportunity to read through them, you'll find that I very clearly stated that I might note that we had a far more extensive consultation process on The Workplace Safety and Health Act then we did on the Workers Compensation amendments, because we felt it was required.

When I talked about the consultation on The Workers Compensation Act, I spoke directly to the issue of consulting with the College of Physicians and Surgeons and to representatives to groups which had made appeals to us for access to medical records. So I think the record should be made clear. The Member for Sturgeon Creek certainly tried to leave a different impression, and if he can cite the Hansard that he indicted existed, I'd be more than pleased to review it.

But in regard to the specific question, yes, we have worked very closely with the College of Physicians and Surgeons on this. I have just had a meeting with the Manitoba Medical Association or representatives of that organization on this, and we will be sending out letters individually to each doctor, notifying them of the change in the legislation. I believe the College of Physicians and Surgeons will be doing the same thing, so they will get two pieces of correspondence.

MR. G. MERCIER: Mr. Chairman, I would be prepared to proceed with the bills, if the Minister is clearly indicating to me that the Manitoba Medical Association and/or the College of Physicians and Surgeons are aware of the amendments to Bill 88 and are not objecting to them, or at least do not wish to make representations.

HON. J. COWAN: They were notified of their opportunity to make representations here by letter and by phone call. A letter in the first instance, to tell them that the Bill had been through second reading; and phone call to tell them of the exact time and date of the committee hearing.

Now I cannot speak on their behalf and state categorically that there are not objections. The College of Physicians and Surgeons is certainly supportive, from my perspective, of the process which we have set up, as a matter of fact, it was in large part upon their recommendations that we have struck the process which you have before you.

The Manitoba Medical Association was less categorial in their assurances and they've always indicated to me, as far back as a year and some odd months ago, that they were not of one voice when it came to access to medical records. They met with me just last week to discuss the amendments. I believe I was able to resolve their concerns, although I did not get a categorial statement from them that they supported it. At the

same time, I pointed out that they could make representation here if they thought it was necessary. Having not seen them here tonight, I can only assume that they did not consider it to be necessary and, therefore, are willing to proceed on this basis.

BILL 87 - THE WORKPLACE SAFETY AND HEALTH ACT

MR. CHAIRMAN: There being no further comments, beginning with Bill 87, An Act to amend the Workplace Safety and Health Act, what is the will of the committee? Clause-by-clause? Clause 1—pass; Clause No. 2.

Mr. Kostrya.

HON. E. KOSTRYA: Yes, Mr. Chairman, I move

THAT Section 2 of Bill 87 be amended by striking out the word ''section'' in the first line thereof; and substituting therefor the word ''subsection.''

HON. J. COWAN: Explain.

MR. CHAIRMAN: Pass. Section 3 . . .

MR. G. MERCIER: Why does the Chairperson not have a vote?

HON J. COWAN: On the Advisory Council? We are removing the vote of the Chairperson so as to ensure the perception of the Chairperson as an impartial party in the proceedings. This is on the advice of the division and has been discussed with the Advisory Council. It is felt that by restricting the right of the Chairperson the vote, the Chairperson can play a more neutral role in the discussions. There has not been, in the past, any difficulty in this regard, I might add, but it was felt that it would improve the process in the event that, in future instances, there should be some difficulties arising out of that. Most of the decisions are consensus decisions, by and large.

MR. CHAIRMAN: Section 3—pass; Section 4—pass; Section 5—pass; Section 6.

Mr. Mercier.

MR. G. MERCIER: The Minister has heard concerns with respect to the 20 or more workers and the suggestion that there should be a definition of workers; and the question as to whether or not part-time or full-time people are included in the terminology ''workers.'' If part-time workers are included I would expect that a lot of establishments will be included that probably should not be included. I think of, just by way of example, a small drive-in restaurant which on weekends might include a lot of part-time students, and I don't think they should be included in the requirement to have a workplace safety and health committee, and some definition is required.

I just want to also place on the record, Mr. Chairman, our position - which I did on second reading - our position clearly is that there should not be a blanket requirement for workplace safety and health committees, that the present procedure of designation by the Cabinet of workplaces, or classes of workplaces, is the procedure that should be used because, otherwise, we anticipate they are going to be workplaces included that really should not be included, and there will only be the additional expenses of operating these committees, imposed in those situations which will be unnecessary.

So that is our general concern and that is why we will probably vote against the bill. But, taking into consideration, obviously we don't have the majority, we want to raise some concerns and this is one concern. What is the Ministers intention with respect to defining workers?

HON. J. COWAN: I think the matter might more equitably be dealt with by defining what we mean by offices, classes of offices, or similar workplaces in the section or limitations of Clause 1(a) section. I believe the definition of worker should stand as it is. I also believe that there are workplaces outside of offices, or class of offices, which we have defined as similar workplaces where the threshold level should most likely be 50, rather than 20. By way of regulation I would suggest that those sorts of instances where you have a workplace that may have more than 20 workers regularly employed there, but is not a workplace where you have the types of hazards that you have in other workplaces, might be moved up to the threshold level of 50 workers.

Now that may not address your concerns, but that is the explanation that I can offer to you, and we're not prepared to change the definition of workers at this time.

MR. G. MERCIER: Well, Mr. Chairman, on that basis we're going to have to vote against this section.

I have a question with respect to 41(c) and the word ''any addition to.'' It refers to 11 different construction projects. Again, I pointed out on second reading, that I think the terminology ''any addition'', which could involve a very very slight addition to any of those types of construction projects, could be so insignificant, and to require a workplace safety and health committee in instances like that is completely unecessary.

HON. J. COWAN: Yes, I apologize to the Member for St. Norbert because I had intended to have that looked at previous to this committee hearing.

While the Member for Seven Oaks is indicating that it might be major, but I just checked with Legislative Counsel and ''major'' is too subjective a word. The concern is well-founded; I want to ask staff to come forward with some change, or perhaps the Member for St. Norbert can offer a suggestion at this time; we're certainly prepared to address that concern. It is not intended to come into effect where a washroom facility, or a small and very limited addition is being put on to a major construction site. So it's something that we recognize is a problem.

MR. G. MERCIER: With respect to 41.1 and the number 50. Is the Minister prepared to increase that to 100?

HON. J. COWAN: No.

MR. CHAIRMAN: Question on Section 6, all those in favour of Section 6 please indicate? Those opposed?

In my opinion the ayes have it.

MR. G. MERCIER: On division then, Mr. Chairman.

MR. CHAIRMAN: On division. Section 7.

HON. J. COWAN: Gerry, we're getting along so well.

MR. G. MERCIER: Well we have the same type of concerns where it's a blanket requirement.

MR. CHAIRMAN: Section 7.

HON. J. COWAN: Again, I would have the same answer to the Member for St. Norbert, in that we believe that it is appropriate for this province, that it is in keeping with what is happening in many other provinces, and that it is a step that will, in fact, significantly increase the safety and health activities at all worksites; and until the Member for St. Norbert can show us a significant number of worksites where there are no accidents I'm not prepared to amend that.

MR. CHAIRMAN: Question? All those in favour of Section 7? Those opposed?

In my opinion the ayes have it.

HON. J. COWAN: On division.

MR. CHAIRMAN: Section 8.

HON. J. COWAN: I want it on the record.

MR. CHAIRMAN: On division. Section 8—pass; Section 9.

MR. G. MERCIER: Is the Minister prepared to introduce the equivalent of the old Section 43(7) with respect to frivolous actions by an employee? I raise this question on second reading because there doesn't appear to be any provision as to what happens when there is a frivolous refusal by an employee to work? Is the Minister prepared to add the equivalent of the old Section 43(7) to this section?

HON. J. COWAN: I'm prepared to review the effect of the deletion, again, and to indicate, not tonight because I can't as of tonight because I need to do some work in the area, but prepared to indicate whether or not we will be doing it and, if we don't do it, give very clearly the reasons why we decided that it was not necessary, but I can't give a further commitment at this time.

MR. G. MERCIER: Okay.

MR. CHAIRMAN: Mr. Kostyra.

HON. E. KOSTYRA: I move

THAT the proposed subsection 43(5) of the Workplace Safety and Health Act, as set out in Section 9 of Bill 87 be amended:

(a) by adding thereto immediately after the word "remedied" in the second line thereof the words "any of"; and

(b) by striking out the word "shall" in the third line thereof and substituting therefor the word "may".

MR. CHAIRMAN: On the amendment—pass; Section 9—pass; Section 10.

MR. G. MERCIER: Is the Minister prepared to accept the suggestion from the Chamber of Commerce that would occur in about the sixth line, I think, so that it would read "for a period of up to two normal working days"?

HON. J. COWAN: No, as I indicated, I believe that would be not in keeping with the intent of providing two normal working days educational leave to employees. So, no, I'm not prepared to make that change. We would like to see provision made for such employees to have two normal working days, up to a maximum of 16 hours, and would recommend that to you.

MR. CHAIRMAN: Section 10—pass; Section 11—pass; Section 12—pass; Section 13.

MR. G. MERCIER: On Section 13, could the Minister explain why he's . . . Normally this would be a summary convictions offense, and the limitation of prosecutions would be six months, can the Minister explain why he's making it one year in this case?

HON. J. COWAN: Because we found that there was some difficulty in preparing all the material within the six-month limitation. It was felt that one year would allow for a better review of prosecutions. The limitation of six months we felt acted in two ways; (1) it did not provide enough time to review complaints which would have been brought forward had there been more time; secondly, it forced complaints in some instances where those complaints would not have been forward, or having capacity to force complaints in some instances where those complaints would not have been forward had there been more time to review it. So we are recommending this change to allow for more efficient functioning of that section.

MR. CHAIRMAN: Mr. Kostyra.

HON. E. KOSTYRA: Are you finished, Jay?

I move

THAT Bill 87 be amended by renumbering Sections 13 and 14 thereof as Sections 14 and 15 respectively, and by adding thereto immediately after Section 12 thereof the following sections

Subsection 54(4)

13

Subsection 54(4) of the act is amended by striking out the figures "43.5" in the second line thereof and substituting therefor the figures "43.9."

MR. CHAIRMAN: Mr. Mercier.

MR. G. MERCIER: I can raise my question now. It relates to Section 14, Mr. Chairman, "The act comes into force upon a date fixed by proclamation." Could the Minister indicate when he proposes to proclaim

the sections of this act, taking into consideration the concerns expressed by the Canadian Manufacturers' Association?

HON. J. COWAN: I can be general at this time. I would expect to proclaim the right to refuse provisions as soon as is possible, and the - well, perhaps it would be better stated the other way. The requirement for safety and health committees and representatives would be proclaimed some time in the fall. We had originally intended to do that in October. However, we had intended this bill to pass somewhat before this time. So it will be some time around October, November.

What we will be doing in the interim is providing the information on these requirements to different organizations, groups and employers and employees, and then proclaiming the act at a time when we believe that information has been circularized and brought to the attention of all those whom it is necessary to inform and they have had time to make the necessary provisions.

The provision respecting education and educational leave would be proclaimed in about one year's time. That allows for the division and other organizations to work out those educational programs that would be acceptable under the act, so approximately one year's time for that particular provision. It also allows a bit more time for industry to obtain the benefits of the recovery which we are fast entering.

MR. CHAIRMAN: On the amendments—pass; Section 13-pass.

MR. R. TALLIN: I just notice that there's an incorrect reference in Section 1 of the bill where it says in the third line, "Chapter 6." It should be "Chapter 63." Could I have permission of the committee to make that correction as a correction other than by amendment?

MR. CHAIRMAN: Section 14—pass; Preamble—pass; Title—pass; Bill be Reported—pass.

BILL 88 - THE WORKERS COMPENSATION ACT

MR. CHAIRMAN: Bill No. 88, Page-by-Page or Clause-by-Clause? We have a variety of suggestions from members of the committee.

HON. J. COWAN: Page-by-page.

MR. CHAIRMAN: Page-by-page. Page No. 1—pass; Page No. 2.

MR. G. MERCIER: Page 2, Mr. Chairman, in Paragraph 6, we received representations on behalf of the CMA and the Chamber of Commerce with respect to the deletion of those words "but in any case not later than 30 days." Could the Minister explain his position with respect to that matter? A 30-day period seems a fairly reasonable. The suggestion, in fact, has been that the period be much less. I would . . .

HON. J. COWAN: It has been the practice of all boards to my knowledge not to enforce that particular section. In other words, they would allow cases to be brought forward that were not reported in the 30 days.

The purpose of the Workers Compensation Board is to judge on the merits of the case. Was that worker injured at a job which would be covered by the Workers Compensation system? It's not to penalize the individual for not being fully informed of the law and not bringing the case forward within a specific time line. So, in essence, it has always been the case to my understanding that that was a very weak provision. It was not followed by the boards in some instances.

It is now, I believe, an amendment which very truly states that it should be brought forward as soon as is practical. That, I think, is the operative clause or the operative phrase and important, and also provides for the cases to be judged more on their merit rather than on an artificial or arbitrary deadline.

MR. G. MERCIER: Mr. Chairman, in how many cases has a claim been denied because the accident has not been reported within the 30-day period?

HON. J. COWAN: To my knowledge, none.

MR. G. MERCIER: Mr. Chairman, it seems to me then, that is a sound argument for at least leaving it exactly the way it is.

HON. J. COWAN: But there is a . . .

MR. G. MERCIER: Surely a 30-day requirement which has been extended and waived in cases - it seems wise to just leave it in there.

HON. J. COWAN: Well, the fact is that it has been extended and waived by way of Section 92 of the act on every occasion. So it really is false advertising to the extent that it has never been the case where it was used as a restrictive measure. There is another section of the act which provides for the waiving of it, and that has always been the case.

MR. G. MERCIER: Mr. Chairman, in how many cases has it been necessary to waive the requirement?

HON. J. COWAN: I don't have that information available to me. I could get it to you. I know there have been some cases, yes.

MR. G. MERCIER: I take it, not that many.

HON. J. COWAN: I couldn't say whether there have been that many. It would certainly be a subjective decision, but I can get you a fairly accurate number.

MR. G. MERCIER: Mr. Chairman, on the basis of those answers, we have no alternative but to vote against the amendment. Surely, it's in everybody's interests that that accident be reported, so that if there is a problem from a workplace point of view from the employer's side, he could take some steps to remedy the situation to ensure that those kinds of accidents don't happen again, if he can do that. There just doesn't seem to be any basis at all for the amendment.

HON. J. COWAN: I am certainly prepared to take those comments back and to discuss them and to indicate

when the bill next comes before the House as to a decision. At this point, I would hate to lock myself into a decision to proceeding with that particular section by way of being forced to. I would prefer to allow for some flexibility. It may be that, upon the advice of others, we decide that it is not necessary to make that amendment at this time. But again, I would need to review that in a bit more detail and I would need to discuss it with my colleagues, but I'm prepared to do that.

MR. CHAIRMAN: Question? Page 2—pass; Page 3—pass; Page 4—pass; Page 5—pass; Page 6.
Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, on Page 6, with respect to Section 14, there were questions raised with respect to that part of Section 33 which is left out, with respect to the 10 percent disabilities. Can the Minister indicate or give us some information as to why that is left out and what the implications are?

HON. J. COWAN: Is the Member for St. Norbert speaking in reference to the fact that we are now including disabilities under 10 percent and have not in the past?

MR. G. MERCIER: Yes.

HON. J. COWAN: I would refer him back to the statements that were made by the previous Minister of Labour under the Conservative Administration when asked the same question as to why it was being left in? At that time the Honourable Ken MacMaster could give no justification for it being left in, and indicated that he was prepared to review the removal of it. We discussed with him, from a somewhat different perspective, the fact that we felt it was discriminatory; that why should a person who has a 9 percent disabilty not receive the increase, and a person who has 11 percent disability receive the increase?

At that time, Mr. MacMaster could offer no justification for that. At this time, I can offer no justification for that; the only difference is that we're making the change.

MR. G. MERCIER: What is the cost implication?

HON. J. COWAN: 1.8 percent of the total package, $196,000.00.

MR. G. MERCIER: On an annual basis?

HON. J. COWAN: Yes, for these amendments. It is not a significant cost figure at this time, by comparison, although $196,000 is a lot of money, no doubt about it.

MR. CHAIRMAN: Page 6—pass; Page 7.
Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, on Page 7, Section 37.1, there were concerns expressed by the Canadian Manufacturers' Association. I would like to hear the Minister comment on that part of the submission.

HON. J. COWAN: That's in regard, I believe, to the removing the necessity to change by act what is being done by regulation.

MR. G. MERCIER: Right.

HON. J. COWAN: The fact is that it's cumbersome and administratively difficult. I don't accept that it in anyway removes the right of any Member of the Legislature to discuss those particular changes. There are all sorts of mechanisms available to members of the opposition to discuss almost anything they want. Certainly all members of any opposition take benefit of those rights, so I can't accept the concerns that it is in anyway going to make it a more closed system. The regulations have been in place for a long time; everybody knows about the regulations, and what this does is removes the necessity for us, by way of amendment, to apply retroactively what was done by regulation some time previously.

I believe the concerns were expressed sincerely but, from my perspective, I don't see it as being a major difficulty.

MR. G. MERCIER: Mr. Chairman, will that mean that, for example, the amendments in this bill, in Section 7, will be done by regulation in the future?

HON. J. COWAN: I'm sorry, I don't understand the question.

MR. G. MERCIER: Is the effect of these amendments in Section 17 and 18 - does that mean that the type of amendment contained in Section 7 of this bill will be done by regulation in the future?

HON. J. COWAN: Maybe I can ask Legislative Counsel to give you a much more learned opinion on that.

MR. R. TALLIN: No, it would not change 25.1 every year on the same basis as the maximum average earnings have changed. The benefits under 25.1, although in some cases they relate indirectly to a maximum average earnings of the person, I think the only thing that would be affected is 25.2 where the compensation shall not exceed 75 percent of the average annual earnings of the workman. Then there's the exception that fixes the maximum or the minimums out for certain classes of dependents, regardless of the maximum earnings of the workman. The maximum average earnings base is the maximum amount that the 100 percent disabled person gets his 75 percent of.

HON. J. COWAN: I can only indicate that I'm glad that I deferred to a much more learned opinion says the Member for St. Norbert.

MR. G. MERCIER: . . . position to Section 19. I expressed that on second reading and I reiterated my concerns, and those concerns were contained in some representations made to the committee.

MR. CHAIRMAN: Page 8 - Mr. Kostyra.

HON. E. KOSTYRA: I move

THAT proposed subsection 52.3(2) of the Workers Compensation Act as set out in Section 21 of Bill 88 be amended by striking out the word and figure "August 1st" on the second line thereof, and substituting therefor the word and figures, "September 15th."

MR. CHAIRMAN: On the amendments. Mr. Mercier.

MR. G. MERCIER: Mr. Chairman, I have - this amendment Ray would be on page 9?

MR. R. TALLIN: Page 8.

MR. G. MERCIER: I have an amendment, Mr. Chairman, with respect to 52.3(1) which is based on a number of submissions made, and the position that the medical reports should be available to the employers, as well. I think I expressed my reasons in my question to Mr. Zimmer, and did during Estimates, prior to the bill be introduced, the making available to workers the medical report. I believe, at the same time, because the employer can be a party to the proceedings and is paying the assessments, that he also has a right for the purpose of a hearing before the Workers Compensation Board to have access to the medical reports.

I, therefore, move, Mr. Chairman

THAT the proposed subsection 52.3(1) of The Workers Compensation Act, as set out in Section 21 of Bill 8, be amended

(a) by adding thereto, immediately after the word "workmen" in the second line thereof, the words "or the employer of the workmen or the deceased workmen," and

(b) by adding thereto, immediately after the word "dependent" where it appears in the third line thereof, the words "or the employer," and

(c) by adding thereto, immediately after the word "dependent" in the fifth line thereof, the words "the employer."

MR. CHAIRMAN: On the amendment - Mr. Cowan.

HON. J. COWAN: Just to speak to it briefly. I believe it has always been the practice, when dealing with medical reports of employees, that access by the employer has been prevented. That is standard practice when dealing with medical monitoring programs; that is standard practice when dealing with reports of this nature.

The reason for it, of course, is that a medical report is a very private and personal thing, no matter what the reasons for which it may be used. Medical reports have had a certain status, historically, traditionally, and in other jurisdictions in that regard. The intent of the amendment which the Member for St. Norbert has put forward would remove that specific status.

I would ask him, if he were an employee and he were injured on the job and the medical report had in it things which were not directly germane to that injury on the job, or were not directly germane to the Workers Compensation claim which, in fact, could be the case, if he would be content to let an outside party - be it an employer or someone else - have access to that particular report? And, in fact, as that report could have some impact on that individual's employability, and we all know, or at least we all should know about the effect of medical surveillance programs and the employability of individuals, would he be prepared to jeopardize his job by making that report available to his employer?

MR. G. MERCIER: Mr. Chairman, if a person, for example, suffers a personal injury and commences a law suit, by the law he is entitled to, not only produce the medical reports that he has prepared by his doctors, he is subject to being required to be examined by a doctor for the defendant, and all of those medical reports, prepared by his doctors and the other party's doctors, are available to all of the parties to the action.

That is a very similar situation to a claim before the Workers Compensation Board and the employer is a party, can be a party, to that hearing, and pays an assessment which pays the claims in these instances, and has a right to be a party to such a hearing and, therefore, has a right to access to the medical reports in the same way as in an action for a personal injury. Just as in action for a personal injury, the medical report should be available to all the parties, and unfortunately, those are the risks that the plaintiff in an action for personal injuries takes and the claimant, in these cases, takes or should take.

HON. J. COWAN: I would suggest, Mr. Chairperson, that it's not an applicable situation for two reasons. Firstly, there is not the type of employer-employee relationship that exists in a Workers Compensation claim, that necessarily exists in the type of situation which he outlines.

MR. G. MERCIER: It can be.

HON. J. COWAN: Secondly, Workers Compensation is a compulsory system for the most part. The worker has to be a part of the system, and when the claim goes forward, then . . .

MR. G. MERCIER: So does the employer.

HON. J. COWAN: And the employer has to be a part of the system where it's a designated industry, and when the claim goes forward you would be extending that compulsory nature of the system to the provision of medical records, and I don't think that would be appropriate, quite frankly. I don't think there's any other precedent that you could indicate that would be similar in nature.

MR. CHAIRMAN: Mr. Kostyra.

HON. E. KOSTRYA: I'm speaking in opposition to the amendment, Mr. Chairman. The suggestion that the circumstances of an employee claim to the Workers Compensation for recognition, with respect to the payment of a claim, and the analogy that's been suggested by the member that that is similar to a court situation, I think, is incorrect. Because, if you were to look at it somewhat differently, the two parties in this process are the employees and the Workers Compensation Board, and clearly the Workers Compensation Board has access to that information.

The second point is that the Workers Compensation Board, by its makeup, does have representation from management and from employees sitting as the appeal body on those kind of claims. But to suggest that access to personal medical information should be given to an employer, I think, is not right and is not justified. The Workers Compensation Board is empowered to look at the claim; it is empowered to determine whether or not the claim is justified, and that information should rest between the employee, her/his doctor, or doctors, and the Workers Compensation Board.

MR. G. MERCIER: Mr. Chairman, the employer can be a party to the hearing and, in many cases, should be a party to the hearing. He is required to pay assessments which provide the compensation to employees and is entitled, as a party, to full access to all of the information. I think that's a fundamental rule of justice and I'm going to say, once more, as some members of this committee weren't here during the last Session of the Legislature, I'm going to say to them that, having supported the Charter of Rights and Freedoms, they're going to find, over the next few years, that much of the labour legislation they have supported over the past years, and are supporting during these years, is going to be struck down under the constitution, under the Charter of Rights and Freedoms. This is the kind of legislation that denies full access to a party to a hearing, that is very questionable under the Charter of Rights and Freedoms.

MR. CHAIRMAN: Mr. Scott.

MR. D. SCOTT: Just on that one final point. The Charter of Rights and Freedoms is dealing with individuals; individuals, not corporations and corporate bodies, and it is for the protection of the individual, so I don't think that argument would really hold.

Mr. Kostyra's point, I think, is very well taken that the Workers Compensation Board, itself, has access to the file. That is the employers representative, in many instances, as well, in that the Compensation Board is a form of insurance against injuries, and the insurance company in their realm are the ones that have access to the information, and they have that access and that information.

MR. CHAIRMAN: First of all, before the motion on Mr. Mercier is put forth. My understanding is that the previous amendment for Mr. Kostyra was passed; so note for the record.

On the motion of Mr. Mercier. Question? All those in favour of the amendment? All those opposed?

In my opinion the nays have it.

MR. G. MERCIER: On division.

MR. CHAIRMAN: On division. Page 8—pass; Page 9—pass; Preamble—pass; Title—pass; Bill be Reported—pass.

That completes the business of the committee tonight. Committee rise.