LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS
Wednesday, March 7, 1990

TIME — 8 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Helmut Pankratz (La Verendrye)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Connery, Derkach, Driedger (Emerson)

Messrs. Driedger (Niakwa), Gilleshammer, Mandrake, Pankratz, Patterson, Storie, Uruski, Mrs. Yeo

WITNESSES:

Mrs. Marla Niekamp, Manitoba Organization of Nurses Association

Mr. Don Halechko, Injured Workers Association of Manitoba

Mr. William Laird, Manitoba Professional Fire Fighters Association

Mr. Harry Mesman, Manitoba Federation of Labour

Messrs. Garth Whyte, Winton Newman, I.D. Irving, The Employers' Task Force on Workers Compensation

Mr. Dean Crow, Manitoba Funeral Services Association

Mr. Robert Lang, Memorial Gardens Manitoba Limited

Ms. Heather and Mr. Gordon Patterson, Green Acres Memorial Gardens and Funeral Home

Mr. William T. O'Brien, Insurance Brokers Association of Manitoba

Written Presentations Submitted:

Mr. Wayne Bell, Journeys Adult Association

Councillor Chris Lorenc, City of Winnipeg Board of Commissioners

APPEARING:

Mr. Steve Ashton (MLA for Thompson)

MATTERS UNDER DISCUSSION:

Bill No. 56—The Workers Compensation Amendment Act (2)

Bill No. 78—The Prearranged Funeral Services Amendment Act

Bill No. 74—The Highway Traffic Amendment Act (7)

Bill No. 75—The Insurance Amendment Act

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Mr. Chairman: We will be considering eight Bills. Is it the will of the committee that we go through these Bills in numerical order? Agreed. I will read out the Bills and their numbers.

* (2005)

Bill No. 56, The Workers Compensation Amendment Act; Bill No. 59, The Public Schools Amendment Act; Bill No. 60, The Education Amendment Act; Bill No. 72, The Securities Amendment Act; Bill No. 73, The Highway Traffic Amendment Act; Bill No. 74, The Highway Traffic Amendment Act; Bill No. 75, The Insurance Amendment Act; and Bill No. 78, The Prearranged Funeral Services Amendment Act.

BILL NO. 56
THE WORKERS COMPENSATION ACT (2)

Mr. Chairman: For Bill No. 56, we have eight people making presentations. Mr. Wayne Bell, Ms. Marla Niekant, Mr. Don—how do you pronounce it?—Halechko, Mr. Jerold Flexer, Mr. William Laird, Mr. Harry Mesman or Ms. Susan Hart-Kulbaba, Mr. Garth Whyte.

Mr. Wayne Bell has a written presentation only, I believe; and the Committee Clerk—have you circulated that written presentation? -(interjection)- It will be presented later during the evening.

Then I will call on Ms. Marla Niekant. Did I pronounce that correctly?

Ms. Marla Niekamp (Manitoba Organization of Nurses Association): Actually, there is a typo. It is a "p" not a "t" at the end. It is Niekamp.

Mr. Chairman: Very good. Thank you. Please proceed with your presentation.

* (2010)

Ms. Niekamp: Thank you and good evening, Mr. Chairman, Mr. Minister and committee Members.

Unfortunately, I did not bring enough copies of the written brief that I prepared. Hopefully some of them have been circulated and the Members could share.

Mr. Chairman: Do all the committee Members have copies? Please proceed.

Ms. Niekamp: The Manitoba Organization of Nurses Associations, or MONA, is an independent labour organization established in 1975. The MONA represents 101 bargaining units, MONA locals, which are certified under The Labour Relations Act of Manitoba. Total current membership is more than 10,000 and includes a majority of unionized registered nurses and licensed practical nurses in the province. As well, some registered psychiatric nurses employed in personal care

homes or in psychiatric units of some general hospitals, and operating room technicians employed in four hospitals are members. Graduate nurses or nonregistered graduate pending licence nurses are also included in the bargaining units.

MONA members are employed in settings ranging from large urban acute care hospitals and rural facilities to small medical units in remote areas, in personal care and privately owned nursing homes, in long term facilities, public health, home care services, the Manitoba Cancer Foundation, and the Red Cross.

Occupational hazards are the third leading cause of death in Canada. Nurses and other health care workers are exposed to a vast number of health and safety hazards on the job such as infectious diseases, radiation, toxic substances that can cause disease, cancer or birth defects, radioactive-equipped environments and equipment, broken needles and glass, lifting, pushing, slipping and falling hazards, as well as patient violence and high stress levels.

The public views health care facilities as places where people go to get well and as such believe them to be clean and safe, but this view of an antiseptic environment is deceiving. As all health care workers are aware, our facilities are far from healthy and safe for workers. As a result, often nurses are caught in the short-term conflict of taking time for precautions to protect themselves and attending to their enormous patient loads.

A review of Workers Compensation Board claims by nurses in British Columbia in 1980 revealed that 47 percent were for back injuries, as compared to the provincial average of 14 percent. In reviewing Workers Compensation Board claims of MONA members, this increased incidence of back injuries is confirmed. Members report a lack of educational programs aimed at prevention. Shortage of proper equipment for lifting of heavy patients is chronic. What a luxury for nurses if patients weighing over an accepted weight would not be lifted until extra help or proper equipment was available.

In these days of nursing shortage and reductions in support staff, back injuries will only increase as will long-term disability claims. The MONA on behalf of nurses in this province expects positive legislative amendments and board policies to adequately and accurately reflect their concerns. We therefore take this opportunity to present our views at this committee level.

The first item I notice that the Minister has proposed in an amendment to address our concerns, and I thank him for that, and the same with No. 2. Number 3, I am not sure if my concern is still valid. I notice the latest amendment coming from the Minister's office whereby he proposes to amend this section to allow for repayment of reasonable expenses as a result of this accident or injury and I am assuming that the intent of that wording in legislation would be then to allow for reimbursing time loss if it were applicable in certain cases.- (interjection)- No, then we do not agree with it.

* (2015)

We do not agree with the amendment if that is not its intent. The original wording reflected the humanistic nature of the Government in ensuring the availability of assistance to the immediate family of a critically injured worker. Paying for time lost from employment, along with any reasonable expenses, would eliminate a financial burden on a family in a time of crisis. The board has not provided any data to indicate this payment would place any undue hardship on the employer group as reflected through their assessments. We are just not sure that it is a big cost item.

Number 4, again with his amendment, I understand that this has been withdrawn.

Number 5, Subsection 28(1), I am noting the positive proposed amendments in regard to the benefits. The Minister has assured us that the change has been made, the increase to dependent parents under (d) of that subsection, although it was not included in his final package. We are not sure then why all the other benefits were increased with the exclusion of dependent parents.

Hon. Edward Connery (Minister responsible for The Workers Compensation Act): They were increased in October. There is a confusion there that they think they were increased in October. Is this Bill No. 1 where we had the indexing?

Ms. Niekamp: Right.

Mr. Connery: That was done in October, and it will become a regular routine without having to be done legislatively every time. It is going to be a matter of fact from here on.

Ms. Niekamp: Okay. Thank you. No. 6 under Section 50, the Board of Directors. While the MONA is not opposed to the Government's attempt to move to a more corporate style board structure, we have voiced our concerns regarding the community appointments. It is our position these community appointments must be seen to be impartial and unbiased. It would also seem appropriate to have consensus of the management and labour representatives on the board regarding the acceptability of the community appointments. This would alleviate any perception of bias towards either management or labour.

Subsection 60.3, I see there is some renumbering and some changes being made, but the intent remains the same. Having an interest in an industry assumes that the individual with the interest would also have some control in that industry. We are not adverse to having conflict of interest guidelines in place in the legislation; in fact, we feel it is a good idea. It seems inconsistent though that the appeal commissioners are subject to potentially rigorous guidelines when they are the people responsible for carrying out the policies as set by the board of directors.

The board of directors, however, retain the right to develop their own conflict of interest guidelines. That is covered under Subsection 56. It would be safe to assume the body actually setting board policy would be more susceptible to be biased towards policy direction if they had a direct or an indirect interest in

the industry. The appeal commissioners will be expected to carry out policy and will be less susceptible to a bias because of their perceived interest in an industry.

No. 8, Subsection 60.9, Power of the Board, dealing specifically with the power to stay a decision. The board of directors is empowered with this amendment to stay the decision of an appeal panel. It is difficult to ascertain how this referral to the board will affect the injured worker. There appears to be no mechanism in this amendment whereby a worker can request a hearing by the board.

We do not know if there are any time limits on holding a decision in abeyance while waiting to be heard by the board. We understand that there may be a minimum of 10 meetings a year for example. How long will it take for a case to be heard? Will this constitute another level of appeal? For example, a decision is made by an appeal panel to reinstate rehabilitation benefits and the employer disagrees with the panel's interpretation of board policy. When the employer approaches the board to stay the decision, will the board suspend the benefits pending the outcome of their decision?

Mr. Connery: Only in errors of law would that apply.

Ms. Niekamp: Not interpretation of the policy?

Mr. Connery: Just failure to follow policy.

Ms. Niekamp: Another question under that section is, will anyone be allowed to make representation at that level, or will it be a review of the appeal panel's minutes on the case?

Mr. Connery: They would get a hearing before a new panel, a rehearing before a new panel.

Ms. Niekamp: Okay. Thank you.

Amendment No. 52, Subsection 67(12.1), because of the limited number of physicians who are able to fulfill the requirements of participation on a medical review panel or MRP, it may be extremely difficult to find a specialist in the field who has not been involved in the claimant's case.

At the Health Sciences Centre, for example, the physicians utilize a team approach to provision of care and may regularly consult with each other regarding specific patients. This type of approach would possibly exclude all those physicians on that team from sitting on the medical review panel.

* (2020)

Mr. Connery: We are informed that is not a problem. That is incorrect and that is not a problem.

Ms. Niekamp: Can you explain further? I wonder if you could explain.

Mr. Connery: We are advised by the board's chief medical officer that will not be a problem.

Ms. Niekamp: You are telling me then you do not anticipate a problem in finding alternate physicians to sit on that panel.

Mr. Connery: That is correct.

Ms. Niekamp: Thank you.

No. 10, Penalties. Throughout the proposed amendments there are noted increases in the amount of penalties. The $5,000 figure is consistent for employers and for workers. This is not a fair assessment. A $5,000 fine would hurt an injured worker far more than a fraudulent or noncompliant employer. The fines for employers should be increased, and the fines for workers should be decreased.

Mr. Connery: Ms. Niekamp, that is a maximum fine, and of course to put in one assessment for one group and another for the other side would appear to be not fair. Now a judge will determine the size of the fine, so because they are all in the same bracket does not mean that an employee would be given the same fine as an employer who is grossly neglecting their responsibilities. A judge makes that assessment, not the board or the staff. So we are not concerned that an employee would be given an unfair penalty, because the maximum is $5,000.00.

Ms. Niekamp: Thank you. No. 11, Subsection 97, Research and Safety Programs. The amendment proposed in Bill No. 56 reflected a willingness on the part of the Workers Compensation Board of Manitoba to promote a safe working environment through research and educational programs. It appears there is no criteria in place regarding the types of programs that may be offered. There is no flexibility to allow provision of educational sessions by those bodies who are acceptable to the workers and their employers. There is a wealth of educational and promotional tools available to assist workers and their employers in obtaining the goal of a safer workplace.

Mr. Connery: Safety programs would include educational programs.

Ms. Niekamp: I guess our concern was more along the lines of who would be providing the education.

Mr. Connery: The board would provide that education. As you know, there is a program right now for a couple of industries to do a program. We are also looking at back injuries. The board would make that assessment. Is that still a problem?

Ms. Niekamp: Just some further clarification then. It would be my understanding that the board would contract out, so to speak, to other agencies to provide—it would be the decision on what agencies would be used to provide educational sessions.

Mr. Connery: That is correct. The board would make that decision.

Ms. Niekamp: Would we have some say into who would be providing?

Mr. Connery: Groups always have access to the board and to the Board of Commissioners to make

representation. We are quite willing to listen to proposals. As you know, we have met many times in my office on various proposals, and we have worked together to bring some to fruition.

Ms. Niekamp: Thank you. Number 12, amendment No. 97, Subsection 109.1(1). This proposed amendment allows no flexibility for those persons who may unwittingly, unknowingly or unintentionally make an erroneous statement to the board. It would seem reasonable to require proof of one's intent to mislead or defraud prior to imposition of a potentially severe penalty.

Mr. Jerry Storie (Flin Flon): Mr. Chairperson, on a point order. It is not so normal for the Minister—

Mr. Chairman: Mr. Storie, on a point of order.

Mr. Storie: —to get into a debate point by point with a presenter until after the presentation has been made, where we can all join in. If it is the intention to change the rules—there may be other Members of the committee who also have questions. I recommend we let the presenter finish her report and we could all ask questions.

Mr. Chairman: Very well, Mr. Storie. That was actually not a point of order but for clarification. I think that was quite well taken. If you do not mind, Ms. Niekamp, we will hear your presentation first, then ask questions later. Thank you.

* (2025)

Ms. Niekamp: In summary then, The Workers Compensation Act represents an agreement made between workers and their employers to address the concerns of both parties. In most cases, workers are assured of receiving benefits while unable to work due to a workplace injury. Employers are protected from legal action, as the payment of premiums for liability insurance has been replaced by the payment of assessments to the Workers Compensation Board. It is our position that the rights of both parties to a fair and just system must be maintained.

I have attached for your perusal at the back various position statements our organization has drafted recently in regard to various issues of Occupational Health and Safety, and Workers Compensation.

Mr. Connery: To go back to your No. 12, where you are concerned about erroneous statements to the board. A false statement to the board by a worker or an employer is now a summary conviction offence. Legal opinion from Crown counsel and board counsel confirms that innocent mistakes do not constitute an offence under this section.

Mr. Steve Ashton (Thompson): I would first of all like to thank you for your presentation. I want to indicate, in terms of some of the points that have been raised, that we will be bringing—

Mr. Chairman: Will you please speak into the mike?

Mr. Ashton: My apologies, Mr. Chairperson. We will be bringing in a number of amendments that will deal with points you have raised. We have had the chance to discuss some of them. I think there are some very excellent points raised.

I take it—I am just going through the brief—that there is a particular concern. Just to follow up from what the Minister was saying, quite apart from legal interpretations or not, they be made very clear in the Act that it is not just simply a question of inaccurate statements but a deliberate intent, essentially an intent that would be on the level of fraud in a legal sense. That is the concern you are expressing, that the current draft of the Act could be open to some pretty general interpretations about what a false statement is.

Ms. Niekamp: That is correct.

Mr. Ashton: One of the reasons we will be bringing the amendment forth is because there has been particular concern expressed that the wording itself will be used to put a great deal of pressure, particularly on workers. We are already hearing a great deal of concern about the fact that the current wording could lead to people being rather intimidated in terms of preparing information and providing statements related to a workers compensation claim.

So you are essentially suggesting that regardless of what the board's lawyers have suggested, that in terms of interpretation, not just by their legal representatives, but by injured workers, that this is an important amendment.

Ms. Niekamp: That is very correct. Thank you.

Mr. Chairman: Any more questions? Mr. Ashton.

Mr. Ashton: I want to indicate too, in terms of the board of directors, I think you have raised a legitimate point. We are looking to bring in an amendment that will address this. You are saying the position of MONA is essentially that you are quite willing to accept community representatives that are acceptable to both management and labour. You want to ensure that is the general assessment, that is, between those two parties, not subject to the direct appointment of the Government.

I suppose the word might be—and I hate to use this word—but under the current Act it is very possible that people could be appointed for reasons of patronage rather than acceptability or knowledge in terms of workers compensation.- (interjection)- I am sorry; I hate to mention that with the Minister of Highways and Transportation (Mr. Albert Driedger) here, but you are suggesting you want to make sure there is not the ability for direct appointment. You would like to see some sort of balance, and also the community representatives to be approved by both sides.

* (2030)

Ms. Niekamp: That is correct. Actually, the Minister and I have had discussions very specifically in regard

to this. One of our MONA locals, that being Local 10 at the Health Sciences Centre, whereby the members of that local, of which number over 1,500, have some concern about the fact that the most recent appointment by the Minister as a community rep, Mr. Thorfinnson, is certainly not seen by them to be an unbiased person.

Mr. Ashton: I want to indicate, too, we will certainly be looking at some of the other items. I know you have raised these previously, but I just want to ask you a general question. We have expressed the concern about this particular Bill, that it is significant almost to the extent to which it leaves items out that should have been dealt with, particularly the many recommendations of the Legislative Review Committee that have not been acted legislatively. In fact, where action has been taken, it has been more on the administrative side.

I just want to ask you for your position, the position of MONA, whether you feel there are additional changes that perhaps should have been part of this Bill but have been left out. I know we have expressed that concern, and we are looking to organizations and individuals such as yourself who have direct knowledge of workers compensation. Do you feel there are other changes that are necessary?

Ms. Niekamp: We did participate in the Legislative Review Committee and made recommendations at that level. We are very cognizant of the fact that there are many recommendations in that document that are not reflected in Bill 56, the recent package of amendments. I am not prepared to discuss fully the recommendations that we as an organization would like to see enshrined in the legislation at this time. However, there are many recommendations, as you indicated, that we would like to see.

Mr. Ashton: I just want to assure you that we will be continuing to press for the implementation of many of the recommendations of the Legislative Review Committee. It has been nearly three years now since the report was released. It was a consensus report, by and large; 95 percent of the recommendations were supported by all three of the commissioners. We certainly feel there is far more that needs to be done.

We are actually quite disappointed this Bill did not go to that extent. I can assure you that we will be continuing to raise that in the future. Thank you for your presentation.

Mr. Allan Patterson (Radisson): Mr. Chairperson, I do not have any specific questions. I would just like to thank you very much, Ms. Niekamp, for your presentation. We are aware of the contents, of course, and from speaking with you before, we are very aware of your concerns and will be taking full account of them in the clause-by-clause discussions.

I would echo the comments of the Member for Thompson (Mr. Ashton) in that there are a good many of the recommendations of the King Committee Report that are missing and yet to come into legislation, but that is not our concern here right now. We will be addressing this particular Bill and doing the best we can with it.

Mr. Chairman: Thank you, any more questions? Mr. Minister.

Mr. Connery: Ms. Niekamp, I want to say that I appreciate the co-operation we received from your group. We have had many discussions in our office and we went through the concerns that have been raised by yourself and many others.

As far as the recommendations of the LRC, a lot of these recommendations have been already implemented through policy. We have a number, and we could maybe supply you later with some of the others, but as far as being implemented, we have 67 that have been fully implemented substantially—15 of them, not 67 percent, 15 of them and partially 24 for 60 percent of the LRC recommendations by and large implemented. About 34 percent are still under study and only 6 percent have been outright rejected.

A lot of the recommendations of the LRC are been looked at in the developing of the legislation and policy. A lot of that material has been used. The work of that committee is not wasted material. It has been used by the board.

I thank you for your concerns, and I think that you made good representation, thank you.

Mr. Chairman: Any more questions to Ms. Niekamp? If not, thank you for your presentation.

Before we go on to the next presenter I would like to ask, if there is anyone who has their written presentations ready can you pass them on to the Committee Clerk at this time.

The next presenter is Mr. Don Halechko, Injured Workers Association of Manitoba. I believe everybody in the committee has a copy of that one, am I correct? Go ahead, Mr. Halechko.

Mr. Don Halechko (Injured Workers Association of Manitoba): Thank you, very much, Mr. Chairperson, and committee for allowing the Injured Workers Association to provide a presentation expressing our views on Bill 56. Before I begin, I heard unofficially that there have been some changes discussed already. Since I am not officially aware of them some points we raised in our submission may have been addressed. I will go ahead.

Our organization regards Bill 56 as anti-worker legislation. Under the pretense of developing a more modern, efficient and workable compensation system, in reality Bill 56 is laying the groundwork for a compensation system, which will have increased potential for reduced benefits and services for injured workers.

The following are concerns our organization has regarding Bill 56 with recommendations to address our concerns:

1. Definitions, Section 1(1)c, the change of "disease" to "occupational disease" is narrow and restrictive.

There is a potential for non-acceptance by the WCB of diseases which arose out of employment but are not considered to be diseases associated by that type of occupation, for example, heart attacks. We suggest that occupational disease be amended back to "disease."

The change of the word "disabled" to "injured" may exclude work-related disabilities such as allergic conditions or diseases due to prolonged exposure to chemicals. Injured implies that a condition is due to a specific injury, and therefore coverage may not include other work-related conditions which develop over time due to exposure to workplace hazards. In our opinion, the more suitable term "disabled" should be used.

Throughout the Act, "industrial disease" has been replaced with the term "occupational disease" in what we understand is solely to use the more modern terminology. However, both are exclusionary to the extent that both are qualifiers, and any qualifiers in front of the word "disease" potentially rule out the acceptance of certain diseases, such as asthma.

Definitions are of primary importance in interpreting and carrying out the Act. Therefore, we recommend that a complete set of operationally-defined definitions be included in the Act to ensure that the intent of the Act is clear.

2. Section 1(3)f seems to prohibit compensation coverage for anyone who resides outside of Canada and is employed by a foreign-based company but is working temporarily in Canada. Our position is that The Workers Compensation Act should apply to anyone working in Canada.

3. Throughout Bill 56, fines for workers and employers for wrongdoings are set at $5,000, irrespectively. In our opinion this is unfair. A fine of $5,000 is too high for a worker to pay. The financial capabilities of an employer to pay a fine of $5,000 is usually greater than a workers.

A threat of a $5,000 fine could be used as an instrument to intimidate workers. In addition, a $5,000 fine is a heavy fine for a smaller employer yet is insignificant to a large employer. It would be preferable to establish a formula for determining a fine based upon ability to pay. I would just like to add, it could be on the size of a payroll or an organization so that the same negative impact could be realized.

4. We object to the repealing of Section 27(16 and 17) regarding the responsibility of employers to provide transportation to a hospital for an injured worker. We strongly believe that Section 27(16 and 17) should be retained and that it is the responsibility of the employer to transport to a hospital any worker injured in their employ.

5. The structure of the Board of Commissioners as proposed in Bill 56 is, in our opinion, an anti-worker board. The voice of workers will be lessened from the previous Board of Commissioners in which workers shared equal input with employers. With the proposed composition of three worker reps, three employer reps and three representatives of the community the workers will have less influence.

* (2040)

Since the community representatives would most likely be selected from upper-management types their orientation in a lot of key issues would likely be sympathetic to employers with whom they would likely share socioeconomic values. As well, the neutrality of the representatives of the public would be in question, since it is likely that a Minister responsible for WCB would likely appoint persons to this position that share his/her particular political Party's orientation.

The former three member full-time Board of Commissioners was established to meet a need identified in the 1982 report by Inspector Cooper, titled, A Report on the Workers Compensation Board of Manitoba. Prior to that, the board consisted of a full-time chairperson and six part-time commissioners. The Board was reconstructed to three full-time members in order to more adequately monitor management practices in the context of Workers Compensation Board policies. This change in the board was a response to a need identified as the presence of intimidation at the Workers Compensation Board, which seemed to be partly due to the lack of involvement by the board in the management of the operations.

The new corporate-style board is a regressive change in the direction of pre-1982 conditions. The proposed corporate-style board would consist of part-time commissioners and a part-time chairperson. The chief executive officer, although not a voting member, would be the one bringing issues and information to the board of directors. As such, the chief executive officer will have significant power and will not only have supreme control over management but also will have ultimate control over what policies and directions the board of directors shall adopt.

In addition, it is likely that a part-time board that is required to meet perhaps only 10 times per year will be less informed and less effective than the previous full-time Board of Commissioners that met 52 times a year.

We recommend that the WCB go back to the former three full-time commissioners, a worker representative, an employer representative and a neutral chairperson. Our opinion is that this type of board is more neutral than the proposed corporate-style board. By working full-time we will be in a better position to know what is happening at the board and thus be better able to advise management and set suitable policy.

6. In Section 109(1), the lack of a clearly defined operational definition as to what constitutes a false statement could lead to different subjectively-determined interpretations and subsequently the intent of the legislation could be altered. A proper operational definition of "false statement" should be included in this section.

Under this section we have two further recommendations that we would like included in amendments to Bill 56 as a protection against the possibility of criminal action being taken against an innocent person due to erroneous conclusions based on unpremeditated circumstances. First, the Act should state that to initiate legal action on a false statement, there must be conclusive evidence that the false

statement was made knowingly and with the intention to defraud. Second, that a qualifier such as "knowingly" or "intentionally" be added preceding the phrase, "makes a false statement."

We emphasize once again that Bill 56 without significant amendment is not acceptable to the injured workers we represent. Please incorporate our recommendations in anticipated amendments to this legislation. Thank you.

Mr. Connery: I think, No.1, your first concerns raised, have all been amended, we think to take care of the concerns you raise.

Section 2, everybody has to be, that works in Canada, except U.S. truckers, and I think everybody agrees that U.S. truckers who are already covered are only bringing loads in and going out, so that is not a concern. They are the only ones left off. Under your fines, of course, I mentioned that earlier, our reasoning. The structure of the board, of course, there we will have to agree to disagree; and six, you have a defense of by error so I think the only area that we would maybe disagree would be Section 5 on the corporate board.

I think the other areas we covered, or I think the explanation, the maximum fines, while there is $5,000, the judge makes that determination and as far as the misrepresentation, that is a defense if you made it unknowingly or in error. I think basically we have covered yours except the corporate board.

Mr. Halechko: I would like to make a comment on this $5,000 fine. Our organization has discussed this topic and we are well aware that is a maximum. At the same time an individual could be intimidated by the fact that there is a maximum of $5,000.00. The potential is there to fine a worker.

This could have a very negative impact on a person's inner action, perhaps by some mistake or error there is a problem within a person's claim to settle their dispute. A person could be pressured to not take a chance that there would be some kind of legal action this severe, whereas an employer for example, I do not like to use names, but a large employer such as, say, Inco, I mean a $5,000 fine would be—they would not even notice it, so $5,000 as a maximum is not realistic or fair in my opinion.

Mr. Ashton: I thank you for your presentation. I agree, the original draft of the Bill is a very flawed Bill. In fact, I would like to ask you, were you consulted prior to the drafting of Bill 56, on these points?

Mr. Halechko: No, we were not.

Mr. Ashton: You indicated too, that you were not aware of some of the amendments that now that the Minister has drafted. Did the Minister, did the Workers Compensation Board not contact yourself or the Injured Workers Association in regard to the amendments?

Mr. Halechko: No, we had some discussions on some points with the compensation board, but not with the Minister's office.

Mr. Ashton: A copy of the amendments, the needed amendments in my opinion, I mean some of them were very obvious, I think they could have been avoided, necessity could have been avoided if the Bill had not been so poorly drafted to begin with. You have not even received an official copy of those amendments which are going to be made to this Bill by the Government?

Mr. Halechko: No, we have not.

Mr. Ashton: I am surprised. You represent the injured workers. This is the Injured Workers Association of Manitoba and yet for this Bill you are saying that you were not contacted prior to the Bill and you have not yet been contacted as to some of the changes to the flaws, very serious flaws in my opinion. I agree with you, it is a very flawed Bill. You still have not been contacted to this point. This is your first opportunity to really learn what is going to happen from the Minister in this regard.

Mr. Halechko: I have been made aware through other sources, but that is unofficial.

Mr. Ashton: I would hope that in the future that you would be consulted. I am very surprised that your organization has not been. Surely when people are drafting Bills on workers compensation it would be logical, so I hope that by raising this at this committee, this will not happen again. This is clearly, I would say, a major omission in this regard.

I want to ask you, in terms of Bill 56, you mentioned you do not like the existing draft of it and I raised this with the previous presenter. What is your view of the Bill generally? It has been suggested it leaves out a lot of significant changes that really still need to be made which were recommended by the Legislative Review Committee several years ago. I am just wondering if you could give some sense of Bill 56. I mean, you pointed to its flaws, do you feel it is adequate to deal with the needs in terms of workers compensation?

Mr. Halechko: Basically not. My first, I guess, just general impression would be that I would have liked to see it written in clear and more simple terms, not requiring interpretations for each section or a lot of the sections. I would have liked to have seen more consultation involved in developing strategies to overcome the problems that are within our existing compensation Act. It would have been nice to see perhaps the Legislative Review Committee's recommendations being used as perhaps a guide for the new Act because that was the most extensive research into our compensation system that has been done to date in Manitoba.

Mr. Ashton: It is interesting you mention about the language, because that was one of the recommendations of the Legislative Review Committee and as I know you are aware, because the Injured Workers Association was one of the lead organizations in making presentations during the public hearing stage

to the Legislative Review Commission, that went through a whole series of meetings. There were literally hundreds of presentations and it really was one of the most extensive reports that has ever been developed on compensation.

You are saying quite clearly you feel that Bill 56 is a disappointment in terms of the Injured Workers Association in that it does not go far enough in dealing with the need for reform at Workers Compensation?

Mr. Halechko: Yes, it does not have any significant reform and we are very concerned about the new board structure.

Mr. Chairman: No more questions? Mr. Halechko, did you have some more comments to make?

* (2050)

Mr. Halechko: I was just going to say, basically that Bill 56 is negative in our opinion because of this major problem with the structure plus a few other negative concerns. The positive factors are far outweighed by the board structure which could have a disastrous effect on injured workers.

Mr. Ashton: As I indicated, we are looking at trying to bring in an amendment that will deal with one of the major concerns you have dealt with.

Mr. Chairman: Mr. Ashton, will you please speak into the mike?

Mr. Ashton: Sorry, Mr. Chairperson. What I am saying is we are bringing in amendments to deal with the composition of the board. So we hope to be able to deal with that concern. In fact we were quite disappointed that the Government has chosen essentially to break its own Act in the last period of time. There has not been a full-time chairperson in place for some time now even though the Act requires it. One of the things this Act does is really try to legitimize what has been occurring, I would say illegally, and certainly a breach of the Act for the last number of months.

I just want to ask you a little bit further in regard to your concern about a number of areas. You are suggesting that the current definition of a false statement as it reads could to a large degree intimidate workers, or be used to intimidate workers and even have the indirect effect of intimidating workers and making statements regarding a Workers Compensation claim.

Mr. Halechko: Yes, I know from personal experience. I am not sure if anyone on the committee has been on compensation for any significant length of time, but generally speaking most people who are on compensation sense intimidation. They feel it; it is in the air. It is in the way they are treated historically by staff. Something like this could just add to that.

Mr. Ashton: I was off work one day from an injury and it is interesting because the amount of pressure one gets is incredible. In this particular case, the greatest pressure came from people that I worked with because it affected the safety awards. So I can identify. I mean that is peer group pressure. I can only imagine what kind of pressures will be placed on people if they know there is an Act that says a false statement, whether they knowingly make a false statement or not, whether there is any intent, whether it is deliberate. I would say, given the amount of concern that already exists, I agree with you, and we are going to be bringing in an amendment that will add very clearly to that statement that there has to be an intent. Obviously if there is fraud there has to be something in the Act to deal with that, but if there is simply an inaccurate statement that was made accidentally or perhaps resulted from confusion, that may be the case.

In fact I would like to ask you, since I know you have dealt with many cases, talked to many injured workers, whether you feel that is also not a problem with this section if it in some cases, people through language difficulties, may make statements that because of those language difficulties themselves may be misleading or may in fact be inaccurate without them even realizing that is the fact.

Mr. Halechko: Yes, actually it is happening frequently where there have been errors often by a client due to perhaps lack of education or maybe because of the fact that English is not the mother tongue, that statements might be put down which later have to be explained. That happens. A large number of individuals who are injured are in manual labour, and often those people are immigrant persons or perhaps in the North, a lot of Native persons who might not have a high education or a good command of the English language. The Act itself, if it does require such a complicated version due to legal considerations, I am not aware of that, but I think there should be a simplified form that could be understood by a common individual.

Mr. Ashton: That certainly has been a problem that has been identified and there has been an attempt, for example, in terms of Workplace Safety and Health to move beyond just providing copies for example of the Act, providing a working copy that people can read and deal with. I certainly share your concern because I think anyone—and you know I am the critic for the New Democratic Party, I have gone through this Bill and I think it is confusing enough for myself. I have had some dealing with compensation before, so I certainly agree with you.

I want to move on to one of your other concerns too, and that is in terms of fines for workers and employers. Do you have any suggestions on how we might rectify that? You are suggesting, I would assume, a differential between the two and I agree with you. Obviously a $5,000 fine for Inco is quite different than a $5,000 fine for yourself and myself or an individual. Are you suggesting on this that we perhaps lower the fine for injured workers? Are you suggesting we raise it for companies, or are you suggesting both?

Mr. Halechko: I would like to see a fairer fine system, something which is reasonable, a fine that would, if it

has to be regarded as a punishment, would not punish a worker more than it would an employer. At the same time I believe $5,000 is much too high. Very few workers could afford a $5,000 fine. It would put their life in chaos. It is something that would be a strong instrument of intimidation or a threat of the use of it. Similarly with smaller employers it might also be significant. With larger employers, $5,000 would be totally insignificant. It would be something that, when dealing cost effectiveness, might not be cost effective to avoid the possibility of a fine. I am talking speculatively, but I think there should be some type of form, perhaps a lower amount for workers, something that a reasonable worker could afford. For employers it would have to be based somehow on either their net revenue, their worth, their payroll, some factor such as that. That is not an area that I have extensive knowledge, legally how to determine fines.

Mr. Ashton: I appreciate your feedback on that, and we will certainly be looking at that. I think this is one of the things that struck me about the original Bill, was both the fines, also the other item we were just talking about before, the definition of a false statement. When I read the Bill and when I first saw it introduced, what concerned me was the fact that it might reinforce the idea that some unfortunately feel that somehow people on Workers Compensation have faked their claims, that they are not legitimate. I can tell you, I have dealt with a lot of cases in the eight years that I have been with the Legislature, and I have dealt with many as Workers Compensation Critic these last couple of years. You have probably dealt with many more than I have.

I am wondering if you could address that because I really do believe that without, I do not believe it was the intent of the Act, but I believe one of my concerns arising out of the original draft of the Act was that it might be interpreted as saying there was a big problem with Workers Compensation in the sense of people cheating the system. I am not saying there are not. There may be one or two cases. I mean, there are companies that cheat the system too. There are individuals, companies cheat on their income tax, there is not any system. In your experience of dealing with many Workers Compensation claimants, do you feel that is a fair picture? Do you feel that there is a large amount of abuse in the system or do you feel that is an unfair picture?

Mr. Halechko: Actually this is a topic of much interest. Recently our organization met with Judge Kopstein at the Board and we have been looking into these frauded at the Compensation Board. There are no actual numbers as to how many fraudulent cases, very few have been exposed. It is a general consensus that fraud probably exists in almost every system. It is also generally accepted within compensation. It would be low in numbers. I guess you could say there are a lot more examples we are aware of where people do not receive benefits they are entitled to than people receiving benefits they are not entitled to.

Our organization has a policy that if we suspect someone to be fraudulent, and we have never really come across it, but just in case, we would not represent a person. We have represented a fair number of individuals, and we have not come across blatant fraud.

One of the concerns we have with having such strong measures for fraud and having them open to interpretation is, when it appears that legislation is required in a strong form regarding fraud, the staff at the board might come to believe that fraud is very evident. In the past, the compensation board staff have openly admitted the fact that they believed a lot of claimants were not on the level or whatever. It has been a negative attitude towards workers. A fraud policy like that could just add to the negativeness of certain staff people. I would like to see that avoided.

Mr. Ashton: I think you raised a very important point, because I have seen internal documents which certainly suggested that, and I really believe that the vast majority of people working at Workers Compensation do not share that, but it is like anything else, whether it be members of the public or any organization, there is a perception that I believe is unfair that there is a significant amount of fraud.

What is particularly unfair is that most of the cases that I have dealt with, and I am sure you have had the same experience, the big issue is often whether it is workplace related or not. What I am suggesting to you in terms of that, a lot of cases where someone is injured, they cannot work, the big question is not whether they are injured or not, but whether it was workplace related or not, and it is very difficult to prove.

* (2100)

I have had people come to me with one or two or three doctors' reports indicating that their recommendation is that they be accepted in terms of their claim, where there is one doctor on the other side, a board doctor says no. What you are suggesting is, from your experience you feel there are no grounds for suggesting that anything other than a very small percentage of Workers Compensation claims are fraudulent. In fact you are suggesting that probably far more people are denied compensation who should be receiving it than ever received compensation who should not be receiving it.

Mr. Halechko: That is correct. I am not aware of a high incidence of fraud. I know a lot of people are not getting benefits they are entitled to. The Compensation Board has failed numerous injured workers. I would like to see the same efforts that are put into this implementing of fraud policy put toward perhaps improving the legislation to ensure some basic rights for the injured workers.

Mr. Ashton: I appreciate your suggestion. I really hope that there will be some significant changes yet to the Workers Compensation system. It is not as if the agenda is not there, the draft. I am not saying the Legislative Review Committee was perfect, but when you can have a consensus report on 95 percent of the items, when that has been available now since 1987, surely we can bring in some more significant changes.

I would just like to ask you, essentially what you are saying on Bill No. 56 then is a flawed Bill. With some

amendments it can be neutralized, but you believe that far more needs to be done in the future, that we need a further reform. Perhaps we should have had the reform in this particular Bill, a Bill that will make significant improvements in terms of the rights of injured workers in this province.

Mr. Halechko: Yes, that would be ideal, to see a revision to the Act that would increase and improve the rights of injured workers to ensure that they receive benefits when they are entitled to it. Yes, that would be a priority.

Mr. Ashton: I thank you for your presentation. As I said, we are going to be bringing in some amendments to deal with matters that the Minister will not be dealing with through his particular amendments. We appreciate your feedback. We look forward to joining with you over the next period of time to try and get those reforms. I think they are long overdue. I know the work of your organization. I am disappointed you were not consulted more fully on this particular Bill, but I am hoping that you will have a very significant role in the future. Thank you very much.

Mr. Connery: Mr. Halechko, you have had many opportunities to speak to Judge Kopstein and members of the board. We appreciate your comments that you have made to them, and you have represented your organization well. I think because of your representation, you have had increases in your attendant allowances by something like over 20 percent for helping injured workers. We appreciate that, we have responded and we look forward to continuing to work with you.

I gather from your remarks tonight that you have discussed the Bill with Mr. Ashton?

Mr. Halechko: Bill No. 56 you are referring to?

Mr. Connery: Yes.

Mr. Halechko: No, I have not.

Mr. Chairman: Any more questions? Mr. Patterson.

Mr. Allan Patterson: Thank you, Mr. Chairperson. I would like to thank you very much, Mr. Halechko, for your brief to me. The points you make are perfectly clear, and I have no need for further clarification of them. We will take them fully into account among the other things to be looked at in relation to the further recommendations of the Legislative Review Committee. Thank you.

Mr. Chairman: Thank you, Mr. Halechko. There are no more questions? Before I ask the next presenter to come forward, Mr. Wayne Bell, written presentation has been circulated to all Members of the committee. Mr. Jerold Flexer. Mr. Jerold Flexer? Mr. William Laird. His presentation has been circulated—Manitoba Professional Fire Fighters Association.

Mr. William Laird (President, Manitoba Professional Fire Fighters Association): Thank you, Mr. Chairman. My name is Bill Laird. I am President of the Manitoba Professional Fire Fighters Association. It represents approximately 1,050 firefighters in the Province of Manitoba. Nine hundred and sixty of those are here in the City of Winnipeg.

The cities that I represent are Brandon, Portage, Thompson, the Atomic Energy of Canada firefighters at Pinawa and the City of Winnipeg firefighters. My opening remark that I would like to emphasize is, the submission is dedicated to what I call the insidious hazards that our firefighters are faced with. It is not the obvious injuries which we were dealing with over the years. It is the sophisticated problems that we are faced with today that have the cumulative effects of our exposure at fire ground operations.

I am appearing on behalf of the professional firefighters of Manitoba which I represent. We wish to ask your help in having the heart and lung regulation, 2477, covering firefighters, placed into the principal Act, The Workers Compensation Act of Manitoba. This can be achieved by amending Bill No. 56 to include the appropriate wording to accommodate the regulation in the principal Act. We have attached to this submission a copy of the first regulation of October 15, 1966, a revised, restated regulation of June 1974 later amended in 1977 and was in full force and effect until the appeal court of Manitoba struck the regulation down on January 29, 1988.

The court of appeal, upon a legal analysis of this issue, determined that the regulation was beyond the regulatory power of the board.

> "Under the present scheme of the Act, if it is the intention of the Legislature to deem that certain diseases arise in the course of employment as a firefighter resulting from the inhalation of smoke, gases and fumes or any combination of them, then, clearly, it must so state by legislative enactment."

That was the Court of Appeal under Justice Lyon, January 29, 1988.

The court of appeal did not say in their judgment that the regulation was contrary to a policy of fairness or common sense. What they did say was the Legislature wanted to make such a regulation law or give the board the power to make such a regulation. It was within its powers to put the contents of the regulation within The Workers Compensation Act itself or to amend the Act by making appropriate sections specific as to the kinds of regulation the board could in fact make. Obviously the Legislative Assembly can remedy this situation, and it is our hope that they will.

I would suggest under the provisions of Bill No. 56, possibly Section 51.1(1), the functioning of the board of directors, they could have a subsection reflecting the validity of the board to pass regulations. When one reviews the history of where our regulation came from and what it was based on, in 1966—it was predicated on the Royal Commission of 1958 where it was suggested by Justice Turgeon that industrial diseases would now be recognized and in so doing brought a broader definition to accidents, put in a proper phrase for industrial disease and then made reference to the

fact that under the Statute 48(1) that existed at that time in 1958 that the board in fact had the authority to pass regulations under Part 1 of the Act. I suggest that under 51.1 of Bill No. 56, they should look very seriously at this and broaden the jurisdiction of the board for the purpose of being able to enact regulations not only under Part 1, but Part 2.

I would fail in my duty to you to suggest then—I am not a lawyer, I am not a judge, but if our regulation could be set aside on a technicality, how many other ones that the board had passed could be challenged? I think it is a serious problem, and it is my hope that we can convince this committee to see the injustices that have occurred and go forward with probably an amendment to 51.1 or incorporate the regulation.

I am open to any questions you may have, Mr. Chairman.

* (2110)

Mr. Connery: Well, Mr. Laird, thank you for your presentation. I would like to tell the committee that there has been nobody more tenacious and determined in trying to achieve this for your firefighters. I think you and Jody must be on a very close first name basis, and ourselves, we have met more than once in our office. I do have sympathy for your concerns, but part of our concern is that the firefighter presumption bears directly on the issue of occupational disease, so it is common more than to just the firefighters. Occupational disease is probably the most difficult issue in the WC benefits package, which will be coming forward at the next Session. Within the package, the issue of occupational disease coverage for everyone will be discussed.

The firefighter issue is being researched and will be settled in the context of a fair system for everyone. I have asked Judge Kopstein to have along with the other benefits package a recommendation for the firefighters for the next Session when we will be presenting the benefits package to this committee. On that basis, while I have sympathy for your concerns, I think it is only fair that we have our board review it in the context of all the workers in the workplace and the occupational hazard and diseases that are out there. I appreciate your concerns, and you have done as best you can, as best anybody can, for their people that you are representing.

Mr. Laird: I thank you for your comments, Mr. Connery, but with all due respect, we are not or should not be lumped in with other workers. Quite candidly, we go into places other people want to get the hell out of, and it is because of that we should be given that type of coverage or recognition. I do not think I can put it any simpler than that.

Mr. Ashton: I would just like to ask you—I take from the Minister's comments that essentially he is saying you met with him on a number of occasions, but he is saying that he is not going to be introducing the amendment. How many times have you met with the Minister and the Workers Compensation Board on this since this matter arose because of a court decision?

Mr. Laird: Oh, I have had three or four meetings and numerous telephone calls. I have had meetings with Judge Kopstein shortly after his taking the position as chairman of the board.

Mr. Ashton: Was there ever any commitment to bring in this type of legislative change, either from the Minister or from the board level?

Mr. Laird: I was left with the impression that there would be something that probably would be acceptable to the firefighters. However, that was going to take some time to develop.

Mr. Ashton: You are saying that the Minister's response on the proposal that you put forward at private meetings and also here today at the committee, you are not satisfied with that response.

Mr. Laird: With all due respect, no.

Mr. Ashton: Mr. Chairperson, I can indicate—also I met with you and you have done a very good job of lobbying—that we will be bringing in an amendment that will put into legislative force the regulation that was struck down by Justice Lyon in January of 1988. While there may be other workers out there that may also require a similar sort of recognition, I agree with you. I cannot think of any argument that can use that type of logic to suggest that firefighters who have had this recognition as you point out in your brief since 1966. It is a regulation that also exists in other jurisdictions. It is not unique to Manitoba; it has been recognized in other jurisdictions.

I can indicate that we will be bringing in that amendment when we deal with clause by clause on this section. I understand, from conversations with my colleague in the Liberal Party that they will be supporting that amendment. So while the Minister may not have listened to the concern, I can assure you that we have. I do congratulate you not just on your lobbying efforts, but also in our conversations and also in your public efforts as well for putting forward exactly what you just said to the Minister. If ever there was a unique circumstance, it is in terms of the firefighters, and for the life of me I cannot understand why the Minister will not agree to bring in an amendment that all it does is bring back what we have had since 1966 and was struck down on a technicality.

So we will be bringing that amendment forward and we even hope the Minister and the Government will support it. It think it is the type of amendment that all three Parties could support in this Legislature.

Mr. Chairman: Any comments, Mr. Laird?

Mr. Laird: No.

Mr. Chairman: Thank you. Mr. Patterson.

Mr. Allan Patterson: Thank you again, Mr. Laird, for an excellent presentation. We the Liberal Party, the official Opposition, feel that there is a great degree of merit in your case of something you had that you lost,

as has been said, on a technicality. Certainly, firefighters is not a normal, stable type of risk such as in an industrial situation where things are known and can be controlled to a very significant degree. So we thank you for your presentation, and we will look very favourably on it.

Mr. Chairman: Thank you, Mr. Laird. Any more questions to Mr. Laird? Thanks for your presentation. Next, Mr. Harry Mesman or Ms. Susan Hart-Kulbaba. Mr. Harry Mesman, Manitoba Federation of Labour. Have you a written presentation?

Mr. Harry Mesman (Manitoba Federation of Labour): Yes, I do. I have provided copies to the committee.

Mr. Chairman: Has it been circulated? Have you all copies of it?

Mr. Mesman: I provided 15 copies to the Clerk before we began.

Mr. Chairman: Mr. Mesman, you can continue.

Mr. Mesman: Thank you. Mr. Chairperson, Members of the committee, the Manitoba Federation of Labour, representing some 85,000 members and their families, are more than pleased to present our comments and concerns on Bill 56 to this committee.

While there was minimal consultation preparatory to the first draft of the Bill with the steering committee minutes not provided to the labour commissioner, we do wish to note our approval of the consultative process carried out by the Minister responsible for The Workers Compensation Act (Mr. Connery) following the Bill's general release.

Many of our concerns were dealt with during this procedure and for this reason our outstanding items comprise a relatively short list. We will note, where appropriate, that an item has been addressed by the Minister either in correspondence or in meetings held in the Minister's Office. We will assume that such is the position of the Government unless stated otherwise here today.

Actually the Minister did provide a complete written list four or five days ago, which unfortunately I was just very recently made aware of, owing to the fact that it was addressed to our president and rightly so, Susan Hart-Kulbaba, who is not in and it was not brought to my attention until very recently. So it is not quite woven into this presentation, but we will deal with it as that comes.

We would be amiss not to acknowledge the positive aspects of this Bill. We applaud the removal of sexist language and paternalistic clauses, although the former is not quite complete. We will touch on that a little bit later.

The recognition of the effect of workplace deaths and injuries on the immediate family is praiseworthy, although that has been deluded somewhat from the original amendment, and I did not share Ms. Niekanp's assumption that people would still continue to be paid for missing time from work, members of the immediate family that is, which was suggested in the original amendment. We are sorry to see that deluded.

* (2120)

Allowing a broader range of medical reports and moving towards prevention programs and more meaningful penalties are all—we find them all laudable. The latter move does have an unfair aspect to it that has been touched on by other presenters and we will do likewise later on.

What we were really hoping to see, of course, and are hoping to see in future legislation, is the implementation of the recommendations contained in the 1987 Legislative Review Committee report, the King Report, because that document represents, as has been pointed out here today and as we have pointed out numerous times and many have, the most thorough study of workers compensation done in this province. It contains numerous consensus recommendations that would better the system as far as we are concerned. These recommendations are being ignored on the whole by the drafters of this Bill, but as has been indicated, a major Bill is down the road and hopefully they will be incorporated in that.

Bill 56, certainly, we view it as far more than the housekeeping Bill it was originally purported to be. In fact, the main item, the board of directors' section, tears the house down and rebuilds it and we find the new structure to be unfortunately somewhat unsound. This part of the proposed Act as well as Section 109.1(1) pertaining to the making of false statements, and one item that is noted by its absence, the reinstatement of Regulation 24/77, commonly known as the firefighters regulation, constitute our primary concerns with Bill 56.

Taken in the order in which they appear in the Bill, our comments are: Section 1(1)(iii) and Section 1(1)(iv) the use of the terms "occupational disease" and "injured" to replace the terms "diseased" and "disabled". Again the Minister has put forth an amendment deleting these. So certainly if that goes through, we have no problem with that. In fact, I am not sure we would have a problem with injured. The real problem we had with these originally was that there are no definitions given for them. My dictionary definition of "injured" I rather like, if that is the definition they wanted to put in the Act sometime. It is extremely broad.

Section 1(3)(f) restrictions on the definition of worker. The Minister has also proposed a new amendment on that, that we have no problem with. So again, assuming that is the final version, that is fine with us.

Section 18(4) We have concerns here or had concerns. Again, there has been an amendment by the Minister. We did not like the words "unless excused by the board on the ground that a report for some sufficient reason could not be made, . . . "The Minister has put forth an amendment removing that and therefore, removing our concern.

We do want to note here that because this is the first section that deals with fines, we do want to raise

our concern here as others have and note that it strikes us as patently unfair that an individual worker and a large corporation are subject to the same maximum fine. I have heard the Minister's comments that indeed all it is a ceiling and a judge hopefully in his or her wisdom will bring it down to a reasonable level, but that is not something we can necessarily count on. So we have a concern with that.

Section 27(16) the transportation to hospital. Again the amendment has been withdrawn, apparently by the Minister, so we are satisfied with that.

Section 28(1) This was answered earlier and I am still not clear on the answer. I am not sure how the increase of the pensions that were put forth earlier addresses this, perhaps it does. The payments for the surviving spouses and dependants, that is Sections 28(1)(a) and 28(1)(b), have gone from $75l to $816.00. We found it difficult to understand why that does not apply to a dependent parent. Perhaps I was not paying close enough attention when it was responded to earlier, but I am still not clear as to why that one also was not changed. So perhaps later on we can get an answer to that.

Section 50, the board of directors. As we noted in our preamble, we are strongly opposed to this new structure. We would expect the business community to likewise be opposed, as the ability of both key stakeholders to influence the decision-making is greatly reduced under this structure. The three "community representatives," we look at as pure patronage appointments, virtually guarantee to result in the board being considered skewed by one or the other stakeholder.

The structure allows the Government to maintain control of developing policy and administration. We would suggest that if community representation is indeed considered essential, and we do not think that it is, that a process akin to that put forth in British Columbia be considered. Lately, I thought this was the process they have in British Columbia. I am not 100 percent sure now. It does not much matter if it is or not, it is a format that we would like to see. What it amounts to is that the employer and worker representatives have to reach some agreement on the community representatives. This would prevent, for example, having a community representative be a CEO of an organization which our members bargain with, which as a previous speaker pointed out is the present situation, or conversely having a union leader in that position.

There have been faint suggestions from the Government that this type of structure will help to enable what has been termed "24-hour coverage" and we have had whispers and undercurrents, et cetera, and suggestions and so on. That is a concept that does meet with our approval but the actualization of that concept obviously can take many forms. We are, as stated here, Doubting Thomases out of necessity borne of experience, and are just not prepared to take the leap of faith that is asked for by approving a structure that may lead to something positive but may just as likely entrench something negative, namely a diminished voice for working people within the workers compensation system.

We do not buy the argument that the costs of the system are ultimately borne by something as nebulous as the community and that is the argument we have heard most often. After all, those who pay the assessments pass on those costs to everyone in general. We say that the costs are borne by the worker at the bargaining table, if organized, and in the pay cheque, if not.

Will the office or plant worker be the community representative? This is clearly a rhetorical question because I am sure we all know what the answer to that is. Community representation will mean individuals who do not represent and are not understanding of working people. It is very important when you have a board, and granted this is something that has been corrected too, but not that long ago all their ads asked for industry experience for their adjudicators. When they are getting just that kind of person in to do the adjudicating, et cetera, it is really important that at least at that final level workers have a meaningful say.

Ignoring the fact that the board has operated for some six months now contrary to Section 53(1), which requires the chairperson to, quote, devote the whole of his time to the discharge of his duties, we believe the move to legalize a part-time chairperson is a mistake and at odds with the fundamental principle of Workers Compensation. We submit that principle, independent administration, cannot be carried out by someone chairing on a part-time basis.

Section 51.1(3), policy committee, again our concern there with the CEO of submitting reports on the administration of the board to the policy committee has been addressed by the Minister in an amendment of his.

Section 58(3), the Vacancy section.

Section 58(2) provides for a majority of the board of directors to constitute a quorum.

When we combine this fact with this particular section, the vacancy section, we can envision a scenario whereby no labour or employer representatives participate in a major board decision, not intended, I am sure, but it seems possible under this structure. Therefore, we really insist that a quorum should consist of equal members from labour and business and a member of the public as chairperson.

Section 69, the ability of the Board of Directors to stay decisions of the Appeal Commission mainly to an increase in the call for a totally independent final appeal level.

While we are on record as favouring such an appeal level, we would hate to see it come about as a result of a neutered Appeal Commission that no one has any faith in.

Also, there is no indication as to how a worker goes about requesting the board of directors to review an Appeal Committee decision. I appreciate from what I have heard here that maybe there is no intent to allow either a worker or an employer to make such a request. If that is the case, I would like to hear it spelled out a little more.

Section 97.1(1), we are concerned here that there is no criteria set out to limit the board's discretion or to provide direction as to the types of programs that should be instituted. Specifically, we would like it stated that programs that are not bipartite in nature would not receive funding.

Section 109.1(1), this is the second item of our three primary concerns, and I will quote here from a January 4 letter that we sent to the board's legal counsel on this subject, such a loosely worded clause can be easily employed to intimidate and to discourage the filing of claims. If the Workers Compensation is perceived by the users to be empowered by a "watch what you say or we will get you" type of legislation, it will surely dissuade many legitimate claimants from proceeding.

It may be legally reassuring to know there are defences available to those who make honest mistakes, but it is also daunting that such defences may be necessary. We are sure you realize that drawing a line between a false statement and an honest belief can prove a very difficult task. The complexity of the Act itself, which we will comment on a little later, virtually ensures that errors will be made by claimants. Without some wording to indicate intent such as "knowingly" or "willingly," we remain insistent that this amendment is absolutely unacceptable.

Section 109.2, workers often have no idea what their actual entitlement is and would not be aware if payments were to exceed that entitlement. To then be pursuing possibly impoverished people in order to retrieve such overpayment causes us some concern. Perhaps at the very least if it were spelled out that payments due to adjudicative errors would not be gone after that might placate some of the people who raised these concerns with us somewhat.

We would also like to address three omissions from the Bill. One of them is the non-inclusion of the Ombudsman. It seems to us that without some statutory authority, his or her powers will be limited in the position, a very tenuous one. The Legislative Review Committee's recommendation to make the Act easily read—Mr. Halechko referred to this earlier—if this Bill does not meet it, we appreciate that may simply not be possible. That seems to be what a lot of people wind up concluding, but then perhaps the alternative, as has also been suggested here, is that a readable version be provided for the general public, would be the way to go.

A third exclusion is also the last item of our three major problems with this Bill. Regulation 24/77, The Firefighters Regulation, has been deemed by the Court of Appeal to be ultra vires. The content of the regulation was not the cause of this decision, but simply the fact that the Board of Commissioners, at least according to the court, did not have the authority to effect such a regulation. The proper thing for this Government to do, it seems to us, and this is the same Government, at least the same political Party that was empowered when the regulation was initially put forth, we feel that they should immediately reinstate this regulation.

* (2130)

The recognition of the unique situation of firefighters relative to chemical exposure that led to the creation of this regulation in the first place is every bit as relevant today. I was hoping to steal—Bill there is lying about their going into places that other people are trying to get the hell out of—but in fact, given the thousands of chemicals that are introduced into the workplace since the regulation first came to be, that recognition should be even more pronounced today.

We have heard concerns expressed that such a regulation would open the door to a full presumption for all workers. Although we frankly admit we would favour such an expansion, it is hard to accept the argument that a regulation covering firefighters would lead to it, as this regulation has been in place for some 20 years, mostly under the NDP Government, and no such development has occurred.

The Workers Compensation Act, as the title alone makes clear, is extremely important to our members. It represents the living document that covers the historic compromise made by workers and employers in the early part of the century. Any attempt to dilute the benefits of that compromise or to diminish the worker's voice in seeing that it is fairly carried out will be met with the strongest possible opposition from the Manitoba Federation of Labour.

The foregoing details, those areas where we perceive some degree of dilution to be taking place, we hope that the final version will correct these weaknesses and thank you for allowing us this time to deliver our viewpoint.

Mr. Chairman: Thank you, Mr. Mesman. Any questions Mr. Minister?

Mr. Connery: Well, thank you, Mr. Mesman, we have had a lot of conversations over the while and I appreciate your earnestness and the way that you represented the needs of the workers. I think by and large most of the concerns you have raised have been addressed through consultation with yourself and Susan and Marla and a lot of other people.

You raised in your area, Section 28.1(d), whether that had been increased and indeed that was increased with the indexing that Bill 1 went through. So that was done. You recognize the defence part of a person by error and realizing that is a defence in error, if a person makes a statement, it is an error.

The three major concerns that you list at the end, the Ombudsman was put in by us. We do not see the problem that you say, well, it is tenuous. I find the Ombudsman very useful and he is an independent review of a case. We have asked the Ombudsman to review cases that we thought we wanted to be absolutely sure the proper treatment was afforded and the proper service was given.

Your second part, to make the Act easily read, we all know that, and I am a part of a committee that meets in Consumer and Corporate Affairs. Plain language is something that we are striving for so we agree the more readable it is for the average person, but sometimes that gets very difficult when you go down to the legal parts.

Of course the third, the Firefighters Regulation, I think as a previous appeals member that you recognize the other things that are out in the workplace today. This Bill, the original firefighters Bill was brought in, I think it was '66 under Duff Roblin, but the workplace has changed. We feel that a few more months to give the Board of Commissioners an opportunity to review it in context of all the other people in the workplace is not an onerous thing upon the firefighters, so I appreciate your comments. I think they are well researched. It is unfortunate you did not get a copy of our amendments. It would have saved you a bit of time and maybe us a little bit of time tonight, but thank you very much.

Mr. Chairman: Any response, Mr. Mesman?

Mr. Mesman: The only response would be by way of a question. The increase you referred to that went through with the previous Bill, that would equate then for dependent parents to a similar amount, to $816.00?

Mr. Connery: Yes, 860, whatever it is, yes, the figure, yes.

Mr. Chairman: Thank you. Any more questions? Mr. Patterson.

Mr. Allan Patterson: Thank you, Mr. Chairperson, and thank you, Mr. Mesman. Your previous conversations with your brief were very clear with what you are putting forth.

I would just like to ask one question on your item on the Ombudsman, you referred, without the statutory authority their powers are limited and so on, the position is tenuous, but what specifically are you recommending there? If the requirements for the Ombudsman were put into the legislation, would that individual—how would he or she be hired, by the board as the present Ombudsman or appointed by the Government in power or whatever? Just what specifically do you mean here?

Mr. Mesman: To be frank, I had not given a lot of consideration or any consideration as to who would be doing the hiring. We were simply concerned with entrenching the position, I suppose, having it indicated that there is an Ombudsman. Spelling out what the Ombudsman's abilities and duties are in the Act in terms of hiring, it is really not a question we have given any consideration to.

Mr. Allan Patterson: Well then, I would take it, you would be satisfied for amending the Act that an Ombudsman be required and then otherwise, just leave it as it is? You are just getting at the fact that the position was created by the board and therefore, may be removed by the board.

Mr. Mesman: That is correct.

Mr. Connery: For the edification of the people here, there still is the provincial Ombudsman who can still go in and review Workers Comp cases, so that is still there for the protection of the people.

Mr. Ashton: I would like to thank you for your brief. First of all, I would like to ask you—you indicate on page 1 on your brief, that you were provided minutes of the steering committee prior to June of 1989, that is in terms of labour.

Commissioner, you are saying—perhaps I will just take that back a bit, this was provided on a regular basis, I take it. It was not just a one-shot deal, it was provided over a period of time?

Mr. Mesman: Yes, it was. It was provided very shortly after the committee would meet, as soon as the minutes were ready.

Mr. Ashton: Then in June of 1989, suddenly those minutes were no longer provided?

Mr. Mesman: That is correct.

Mr. Ashton: Was there ever any explanation as to why the minutes were previously provided and then June of 1989, were no longer provided to the Labour Commissioner?

Mr. Mesman: There was no explanation given, no.

Mr. Ashton: I am just wondering if you are aware of whether that has continued to be the practice. I realize you no longer are in that position, but I am just wondering if that has continued to be the case?

Mr. Mesman: That has continued to be the case, yes. I believe that is also true for the employer representative.

Mr. Ashton: So during the time at which this Bill, presumably, was being developed, I assume perhaps some of the minutes prior to June had made reference to some of the developments, in the middle of the preparation of this Bill, the minutes were all of a sudden not provided.

Mr. Chairman: Is there a question with that? It is a statement. Go ahead.

Mr. Ashton: Mr. Chairperson, I think if you would listen correctly, I am asking if that is what happened? In the middle of the preparation of the Bill, the Steering Committee minutes were no longer provided.

Mr. Mesman: That is correct and I cannot recall your entire statement, but most of the items in the Bill that we have concerns with had not been addressed by the Steering Committee up to that point, so they were new to us at the time that we saw the Bill.

Mr. Ashton: Well, I am quite frankly surprised, and I would hope that in the future if the Minister is going to be bringing Bills forward that he might look at improved process—

Mr. Chairman: Your question shall be addressed to the presenter and in respect to his presentation—

Mr. Ashton: Mr. Chairperson—

Mr. Chairman: That is the rule of committee.

* (2140)

Mr. Ashton: Mr. Chairperson, if you want to make editorial comments to the Chair as an MLA, I would suggest that perhaps you do it from the floor. I am referring specifically to page 1 of the brief, and if you would care to read it, it says that steering committee minutes were not provided to the Labour Commissioner after June of 1989.- (interjection)-

I am suggesting that perhaps they might be in the future. I am certainly asking questions as direct as the Minister has made a number of comments for clarification, suggestions, et cetera, and commented on briefs, and that is all I was doing in this particular case.

I asked half a dozen questions on this to determine what the situation was. I am suggesting that quite frankly, I am surprised—

Mr. Chairman: Go ahead with your question?

Mr. Ashton: Mr. Chairperson, if you will just allow me to continue. I just would suggest that we are referring to the brief here, it is an important matter, we have a Bill, a very flawed Bill that is before us, I believe in many respects because the consultation process was not done until after it was done. If those minutes had been continued to be provided, it might have prevented that.

I have some other questions as well in terms of the rest of the brief. On page 2, you have indicated in terms of the King Report. You are suggesting there are many recommendations in the King Report, the Legislative Review Committee, that still have not been introduced, for some significant changes. Are you suggesting to this committee that Bill 56 does not really deal with many of those recommendations? From the brief you are suggesting that there are many other recommendations that still need to be enacted in legislation?

Mr. Mesman: Yes, I was actually surprised in going through the Legislative Review Committee, how many of the recommendations have been enacted upon, but they have all been of a relatively minor nature or of not so minor, but an administrative nature. The legislative recommendations to date anyway have been ignored.

Mr. Ashton: So essentially we are looking ahead at a need for further reform in the future. I just want to deal with some of the other points you have raised because they are very important points, they are items we certainly identified as weaknesses. In terms of your concerns over Section 50, on the board of directors, you have indicated that you have major concern over community representatives. I have indicated to a previous presenter we are looking at an amendment that hopefully will deal with it.

I take it from that your concern is not just from the labour side, you are suggesting this is concern that really should apply to the business community as well, in the sense that the stakeholders, as you call them, could be faced with community representatives that do not really have a complete knowledge of compensation or an open mind on compensation, not really have the kind of perspective that you feel would be necessary in a Workers Compensation Board?

Mr. Mesman: I would think so, yes. I note the business community is presenting before this committee following myself. Perhaps they will express that concern, I have no idea. I have heard it expressed by some members of that community, a concern anyway. Whether that has been met since, I have not talked to these people for some time. I would think their concern would be exactly the same.

They have no control, in fact I should touch on too, that the method that this structure came about, if we want to talk about a lack of consultation, I point out here where the consultation has been good and with the Minister it has been excellent. In terms of this structure itself, you may as well say it appeared full blown out of nowhere, there was no consultation on it whatsoever, and certainly none on what type of people were going to represent the community, who the individuals were going to be. So I am told by the employer representative on the Workers Compensation Board at the time and still to this date, the same was true of their community. The system was just there one day practically. You may as well put it in those terms.

Mr. Ashton: As I have indicated previously, we are looking at an amendment that hopefully can deal with that. Further on in your brief on page 5, you express concern over Section 58(3). I just want to clarify for the committee, you are suggesting that there be a requirement in the Act that requires not only a quorum but representation from the business side, from the labour side and presumably from the community representatives, certainly not just labour and employer representatives.

Mr. Mesman: Yes, unless I am misreading it—and I am always prepared to be corrected and often am—it is very short, it simply says when there is a vacancy on the board of directors, the remaining members may exercise the power of the board. Put that simply, as I say, I can envision a scenario where the remaining members—we have a highly disbalanced board with possibly no employer or labour representation. Perhaps a quorum will consist of the three community reps or the three employer reps plus the chair. This does not spell that out. That is just a concern we had.

Mr. Ashton: That is another item we are looking at. I just want to deal further. You have expressed concern, as have other presenters, in regard to Section 109(1), in particular the question of false statements. Now the Minister suggested that there is a defence that exists in all that can be used. I take it from your comments your concern is not just in terms of the defence, but the impact that clause would have in terms of potentially either directly or intimidating workers who are making statements, that workers maybe will not be concerned so much about defence or getting accused, but might be concerned about making the statements in the first place.

I just want to get a clearer sense, because I suspect from the discussions back and forth with the Minister, the Minister is misunderstanding the concerns that have been expressed on this particular section.

Mr. Mesman: A previous presenter has noted that many of the claimants appearing before the board are illiterate, perhaps not many, but a good number. English is a second language or they do not speak English at all. Even those who do, if they are informed by the people they initially meet with the board, and there are ways to say things I suppose, and if they are told, well, you better get this right, you better do that right, this section of the Act says if you make a false statement—so we are concerned with that.

We are perplexed as to why the Criminal Code allows the statement of intent but The Workers Compensation Act does, and given the fact that most white-collar workers are not covered by Workers Compensation, it almost seems like a different law for blue-collar workers as opposed to white-collar workers. We think claimants to the Workers Compensation Board should be entitled to the same protection that every other citizen is.

Mr. Ashton: That is another instance that we will be looking at amendments. I want to ask you a question in regard to an item that has been raised by other presenters. That is in regard to the fines that are proposed in the Act for both employers and employees.

I am just wondering what your opinion is, whether you feel that they are perhaps out of line or whether you feel there should be a differential between employers and employees, what your view and the view of the Manitoba Federation of Labour on that particular question is.

Mr. Mesman: Our view is stated in the brief. We just do not consider this—again the notion that a large corporation is facing the same fine as an individual worker, we are not reassured by the fact that a judge may put it down. Judges are not exactly representative of workers either and may not necessarily be sympathetic. Again, that is just too iffy for us.

Mr. Ashton: Finally, I share your concerns in terms of wording. It is interesting we have so much debate about language in Canada, about unilingualism, bilingualism. We still as lawmakers have difficulty I think sometimes in writing any Bills, whether it be in plain English or French, that anyone can understand. I do hope at some time we can develop a code perhaps that can accompany the Workers Compensation Bill. I do recognize there are certain things you have to have written for the lawyers and for the courts.

I think Mr. Laird pointed to how you can run into difficulties with technicalities in the courts. I am sure we want to avoid that, but I think a code may be some way of dealing with that which outlines in very plain, ordinary, common-sense English, French and perhaps other languages as well—I do not want to get into that controversy tonight—ways in which the Bill can be written and ways that the average citizen can understand. I thank you for your presentation and your suggestions on that point.

Mr. Allan Patterson: Just another point that I had overlooked earlier, Mr. Mesman, in reference to the quorum of the board, admittedly I understand how there could be all the members of one portion or the other, either the employer reps, the employee reps or the public interest reps. The whole of one group could be absent and there still would be a quorum, so we can see the problem there.

On the other hand, to say that a quorum should consist of equal members from the worker and the employer side to me seems impractical. Most of us here have been on organizations, boards of one type and another. While, let us say, members could be telephoned even the morning of an evening meeting to confirm their attendance, there are always emergencies that arise, and someone might not turn up. Then to insist on equal numbers from two sides to me would seem impractical. Would it not be satisfactory in your view to merely say that there must be at least one member from the worker or the employer reps on the board?

Mr. Mesman: I would suggest that the equality at least should be in terms of voting if not attendance. If there are three labour reps and only one employer rep shows up, then perhaps there still should be equality in that sense.

I appreciate what you are saying, but the way the Bill is worded now definitely allows for the kind of scenario that we put forth, and that we seriously fear. I do not think in terms of the board, I am not sure—of course this is a new structure so it is hard to say, but even when it was a part-time structure before, unlike many boards perhaps that we are familiar with, certainly the meetings that I have been at which really have not been all that numerous, four or five, the attendance has been 100 percent.

I think this task is such that I do not expect a lot of absences, although they will occur. It is just again in terms of voting. We would hate to see—there are very, very important decisions made by this board.

Mr. Allan Patterson: I understand, Mr. Mesman, nevertheless it is a very basis of our democratic system all the way from our voting at all levels of Government through the municipalities up through to Parliament and in many formal and informal organizations. Let us say with the board we have the three reps from each of the three areas, then the neutral chairperson. Conceivably, let us say, we would hope that all 10 would be there for most of the meetings, but obviously it is unrealistic to think, over the course of a minimum of 10 meetings a year and probably more that they all would be there. Possibly one person is missing from, let us say, the worker or the employer team so to speak, so there is an imbalance if you want to call it that, of three to two. That will occur probably several times in the course of a year and how can you deny one member a vote who was there?

* (2200)

Mr. Mesman: We would prefer an equality of voices at all times. If that is not possible then at the very least your suggestion of at least one voice being there for whichever group we are talking about, that would be I guess the minimum that we would find acceptable.

Mr. Allan Patterson: Yes, frankly, I cannot simply see any real rationale for assisting on equality. You know that has a great motherhood ring, but it is just not a practical thing to achieve all the time. I would certainly see that, I personally would think that as long as one member would be there that should be satisfactory and it is highly unlikely that very many, if any, meetings would arise where there would only be one person there and greatly outnumbered.

Mr. Chairman: Mr. Mesman, do you want to respond? No. Mr. Minister.

Mr. Connery: Mr. Mesman, when they had a three-man board, the quorum was still two and so technically, and I guess—

Mr. Mesman: We objected to that, pardon me.

Mr. Connery: —and many times there was a chairman and either the labour or the employer representative there and that was a quorum and they could make decisions. By saying that there would have to be somebody from the labour or management side to conduct a meeting, one or the other could boycott or hold the board up from doing anything by just not coming to the meeting. There is some dangers in there. I appreciate what you are trying to say to make sure that nothing is done out of balance, and that is what we tried to do. That safeguard was not in place even when there was a three-person board.

Mr. Mesman: As I rudely stated earlier, we objected to that system also. We did not like it when appearing before the final level of appeal to find only two members there, even though it might be the labour member and the chair. That did not seem a proper way to go then, nor does it under this system to us.

Mr. Chairman: Any more questions to Mr. Mesman? If not, thank you for your presentation. The next presenter, Mr. Garth Whyte, the Employers' Task Force on Workers Compensation.

Mr. Garth Whyte (The Employers' Task Force on Workers Compensation): Mr. Chairman, I am representing 21 different employer groups. I have three other colleagues with me. Is it all right if they sit at the table as I make a presentation?

Mr. Chairman: No problem. Go ahead, Mr. Whyte.

Mr. Whyte: Thank you very much. The Manitoba Employers' Task Force on Workers' Compensation—

Mr. Chairman: Mr. Ashton.

Mr. Ashton: Sorry to interrupt, I am just wondering in terms of proceedings of the committee, I noticed we have fairly detailed presentation coming up now and we have quite a few presenters. I am wondering if we might want to signal to some people they may wish to come back for another hearing. I am not sure if we are going to continue all night, I suppose we might get to them, but I think the intention was to adjourn at a fairly reasonable hour and I just thought it would be now very appropriate to give people some indication.

Mr. Whyte: I am going to go through a lot of this already. There is a lot that I think has already been discussed and we will go through it fairly quickly, I hope.

Mr. Chairman: Mr. Ashton, is it okay if we will hear this presenter and then we have all the presenters for Bill 56 and then after that I think we should address your concern.

Mr. Ashton: I am just suggesting that some time tonight we try and anticipate so we do not keep people waiting.

Mr. Chairman: Very good. Go ahead, Mr. Whyte.

Mr. Whyte: I should introduce myself and my colleagues with me. I am Garth Whyte. I am director of the Canadian Federation of Independent Business for Manitoba. Nationally we have 85,000 members and about 3,500 members in Manitoba. To my far left is Mr. Winton Newman, who is executive director for the Mining Association of Manitoba, and to my left is Ian Irving, who is with the City of Winnipeg and is responsible for the Workers Compensation in the City of Winnipeg.

I am speaking also as the chairperson of the Employers' Task Force on Workers Compensation and we appreciate the opportunity to present our concerns with this Bill 56 to the committee, which is amendments to this Act.

The Employers' Task Force was formed in the fall of 1985 to co-ordinate the efforts and activities of a significant cross section of Manitoba employer associations to address concerns with Manitoba's Workers Compensation system. The task force is the largest amalgamation of Manitoba employer groups to occur in the last two decades. This is indicative of a common and high level of concern that Manitoba employers have with regard to the workers compensation program in this province. I have to emphasize that.

We have 21 associations with a combined membership of approximately 10,000 employers represented by this task force. We have over 300,000 people who are employed by these employers. Our membership consists of a wide variety of employers' associations embracing most types of employers covered by the Workers Compensation program.

I think it is worth listing who are members of this task force because you will not have very many employer groups talking to you and I want to emphasize, just because you only have one person coming here to talk to you representing employers, we have been meeting, we met today.

I am speaking on behalf of the Canadian Federation of Independent Business; the Canadian Manufacturers

Association; the City of Winnipeg; Furniture West Incorporated; the Manitoba Broadcasters' Association; the Manitoba Built up Roofers Association; the Manitoba Chamber of Commerce; the Manitoba Fashion Institute; Manitoba Heavy Construction Association; Manitoba Hotel Association; Manitoba Meat Packers Safety Council; Manitoba Motor Dealers Association; Manitoba Ready-Mix Concrete Association; Manitoba Restaurant and Food Services; Manitoba Trucking Association; Mining Association of Manitoba; the Prairie Implement Manufacturers Association; the Retail Council of Canada; Western Grain Elevator Association; the Winnipeg Chamber of Commerce; and the Winnipeg Construction Association.

Please, I hope you take to heart our presentation. We have spent some time on this and this is the first time, at least in my dealings, and many of our dealings, where we have all these groups together speaking in one voice on one issue and this is workers compensation. We take this issue very, very seriously. Not only are we a major user of Manitoba's Workers Compensation system, but we are the WCB's only shareholders since employers pay 100 percent of the costs. As employers, we want to ensure that our employees receive proper compensation for work-related injuries. I would like to repeat that. We want our employees to receive proper compensation for work-related injuries. At the same time, we want to avoid unwarranted costs that could hinder the survival of growth of our individual members and in turn jeopardize jobs.

Since our formation, we focused on three issues. Those three issues are still applicable today and I suspect we will be hearing those three issues are still applicable today and I suspect we will be hearing those three issues over and over again.

The first issue is rates. Prior to 1989, for four years in a row Manitoba employers had to endure the highest rate increases in Canada. Average annual rate increases were 20 percent compounded per year. Some firms had to pay premium increases as high as 40 percent per year. These increases were never justified or explained to employers. Current assessment rates are also considered to be too high because we have the highest rates in western Canada.

The second issue is financial accountability of the Workers Compensation Board. During the same period that rates were increasing 20 percent per year compounded, the WCB unfunded liability was doubling every two years. It went from a $23 million surplus in 1982 to a $230 million deficit in 1988. Just as distressing, the Board did not have a financial plan to manage its finances over the long term and was unable to determine why its costs were increasing so dramatically. We need that information to properly manage the WCB.

The third issue that we are concerned about is the board's loose adherence to Workers Compensation principles. The foundations of the Workers Compensation program appear to have been forgotten in this province. As a result, the program is wider in scope and more costly than it was ever intended to be. The Task Force is of the opinion that Manitoba must return to the original tenets of the Workers Compensation program and reaffirm that it is an insurance program and not a social support program.

The problems associated with the first two issues appear to be improving. Average rate increases for 1989 and 1990 have been frozen at zero percent. The new WCB administration seems more financially responsible and accountable. It has a $7 million surplus reported for the first three quarters of 1989. However, we still have not seen a financial plan to address the board's $230 million deficit. We still have not seen a detailed cost and claims study which we have asked since 1985, which we asked of the previous Minister, Mr. Harapiak, and we have asked Mr. Connery. We need a cost and claims study to determine why the board's financial problems have occurred. We have still not seen an annual report for 1989, so I cannot include in my figures 1989 figures. We are confident that financial analysis will be occurring early this year.

The board's casual adherence to Workers Compensation principles has not yet been addressed. The current practice of the board should be examined to determine whether or not extensive legislative changes to The Workers Compensation Act are needed. The provision of compensation benefits is a central theme of a workers compensation program. However, there is no perceivable overall strategy utilized by the board. The approach to compensation benefits seems to be an amalgam of policies and practices that respond to increasing demands for one form of compensation or another. At the same time there is a tendency to be increasingly liberal in the determination and application of benefits. This is moving the Workers Compensation system in the direction of becoming a virtual welfare safety net, which is not affordable.

There are some specific issues that have to be addressed in the future: the responsibility for previously existing conditions; definition of work-related injury; and calculation of pension benefits for full and partial disability. Bill No. 56 does not address these issues. When we go through this Bill you will find that we have similar concerns with Mr. Mesman, and you will find, is that not interesting? The reason that we do is because we were under the assumption that we would not be hitting heavy policy issues. As a result this is a housekeeping Bill and that is how we want to start the issue off. All this Bill was to deal with under what we thought was governance and the appeals provision and technical-administrative matters. We are going to restrict our comments to those two issues. We have put on the table what our concerns are and we have concerns on a lot of other key issues when it comes to adherence to Workers Compensation principles. Perhaps we will get that in questions and answers, but we were here because we thought that we are going to deal with housekeeping issues with this Bill. We assumed that our concerns would be addressed at a later date when more substantive changes to the WCB Act will be made. I have to say on record right now that we were assured by the previous Minister, Mr. Harapiak, and we were assured by this Minister that there would be no major policy changes unless there was a detailed financial cost and claims study, until we knew the costs. If we have them then I assume that is

why some of these other amendments are coming forward.

Before we list our concerns with Bill No. 56, it is useful to briefly state some principles which we believe should be considered when making amendments to the WCB Act.

First: Legislation should not be changed for the sake of changing it. If there is not a problem or if the new legislative additions do not provide a better solution, then why make changes or add a new section?

Second: We are concerned that the substantial increases in rules and penalties pertaining to employers perpetuates the attitude that most employers are bad since they mistreat their employees and do not pay their fair share. We believe the opposite is true; the vast majority of employers are good corporate citizens who care about the welfare of their employees.

Third: If changes to critical terms are made, such as changes of "disabled" to "injured" without defining what they mean in the Act, then those changes should not be made. Otherwise we will be forced to debate substantive issues which may be better discussed at a later date.

Fourth: If legislative changes or additions result in policy and financial changes, then the rationale for those changes and a cost analysis should be done stating the implication on employers and employees. Also the impact on the board's long-term plan should be explained. Otherwise once again we will fall into the same trap of making changes without knowing the cost implications which results in the further escalation of the unfunded liability, which again is $230 million and growing.

Fifth: The task force strongly supports the concept of making the WCB more financially accountable. We feel that the appeals board should be accountable to the board of directors who determine WCB policy. The board of directors as a whole should be a non-partisan entity comprised of competent individuals who collectively are responsible for managing a $150 million organization.

We recognize that many positive changes to the WCB Act are being suggested. We concur with the approach to update and clean up the current Act. In order to be brief we are only going to address those areas where we have major concerns. We are going to just discuss the Act. Rather than read page 5, I notice that the Minister has put forward some amendments and it is similar to Mr. Mesman's concerns with Section 2, Subsections 1.4 and 1.3, so I will not get into that in detail. We are satisfied with that as well: definition of injury and occupational disease.

Our second concern is with Section 15, which is on pages 7 and 8 of the Act. With this section fines are increased to $5,000 if an employer does not report an accident in three days. This gives another side of the equation. This is a much heavier fine. It gives more discretion to the board. In addition to a fine, which is a maximum of $5,000, the employer shall pay to the board as a penalty any amount prescribed by regulation or by the board. We strongly suggest that the board should have an internal policy which restricts the maximum fine for first time offenders.

* (2210)

We would like to see a process which also makes the WCB administration accountable. There is an inequitable onus on the employer to ensure that accidents are reported. Under the current legislation employers must report an accident within three days. The injured employee at times has up to 30 days to report the accident. In some clauses like Section 109 employees have up to a year. More balance is needed between the time required by employers and by employees to report accidents. Since penalties on employers have been made more strict we suggest that a more reasonable time frame should be allotted for reporting accidents. That is why we are wondering and questioning taking out that clause unless excused by the board on the ground that the report for some sufficient reason cannot be made. There are times, especially in remote regions, where an employer just cannot possibly report an accident in three days.

I think people should know, about 60 percent of employers are not aware of an accident until they are informed by the WCB to report, because the employee does not tell them, not because they are malicious or anything like that, because they go to their doctor, the doctor goes to the board and then the board goes to the employer. So I want you to take that into account when you strike out, you know, just the fact that there may be some time when an employer, there is a reasonable grounds where they may not be able to report within three days. Also, I am talking about balance, 30 days versus three days, because there is a $5,000 fine. Now we are also implying big employers can pay heavier fines. Well, let us say you do not report several accidents. It is $5,000 a crack.

The next one is section 22, and we just want to make an observation. We agree that there is some merit, but this is Emergency Expenditures to Families. Again, we are concerned with this new clause in that it is not clearly defined. What are family members? What are reasonable expenses? We feel there should be more parameters put on this section.

We really feel that the issue, another major issue which is supposed to be talked about I would think in debate at a later date, the issue of lost wages and time lost from employment. That is a major issue.

Section 34, Selection of a Board of Directors. We think it is very positive that the representation of employers are consulted for the selection of employer board members, and we think it is positive that representatives of employees are consulted for selection of worker board members. However, nothing is said about consulting employer or employee representatives about the selection of the chairman or chairwoman and the public representatives. We think that it is possible to select public representatives which are mutually agreeable to employers and employees.

We strongly feel that the stakeholder should be consulted for all board appointments. If the responsibility of selecting the chairperson and the public

board representatives is left solely to the Government then it opens the door for a partisan board. One of our major problems with previous boards was that they were politicized. A well-run professional board should be non-partisan with representatives that are acceptable to the stakeholders. Therefore, we feel that an additional section (c) under 50.1 should be included which states that, both employer and employee representatives should be consulted regarding the appointment of the chairperson and the public board members.

Mr. Chairman: Excuse me, at this time we will have to take a five-minute break because they have to change the tape.

Mr. Storie: Some of them are not going to be able to make presentations tonight. I would recommend, given there are only two presenters on Bill 74 and 75, that we suggest or the committee recommend that Bill 59 and Bill 60 and Bill 78 be dealt with at the next committee meeting. That would allow them to leave, because my fear is that this may take some time. I would expect the committee would want to adjourn by 11 in any event, so let us relieve them of their burden.

Mrs. Iva Yeo (Sturgeon Creek): If we do agree with this, by leave, that the individuals who are here for presentation to Bills 59 and 60 be at least given some indication as to when they might expect to return, because it is my understanding that tomorrow night there already are other Bills that are on the plate. I think it is unfair to leave them dangling, so to speak.

Mr. Ashton: Yes, I think we can accommodate that. I do not believe we need even to have a specific referral from the House. I believe, since they have been referred to committee, they will continue tomorrow anyway. I would suggest that we make that the first item of business.

Mr. Chairman: I think, like I indicated before, we have to adjourn and come back, and I think we should discuss this later.

An Honourable Member: It does not matter if it is not on the record. It is for them.

Mr. Chairman: It has to be on the record. We will adjourn for five minutes.

RECESS

Mr. Chairman: Members of the committee, what is your wish? Mr. Storie.

Mr. Storie: Mr. Chairperson, just before we interrupted to repair or replace the tape, I had recommended that we have Bill 74 and 75 the only further Bills that we would consider this evening. Those that are here to present on Bill 59 and Bill 60 be informed that the committee, and Bill 78, although my colleague from Roblin-Russell (Mr. Derkach) has another suggestion on 78, but those other two education Bills be called for Monday night, next—

Mr. Connery: Why not just leave the two education Bills out?

Hon. Leonard Derkach (Minister of Education and Training): Mr. Chair, by leave, I would ask that there be some consideration given to bringing forward Bill 78 tonight since we do have some people who are a long distance from the city who have come here to listen or to make presentation. I would like the committee to consider hearing Bill 78 tonight so that these people can get away.

Mrs. Yeo: For clarification, and it is my understanding the recommendation is that Bill 78 be considered next and that Bills 59 and 60 and those presenters who are here to present for Bills 59 and 60, that consideration be given to having the committee sit for review of those two Bills on Monday at 8 p.m.

Mr. Chairman: The next date for committee hearing will actually be decided by our House Leaders. We cannot decide that. We can maybe recommend at this point in time—

Mrs. Yeo: I am saying recommendation.

Mr. Chairman: —but a recommendation, that is fine. Mr. Minister.

Mr. Connery: Then let us be clear. What Bills are we—is it just 59 and 60 that we are not going to deal with and we will hear all of the other presenters tonight, because there are not that many more. So we can hear all the presenters except for those on Bills 59 and 60.

Mr. Derkach: Mr. Chairman, if we could deal with Bill 78 immediately after Mr. Whyte's presentation herein after questions, that would accommodate the people who are here from a distance.

Mr. Chairman: Is that the will of the committee? Mr. Storie.

Mr. Storie: Just so there is no doubt. The Government House Leader (Mr. McCrae) was here and the question of a Monday night meeting was discussed and I gather it is appropriate. So while we leave it to the Government House Leader to formally call the committee, it is understood that it will be Monday night.

Mr. Chairman: Okay, for clarification, we will hear the present presenter, then we will go to Bill No. 78. Then we will take 74 and 75 in that order. Is that agreeable with the committee? (Agreed)

I would thank all of the presenters for coming out. It is unfortunate we have called too many Bills for one evening. Hopefully that error will not be repeated.

I would like to ask Mr. Garth Whyte to continue with his presentation. Go ahead, Mr. Whyte.

Mr. Whyte: Mr. Chairman, another area where I think we agree with the Manitoba Federation of Labour is on the section 34, members of the Board of Directors. The Task Force has recommended in the past to the Legislative Review Committee that one board representative could be chosen by the medical profession and one representative of the Manitoba

Government. However, why should the public interest have more representatives, four including the neutral chairperson, than the major stakeholders?

A maximum of two board members representing the public interest is appropriate. Any more would create an imbalance which may lean towards a partisan board rather than a board which is sensitive to the major stakeholders, employers and employees.

Section 36, the Function of the Board of Directors. We think this is an excellent addition to the Act. It makes the board accountable by specifically stating that it is responsible for policies, budgets, planning and committees. We assume that the new board will be responsible in ensuring that the public is informed of any proposed new policy changes which have significant financial impacts on the WCB and its stakeholders, for example, publish the new policies in the Manitoba Gazette.

Section 36, the Establishment of the Policy Committee. We agree with the Minister's suggested changes.

Section 41, Hiring of Staff. We agree with the Minister's recommendations, the new changes.

Section 44, the Appeal and Appeal Commission on page 16, eight of the report. We strongly urge that an additional subsection be included which states that an appeal to the Appeals Commission be done within a limited time frame such as 120 days or 150 days after the board has decided to reconsider a decision. Otherwise, we are leaving the board open to unlimited appeals which may occur years after the case was reviewed. This may lead to a similar problem which the board found itself in, in 1988 and'89, when it was hearing cases as far back as 1948, and in some instances where cases were permitted to be appealed three or four times. In other words, when there was a new board there was another appeal.

* (2230)

Section 44, No Interest in Industry Permitted. With the new amendments pushed forward by the Minister we agree with that.

Section 44, Powers of the Board of Directors. We feel this is an extremely important addition, and I think it has to be emphasized that we strongly agree that the Appeals Board's decision should be bound by the policies of the Board of Directors, because why we ran into problems before was we had one person wearing two hats, one person being an adjudicator and at the same time being a policy decision maker. We feel that now we have the adjudicators at least going into a policy-type function. I think that is very good.

I am going to throw another issue out. On Section 47, we are only changing a word, but since it is mentioned I am going to bring it up and it is Access to Medical Reports. Changes referred to this section pertain to 64.1 of the WCB Act which allows claimants, that is workers or dependants, access to medical reports. However, employers are not allowed the same privilege. We think that a further addition should be made to the Act which allows employers the right to have access to medical information on appeals. Otherwise, they do not have the benefit of the entire information bearing on the case which we suggest is a denial of natural justice.

I mean, it is unbelievable when there is an appeal with new information that employers are not allowed to have the benefit of what that information is. Also, I would suggest in Section 4(1) of the Act where it says, employers have to provide a safe workplace for their employee, how can an employer provide a safe work environment to an injured worker when you reinstate them on the job if they do not know what the injury is or if they cannot look at the medical files?

This access to medical files is allowed in Ontario, British Columbia and Alberta.

Section 61, Regulations may be Retroactive. We are very concerned with powers given the Government bodies which allows them to make regulations, any regulation, retroactive to any date. Why is there a need for the WCB to introduce retroactive regulations? Retroactive regulations could have significant cost implications which could directly impact on employers either through rate or penalty increases or indirectly impact on employers by increasing the costs to the Workers Compensation Board.

This is a major concern with employers who enter contractual arrangements such as in the construction industry. Once a job is over, there is no way to back-charge or cover retroactive expenses. Once a job is completed, it is impossible to collect money from the person who commissioned the contract since he is no longer a customer. Likewise, employees are no longer employees since the job is finished. The Builders' Liens Act states that money from the next job cannot be used for anything other than that job, so employers must know what their costs will be before they negotiate a contract, not after the contract is completed. The notion of retroactive legislation or regulation negates this fundamental business principle. If there is a specific reason why legislation should be retroactive, let us put it in there. Let us state what it is, but to have a blanket retroactive legislation is just not untenable for us.

Section 61. This deals with the Prohibition from Carrying on Business. This addition refers to Section 85 of The Workers Compensation Act which pertains to collection of assessments by the board. The addition of this clause which allows the WCB to close down a business is heavy handed, unnecessary and perpetuates the myth that Manitoba employers are dishonest and cheat the system. The board already has all the powers it needs to collect assessments. Fines for not complying with the requirements of the board have been increased tenfold from $500 to $5,000.00. If assessments still have not been paid, the board has the power to apply to the Court of Queen's Bench for a certificate of default. Now the employer will be breaking the law if he or she does not comply to the court order.

We do not feel it is necessary to add an additional clause which states that the WCB can go back to the courts to restrain an employer from carrying on business, not only because of reasons mentioned above, but also because to our knowledge there has not been

one case where this action would be necessary. If there has never been a case, why are we putting it in? How serious is this problem?

Section 79, on Research and Safety Programs. There are being some amendments proposed by the Minister, and we say that is okay. So I will skip over that one.

Section 83 Removal of Documents. The way this new section is written it is quite possible to have the following scenario. Without the employer's knowledge a WCB official can post a receipt in a prominent place. If the employer fails to comply with that notice, the board can apply to the courts, again without notice to the employer or to the employer to comply. It is possible the employer will first hear about this issue from the courts. We feel this section is heavy handed and smacks of "pay police." We strongly feel that employers should be informed by registered letter before stringent action is taken. Once again, the fines have been increased to $5,000.00. The need to post WCB documents in a prominent place appears as a heavy-handed strategy by the board. This seems like overkill of an issue which has been adequately amended.

Do not get us wrong, we want to get those bad apples. We just do not want confusion. If there is a legitimate mistake and if they do not find out about it until they are heard in the courts, it is very intimidating. We all talk about the large employers. I have to remind everyone here that 90 percent of all businesses in Manitoba have less than 20 employees. They do not have Workers Compensation specialists. So when we put these types of regulations in they are very scary.

Also, I want to say we have the best intentions in this. We are working hard and we want to have a good Workers Compensation system. We are prepared to work with all parties to have a fair and honest system that properly treats our employees and properly deals with our injured employees, but at the same time is sustainable.

We would like to thank the committee for allowing us to state our concerns of Bill 56. Our intent has been to provide constructive criticism which we believe will improve this draft Bill. We recognize that a lot of hard work and conscientious work has been done in drafting this Bill by WCB officials. We very much appreciate the excellent open consultation we had with the WCB officials and with the Minister. We are encouraged that all the stakeholders, employees, employers, the WCB administration and the Government have had an opportunity to provide input which will benefit this process. Thank you.

Mr. Connery: A few comments, Mr. Chairman, on Mr. Whyte's presentation. The annual reports, of course we are just into March, we anticipate maybe in the next month or whenever it will be ready. That would be quite good timing actually for an annual report because you have got to go through the Auditor and everything else. So it is not ready. The comment made by Mr. Whyte that the deficit is still growing is not correct. The deficit is not growing. The board is putting aside with its current assessment for all future costs and in fact there is a surplus. The deficit will be addressed in the next benefits package. That is when the deficit will be addressed.

On the obligation for the employer to report, they do not have to report until after the employee has notified them. The board is not going to go out and somebody, because of the extenuating circumstances, cannot make the report in the given three days. We are not going to be out pressuring these people, but there are employers that just ignore reporting. For those employers that are just not playing fair, then the fines are there.

The size of the fines, we discussed it in an earlier Bill. On the way to Montreal, I was reading an Ontario paper where Greg Zorba increased fines under the Elevator's Act from $10,000 to $100,000—10 times—so that businesspeople would look up and say, look, this is serious. It is just there to ensure that people do follow the legislation that is in place.

No. 9, you had the appeals—I am going back. We do not think that if new evidence surfaces two years after an appeal—and it is only by new evidence that people can appeal in the new legislation. In the old legislation, you are right, one appeal went back recently to 1948. Ludicrous that we go back that far. We will ask Ian Irving to comment on the firefighter regulation at the end of my comments. I would like to know what his is.

The other one on 13, you were concerned about 13. That is only for Government employees, deemed Government employees, Section 61 (77 (1.1)) on page 10, top of your page 10 of the presentation you gave to us, you raised a concern there that we would be going back to employers. That is only for Government employees, and it would not affect the private sector employers.

Mr. Whyte: Two things: on the retroactive one, why do we not just put that in there then? Why do we not say it is only for Government employees? Is it in there?

Mr. Connery: Yes, it is, and we feel it is clear.

Mr. Whyte: On the other issue, the fact that employers are not providing notice in three days, what is the extent of that? How serious is that problem?

* (2240)

Mr. Connery: It has decreased substantially, but it is still a concern and a problem that is there. Hopefully it will improve. So there is a concern and it is happening with some employers just neglecting and not getting with it. Let us face it. We are dealing with an injured worker. Our goal is to have injured workers dealt with as quickly as possible, those that are, as you said, injured in the workplace or become ill due to their workplace activity, that we can deal with them as expeditiously as possible. So that concern is still there.

On Section 14, you were concerned about prohibition from carrying on a business. That has to be obtained through a court order. So it is not just the board at their whimsy being able to stop a person from

conducting their business. If somebody just decides they are not going to pay their assessment and carry on business, we do not have the strength to make them pay, then all the other employers have to carry that cost. It is just for that rare occasion and hopefully not very many times that it would be used, but if an employer just thumbs their nose at us, we want to be able to ensure that they pay their fair share, which I am sure you would not want your other employers having to pay for that.

No. 16, that was photocopying only. I recognize what you are raising there in Section 16, but that is for photocopying basically of documents. You also raise the thing on fines where we have now $5,000 fines. Prior to that an employer could be assessed half of the charge—what number was that in? Section 15 where the fines are. Section 18, but No. 15 on yours. In the current legislation the employer could be charged half of the capitalized cost of the claim, which could be $100,000.00. So really, in essence, no employer is going to get hit with an unrealistic fine of that nature, and $5,000 in my estimation, it would only be assessed in a court of law by a judge where the crime deemed that sort of a penalty. Most of them would be much lower, and before $50 really was no deterrent to any business, small or large to make sure they followed the regulations.

Those are my comments on yours. I think we have had many hours of consultation, both with the labour side and with your side. We think we have made tremendous accommodation. In many cases the concerns raised were raised by both the employers and the employees, the injury part and many areas. So I think through the consultation process, we have come up with a fair Bill now that represents both sides pretty fairly. I would like to have the comments of yourself or Mr. Irving on the firefighter amendment.

Mr. Whyte: We skimmed over quite a few things and I agree. I guess the idea of closing down a business, the idea that you cannot prohibit from carrying on a business, if it is not substantiated, if it is not an issue, we would suggest you do not put it in. If it is, then we agree. That is my comment.

Likewise with the fines. It is good to know that the number of employers not reporting accidents has decreased substantially. That is good to know because that was not told to us. If it is a major problem, it is a concern to us and we should deal with it. When we put in legislation where it implies that it is actually increasing -(interjection)- I know, but with the increase in fines, and we are concerned about that.

Then we also want to put in the idea of balance, three days versus 30 days. That was the issue; we are just raising that.

As far as firefighters go, again, that is a very sensitive issue and it is an important issue. No one would say that it is not an issue that should be seriously considered. Our concern is the first we heard about this was through a rumour yesterday. Our concern is that we have been up front with our agenda and we have repeated it one more time. We gave them the King Report, we have given it prior to the King Report, we have given it to several Ministers over and over again, and both the prior Minister to you, Mr. Connery, Mr. Harapiak and yourself have said there would be no substantial policy decisions. I am told that this would be costed out until there was a cost and claim study, and we understood the implications. We think that this proposal, without giving us notice, is unfair.

More than that, if you look at just the trends of the board, by making things that just seem to be innocuous and seem to be fair, by doing that, this is what has happened to our board. Five-year trend, prior to 1989, rates were going up 20 percent per year compounded. As a result, revenues increased 500 percent. At the same time revenue increased by 500 percent, the deficit increased by 1,650 percent, up to $232 million, so we are getting more revenues. At the same time our deficit was going to $230 million, but at the same time, since 1986 the number of claims over the last few years have been decreasing.

You would think we would have a better situation, we are getting into a worse situation, and even the time lost per claim from'81 was 14 days, it is now up to 27 days, why? Our concern is when you introduce major policy decisions like the firefighters amendment, give us a chance to look at the clause, give us a chance to at least let us work out a situation where we can work with both parties and develop something. If we keep slipping in amendments like this all the time we are always going to run into this problem. Maybe I should let Ian speak, from the City of Winnipeg, but that is one of our major concerns.

Mr. Connery: You mention the amendments. I have gone to great lengths to ensure that all parties that have expressed interest in it had the amendments, both Opposition Parties had the amendments last week as did yourself and the unions, the MFL, so that they had an opportunity to see what the amendments were and to study them and not all of a sudden be faced in committee with an amendment. We have tried to be fair with it and to ensure that.

I appreciate your comments and Mr. Irving or—I do not know who is going to address the firefighters amendment, but the firefighters amendment is part of a benefits package. We believe that the benefits package should not be band-aided, piecemeal, bit by bit, that it is an overall plan to ensure that injured workers are fairly compensated. With the change of the workplace, with occupational disease and so forth, that we do not think one should be done in isolation from the rest and that is why we think that the few months that it will take now, once we are done this Bill, and by early May I want to be out into full consultation with all of the shareholders on the next benefits package, so that we have some decent time to, in a White Paper form, not in Bill form, look at the amendments.

I think the firefighter amendment is a benefits one and should be discussed in conjunction with all of the other benefits that we are looking at. I would hope that both Opposition Parties would accept that, that we will be bringing that package in for the next Session and

the firefighters would be dealt with at that time. I would like to know your comments on the firefighter amendment and the cost implications that could affect the city.

Mr. Ian Irving (The Employers' Task Force on Workers Compensation): I would like to point out that the city made representation to Mr. Connery on September 13, 1988 and has since made representation to both the Government and the Workers Compensation Board on the firefighter regulation. It is a matter of public record that the city is opposed to it. As Mr. Whyte has stated, we became aware through the grapevine yesterday that this item was to be presented today.

We have been repeatedly given reassurances by both the Government and the Workers Compensation Board that this Bill would deal only with housekeeping items. The firefighter regulation is not a housekeeping item. The implications are far reaching. In my view it affects the interpretation of Section 4(1) of the Act, Section 1(1) of the Act, Section 4(5) of the Act. It bears on pre-existing conditions. It bears on industrial diseases. To consider this a matter to be isolated to fire fighters is not correct. The broad precepts involved with the firefighter regulation bears on all employers in Manitoba and so it is not just an issue that is to be addressed by the city.

* (2250)

We would like to see this matter properly researched and I understand that is underway and we concur with that. We would like to see this issue properly costed. I understand that is also underway, and we concur with that. I strongly suggest, Mr. Chairman, that this is not a matter to be dealt with tonight, that this is a matter that could be dealt with when the major package of amendments is put forward and that, in order to give us an opportunity of fair representation, it would be delayed and left over until that time. At that time we would like to give a detailed presentation concerning why we feel that the firefighters regulation is not a reasonable regulation.

Mr. Ashton: I have a few comments, some questions too. First of all, in regard to the firefighters regulation, it has been in place for 22 years so obviously there has been a cost, certainly prior to 1988, in terms of the regulation.

I can indicate that one of the reasons we will be bringing this in is because we feel it is important to continue the recognition that was struck out essentially on a technicality. If one reads the decision of Justice Lyon, it was nothing more than a technicality. I have gone through the particular decision itself so that is the intent, and quite frankly we wish this was the benefits package.

We wish the benefits package or elements of it could have been brought in previously because there was a broad consensus with the King Report, the Legislative Review Committee, if you like.

I want to ask—and by the way, I appreciate the brief. It gives an interesting perspective and I think it gives a balanced perspective too in terms of small and big business because obviously there are different concerns, different concerns from, say Inco and I know went from other previous lives and whatnot and I am sure he would be the first to admit that the state of the situation facing workers compensation at Inco—where there is a well established department and people who deal with workers compensation on a regular basis—quite different from your average employer with say five or six or seven employees. He probably has a tough enough time keeping up with the paperwork and is going to have a tough enough time over the next six months keeping up with the new paperwork for the GST and various other items. It is not restricted to any level of Government. You know you are filling out your tax forms, you are filling out your workers comp forms, it is quite a different situation.

I did want to ask in terms of the Legislative Review Committee, whether it is still the position of the Employers' Task Force to support the recommendations that have been made. I realize some of them were not unanimous. There was a dissenting opinion. Do you still support the report and the many recommendations that were made by all three commissioners to that report?

Mr. Whyte: There were recommendations in there that we would support, but we also did a report to the King Commission asking the same concerns again. If you flip through that report—I should have brought it, I was just looking at it today. If you had it, you roll it through like this. I challenge you to find any numbers in there. I challenge you to find a cost and claim study in there.

I know even when they estimated the deficit, they underestimated the deficit. Later on our estimates went way up. It is the same problem again. Without having some of these things, it was three people sat down who said okay, here is what we think should be done. You can say that it was broadly accepted and it can be a base, but our concern—I think it is legitimate—is that we have to know where we are going. We have to know where we are going down the line.

Even Ontario, who has an $8 billion deficit, has realized now that they have to come up with a 10- to 15-year plan to know where it is going in the future. How can we make clauses and put things in without knowing the cost implications, without having studies on it, without having a cost and claim study—which again Ontario has done and B.C. has done and other groups have done—without knowing what the trends are and why we got in this mess in the first place?

When you look at the LRC Report—and Mr. King will agree to this—they did not do a cost and claim study because they did not have the data. They do not know what it is. So it is one thing to say we should deal with this report, but it is another—like, if we are wrong, if you say, employers, here it is, then I think you will find us working with you.

If you say, employers, here is why we got into this mess, you will see us roll up our sleeves and we will work out a solution, but we are sort of digging in on

this one. It is becoming our fastest growing problem. The reason is to this date there is still no financial plan. No one knows why we got into that predicament in the first place.

As decision makers, rather than basing it on political decisions, we want this board to be a non-partisan board, a board that truly manages the concerns and is self-sustaining so that it will last. That is where our concerns are right now, when we introduce things like the firefighters' amendment. We care about our employees as much or more than a lot of the other people who spoke here. We really care about our employees. We do support the system. Why are people always going to Workers Compensation?—because it is a weak sister. The Workers Compensation system is seen as a cash cow.

There are other things that if it is an important thing that society says we have to deal with, we should deal with it. There are other ways to compensate. Let us look at the system and make it strong, rather than say, okay, let us put something in the Act because politically it is expedient to do so.

Mr. Ashton: The reason I am asking about the Legislative Review Committee is because it was potentially a tripartite body. I have come to know all three of the individuals and the employer rep on that, for example, is from Thompson. Mr. Winton Newman knows him very well. It is someone I highly respect. I think one of the most incredible things about that report was the degree of unanimity.

I am not contesting, by the way, the importance of having the costing out. I think that was the first step towards recognizing this, by the way, was when the infinite liability was established. That was the first step towards that process, and it was criticized at the time by the way. It was a concept that was criticized in the Legislature, but it is one that has been adopted by all Workers Compensation Boards as all insurers do. It is recognizing the fact that if you have certain claims of cash flow over a period of time you have to account for how much it is going to cost you, not only this year but in upcoming years.

I agree with you, but I am a little concerned by your suggestion that Workers Compensation is somehow a weak sister or a cash cow. I can tell you I have dealt with many Workers Compensation claimants who have had a very difficult time establishing a claim. They have gone through literally dozens of hoops. I have talked to people who have had to wait weeks and months for a regular claim. I am not trying to blame it on anyone.

I do believe some action has been taken over the years and even recently in terms of administrative changes that prevent that, but do you not at least still support, do the employers not still support the principles of the King Task Force Report? I really thought that was a major achievement to have a report come out with literally 95 percent of the recommendations unanimous from all three commissioners including the employer representative, Mr. Tom Farrell, who is an individual I highly respect who knows Workers Compensation inside out, very highly respected by the way from Inco, a very highly respected individual generally. I am a little concerned that you appear to be backing off the King Task Force Report.

Mr. Whyte: No, I guess you will have to talk to Mr. Harapiak. When he was the Minister we gave him a detailed presentation with our concerns with the King Report. They are on record. Yes, we highly respect Mr. Farrell as well.

You know it is funny, the example you brought up is exactly what we are talking about. We are concerned with the length of time it takes to do claims. Do you know how long it takes? Why is it like that? We feel that it is costly and it is not serving an injured employee. Those are the type of examples we are talking about to manage the board properly. What would take so long to sit down, which we have been asking for since 1985, to state what the trends are, what are the pressure points on the board, and let us deal with them? Then we will fit in the King recommendations into those problems.

I think we have been consistent on our response to the King Report. Even with the King Report we asked Mr. King, where is your cost and claim study? What did you base your recommendations on? I think if you talked to Mr. King you will find that they did not have suitable statistics and on that they were basing their decisions on other motives and other recommendations.

* (2300)

Is it not possible that if we look at what the actual problems are and determine what the issues are that would at least influence where our board should go and what the direction should be? Or should we do things in a piecemeal manner and put it in as there is one pressure group or another, because if you want us to play that game, we certainly can do it too and we will pressure. Mr. Harapiak had a thousand phone calls in one week on the issue, but we have been upfront. We have solidified the position of 21 employer groups.

As you see in our presentation and in our documents, we do not attack or go after the employee. All we are asking for is proper accountability of the board which benefits both the employee and the employer. We got to know where this board is going and it is $150 million corporation. That is all we are suggesting.

Mr. Ashton: I appreciate the cost question. Obviously, when a decision is made there are cost implications. One of the reasons, for example, that the rates did increase over the '80s was because of changes, improvements affecting injured workers. The Rehab program, for example, had a cost and that is reflected in the rates. The history of rates, not only in Manitoba but elsewhere, has been that if you simply try and artificially deal with rates you can, in the long run, run into the cyclical problem if you freeze rates—and that happened by the way in the '77 to 1981 period—rates were frozen and there is a catchup period after that and there is a bit of a yo-yo impact.

I do agree with you, although I would hope that employers would be opened-minded in the same way

that Mr. Farrell was and employers were on the King Task Force, because I do believe there have to be some improvements to Workers Compensation. I do believe there will be a cost factor. Some of that can perhaps be balanced out by improved administration, but I would hope that employers would consider it.

I do want to deal with some of your specifics on this Bill. I can appreciate your concerns, because there have been different signals from the Government. Most groups were told this is going to be a housekeeping Bill. I would say it is more significant than a housekeeping Bill. It went far beyond that original scope, although it did not go to the extent of the full reform which I would have liked to have seen and our caucus would have liked to have seen. I want to deal with a couple of the specifics that you have outlined, because I can appreciate once again the perspective, and I know your involvement with CFIB. It is a different sort of involvement.

Your concern in regard to really Section 15 and the three-day reporting mechanism is in terms of the impact on employers who through no mal-intent, who without any real attempt to either give misinformation or provide late reports, is dealing with that. We have indicated before that we are looking at an amendment that would, for example, add a qualification to false statements which would require that it be a deliberately false statement, and that of course would apply both to the employees and the employers. I am wondering if you could comment on that, whether you feel that would deal with the concern that you have expressed from that particular side.

Mr. Whyte: We would have to look at your proposal, but I think you are leading into what we are talking about, an issue of balance, just an issue of balance and reasonableness. I think I would have to look at it, but yes.

Mr. Chairman: Any more questions? Mr. Ashton.

Mr. Ashton: Similarly, the concern that you have expressed and has also been expressed by labour representatives has been in regard to the composition of the board. The amendment that we are looking at bringing in, I have explained it earlier, essentially would provide the committee reps to essentially be appointed by the stakeholders, or at least have some involvement of the stakeholders, not directly by the Government. I appreciate it. I am not trying to blame the current Government. It has been something that is done by previous Governments of all political stripes, appointing their own people to the board. Would such an amendment deal with your concern, the concern you have with the current legislation?

Mr. Whyte: Yes, our dream is to have a non-partisan board, a board that tries to take their stakeholder hat off and says, okay, let us have a system that is running properly and beneficially to people who really do need that system. As you point out, let us clear it up so that people get quick and fast relief when it comes to being compensated. At the same time we have to look at our policies and see that they are done, rather than in a holus-bolus manner. You know, let us get a benefits package together that at least states the intent, so people know the rules of the game for Workers Compensation. I guess the short answer is yes.

Mr. Ashton: You also express concerns in terms of Section 44, the No Interest in Industry permit. I am just wondering if you would elaborate on your suggestion. I can see the concern, it is a fairly broad prohibition. I am not really sure what one would describe as purchasing, take or becoming interested in an industry. I assume that would be almost any business interest. I am just wondering if you can clarify, if you have perhaps any further suggestions on your suggestion which is to deal with it in a conflict-of-interest way.

That incidentally is what we do essentially in the Legislature. We have rules that require that people indicate any conflict of interest, disclose any conflict of interest. It really has not been much of an impediment in terms of, individuals rarely use it, but it does protect against the perceived conflict of interest that can arise.

Mr. Whyte: Our concern was, the way it was written before, you could not directly or indirectly have purchase, take or become interested in an industry. Essentially we could not pick a representative. What we suggest is, also again the sense of balance, that a board have a policy or there be a regulation put in, I believe the Minister is doing that, where the commissioner is required to remove themselves from a specific case if there is a potential conflict of interest. I think that way we actually hit the issue right on the head, rather than have a blanket one where it would be just difficult for us to pick anyone. That is what our concern was.

Mr. Ashton: I just want to deal, I touched on it earlier, but in terms of your concern over this three-day provision and also in terms of the $5,000 fine, my concern is that, for example, a $5,000 fine is not really a major problem, and I hate to pick on Inco, but Inco is the company I know the best. It is a large corporation. Five thousand dollars for Inco is not the same as it is for the local grocery store.

I am also interested in terms of your concerns about this three-day delay, because it seems to me that there are going to be three types of situations you run into. There are going to be the people who always report a claim on time. I would tend to think, I do not know what the board statistics would show, that some of the larger companies would probably be the most prompt, because they do have Workers Compensation departments and the administrative ability to deal with it.

You have the second case of people who habitually and deliberately do not file reports, and that exists. I have no doubt that it is there. Then the third situation is with small business operators who, perhaps because of pressures of paperwork as I said before, do not deliberately file late but may end up with a late submission.

I am just wondering what your suggestion is. I appreciate the Minister's perspective. You want to make

sure the claims are speedy, but I do not think we want to penalize the person in that third category. So any suggestions you have on the fines and the three-day requirement will be appreciated.

Mr. Whyte: First of, I guess we should point out we believe that Inco is a good corporate citizen, so the fines would not be applying to them anyways because they do put it in on time. Secondly, it is 5,000 a pop. You have to look at it in that sense. There is a fourth scenario that you did not give, and that was the remote area scenario. We were hoping at least that the legislation would give some discretion where the board would be allowed some discretion saying, yes, okay, in these circumstances that there was a reasonable ground, why they did not get it in three days.

We were also talking in a sense of balance, the 30-day versus a three-day issue. However, having said that, my question was more, and I guess I will say this over and over again when I go to various legislative committees, when fines escalate like that, I am concerned that there is a major problem. It turns out it is decreasing, not increasing, so then my concern is not as bad. It was more a perceptual concern on my part. It is not because there has been an increase in this, but it is more to get at those, like as you point out, the bad actors. If we can get those ones, then we have no problem with that. I hope that answers your question.

Mr. Ashton: It almost seems to me that if there could be some inclusion of deliberately failing to file reports, that might be some way or perhaps some greater penalty for those who deliberately fail to file reports. It is interesting since we are just dealing with that on a parallel note in the other section.

I just want to indicate that we obviously have some disagreements on some principles. We have some disagreements perhaps on where we should go from here, but I certainly appreciate your suggestions. I think that the fact that there are a number of areas in here where there are similar concerns between the business community and between the Manitoba Federation of Labour indicates the importance of consultation. Even if at a certain point we have differences on where to proceed from there, it is a good process. Even this committee process, that is really what we are here for as well. I appreciate your presentation.

* (2310)

Mr. Allan Patterson: Thank you very much, Mr. Whyte, for your presentation. It is very clear and we understand what you are getting at. I fully understand your concern with costs. I, myself, have wondered in looking at the annual reports where it seems more or less reasonable to assume that costs go up roughly with the CPI, the cost of claims, but then at the same time wage rates are going up roughly by that same percentage.

Given a consistent rate, the revenues should by and large balance off the increase in cost of claims. That has not been the case, as you pointed out, where the costs increase, I forget how many fold over the increase in revenues, and then with the increases in the actual rate along with the inflationary effects on the total payroll. That is certainly something that we will continue to monitor, and we look forward to the financial plan.

The other thing I wanted to get to, and this relates to the matter of costs are what, I think, you are worried about in an anticipated cost of the firefighters. There are not any extra costs there. They have been there for some 22 years and in the system. These horrendous increases that we have been talking about, a phenomenon of the 1980s, more or less the last half of the'80s, to put the firefighters back in to where they were does not imply any real increased costs in the future because they have been there back in the days before we were concerned with this tremendous gap between the revenues and the costs and the deficits and so on.

The firefighters regulation was put in under the Conservative Roblin administration; it stayed there through the Schreyer NDP administration, through the Lyon Tory administration, and through the Pawley NDP administration. That suddenly has been thrown out on a technicality as I understand it, not on any grounds of it being unfair or whatever. To us there is a very strong case for putting this back in.

The Legislative Review Committee report, I believe came out in, was it early 1986, May or thereabouts of 1986, that the King Report, and let us assume for the sake of argument that in 1987 action had been taken very rapidly on this type of revision of the Act in view of the King Committee report. The firefighters would have been there. I cannot understand any significant extra cost implications on restoring the firefighters to what they have had for over two decades.

Mr. Irving: I think that what needs to be understood is that the firefighters regulation as was initially introduced was well-intended and as it was administered during the early years probably a positive influence. What has happened is that over the years the interpretation of the firefighters regulation has broadened considerably and generally falls under what Mr. Whyte refers to as loose adherence to Workers Compensation principles.

What we ended up with was a situation where a claim would be accepted without any regard to, for example with a heart claim, hypertension, obesity, a history of smoking, elevated cholesterol levels. Why should not these factors which all can contribute to the disease process not be considered when the claim is adjudicated? What essentially the regulation such as the firefighters regulation does is absolutely diminishes and removes those kinds of considerations and the claim is almost automatically approved.

With regard to the suggestion that there are no costs involved with the firefighters regulation, and I am working from memory, after the first year that it was rescinded the cost associated with that particular regulation decreased $1.2 million, that is for the City of Winnipeg alone. In subsequent years it has resulted in savings of up to $580,000, so to suggest that this is a cost neutral change in the legislation is not supportable.

Mr. Whyte: I am going to put my CFIB hat on, the small business hat. I have to get something straight here. We talk about costs but I want people to realize we are also talking about livelihoods and we are talking about business survival as far as my members are concerned, and I am talking about members who are in rural Manitoba where 90 percent said that a healthy agricultural sector is important to their business. I am talking about the ones that are under interest rates, under the GST, and other things and their number one problem, the highest tax that they identified was workers compensation premiums.

When we talk about costs it is not that we are mercenary. As the stakeholder that pays 100 percent of the costs, we want it justified. Our fight is not with the firefighters. That is not what we are trying to do here. Truthfully we backed into this thing. We did not know when I came in here that was what we were going to talk about.

The impression is, what is wrong with passing this Bill, but getting on to the firefighters amendment and allowing us to work with them and develop an amendment that we would think would be adequate. We have not seen the amendment. The next thing is, currently, and I could be corrected, the firefighters can go to the board right now. What they are asking is reverse onus. What they are saying is, we want to go to the board, but we do not want to argue that there is a relationship between the accident or the misfortunate death and the workplace. They say, we do not really want to prove that.

From our perspective, maybe we can work around that. We need to know what the amendment is. This is a substantial issue; we feel that it is beyond the scope of what was introduced in this legislation. The fact that we are able to get some compromises with the Manitoba Federation of Labour on many issues because it was dealing with the Government and the corporate board structure and some technical aspects of the Bill.

Mr. Allan Patterson: Yes, I understand, we are not talking about any other employers that you have mentioned; firefighters period, nothing else. There was a cost there for some 20 years in this which is just, let us call it the regular, normal cost of doing business on the part of the relevant cities.

Then through a technicality just about two years ago now they were relieved of that cost and so they have a windfall saving you might say. If it is restored they are merely going back to what they had in 1987, and been relieved of in 1988 and 1989. There are no implications of any costs for other employers. We are only talking about firefighters and the municipalities that employ them; there is no cost to others other than the fact that ultimately it is the consumer, the taxpayer, that pays everything anyway. Whatever the costs are, they are buried in whatever is done, either through taxes or through the price of merchandise and services, it is the consumer and taxpayer all rolled up in one body that does pay for everything which we do not realize sometimes.

Nevertheless, to the employing organization it is only firefighters and full-time professional firefighters and it is just restoring something they had and to that extent I cannot see the argument for any increased costs.

* (2320)

Mr. Whyte: I respect your opinion. I would have to look at it, but there is a concept that is being introduced again. Reintroduced, the concept of reverse onus brings in the concept of pre-existing conditions. There are a lot of questions I have to ask. Yes, it was a technicality, but no one here has addressed, who brought it to court in the first place? Why did someone think that they would win on a court case and take this to court? Because someone thought that it was getting so out of hand, that it was so outrageous that someone had to do something that they were prepared to take it all up through the court system. They won.

If they won, do you know the reasons why they won? We say it is a technicality, but maybe that was the first reason, and maybe if that technicality had not been the case then it would have gone on to something else. To assume that just because it was a technicality and it was there before, therefore we are going to put it in, without giving us a chance to put forward why it went to court in the first place, and why it was such an issue that people decided that we are going to contest this in court. Especially after I read over the litany of the increasing deficit, increasing rates, and the need for constant claim study, and look at this issue. The terms of reference of this particular issue, that it was a housekeeping issue, we believe it is beyond the scope of this. It hits the whole idea of benefits.

It hits a whole bunch of issues. If it is justified, we will work again with you to put this thing in, but if we keep making decisions like this—because I have had this discussion for five years—this is one issue here. It is not a big cost issue and we will put it in. Two hundred and thirty million dollar deficit later, increases of 20 percent per year compounded later, a thousand phone calls later, we say, gee, I do not know what happened but somehow we put this in, but we did not really truly evaluate it. If we do not truly evaluate these things, we keep going along this track, we are all responsible. I am talking—it is more than costs.

There is a pressure on this system. There is agreement right now between employers and employees, and that agreement is going to break because people are getting fed up with this. We cannot just make ad hoc decisions because of the last-moment efforts. Unfortunately it is dealing with an issue like firefighters, and that is not what I want to do. I am just saying, this is a serious policy issue from our perspective. So serious that someone took it to court. Someone said, we are upset with this issue. To me that warrants at least some time for us to give them another perspective. Even then maybe we will get a section here which will accommodate both parties and there will be no problem. That is all we are asking.

Mr. Chairman: Okay. Mr. Minister.

Mr. Connery: Thank you, Mr. Whyte. A few points I think just basically on this, Mr. Whyte raises the issue

of the deficit which is in the area of $232 million. The reason it is there is because the cost of some of these things were not factored in, and assessments were not levied to cover those future costs. That is why it is so important that we have this claims and cost study. It is now before the board. It has been done. It is at the Board of Commissioners. It is up to them to release it.

The King Commission as far as I—and I do not swear on a stack of Bibles on this—but I do not know where it recommended that the firefighter regulation be reimplemented in the King Report. If you can point that out to me, I would appreciate that, but it is not in there. The King Commission did want and recommended a full study on occupational disease for all employees. So that is important. That is what the King Report recommended.

Also, part of the reason that we have such a quick turnaround and improvement on the claims of the workers is because now the board is using the phone, fax machines and everything else. You do not have to wait for mail. So there has been a lot of improvements in management, and a long ways to go yet. The board will recognize that and I do, that it is going to take a little while yet to bring it all in. We honestly believe that, like everybody else, we are not against the firefighters, but we do think there needs to be a cost implication. If there is cost and it is justified and it is in the workplace, that cost has to be paid by the employers. Just to say, as before, oh well, we will put this one in, you better be aware of the cost of it. We do not want to deprive any employee of what is coming to them, but I think that giving the Board of Commissioners and the staff an opportunity to review it along with all of the other benefits packages and the opportunity for both sides, like we are tonight, to discuss it and to come up with a plan, I think is the best way to go.

I would ask again that both Opposition Parties would take a hard look at that and give the board a few months to come forward with the recommendation on the firefighters along with all of the other occupational disease studies.

Mr. Herold Driedger (Niakwa): Mr. Chairman, I just have one or two questions. We have revisited many of these things several times from different presenters, and I am not going to go back over the same thing. There is one thing in your presentation, Mr. Whyte, which I find interesting, and I would like you to just explain it a little bit further. You used the line, we would like to see a process which makes the Workers Compensation Board administration accountable. Would you just explain that line just a little bit more, please?

Mr. Whyte: What page are you referring to?

Mr. Herold Driedger: I am on page 6, the end of the first paragraph.

Mr. Whyte: What we are suggesting there, and I guess the concern that we had was, there is an assumption that the employees will do their best to report the accident and there is an assumption that the employers will do their best to report the accident. We were just assuming what if in the whole process—where is there something in here that says that administration will get the—6 percent of our members are not informed of an accident until they hear it from the administration. Back to some of the issues we pointed out, to speed up this process, you would think that the WCB administration would become accountable to make sure that, as quickly as possible, these notices would get out as well. It is a three-way relationship.

Mr. Herold Driedger: I thought you had a wider definition with that. I myself do have, and I will revisit that at another time. I was just wondering what you meant by that. Thank you very much.

Mr. Ashton: Yes, in regards to the five hours, I want to indicate that I would be more than happy to provide a copy of the amendment that we are proposing. Quite frankly, I did not get it back from the drafters till a few days ago. I have provided a copy to the Minister. I have provided a copy to the Liberal Critic.

I also want to indicate that I have specifically requested—this is more as House Leader actually than as Workers Compensation Critic—that we, wherever possible, attempt to have public presentations and some notice of amendments prior to the meeting in which we vote on those amendments. I think that is particularly important because in a minority Government situation, the Legislature, this committee, has the final say. In a majority Government situation it usually tends to be the Government Caucus that can approve or reject amendments regardless of what the other Parties in the Legislature are seeking.

I want to indicate that I have suggested—and we may even want to put provisions in our Rules to deal with that. I have raised that as House Leader because I think it is a legitimate concern from your point. But I would ask just that you would keep in mind that—and I appreciate the concerns—I know small businesses are paying 7 percent on the retail sales tax—that has to be submitted—7 percent on the GST, 4 percent vacation pay, 4.1 percent now on CPP, UI. Larger employers pay the Health and Education Levy. I realize that Workers Comp. is sort of lumped in with that, and it is frustrating for people. I would just hope that you would keep in mind that in this case in particular, the Workers Compensation is essentially an insurance system.

One of the trade-offs with Workers Compensation is that it protects employers against lawsuits. That is specifically prohibited in The Workers Compensation Act. I am not a lawyer. I know the law well enough to know that in the world of civil suits of the thin-skulled doctrine, the tremendous increase in liability suits in the last period of time and the tremendous increase in awards that have taken place that have impacted for example on insurance. I am sure your members are aware of that because insurance has escalated dramatically. If one looks at the principle that is involved with the firefighters and would take it to a court of law, you would end up with a potential for the same sort

of thing to be upheld by the court because of the thin-skulled doctrine.

* (2330)

I really wish that you will make comments after you have dealt with it. We may have a disagreement on the principle, but if there is any specific concerns you have on the wording, that is fine. I do believe, and I hope your members would consider this, specific hazards that firefighters are faced with and the fact, as my colleague pointed out, that this went for 22 years. It is not something that is new. It was taken out on a technicality. I can tell you Mr. Laird has raised this continuously with people.

The Minister has been aware of these concerns for the last number of years. There has been no attempt to spring this on people. We believe it is important. We believe it is important to deal with it now. We are quite happy to provide you with a copy of the proposed changes, but we do believe it is an important principle to deal with this Act.

Mr. Chairman: Thank you for your presentation, unless you have any comments to make. No more questions to the presenter? Thank you for making your presentation.

That concludes the presenters to Bill No. 56.

BILL NO. 78—THE PREARRANGED FUNERAL SERVICES AMENDMENT ACT

Mr. Chairman: We will now go to Bill No. 78, The Prearranged Funeral Services Amendment Act. I will call upon Mr. Dean Crowe. Mr. Crowe, Manitoba Funeral Service Association, your brief is being presented and you may proceed.

Mr. Dean Crowe (Manitoba Funeral Service Association): Thank you.

Mr. Chairman: Order, please. Go ahead, Mr. Crowe.

Mr. Crowe: I am the president of the Manitoba Funeral Service Association. We represent 90 percent of the funeral homes in the Province of Manitoba. The majority of our members agree with the requests for changes into the legislation that we are proposing, that we would like to put forward with the recommendations. Not all of our members agree with us.

The Manitoba Funeral Service Association feels that the Act governing prearranged funeral services should be changed to provide more consumer protection for individuals who are purchasing prearranged funeral services. Our association feels that 100 percent of the funds that people pay into a prearranged funeral service plan should be placed in a trust fund, that none of the funds should be kept by the individual funeral homes that are providing those plans.

We also feel that 100 percent of the interest that is paid into those plans through the investments should remain in trust as well. We do not feel that we have provided anything at that point which—as the present Act allows us to have the interest paid to the funeral home. That money should remain in the trust account and be fully refundable if the purchaser so wishes. This would give people who in our society today are very mobile and if they should decide to move from the province, they have the funds refunded to them and they are able to purchase a plan or do whatever they wish with those funds following the refund or the rebate of their initial investments.

The Manitoba Funeral Service Association also believes that this cannot be fully achieved without doing some changes to The Cemeteries Act, which we would like to make a presentation when that Act is reviewed as well, but it must be combined with the two Acts in order to be effective, to provide the protection that is required to the consumers today.

Most of the funeral homes in the province, even those that are not members of our association—some of them do not agree with this but most of them do—agree that the funds must be able to be transferred by the owner of the plan to another funeral home if they move from one side of the City of Winnipeg to the other or from one side of the province to the other, to be able to adapt with the society today.

With the present Act as it is situated and the amendments that are proposed to the Act, allow the firms to keep 12 percent of the funds paid in. I am not certain as to what the purpose of that 12 percent is. There have been suggestions that it is for administrative purposes; 12 percent seems to be a very high amount of funding to cover administrative purposes.

The trust companies that the funds are deposited with will provide the funeral homes with an account of every individual deposit and will provide, if you want it on a monthly basis or on an annual basis, they will provide that in a computer printout for each funeral that you have pre-sold. There are some trust firms today that do charge an administration fee, but there are also firms that do not charge any administration fee and in fact provide a bonus to the firms instead of charging them the administrative fees. So I do not feel that 12 percent is necessary for administrative purposes, nor does it wash as far as a reason for keeping that 12 percent.

We feel that door-to-door solicitation and telephone solicitation is a problem because of complaints that we have received. The information that I have handed out is a copy of a letter from a particular family, who have complaints about the fact that solicitation is going on and the manner in which it is conducted.

There are provinces in western Canada who have already enacted legislation that prevents door-to-door solicitation. The provinces are B.C. and Saskatchewan. B.C.'s Bill was proclaimed on the 19th of February and they totally prevent any solicitation by either funeral homes or cemeteries. Saskatchewan's Act has been in place for a number of years and they too have—There is a copy of part of the Saskatchewan Act in the handout and that covers the door-to-door solicitation, telephone solicitation and that sort of thing. There is no need for it in this province, or any province for that matter. Ontario is presently revamping their

Act and they too are considering bringing in legislation to prevent any door-to-door solicitation and telephone solicitations.

* (2340)

We feel that in order to give the consumers of the province the protection that is needed, basically the Act should call for a 100 percent trusting of the initial funds, the interest to remain in that trust account and be totally refundable to the purchaser upon request, with no administrative fees. We feel that any solicitation of any type should be prevented and that the firms be accountable to the purchasers of the plans.

I am not going to go through the Act, the amendments as they are proposed. They I believe need some work and I think that the amendments should be made to provide for the things that I have mentioned. The one part of the Act, there is one clause that I would like to point out and that is Clause 5(3) on page 3 of the proposed amendments and it is "Interest and income to purchaser." The way that it reads, it seems to me that they are suggesting that the interest will be paid out to the purchaser of the plan as that interest accrues to the account; that apparently is not the case.

That basically is the basis of my presentation for this evening. I would answer any questions or whatever you want of me to that regard.

Mr. Chairman: Thank you, for your presentation, Mr. Crowe. Any questions from committee Members? Thank you, Mr. Crowe, for your presentation.

I will call on Mr. Robert Lang, Memorial Gardens Manitoba Limited. Mr. Lang.

Mr. Robert Lang (Memorial Gardens Manitoba Limited): Thank you, Mr. Chairman. I must question some of the motives as to some of the discussion that was just made. I believe we are here to discuss the Funeral Act and not The Cemeteries Act. I wonder why it would come up at this particular meeting. Let me say that the existing pre-need Funeral Services Act has been in effect for almost three decades and has more than protected and served the public of Manitoba more than adequately. This is what our firm believes.

For example, Statistics Canada showed that in 1984, an average at-need funeral in Manitoba or when death occurs, that needs service would cost $1,727, and that was in 1984. Over the three subsequent years, from'84 through October 31 of'87, our firm's average pre-need funeral sale in Manitoba was approximately 25 percent lower to the clientele or the consumer, or $1,339 per arrangement.

It appears obvious that people are prearranging and are truly benefitting from the opportunity to purchase ahead of time, and it seems clear that the Act is doing the job that it was intended to do. Is change necessary?

However, if you, the committee, see fit to go ahead and recommend the passing of Bill 78, we, Memorial Gardens Manitoba Limited, will be able to operate within its confines with one notable exception.

We feel the administration fee of 12 percent of the sale to said companies is inadequate. We feel 12 percent will not cover our compensation to employees, administration of the contracts, provision of the two benefits that we as a company offer under our existing programs. They simply are: if 40 percent is paid by the purchaser and he has not attained his 66th birthday, we in Memorial Gardens would erase the entire balance outstanding whether it be $200, $500 or $3,000, heavens forbid, if death should occur.

The second benefit we offer at the present time is if 20 percent is paid by the purchaser and any child of the purchaser, heaven forbid, dies after attaining the age of One year but before attaining the age of 18 years, the company will provide for such child a complete funeral service equivalent to the service the purchaser owns at no cost. This will no longer take place.

Recently, progressive legislation was enacted in British Columbia. They legislated 20 percent of the contract to the company and 80 percent to trust for the consumer. We sincerely hope, if the amendment is passed, that the administration fee will also be set at 20 percent here in Manitoba to the companies and 80 percent trust to the consumer.

I want to thank you for listening. Do you have any questions?

Mr. Chairman: Thank you, Mr. Lang. Any questions to Mr. Lang? Mr. Uruski.

Mr. Bill Uruski (Interlake): Mr. Lang, we are really talking about 8 percent here, are we not, essentially? By what I understand from your brief, the Bill allows a 12 percent administrative fee, and you are saying that you require 20 percent?

Mr. Lang: Correct.

Mr. Uruski: What would that 8 percent cover?

Mr. Lang: It would cover compensation to employees; it would cover administration; it would cover benefits; and simply overhead. As of November of 1988, we stopped aggressively marketing prearranged funerals because at 12 percent it was causing a negative cash flow within the firm that we could not tolerate or accept. I do not know if the committee is aware of that, but that is the case.

Mr. Uruski: Mr. Chairman, am I to understand that presently—what is the present administrative charge that you—

Mr. Lang: Twelve percent.

Mr. Uruski: If the present administrative charge is 12 percent, then why would you be asking for 20?

Mr. Lang: So we can offer prearrangement to the public and hopefully, see a profit.

Mr. Chairman: Any more questions to Mr. Lang? Thank you, for your presentation, Mr. Lang.

Mr. Lang: Thank you.

Mr. Chairman: Heather and Gordon Patterson, Green Acres Memorial Gardens and Funeral Home.

Ms. Heather Patterson (Green Acres Memorial Gardens and Funeral Chapel): Thank you for this opportunity to present—

Mr. Chairman: Go ahead, Heather Patterson.

Ms. Heather Patterson: We have previously sent to the Minister some questions, some of which have been dealt with and some are not, but I would like to go over them. Basically it is in the letter on the beige sheets.

Mr. Chairman: Your submission, I believe, is being distributed.

Ms. Heather Patterson: There are three parts to it.

Mr. Chairman: Very good. Go ahead.

Ms. Heather Patterson: One of our main concerns is really in regard to a tax question, and that is what I will start off with. When a man and a wife purchase a prearranged funeral plan—I am sorry, I am going to back up a bit, I am going to say who we represent.

We are Green Acres funeral home and cemetery. We are a private industry and really just to clarify it in regard to the Manitoba Funeral Service Association, I just want to state that most of the members with the association do not actively sell prearranged funeral plans.

The two firms that actively sell prearranged funeral plans are ourselves, Green Acres Memorial Gardens and Funeral Chapel, and Mr. Lang's firm that was represented before you. The members of the Manitoba Funeral Directors Association do not actively engage in prearranged funeral services.

To go to the tax question, when a man and a wife purchase a prearranged funeral plan, present cost could involve an expenditure of $4,000 to $5,000 for the two of them. With this amount trusted over a 15-year period, that sum could increase to $10,000 to $12,000 after fees. We would like to know who is responsible for the taxation on these funds, the company or the family?

We spoke briefly with the Minister and there was some indication that they thought, through talking with Revenue Canada, there would be a situation where it would be responsible only in the hands of the company. In further conversations with the Canada Trust company, which is the trusting body under the trust Act, they say this is not so. The interest is accrued to the individual purchaser on a month-to-month basis based on the original investment on the prearranged plan, that they will be T5'd for it each and every year. So we would like clarification on the tax question because that would represent that not only would the consumer now be taxed on the accruing interest, but the company would then be taxed again once it comes into their hands.

Also another concern in using the above example, when the death of a purchaser does occur, is the casket-and-services called for under the contract a binding contract, or can other members of the family adjust this contract and receive different services and a refund besides?

To explain it, there is nothing that states in the Act that the contract is binding as stated between the customer. So the customer can come in, select a $5,000 casket, as an example, pass away, the family comes in and says, no, they would like the $2,000 casket and the $3,000 refund. You know, as just an illustration, or it can go the other way. It can be a $2,000 casket, they want the $5,000 and pay the additional $3,000.00. Now it works both ways, but we want to know, is the contract binding with the customer or is it flexible entirely?

Are these contracts with a specific funeral home transferable to another funeral home? It would appear that they are, simply by having a son or daughter cancel and ask for a refund of a performance. I understand that is correct. Furthermore, are the rights of the purchaser respected, or can the next of kin cancel the contract at the time of death, purchase another form of funeralization. In the current laws, they can, but do not usually reap any benefit to do so. A $10,000 to $12,000 cash value could be enticing, especially for a grandchild, nieces, nephews and friends who are next of kin. This is more common than most people realize.

* (2350)

We believe that the proposed Bill 78 intends to place in the hands of the purchaser the original monies for the purchase of the funeral plan and the compound interest, rather than in the hands of the funeral establishment. However, the interest is meant to offset inflation, so that the cost of the purchaser's plan is frozen as of the day that he bought it. Will funeral establishments use the same diligence as they are presently in seeing that trust companies invest these individual packages of funds, so that cost of inflation at the time of performance can be met?

We found out further information on this than when we wrote up these questions. We found out that now the interest cannot be invested in lump sum. They will have to be invested individually, so they will get the going rate of a savings plan. Where now they are reaping the benefits of 10 and 12 percent, it will be at the rate of a savings plan. There is no way they can be administered in lump sum any more.

How does the proposed legislation under Bill 78 intend for these monies to be invested in bonds of such nature so as to coincide with the time of death? Well, we found out that cannot be done. I will skip that for now, because we have represented that. I am just going to skip down to—Bill 78 has the possibilities of creating more complex problems within the funeral industry than solving the one minor problem it is attempting to solve. Again, I go back to what Mr. Lang has said. Since the inception of this Act, there has been never a problem with the funeral homes looking after their prearranged plans. It has just never happened. So I do not know what the legislation is really kind of trying to do. It is trying to put in protections that were never needed.

Like a term insurance policy, each and every year that a prearranged funeral contract is in force, it offers the purchaser protection against increased cost. It is a benefit that should not be ignored. In addition, time payment plans on prearranged funerals forgive the balance owing for clients who, at the age of 65, die before full payment has been made. This will no longer be offered to the public with 12 percent to work with.

The Funeral Directors Association has been reluctant for many years to supply prearranged funeral plans or inform to families on funerals, except at the time of death. The result has been that the public is doubtful, suspicious and unaware of funeral alternatives and prices. The reason we in the death industry are constantly bombarded with suspicion is, the old establishment has strived to keep the public ignorant. Why? Because it helps to keep their market share based only on the fact that uninformed people return again and again to an establishment that previously served them, for they do not know any other alternatives.

A look at Ontario confirms this, where the old, established firms have been successful in legislating 100 percent trusting with interest accruing to the purchaser—therefore no one actively sells prearrangement—no advertising bigger than the size of a business card, no firm being allowed to operate without a preparation embalming room—making such firms as Neil Bardal in the Province of Manitoba, that specializes in cremation, impossible to exist—and no cemetery being allowed in conjunction with a funeral home.

Because of the letter being written prior, that is why that last paragraph does not make sense, but these concerns that I have just mentioned are also stated on the United States Federal Trade Commission.

Now, in the next situation of the white paper that I have here, it is really something that we are presenting without clarification. We do not know the tax question clarification, but on the assumption that the family is going to be T-5'd each and every year, and have to pay tax on the accrued interest, if that scenario is going to happen -(interjection)- Pardon me? If that scenario is going to happen, we were just showing what would happen on a $2,000 prearranged plan based on how the current Act is and then how the proposed Act is. We must have clarification of who will pay the tax. If the purchaser has to pay the tax, $2,000 over a 10-year period, they will be looking at $611.85.

Further to that, we go on to the trustee fees that will increase fivefold. Because each one has to be tracked individually with the interest accrued independently to each individual contract holder, the trustee fees now will go up fivefold, so there will be an additional fee to the purchaser under the proposed Act of $300, for a total increase in cost the moment of signing a $2,000 contract, if he lives for a full 10 years, of over $900.00.

Now, I know Mr. Crowe said something in regard to trustee fees—they even pay bonuses. Well, I wish I knew that trustee company, because we deal with Canada Trust, and they charge us almost $10,000 a year. So I would like to get a bonus.

I am just going to read over the list of points if I could, please. Number one, under the proposed amendments to the Act, the consumer, as demonstrated in the previous two demonstrations, will be faced with a 16 percent increase in cost for the prearranged funeral contract, not to mention the GST—I have to get that in.

This proposed legislation creates a double taxation by the tax that will be paid by the consumer and the corporate tax that will be paid on the profits by the company. Presently, only the company pays tax on their earnings.

Currently, any consumer can place $2,000 in a savings plan with any banking institution. Legislation is not necessary to permit them to do this. The proposed legislation does not give the consumer the alternative to prearrange under terms that are untaxable that now presently exist. This legislation just eliminates an alternative and creates an additional cost to the consumer.

Also, under the proposed amendments, the trustee fees will no longer be paid by the company, but rather by the purchaser. Currently, Green Acres has 1,802 prearranged funeral plans and pays $9,882.67 in fees annually. This is a rate of $5.48 per contract annually. After discussion with Mr. Wayne Smith, Manager of the Canada Trust Company, we find that the proposed amendments will cost a minimum of $30 annually per contract due to the increased administration costs and annual T-5s necessary to each contract owner.

Now, I have further documentation from Mr. Wayne Smith of the Canada Trust Company who I do wish to mention—the trust companies were not informed in order to make representations so this was done very hastily and I

Mr. Chairman: Heather Patterson, if I may, I would like to remind Members that there was a written submission, which has been circulated by Mr. Wayne Smith from Canada Trust on Bill No. 78.

Ms. Heather Patterson: Okay, that is fine then.

Mr. Chairman: Any questions to Heather Patterson? Mr. Minister.

Hon. Edward Connery (Minister of Consumer and Corporate Affairs): In my conversation with staff, the interest would stay in the fund; it would not come out and it would not be T-5'd every year. So if there was a cancellation of the plan and the money was taken out, at that point the total interest would then be taxable. Or if the services were utilized and the company then was given the money, they would then pay the tax on the interest at that time. That is the information that is given to me.

Now, I am concerned and I find it kind of a little repulsive that I might buy a plan and my grandchildren put me in an old cabbage crate and pocket the money and go to Florida, but I am told by our staff that this is the way the estates are and that we do not have the power to do something about that. I am not a lawyer,

I do not know the law and I go upon my legal advice -(interjection)- I know you would go with them, Albert, but—so we do not know what we can do about that. That does concern me.

* (2400)

As far as some of the other concerns that you raise, my staff does not think that the increased costs will actually be there. As far as money going in and matching when you are going to die so that the money is available when you die, it will be shorter term. You will not be putting it into 30 year. Unless you have a lot of contracts and a lot of money being invested.

Ms. Heather Patterson: We talked to the trust company, Mr. Minister, and it will be absolutely impossible for them to do lump-sum investments, because the funds have to be readily available at the point of death and because of the individual tracking it will be impossible for them to administer that. So it must be done much the same as a savings account.

Mr. Connery: Well, how do they do it now then.

Ms. Heather Patterson: The funds are invested lump sum. There are 200,000, 300,000 packages.

Mr. Connery: But then the money still has to be available to be disbursed on time of death.

Ms. Heather Patterson: It is not on an individual basis, Mr. Minister.

Mr. Uruski: Ms. Patterson, from what you have said you are either—am I to take, you are being hosed either by the Government or by the trust company, is that what you are telling me?

An Honourable Member: Or maybe both.

Mr. Uruski: Or maybe both.

Ms. Heather Patterson: I do not know what to say.

Mr. Gordon Patterson (President of Green Acres Memorial Gardens): I am the President of Green Acres Memorial Gardens and my daughter—I am just getting into retirement so my daughter was looking after this tonight.

To clear up for you the situation of the difference in investing money, and I should not think I should have to give you gentlemen a lesson in this, if a trust company turns around and they invest in bonds at, say a yield of 9.5 percent and they put $100,000 in that issue of a bond, what happens if the interest rate goes to 13 percent? The bond goes down, unless you wait until maturity.

What we are saying in our letter is how do you match a maturity with the death of a person? Because you do not know when the death of the person is going to be. So it eliminates those kinds of investments. All the types of investments that can be used then in prearranged plans under this new legislation is simply like a bank-interest earning. That reduces the earnings to provide that service. That is detrimental to the consumer. Is there any question about that or is that clear?

An Honourable Member: It is not clear to me.

Mr. Gordon Patterson: Well, let us pursue it until it is then.

Mr. Uruski: Mr. Chairman, let me just further that question. Why could you not go into the Treasury Bill market and take 90-day Treasury notes at basically the money market rate at that time. While you will be in the money market on very short-term investments, you will not be in the market for the long-term GICs. Of course, there will be periods of time when the short-term money market will be far above the long-term investments and vise versa.

Mr. Gordon Patterson: That would eliminate, Mr. Uruski, such things as extendable bonds. We have in our portfolio presently $180,000 of extendable bonds that give an interest rate of 14.5 and 15.5 percent.

Mr. Uruski: Mr. Chairman, somewhere you have received that interpretation in this new legislation. Can you tell me, from where in this new Act do you get the interpretation that you are giving us, so that maybe we could, and that maybe we have missed it?

Mr. Gordon Patterson: Oh, all right. Going back to that point, what happens now under this new legislation, if it is brought forward, is each parcel, each prearranged plan becomes really a separate trust fund on behalf of that purchaser. What will occur, from a practical standpoint, if we use for example the purchasers that we have now which are 1,802 purchasers, there would be 1,802 separate trust accounts. This could lead to a very costly situation for fees to the public, to the consumer. What you are creating here is cost to the consumer under the guise of protection for the consumer. You know, the old established-lines funeral directors might love you for this legislation and some of the hearse manufacturers and the casket companies, but if the public knew what this is going to cost them, they will not love you for it.

This situation under this new legislation is—and let me go back to the tax implications. The tax company claim that on each and every one of those trust funds, they will have to T-5 every one of those people. They say that that to T-5 them once a year, it will cost $20 for each one. Never mind any other expense of administration. That will mean that the trust fees to the public will increase at least five fold. In the tax situation, if a man has bought a $2,000 funeral service and he has decided, I have put my house in order and that is it. He knows 10 years down the line or 15 years down the line, he has no tax implication. The money goes to the company. The company takes it in revenue, depending on whether the company made money or not will determine whether they pay tax.

What is proposed in this legislation, that money will be taxable in his hands each and every year, and that

will create him a cost of some $600 over a 10-year period, if he is in a 30 percent tax bracket. So this legislation is regressive.

Mr. Chairman: Ms. Patterson, did you want to comment on that?

Ms. Heather Patterson: I just wanted to maybe clarify something in regard to the investments and to maybe try to clarify why it cannot be one lump sum. It is because if you invest $100,000 in something that is 9 percent and another $100,000 that is 12 percent, and you have to track the interest for each individual purchaser, what purchaser gets what rate? How is it done? It has to be tracked individually according to the actual legislation. There is no other way to do it.

Mr. Uruski: Mr. Chairman, perhaps Ms. Patterson can tell me where in the legislation does it say that? I am looking at the Act here where it says Separate funds, Section 5(2)?

Ms. Heather Patterson: And that the interest must accrue to the purchaser.

Mr. Uruski: What it says here, "The authorized trustee shall maintain separate special funds for:"—one fund, if I would interpret it—"moneys under a prearranged funeral plan entered into before this subsection comes into force"—that is one fund—and another fund for "moneys under a prearranged funeral plan entered into after this subsection comes into force", so you have two separate global funds. And in 5(3), "Every prearranged funeral plan shall provide that interest on plan moneys and income earned by plan moneys accrues to the purchaser". Do you not do that now in terms of if you invest it globally—

* (0010)

Mr. Gordon Patterson: It is a global fund, but look—You have to be practical about how can you possibly use a global fund and set up each purchaser an individual fund. It is impossible.

Mr. Uruski: Mr. Chairman, I am not arguing against you. I am just trying to understand, how do you do it now?

Mr. Gordon Patterson: We do it now because it is a global fund, and the interest is accruing to the company. Now you have to accrue the interest to each individual that has a plan. How can you have a global fund?

Ms. Heather Patterson: I hope I can clarify this. When we take the interest monies, it is not on a per plan basis, but with the new legislation it will be. Does that clarify it? The interest is brought into the company just based on the whole global. The individual original investment amount is tracked.

Mr. Connery: Talking with staff, I think there probably will be some little adjustment in how the trust funds will handle their money. They do not have to be kept separate, but by regulation they can still do it. You do not have to worry in that aspect, but no, it is going to go. The money does not have to be kept separate as it goes through, but the trust companies maybe will be using some Treasury bill short-term money to cover for immediate use demand on it. We do not think that is a problem. By regulation they can do it and some adjustments within the trust companies we think it can be done.

Mr. Gordon Patterson: Mr. Minister, I have to differ with you. If you take a $10,000 deposit going into Canada Trust over, let us say a month's purchases of prearranged plans, and they are going to buy different vehicles that give interest off for those funds, how are they going to apply it only on a global fund? If they have to apply it to each individual customer, then they have to do it through a company plan where the company sets up 1,800 different funds, and they pay him a set rate of interest each month. It will not work any other way. I would like to know how it can work. Canada Trust in their letter I think clearly illustrates that is the way it must be done.

Mr. Herold Driedger (Niakwa): Just I think for our own clarification here, the way I seem to have read the legislation, although you are talking trust funds and you are talking bonds and you are talking long-term vehicles, I believe it probably would operate similarly to the way a mutual fund might operate whereby you take a pool of monies and invest it.

The part of your argument that I can understand is that there will be increased administration costs for the reporting of each individual's accrued interest, or if it was a mutual fund, capital gain as well. Now this definitely does increase administration costs. I do not think there is any problem with that at all.

I fail to see though at this moment—mind you, it may be because it is late in the evening, and I will revisit this again in the morning—but I fail to see whereby you are talking about 1,002 separate investment vehicles.

Mr. Gordon Patterson: We have dealt with trust funds in both prearranged funeral plans, in perpetual cares and so on. I can show you over many years in global funds, as we were talking about, where the market value of a fund might be worth $100,000, but the book value is $90,000.00. How now does a trust company pay out a claim under those circumstances, because they do not know whether the book and the market is ever going to meet. How do they do that? I would like to know.

The only way it can be done is by individual funds and accruing a specific interest to each individual account. That will reduce the earnings of the funds. It will increase the administration cost, and it will put a taxable burden on the consumer. This is what this Act is doing. Do not kid yourself otherwise. We are not doing the consumer any good by this proposed legislation.

I will tell you, I was in Law Amendments here in 1961 under the Duff Roblin Government when this Act came in, the present Act. That is some 29 years ago. There

has never been a scandal. There has never been lack of performance in 29 years. You know because the established funeral homes lobby and lobby the Government. We do not want competition. We want that person buying that funeral when the death occurs in the showroom. We do not want people out offering them alternative plans. That is the reason why we are introducing new legislation, not to protect the public. Are we worried about protecting the public 29 years later? Is that what we are saying?

Mr. Chairman: Thank you for your presentation? Any more questions to Heather or Gordon Patterson? Mr. Allan Patterson.

Mr. Allan Patterson (Radisson): Just clarification, Mr. Patterson, you mentioned the old-line ones, I was always under the assumption that you could buy a prearranged funeral from any mortuary.

Mr. Gordon Patterson: If you go into his establishment, get him pinned down to a contract and get him to get it out, he will do it for you.

Mr. Allan Patterson: They do not push it, is that what you are saying?

Mr. Gordon Patterson: He does not want it. You have to understand that. He does not want it. He wants the status quo.

Mr. Chairman: Thank you, Heather and Gordon Patterson, for your presentation. Is Mr. Donald Gordon present? Is Mr. Richard Rue present? Is Mrs. Bev Fenwick present? That concludes our presentations on Bill No. 78, and our tape has just run out. Thank you very much. We have a few-minute recess. We have two more Bills, Bill 74 and Bill 75.

* (0020)

RECESS

BILL NO. 74—THE HIGHWAY TRAFFIC AMENDMENT ACT (7)

Mr. Chairman: Will the committee come to order? We will now hear representation on Bill No. 74, Councillor Chris Lorenc.- (interjection)- I understand he is not here, but we have his written presentation so we will take that written presentation as his presentation on Bill 74. Nobody else is here to make any presentation to Bill No. 74?

BILL NO. 75 THE INSURANCE AMENDMENT ACT

Mr. Chairman: Is it the will of the committee to go to Bill No. 75? Bill No. 75, The Insurance Amendment Act, Mr. William T. O'Brien. Do you have a written presentation, Mr. O'Brien?

Mr. William T. O'Brien (Insurance Brokers Association of Manitoba): Yes, and I have supplied sufficient copies—Mr. Chairperson, Mr. Minister and committee Members.

My name is Bill O'Brien and I am executive director of the Insurance Brokers Association of Manitoba, as well as chairman of the steering committee representative of all major segments of the insurance industry in the province including general insurance licensees, life insurance licensees, licensed adjusters, general insurance companies and life insurance companies.

I will direct my comments specifically to those proposed amendments dealing with the establishment and operation of insurance councils. The steering committee together with representatives of the office of the Superintendent of Insurance has met a number of times to discuss the formation of insurance councils which will become possible if the proposed amendments are approved.

There is unanimity among the representatives of the insurance industry on the steering committee regarding the need for increased educational requirements for future licensees as well as for some mechanism requiring present licensees to keep current on changes in the industry. The main beneficiaries of course of any improvement in qualifications of the practitioners will be the insurance consumer. We are not asking for any new ground to be broken. There are insurance councils in place now in Saskatchewan, Alberta and British Columbia, so that we will have their experience to draw on.

You will note that the proposed amendments safeguard the authority of the office of the superintendent which I submit will become more meaningful by formalizing provision for the insurance industry to assist the office of the Superintendent of Insurance in monitoring the industry.

We believe that the proposed amendments will have a positive effect by laying the groundwork for more input by industry representatives into the affairs of the industry.

I appreciate this opportunity of making these comments to you. I am prepared to respond to any questions that may arise.

Mr. Chairman: Questions to Mr. O'Brien? Mr. O'Brien, first of all, I would like to thank you for waiting this long for making your presentation. You are the last one on our list for tonight and unfortunately somebody has to be last, but I want to thank you for your indulgence.

Mr. O'Brien: I was in very good company, Mr. Chairman.

Mr. Chairman: Thanks, Mr. O'Brien. Any questions to Mr. O'Brien? If not, we want to thank you for making your presentation to the committee.

Committee rise.

COMMITTEE ROSE AT: 12.24 p.m.

PRESENTATIONS SUBMITTED BUT NOT READ

Written presentation of Mr. Wayne Bell, Journeys Adult Association

ACCIDENT

I sustained third degree burns to the right upper arm and hand, second degree burns to my face and neck. This was November 15, 1973 at Johnson Nuts-Nutty Club on Pandora.

THE DISABILITY

Since the accident I have had two skin graftings—one in 1973 and another in 1980. In 1979 I had a Z plastic operation done. All these operations were performed at the HSC by Dr. Stranc. Tightness in the skin as time passes. Dr. Stranc says I will need further skin grafts in the future. I have suffered personal trauma because of the damaged area on my right arm. The scars are ugly looking and people such as co-workers react funny when they notice the scars.

The scar tissue becomes very painful when I am around paint fumes or in the sun. For this reason I had to give up a career as a painter. Also I stay indoors to avoid pain from sunlight.

The second degree burns left my face damaged. The area of my face around the bridge of my nose and around my eyes give me problems. The skin under the surface layer flares up when I am around paint or in sunlight. Many times I have had to go to hospital emergency wards because of this flaring, burning and itching in my face. Quite a few times I lost time at work because of this disability.

WHAT THE WCB HAS DONE

In 1973 I sent in a claim to the WCB. The Johnson Nut Co. sent in their report and so did the HSC. The board acknowledged the accident.

WCB paid time lost—75 percent of lost wages for the four months I was off work (three months in the hospital).

In 1974 Dr. Snelling recommended job counselling for me from the WCB, since I was depressed about all the low-paying jobs I was working at. The WCB ignored Dr. Snelling's recommendation and offered me no assistance.

In 1975 the Board requested an examination and as a result classified my arm injury as a partial permanent disability. They compensated me a lump sum of $6,800.00.

In 1980 I made a claim for time loss because of the skin grafting operation that year. I also requested that the compensation for the p.p.d. be increased because there was pain and tightness after the grafting. The WCB compensated the time loss, but refused to increase the p.p.d. compensation.

In 1981 the WCB gave me an examination of my right arm. The WCB doctor decided that with limitations I could go back into the labour force (including painting). I agree that there was improvement in my arm, but I disagree that I was capable to go back to the labour. There was still tightness in the skin and I would need further surgery. Employers do not like workers missing time from the job.

In 1982 the Review Committee denied me an augmentation between wages of a painter and my present wages. The review also denied additional compensation for my p.p.d.

I appealed this decision in 1985, 1987 and 1989. I was denied additional p.p.d. compensation each time. But in 1987 the WCB compensated me for time loss as a result of facial flare-ups. The Board would not recognize my face problem as a permanent partial disability. It seems there are no guidelines that cover this injury that becomes apparent only in certain circumstances (exposure to paint fumes or sunlight). The WCB says my medical evidence is weak.

CONCLUSION

As you can see, all my injuries have not been properly compensated by the WCB.

There are loopholes in the system and my case seems to have fallen through the cracks.

Before Bill 56 is passed these problems have to be solved. The loopholes have to be eliminated so that other workers do not experience what I have gone through.

(Signed)
Wayne Bell

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Written presentation of Councillor Chris Lorenc, City of Winnipeg Board of Commissioners

A PRESENTATION ON AMENDING THE MANITOBA HIGHWAY TRAFFIC ACT TO ACHIEVE PROMPT RESTORATION OF TRANSPORATION FOLLOWING A MAJOR SNOW STORM OR BLIZZARD IN WINNIPEG

The Winnipeg Scene, Past and Present

The resident population has risen from 472,000 in 1961 to 619,000 in 1987—an increase of 31 percent in 26 years.

Through the same 26 years, the registered vehicle population has risen from 131,000 to 333,000—an increase of 154 percent.

The area of arterial street pavements has increased from approximately 1,041 to 1,659 lane-kilometres in the same span of time, an increase of 59 percent.

Therefore, the average vehicle usage of the arterial streets of Winnipeg per kilometre of street has increased by some 60 percent in the 26 years.

In the early 1960s, what are now referred to as collector streets, most of which are also bus routes, were essentially unrecognized or nonexistent. Today, there are 1,488 lane-kilometres of such streets that serve the important function of collecting transit passengers and vehicular traffic from residential neighbourhoods and of providing access to the Regional—or arterial—Street network of the City.

The 407 kilometres—or 1,659 lane-kilomotres—of arterial streets and 744 kilometres—or 1,488 lane-

kilometres—of collector streets total 1,151 kilometres—or 3,147 lane-kilometres. The task of clearing snow from these arterial and collector streets has grown by approximately 200 percent from 1961 to date, in terms of lane-kilometres of pavement to be cleared in a 24-hour period.

The Public Goal

Following a major snowstorm or blizzard in which more than approximately five centimetres of snowfall and/or severe drifting occur, warranting city-wide snow clearing from public streets, the goal is to restore the arterial and collector streets to normal operation within 24 hours, thereby minimizing the storm-caused disruption to the movement of persons and goods upon which any urban enterprise vitally depends. Depending on weather conditions, a city-wide, snow clearing operation can be expected to occur approximately four times per year.

Restoration of transportation is basic to restoration of the normal conduct of emergency service response, of medical support personnel transport to hospitals, of business, commerce and manufacture, of institutions of education and of other significant enterprises.

The Resources and Best Utilization

The city has for many years contracted with the major construction contractors to make available to the city, during winter months, the fleets of heavy equipment utilized for road building in summer months, in addition to hiring private hourly equipment rentals, which constitutes some 225 graders and front-end loaders. The city owns and operates approximately 75 pieces of the same equipment mix. During and following any snowstorm and/or blizzard, all of this equipment is fully utilized in Winnipeg until the streets are restored.

Public utilization of the arterial and collector streets during the day and evening is substantial. Traffic studies indicate that approximately 80 percent of the public utilization occurs on the arterial—regional—street system during the day. Concern with public safety thereon argues against snow clearing on the arterial—regional—street system druing the active day period. In addition, low resource utilization productivity also advocates against snow clearing from the arterial—regional—street system during the day.

The snow-clearing equipment is most effectively utilized in clearing snow from residential streets during the day, parking thereon generally being at the lowest level, advantaging the snow-clearing operation.

Upon arterial and collector streets, the least active eight-hour period of public usage occurs between 23:00 (or 11 p.m.) and 07:00 (or 7 a.m.) of the following day. In the interest of public safety and to accomplish the most efficient snow-clearing equipment utilization, it is appropriate to focus on snow clearing into this eight-hour period of time in the day.

The Problem

The foregoing goal of restoration of arterial and collector streets to normal operation within 24 hours has not been accomplished for many years. Though of substantial public importance, under current circumstances it has been found unachievable. The obstacles to the achievement of the goal are:

1. many hundreds of vehicles parked on-street at the end of the day, and
2. in storm conditions, hundreds of vehicles left (snow "entrapped") on-street wherever they become immobilized, and
3. inability of the city to call a moratorium on on-street overnight parking upon arterial and collector streets, to achieve prompt and effective snow clearing, and
4. the severity of the storm, including the amount of precipitation and the drifting induced by wind, the moderation of which is beyond human capability.

Limitations on the City's Powers

1. A.M. Peak Period stopping prohibitions in curb lanes discourage all night parking upon arterial streets, but do not prevent it into the early hours of the morning.
2. The overnight one-hour parking rule (limiting parking to one hour 3-6 a.m. does not prevent continuous parking until the hour of 4 a.m., leaving only 3 hours until the commencement of the a.m. peak traffic period. Three hours is inadequate time in which to complete snow clearing from arterial streets city-wide.
3. The snow emergency by-law has not been implemented since its adoption in 1978, perhaps because the storm-caused disruption of travel experienced in recent years has not been considered to constitute grounds for declaration of an emergency, in that basic emergency services have been maintained and no undue risk to public safety has occurred.

The Solution

The solution lies in the direction of achieving greater productivity in the use of limited resources. That is, the obstacles to efficient usage of snow-clearing equipment need to be eliminated, or substantially reduced. And the primary obstacle is the presence of automobiles parked (or "snowbound") upon arterial and collector streets during the city-wide overnight snow-clearing operation.

Just as one must temporarily suspend the use of one's automobile while it is being serviced and restored, it has been concluded by City Council that the same need occur with respect to parking upon arterial and collector streets during and/or following a major snowstorm or blizzard. That is, parking need be suspended upon arterial and collector streets overnight (23:00 to 06:00) to achieve city-wide snow clearing overnight.

It is for this very important reason that the city seeks to have The Highway Traffic Act amended as proposed.

Snow Route Overnight Stopping Prohibition By-Law

The Snow Route Overnight Stopping Prohibition By-Law will, when declared, prohibit on-street vehicular

stopping from 23:00 (11 p.m.) to 06:00 (6 a.m.) of the following day on all streets signed as snow routes. The snow routes are the arterial and collector streets, most of which are also Transit routes.

Initial declaration would be restricted to a single night on each occasion following a major snowstorm warranting city-wide snow clearing, which could be extended to a second night on an "as required" basis. When declared, substantial publicity will be given to the declaration, clearly explaining the meaning of it. Vehicles parked upon snow routes in contravention of the by-law would be ticketed by the Police Department and towed to a compound, just as has long been done with on-street parking violations of the rush hour stopping prohibition in peak periods. During the course of the overnight snow-clearing operation the arterial and collector streets will remain open for public travel thereon. The intended form of the Winnipeg Traffic By-law amendment is as shown in Appendix A attached hereto.

The Necessary Enabling Amendment to The Manitoba Highway Traffic Act

To enable the City of Winnipeg to undertake the foregoing to meet the above public goal of restoring the arterial and collector streets fully to public usage within 24 hours, it is necessary that The Manitoba Highway Traffic Act be amended by adding the following subsection (q) to Section 122(1):

122 (1) Except when necessary to avoid conflict with traffic or to comply

with the law or the directions of a peace officer or traffic control device, no person shall stop, stand or park a vehicle

(q) on a highway within the period eleven o'clock in the afternoon to six o'clock in the morning of the following day when stopping during that period is prohibited by by-law of the appropriate traffic authority and subsection 90(5) does not apply to such a by-law.

APPENDIX A

RECOMMENDED AMENDMENT TO THE CITY OF WINNIPEG TRAFFIC BY-LAW TO PROHIBIT OVERNIGHT ON-STREET STOPPING TO AFFORD CITY-WIDE STREET CLEANING FOLLOWING A SNOWSTORM

It is recommended that the following section be added to the City of Winnipeg Traffic By-law No. 1573/77.

29A (1) No person shall stop, stand or park a vehicle on a street between the hours of 23:00 and 06:00 of the following day on streets or portions of streets bearing "Snow Route" signs of the type specified and approved by Order No. 21/78 of the Highway Traffic Board, whenever the Mayor or his designate has so declared.

(2) The Mayor or his designate shall make or cause to be made a record of each time and date when any such declaration is made.

(3) The Mayor or his designate shall forthwith file at the office of the City Clerk, Main Floor, Council Building, 510 Main Street, Winnipeg a signed and dated Declaration that the overnight stopping prohibition is in effect upon the days referred to in Subsection (1) hereof.

(4) The Mayor or his designate shall inform the general public by issuing for immediate release a communique to the media specifying the Declaration of Implementation of the overnight stopping prohibition.