Second Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

40 Elizabeth II

Chairman
Mr. Jack Penner
Constituency of Emerson

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Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Thursday, July 18, 1991

TIME — 7 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Jack Penner (Emerson)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Downey, Praznik

Mr. Ashton, Ms. Cerilli, Messrs. Connery, Edwards, Hickes, Penner, Reimer, Mrs. Render

WITNESSES:

Robert Watchman, Manitoba Chamber of Commerce

Craig Cormack, The City of Winnipeg

Gervin Greasley, Winnipeg Construction Association Inc.

John Huta, Private Citizen

Bob Sample, Canadian Union of Postal Workers

Garth Whyte, Canadian Federation of Independent Business

George Croft, Canadian National Railway

Bruno Zimmer, United Food & Commercial Workers, Local 832

Debra Ram, Injured Workers Association

Al Harris, Manitoba Trucking Association

Judy Cook, MFL Occupational Health Centre Inc.

Richard Kerylko, Private Citizen

Sandra Oakley, Canadian Union of Public Employees, Local 1063

Lend Wheeler, International Association of Machinists and Aerospace Workers, Lodge 484

Bob Hykaway, Amalgamated Transit Union, Local 1505

Michael Chuchmuch, Private Citizen

Written Submissions:

Robyn Singleton, City of Brandon

Shelley Morris, The Winnipeg Chamber of Commerce

Winton Newman, The Mining Association of Manitoba Inc.

Irene Giesbrecht, Manitoba Nurses' Union

MATTERS UNDER DISCUSSION:

Bill 59, The Workers Compensation Amendment and Consequential Amendments Act

* * *

Mr. Chairman: Committee, please come to order. We are going to be continuing presentations on Bill 59, The Workers Compensation Amendment and Consequential Amendments Act. As was announced in the House this afternoon, the committee will be meeting, if necessary, on Friday afternoon at one o'clock and Saturday morning at 9 a.m. Hopefully we will not have to stay that long, but those will be the meeting dates.

I would like to also inform the committee that you have before you written briefs that were received from Robyn Singleton representing the City of Brandon; Shelley Morris representing the Winnipeg Chamber of Commerce; Winton Newman representing the Mining Association of Manitoba; and also from Irene Giesbrecht representing Manitoba Nurses' Union. The briefs, as I said before, are before you for consideration.

As an administrative matter, how did the committee wish to deal with persons who are unable to attend this meeting and are not present when their names are called?

Hon. Darren Praznik (Minister responsible for and charged with the administration of The Workers Compensation Act): Mr. Chair, I would suggest we just continue to go through the list. We have some other hearing periods scheduled where we do not have an excessive number of presenters. So we should be able to accommodate within today and tomorrow, et cetera, the people who want to address the committee.

Mr. Chairman: Fine. If that is the wish of the committee then that we drop them to the bottom of the list. Is there any indication as to how long you want to go this evening?

* (1905)

Mr. Praznik: No.

Mr. Chairman: Fine. Then we will start. We do have a presenter by the name of Dr. Allen Kraut who is No. 22 on the list, and he can only stay for a short while this evening. So I wonder what you want to do, whether—

Mr. Praznik: No, he can come back. There are other people here.

Mr. Chairman: Okay. He will not be able to appear again I understand. If that is the wish of the committee, then we will proceed with the people as listed.

Mr. Edward Connery (Portage la Prairie): For clarification. People who are called but not here will drop to the bottom of the list. They will have another opportunity, but if they are called twice then they are off.

Mr. Chairman: Then they are off the list. Agreed?

Mr. Steve Ashton (Thompson): We have had this debate on other committees, but the tradition of these committees has been to accommodate people wherever possible. This rule of dropping people through the list twice really was brought in the first time by way of resolution in the committee on Bill 70. I just want to indicate it has always been the practice of a committee regardless of how many times we read the list to attempt to be as flexible as possible. So I would say that in keeping with our traditions, we should try and accommodate people who are only available for a particular period of time.

Mr. Chairman: Thank you, Mr. Ashton. If that is the will of the committee, that is the way we will proceed. We will read them, if they are not here and if they come later, we will accommodate them.

If you will, Mr. Ashton, we had indicated earlier that if a name was called, we would drop that name to the bottom of the list. When we get to the end of the first round, we will recall them at that time.

Mr. Ashton: Yes, I was just suggesting and I identified a particular case this morning of somebody who is on call, for example, who is probably only able to come for about an hour or that period, if we can accommodate people in that sort of a circumstance without having to go through that when—

Mr. Chairman: We will try our best.

I call now, Mr. Robert Watchman, Manitoba Chamber of Commerce. Mr. Watchman, have you a presentation to distribute?

Mr. Robert Watchman (Manitoba Chamber of Commerce): Yes, I do, Mr. Chairperson.

Mr. Chairman: I would ask the staff to distribute the presentation. I would ask then that you might begin your presentation while the distribution is being made.

Mr. Watchman: Mr. Chairperson, the Manitoba Chamber of Commerce is an organization dedicated to the progress and development of commerce throughout the province of Manitoba. As such, the Chamber's membership consists primarily of business representatives from virtually all aspects of commerce in Manitoba. Because of its membership, the Chamber is the voice of the business community in Manitoba.

The Chamber has a broad interest in all issues which are relevant to the general business community and, therefore, is naturally concerned with the issues relating to Workers Compensation. In fact, the Manitoba Chamber of Commerce has been a long-standing member of the Employers' Task Force on Workers Compensation.

Given the Chamber's broad interests, my comments this evening will be of a general nature. I will be brief because I believe that there will be presentations by other members of the Employers' Task Force which may deal with some of the proposed amendments in more detail.

The members of the Manitoba Chamber of Commerce employ thousands of workers in the province of Manitoba. Employers in Manitoba are readily concerned about the well-being and safety of their employees. Employers have, for the most part, supported the fundamental principles of the workers compensation system, that is, compensation for injuries directly related to the workplace. However, in the recent past, employers who are the sponsors of the workers compensation system have become greatly concerned about the escalating costs of the current system in Manitoba, the financial accountability of the Workers Compensation Board and the diversion from the fundamental principles of a workers compensation system which have arisen in Manitoba. As a result,

employers have repeatedly requested and would now welcome policies and legislative initiatives to address these concerns.

The mandate of the Workers Compensation Board's Steering Committee on Legislative Reform was to develop legislative amendments which would provide a fair and reasonable benefit program pursuant to the principles and designs of a workers compensation system, address the issue of eliminating the unfunded liability, and provide for competitive assessment rates.

The result of the work of the steering committee has been the amendments proposed in Bill 59. The general consensus of the business community with respect to these proposed amendments, in view of the steering committee's mandate, is favourable. In respect of cost concerns, the business community was pleased to see the integration and offsetting of other disability benefits to eliminate the layering of benefits. Also, the business community favours a compensation system based on net income which attempts to eliminate a possible disincentive to return to work which can be created by a system which is based on gross income and which allows a layering of benefits.

* (1910)

In respect of financial accountability, the business community was pleased to see a plan for the retirement of the current unfunded liability over a reasonable period of time. However, the business community emphasizes that such a plan should not simply rely on increases in assessment rates but rather requires improved management and a return to fundamental principles. Other provisions directed to financial accountability which were welcomed by the business community include the obligation to prepare a five-year operational plan which is being introduced by Section 71.1 and a budgeting requirement to cover the costs of the system with a maximum three-year limit to retire any new funding deficiencies.

The business community was also pleased to see that the difficult issues concerning occupational disease have been addressed in the proposed amendments. The business community supports a treatment of this matter in accordance with the fundamental principles of a workers compensation system. The business community believes that only those occupational diseases which are directly related to the workplace, and only where the employment is the dominant cause of the occupational disease, should come within the scope of the workers compensation system. Further, the business community supports the restriction of the definition of accident to exclude those matters which are merely personnel.

Although the views of the business community are generally favourable, there do remain concerns as to whether some of the proposed amendments meet the steering committee's mandate or address the cost concerns and the adherence to fundamental principles which are important to the business community. The Chamber's comments with respect to these concerns are as follows:

Firstly, there is the issue of pre-existing condition. Under the current Workers Compensation Act, we believe that Section 42 allows for a prorating and possible reduction of benefits for pre-existing or underlying conditions. Section 21 of Bill 59 would repeal former Section 42 and no equivalent or alternative provision is offered in substitution.

It remains the position of the business community in Manitoba that there should be some basis for potential allocation of underlying or pre-existing conditions. The employers pay the full costs of the compensation system, and it is unfair that they be required to pay for conditions not related to their own obligations to their employees. That portion of any injury not directly related to the workplace should not be payable or charged against the workers compensation system.

The failure to adequately allow for prorating due to a pre-existing condition can result in a disincentive to hire workers with a pre-existing condition and can result in unjust assessment and detrimental impact on the experience rating of a class or subclass of an industry.

The rationale for the elimination of Section 42 has not been explained by the steering committee. It appears to be a case of changing the legislation almost for the sake of change itself. It is the position of the business community that the issue of pre-existing conditions should be clearly addressed in The Workers Compensation Act and that it should allow for prorating of benefits. Alternatively, the business community believes that if the issue is not to be so clearly addressed that the current provision which would allow for possible prorating should remain in the act.

The second issue is the calculation of average earnings. Section 21 also introduces into the calculation of average earnings of a worker all earnings regardless of whether income is earned from employment in an industry to which the act does not apply. The business community's concern is that an employee with a second job may be injured and entitled to compensation for income earned in that second job which is not within the scope of the act but which would increase the assessment rates and have a detrimental effect on the employer's experience rating based on overall income of that worker.

Further, as the employers pay the full costs of the compensation system, it is unfair that employers insure the uninsured earnings of a worker. It is submitted that there should not be a payout based on income which does not generate a revenue for the workers compensation system.

The third issue is unfunded liability. Section 21 also introduces Section 49.2 which provides for the reduction and elimination of current unfunded liability. While the elimination of this unfunded liability is welcomed by the business community, the proposed provision gives the board broad assessment and collection powers. It is the Chamber's understanding that it is the board's objective to retire the current unfunded liability which is now in excess of $225 million before the end of 1999. Although amendments to the act do include a five-year operational plan, one of the concerns which has been expressed repeatedly by the business community in the past is the need for greater accountability and financial control. Accordingly, it is submitted that this provision should expressly refer to the parameters of the retirement of the unfunded liability to better ensure its accomplishment.

* (1915)

The next issue is the power of the board to make regulations. Section 31 provides for a revision to the board's ability to make those regulations. Although the proposed amendment in many instances specifies the scope of the regulations, Clause S gives the board a very broad and rather undefined ability to make regulations respecting any matter it considers necessary or advisable to carry out the intent and purposes of the act.

One of the concerns expressed by the business community in the past has been the board's diversion from the fundamental principles of the workers compensation system and the liberalization or socialization of the benefits granted. Therefore, if the regulatory ability is so broadly based, it is submitted that it would be appropriate for there to be public consultation in the development of regulations.

Such consultation is not new in Manitoba. Good examples can be found in The Waste Reduction and Prevention Act and in The Business Practices Act which generally provide that, except in circumstances considered to be of an emergency nature, in the development of regulations, in this case, the board shall provide an opportunity for public consultation and seek advice and recommendations regarding the proposed regulations.

It is submitted that it would be appropriate to include such a provision in The Workers Compensation Act, at least in respect of the residual regulation-making ability of the board.

Next is a concern with respect to the addition of directors' liability for unpaid assessments. Section 46 of the proposed amendments introduces Section 85.2 which would make a director, other than a director elected pursuant to a collective agreement, liable, with a corporate employer, for any amount owing to the board in excess of $1,000. In the summary, in respect of these amendments, which was prepared by the steering committee, there was no suggestion that a problem existed with respect to the payment of assessments by employers.

Accordingly, there was no suggestion that such a provision is necessary to remedy any problem. Rather, the rationale put forward indicates that similar models are set out in other acts such as the payment of wages act. Again, this provision seems to be a matter of changing the legislation simply for the sake of change. It is the position of the business community that matters which do not present a problem to the system should not needlessly be addressed in the act.

The Manitoba Chamber of Commerce is concerned with the ever-expanding directors' liability which makes it difficult for firms to attract and retain good directors.

The next issue I wanted to address was that of employer access to information. The business community very much welcomes the proposed amendment to allow employers access to

information on the reconsideration or appeal of a decision. This entitlement has long been advocated by the business community. As employers are greatly affected by the decisions of the board, they must have access to the information considered by the board in coming to its decision. To hold otherwise, we would submit, amounts to a denial of natural justice.

The amendment appears to be based on the Ontario model and also includes the right of the worker or claimant to make written objection before access will be granted. There can be a hearing on this issue alone and although the proposed amendment does provide that such objection must be made within a period of time, to be determined by the board, it is submitted on behalf of the business community that the time limit for submitting, considering and reviewing decisions on any such objection be kept to an absolute minimum.

It is the Chamber's understanding that the experience in Ontario has been that the objection, consideration and review process can be extremely time consuming with the incidental detrimental effects to the originating reconsideration or appeal process. Accordingly, it is submitted that time limits be expressly provided for in subsections 1.4 and 1.5 of Section 101.

* (1920)

Finally, and closely linked to the issue of access to medical information, is the desire of employers to have the ability to obtain a medical examination by a practitioner of the employers' choice. This right has not been provided for in the proposed amendments. As the sponsors of the workers compensation system, it is submitted that employers have the right to a second medical opinion. Very often, the processing of reconsiderations and appeals takes place years after the accident. It is submitted that it is vital to the employer to have the ability to obtain its own contemporaneous medical information.

Under a private insurance scheme or in a personal injury law suit, this option would be available to an employer. Further, such entitlement has been granted in other jurisdictions, most notably Ontario, Section 21 of the Ontario Workers Compensation Act.

Again, a safeguard can be built into the legislation allowing the worker to object to the requirement or to the nature and extent of a medical examination. If the determination and resolution of that objection is kept within a suitable time frame, it is submitted that a provision allowing for medical examination at the employer's request would be beneficial to the workers compensation system in Manitoba.

In conclusion, the business community of Manitoba was generally pleased to see legislative proposals directed to the financial stability and affordability of a just workers compensation system. Although many of the long-standing concerns of the business community have been addressed, it is submitted that the foregoing suggestions would further the interests of the stakeholders and improve the workers compensation system in Manitoba. Thank you.

Mr. Chairman: Thank you very much, Mr. Watchman. Are there any questions of Mr. Watchman? If not, I would like to thank you very much for your presentation. We move on then to the next presenter, Mr. Craig Cormack of the City of Winnipeg. Is Mr. Cormack here? Would you come forward, please? Have you a presentation for distribution?

Mr. Craig Cormack (The City of Winnipeg): Yes, I do.

Mr. Chairman: I would ask that you commence your presentation.

Mr. Cormack: Mr. Chairperson, committee members, my name is Craig Cormack, Workers Compensation Co-ordinator for the City of Winnipeg. The position paper that I have distributed has been endorsed by the Executive Policy Committee of the City of Winnipeg.

It was our intent to have this paper endorsed by council, however the timing was not on our side, as you can well appreciate. In general, the City of Winnipeg is pleased with the contents of this bill and believe it to be not only progressive but positive for both employers and employees.

I will start by addressing those amendments that we find supportable followed by those that we find unsupportable. I will conclude my presentation by addressing areas of concern to the City of Winnipeg that were not addressed by this bill.

The amendments which clarify when stress and occupational diseases will be considered compensable, are thought to be extremely positive. We believe that the defining of circumstances under which these conditions would be considered compensable is a positive step forward. Prior to

this, definitions have essentially been left open to individual interpretation.

The City of Winnipeg wholeheartedly endorses the amendment which would make it an offence to dissuade a worker from applying for compensation. We believe that it is every worker's right to make application for compensation in the event of injury and that this process should not be interfered with by an employer.

We consider the amendments, with respect to survivor's benefits, to be progressive, and compliment the steering committee on their inclusion in Bill 59. Specifically, the amendments allow for the vocational rehabilitation of the spouse, financial support of dependent children, no disentitlement in the event of remarriage, a lump sum of $45,500 to the spouse with the ability to convert to an annuity and a provision for extension of benefits where hardships exist.

* (1925)

Equally deserving of praise are the amendments that bring about a dual pension award. These amendments will provide equality with respect to the assessment of impairment awards and treat separately the impact of the impairment on the worker's earning capacity. Under the current system, two workers with identical earnings, disability and impairment awards could conceivably be compensated differently. Specifically, if worker A returned to work with no wage loss, he/she would enjoy full wages plus the impairment award, whereas if worker B returned to work at a lesser rate of pay, his or her impairment award would be used to bridge the gap between the pre- and post-accident earnings. This scenario would not occur under the proposed legislative amendments. These amendments can only be categorized as progressive, positive and long overdue.

We are pleased to see that Manitoba is joining the majority of other jurisdictions that currently allow employer access to medical information. We at the City of Winnipeg have long considered the absence of such access to be a denial of natural justice. Therefore, the removal of this inequity is most welcome.

The employers of Manitoba have been at a disadvantage since September 1983 when legislation allowing employee access to medical information was introduced. Without access, employers are generally unable to determine the appropriateness of board decisions, nor are they able to prepare submissions to the board using the same information that is currently available to the employee. We are cognizant of labour's opposition to this specific amendment on the basis that employers will abuse this aspect of the legislation. Bearing this in mind, we would not be opposed to the imposition of a significant fine in cases where medical information was used for purposes other than originally intended.

It is absolutely imperative that this province move from the minority to the majority by introducing this access legislation. We urge this committee to support this most important amendment.

The City of Winnipeg is supportive of the concept which would allow for the adjudication of claims on an external basis. On the basis of the limited information available, we believe that this innovative approach to adjudication will result in a more expedient handling of claims, as well as the possibility of significantly reducing administration costs.

We would be opposed to the board of directors being allowed to make substantive regulations without consultation with respective stakeholders and the costing out of each regulation. In this regard, we would strongly recommend that the provisions found in The WRAP Act and The Business Practices Act be included in this amendment. Both of these acts require consultation with stakeholders prior to the establishment of any substantive regulation. We believe that the inclusion of such wording would make the board of directors more accountable to the people who they represent.

The City of Winnipeg is also opposed to the amendment that would allow a worker to object or otherwise interfere with the release of medical reports that have been deemed relevant by representatives of the board. We believe this administratively cumbersome process, currently in effect in the province of Ontario, will only serve to delay the release of relevant medical information. We have been informed by employers in Ontario that this process simply prolongs the eventual release of relevant medical information.

Prior to the introduction of access to medical legislation in September 1983, all health care professionals were given advance notice so that they could limit the contents of their reports to facts

that were germane only to the compensable incident. We are of the opinion that the pre-1983 instances of medical reports containing information unrelated to the compensable incident are now extremely rare. This combined with the proposed screening for relevancy by a board official should constitute sufficient protection of the employee's rights. Under those circumstances, we are of the opinion that this amendment should be removed from this bill.

We were rather surprised to learn that the steering committee did not bring forth an amendment that would extend the right to request a medical review panel to employers. We say this because it was thought to be a natural consequence, given the amendments, to provide employers with access to medical reports.

I believe it is fair to say that we are not always in agreement with the medical position held by the Workers Compensation Board. At the present time, our ability to take issue with a medical position held by the board is impeded by the existing legislation.

* (1930)

We are of the opinion that the employers and employees are not being treated equally and that this translates into a denial of natural justice to the employers of Manitoba. It is our understanding that the majority of provincial jurisdictions provides for some form of independent medical assessment that can be initiated by the employer. At the present time, only the board and the employee have the right to request a medical review panel in Manitoba. In cases where the medical opinion that the employer disagrees with is that of the board, the employers are extremely limited in their avenues of redress. We would strongly call upon this committee to eliminate this anomaly and further amend the act to allow employers the right to request a medical review panel.

There is concern at the City of Winnipeg, that we are not being fully reimbursed in cases of third party negligence where cost recovery exceeds actual compensation costs. As you are no doubt aware, the city, through contractual agreement, continues net salary to the majority of workers who are injured on duty. In third party cases where recovery is made, we are reimbursed in accordance with actual compensation costs as calculated by the board.

This reimbursement does not take into account the difference between compensation payable and net salary, thereby creating a cost to the city for an accident solely attributable to the negligence of a third party. Legal counsel for the board use the gross salary figure when seeking damages from the third party. Therefore, we believe that any recovery in excess of actual compensation costs should go towards the defraying of the city's portion of these costs.

Under the current circumstances, the worker, in cases where there is recovery in excess of actual costs, would receive monies greater than that, that he or she would have, had they not been injured. We do not believe that the board, labour or this government endorses this anomaly. We would hope that this committee would look favourably upon inclusion of a further amendment to Section 10 of the act in order to rectify this situation.

At the present time, when the Workers Compensation Board makes an adjudicative error which results in costs to the City of Winnipeg, there is no acceptable redress with respect to cost allocation. The City of Winnipeg has absolutely no qualms about underwriting the costs associated with accidents arising out of and in the course of employment. However, we are extremely concerned with the board's lack of accountability in cases involving adjudicative error. Quite simply, we do not believe that the City of Winnipeg should be held accountable for the costs associated with an adjudicative error.

We are familiar with the Second Injury Fund to which most of these costs are normally transferred; however, we do not believe that we should be compelled to participate in this program in order to eradicate the costs that flow from these errors. We also hold the opinion that the Second Injury Fund should not represent the only means by which cost relief for adjudicative error can be achieved. It should be noted that, during the period 1986 to 1990, there existed an administration fund which absorbed costs of this nature, and we believe that resurrection of this fund is one option available to the committee. We would call upon this committee to introduce an amendment that would promote greater accountability with respect to adjudicative error.

I would like to conclude my presentation by reiterating the City of Winnipeg's position with respect to the firefighters' Regulation 24/77. There is, in our opinion, currently no evidence whatsoever that would support the call for firefighters to be

treated any differently than other workers in Manitoba when establishing a claim for compensation. It should be noted that a presumptive clause similar to that provided by Regulation 24/77 and Bill 9 is notably absent in the majority of other provincial jurisdictions. The city recently commissioned a study with respect to this issue, and I have a tabled a copy with the chairperson of the committee.

In the circumstances, the City of Winnipeg would be opposed to any and all attempts to pass Bill 9. I thank you for your time and wish you good luck in your deliberations.

Mr. Chairman: Thank you, Mr. Cormack. Are there any questions of Mr. Cormack? If not, thank you again for appearing.

I would like to call then No. 3, Mr. Gervin Greasley, Winnipeg Construction Association. Mr. Greasley, have you a presentation to distribute? Can I ask staff to distribute, please?

I will ask you, Mr. Greasley, to proceed with your presentation, if you will.

Mr. Gervin Greasley (Winnipeg Construction Association Inc.): First, we will have a little workplace modification here. There we are -(interjection)- The story of my life.

Mr. Chairman, committee members, I will not go into a long preamble about the history and nature of the of the construction industry, except for two points. One is that, collectively, our employers provide work for some 29,000 Manitobans, and the second is that we have a large percentage of our employers who are conscientiously interested in good, safe practices and in compensation for accidents at the workplace. Unfortunately, we have a few who are not, and we are now trying to bring enlightenment to those few.

There are a number of aspects of the current legislation and of amendment by Bill 59 which are of concern to employers in general in this province. It is not our intention to cover all of these items in this presentation. We are aware that a number of other employer representatives have addressed specific items, and you have heard some of them today. We have an opportunity to have seen some ofthose presentations, and by and large, we support most of them. For that reason, we are going to confine our comments to a selected number of items which are of more particular and direct concern to the construction industry.

First is occupational disease—the proposed definition of occupational disease appears to reduce the potential for bias, as well as much of the requirement for subjective decision making where diseases may or may not be related to occupations. The new definition indicates that, where a disease arises out of the course of employment, the employee has the right to expect that his or her claim will be considered for compensation. At the same time, the employer, under the proposed definition, can be more confident that the disease being considered by the board is truly the result of conditions peculiar to the occupation or to the employment.

With respect to the definition of accident, the proposed definition of "accident," included in this amendment, is also supported by our industry. We recognize that only a minority of employees have in the past desired to claim compensation benefits for work-related changes similar to terminations and promotions. By eliminating that potential in the future, we feel that the definition will permit the board to concentrate its efforts and time on legitimate claims from, and services to, employees who are injured in the workplace.

Section 4(3), on willful misconduct, we have some concern. Even though a worker engages in a deliberate and willful misconduct which leads to a subsequent accident to himself or herself, the board is still prepared to pay wage loss benefits and to subsidize medical aid, as it now does in fact. The only penalty here is a three-week waiting period immediately following the date of the accident instead of the current one-week delay. This is in fact a delayed reward to the worker for deliberately carrying out actions contrary to the employer's safe practices and instructions.

If the board determines that misconduct is evident in the claim, which of course it must do in order to invoke a three-week waiting period and the board insists on continuing with the claim and paying benefits, then we feel that the cost of the claim should not be assessed against the individual employer, but rather to the group.

In our opinion, it would be unjust to charge the claim against the experience record of a single firm, which would thereby create an ongoing penalty for the employer when the deliberate act of misconduct is normally beyond the control of that employer.

With respect to time to report, our industry supports the changes in subsection l8(1) extending the time for filing to five business days from the current three days. This has been a particular concern to the construction industry, as many of our job sites have been in remote areas of the province. Information and reports involving accidents have been slow to arrive at the main office of the employer, where the claims are normally completed and then forwarded to the board.

We also note with satisfaction the substitution of a new section with some change in wording providing the board with the discretion to relieve the employer in whole or part from a penalty if the employer can clearly demonstrate sound reasons for failing to make the report within the required deadlines. The nature of the accidents often vary considerably, and proper investigation and reporting may require more time in some instances than in others. In the end the employer must prove that his reasons were sound. With respect to intimidation, as pointed out in Section 19(1), and penalties to be implemented for employers who are found attempting to influence workers not to report accidents or to make claims, we concur with the proposed section. If the employer has any concerns about the legitimacy of a claim, the employer's time and place to make that known is either in completing the accident report or during the appeal process.

* (1940)

We note with interest Section 27.1, through which the board may limit or deny a claim for medical aid or impaired benefits or wage loss benefits where the worker either insists on going back to the type of work which the board has identified will cause further injury or continued injury or where the board has, in fact, provided training for another occupation which is not injurious so that the person will have a livelihood and not go back to that job. This proposed legislative change makes sense to us.

However, it does seem to be a direct contrast to the section we just discussed on willful misconduct. On the one hand, the employee can carry out an act of willful misconduct resulting in an injury and after three weeks still be compensated. In this section, if a worker's form of willful misconduct is to return to the same type of occupation which the board considers potentially harmful, the worker can be denied benefits. The inference here is that the board has a double standard. It is prepared to accept actions that are against the policies of the employer, but it is prepared to not accept actions that are against the policy of the board. I think that should be given some attention.

With respect to accidental death, it is our understanding that the whole area of compensation on the death of a worker, which carries through from Section 28 to Section 35, will be covered by representatives of other industries who have studied this more fully.

Without passing over that though, we would mention Section 30(2), which appears to credit the members of the Workers Compensation Board with unique powers of precognition. In discussing the limit of payment to a former spouse, the section provides that the amount payable shall not exceed the amount of maintenance that the worker was required to provide. There is nothing unusual about that.

However, the balance of the sentence goes on to say: . . . in the opinion of the board would have been required to provide under a separation agreement or an order of the court.

We are not sure how the board knows what a court may have required a worker to provide when at that point there was never a court case and, for that matter, we are not sure how the board determines what the worker would have been required to provide in a separation agreement when no separation agreement was negotiated.

There appears to be a move to have the board assume some powers and role of the court and to have the board make some of those types of decisions after the fact. We are concerned about the precedent that this may set in extending the board powers beyond the areas of workers compensation and rehabilitation.

We would also like to comment with respect to the provision of independent financial advice to those who receive benefits, annuities and so on under the act. Among the new concepts is the provision for annuities and the availability of independent financial advice by a person approved by the board.

We are concerned about the independence of the source of the financial advice. If it is to be truly independent then there must be specific criteria set by the board through which those individuals or firms with proper financial experience and training can make their services available. The criteria would, in our opinion, require the individual to have

recognized training in financial planning or in the field of annuities. The individuals should not be employees of firms that are carriers of the policies, in other words, life insurance companies, trust companies and the like, but should rather be independent financial advisers whose practice it is to go to the full market to get the best deal for the client.

In addition, in setting up this financial service, the board should advertise its desire to establish a short list so that individuals or firms in that business can apply to be shortlisted providing they can meet the criteria. When the worker or spouse desires independent financial service, the individuals or firms on the approved board list should then be called in rotation. The financial advisers called upon by the board must not only be independent, must be seen to be independent if the system is truly to work.

With respect to payment of wage loss benefits, our industry supports the calculation of wage loss benefits based on 90 percent of the loss of earning capacity for a maximum of 24 months, plus 80 percent of loss of earning capacity after the 24 months, plus the establishment of an annuity with premiums paid by the board thereafter and contributions to begin after 24 months.

With respect to the return to employment, our industry has a particular problem with the proposed Section 40(6) concerning the return to employment. It is a problem we have had on an ongoing basis. The worker is considered to have returned to full employment when the board is satisfied the worker has established real and substantial attachment to the labour force. That is not an arguable point except that the terms "real and substantial" are difficult to define within the traditional employment practices of the construction industry.

A worker in the construction industry may be called to work by an employer for a period ranging anywhere from three days to two years, depending on the nature of the work. It depends entirely on that work and the length of time it takes to complete it how long the employment lasts. If a worker in a factory is employed on an ongoing basis, is rehabilitated and returns to work for a period of three months, then it may be fairly clear as to whether or not real and substantial attachment has been achieved, but when a drywall worker, for example, is called to perform three days of drywall taping after rehabilitation because there is only three days of drywall taping on that job, then the question arises, is that real and substantial attachment?

The problem that we have here is one that we always have with legislation that is drafted in Manitoba. Those drafting the clauses seem to think of industry as being a permanent work site, a factory type, for example, or a retail establishment or some ongoing business location. That is not the pattern in the construction industry, where contractors do not own their work sites and people are hired by the length of the job rather then on the annual basis.

If Section 40(6) is to be effectively applied to the construction industry, then there will have to be a clear and practical outline of what the terms "real and substantial" mean in relation to industries with short-term hiring traditions. We would be pleased to meet with the minister or the board to develop criteria for our particular industry.

I would like to comment on duplication of programs. With respect to annuities that are to be set up by the board after 24 months, Section 42(5) states that the provision of an annuity by the board for individuals on compensation more than 24 months does not apply where the employer is continuing during the period of the claim to provide the employee's pension contributions to at least the same level of those contributions that would be made by the board. This is basically sensible and it means that the board would not be paying double coverage at the same period of time.

However, we note that under Section 43, no similar exclusion is made with respect to the establishment by the board of the group benefit program, such as extended health care, accidental death and dismemberment, and group life insurance. There are many instances where these benefit plans are carried on by employers with the premiums paid by employers during the time that the employee is away from work as a result of an accident. Under Bill 59 as it now stands, with no exclusions for payments on group benefits, it would appear that the employees could be double covered with the board paying additional costs of up to 5 percent of the future wage loss benefits in order to provide coverage that is already being provided. We recommend that an exclusionary clause for the group benefit section be added to Bill 59 in a similar fashion to that in Section 42(5) with respect to the annuities.

We have talked today about costs for appeals, and it seems to us that whenever legislation intentionally includes words or phrases the meaning of which is not universally clear, the chances for error and administrative difficulties are significantly increased. We referred a minute ago to the terms "real and substantial." In Section 60.8(7) we again enter that gray area which will require significant subjective decision making in order to interpret whether or not an appeal to the Appeal Commission is "frivolous." Reference to a number of dictionaries available does not help us with the interpretation of this word and its practical application with respect to eliminating any nuisance appeals that the commission may have received from employers or employees.

* (1950)

Until such time as a better wording can be found or a clear definition provided in the act, we predict that this word is going to create difficulties with the application of this section and may lead, through frustration, to its simply being ignored. The meaning should be very clear so as not to affect the genuine appeals of either party to the appeal.

The worker has the right to request a matter now to be referred to a medical review panel and takes the risk of being ordered to pay the cost of up to $250 should the panel support the medical officer of the board and the referral be considered frivolous. We presume that there will be no $250 penalty to any employee who has what seems to be a justifiable presentation but still loses the appeal. This is only dealing with an absolutely frivolous appeal in the case of the board.

As medical testimony and information is often essential to the appeal process, and as sometimes there is a difference of a medical opinion between doctors, we strongly recommend that the provision be included in the amendments to the act whereby the employer will also have a right to request the board to refer the matter to a medical review panel subject to some form of penalty for the employer similar to that faced by the worker, not necessarily the same dollar value but the same system of penalty.

Access to information: While the intent of Bill 59 appears to be to improve access for employers to the information on file in order to allow the employer to make proper presentation at an appeal hearing, there is considerable doubt within the construction industry as to whether or not Section 101 will, in fact, provide any benefit to employers in this regard.

While this section states that the employer may examine and copy such documents as the board considers relevant, there are a number of barriers to the process. The first is that it is the board that decides whether the information is relevant. As the directors of the board are hardly likely to be sitting on the case, it then becomes the decision of the administrators at the board as to whether or not material is relevant to a case. Of course, that places them in the position of a judge, to some extent, and with the authority to deny employers the right to information which could support their presentations during the appeal.

The second barrier to practical application of this section is that the board will not grant the employer's request in the first instance but will have to notify the worker of what documents the board considers to be relevant and will wait for the written objections from the employee, which we assume in most cases will be forthcoming, particularly if it appears it is going to affect the worker's opportunity for a successful claim.

At that point then, the board—and read that administration—then determines whether or not to approve or refuse access to employers and notifies the employer accordingly. This section seems entirely out of balance. One of the stakeholders, being the worker, has full and unrestricted access to all of the documentation and may examine and copy all of the items in the board's possession. The other stakeholder, the employer, has access only if the party on the other side of the appeal agrees that he should have it.

The final decision as to whether the employer stakeholder can have access is made by the administration of WCB which is not really a stakeholder in the process.

If you will consider for a minute a parallel situation in a court of law, you would have a defendant being advised by the judge that the only evidence the defendant can introduce on his behalf is evidence that is approved by the claimant. Then you can imagine, of course, what the likely success rate would likely be for defendants in a case. Perhaps you can then appreciate the concern of the employers with this highly restricted process of having access to information on which they are to be judged. We strongly recommend that both the

workers and the employers, the two real stakeholders in this process, be given equal access.

With respect to liens, we envision a major problem for the construction industry with Section 104. Here is another case where it appears that in order to overcome a credit and collection problem within the administration, legislation has been drafted based on standard factory-type industry operations or business operations which do not apply to the construction industry. Liens have a very particular meaning within the operations of the construction industry and pose a far greater threat to the operations and security of the industry than they do in any other normal business operation.

To exaggerate the situation slightly for a moment, let us consider the phrase within the proposal which states: the real property and personal property of the employer or in which the employer has rights. Take for example: John is selling a car to Peter and taking a chattel mortgage as part payment. The chattel gives John a certain right, as it would in the definition under this section, a right to the car until such time as it is paid in full. During the process of making regular payments, Peter decides to sell the car. Normally this could be done subject to paying off John. However, John is also an employer registered with the board. Under the strictest applications of 104(2), Peter must first go to the Workers Compensation Board to ensure it does not have a fixed and specific lien for the amounts owing the board on the property in which John "has rights."

Now that is obviously a ridiculous situation, and we agree that example is—but we are advised by our legal representatives that it is entirely technically possible within the scope of Section 104 for that very thing to happen. We are sure that is not the original intent when that was drafted. How much more damaging then is this section for the construction industry where a lien registration can halt the entire project and freeze the cash flow for all of the contractors involved in the project, even those that do not have any outstanding amounts owing to the Workers Compensation Board?

We are advised by our legal representatives that under the extremely broad wording of Section 104(1) and 104(2), the board would be entitled to file liens against the property which is not owned by the contractors, the construction projects, for example, on which they are engaged. Now take an example: if they were doing an extension of the Great-West Life building, the board could then file a lien against the property of Great-West Life because some electrical contractor owed assessment money to the board.

Under The Builders' Liens Act, when a lien is filed against the property that lien must be satisfied prior to any other funds being disbursed. This would mean that on a major project with as many as 22 contracting companies working, the cash flow could be halted, or at least delayed, for 21 of those firms, for their employees and for their suppliers, should a lien be filed by the board.

This seems a needless excess in view of the fact that the Workers Compensation Board already has the right to require the prime contractor to obtain clearance from the board prior to making any final payments to the various subcontractors. Moreover, if the prime contractor fails to do so and pays out the funds to the defaulting subcontractor, then the prime contractor becomes responsible to the board for the amount of money owing by any subcontractor to the board. So they already have that protection.

Our industry is greatly concerned because we already have the board in the past interfering in the normal flow of funds, not vindictively, but certainly through lack of knowledge of the operations of the industry.

Last year the board administration was writing to owners of projects suggesting they deduct at the beginning of the project all of the amount of the premiums that might be generated on that project, and that, of course, caused cash flows for everybody on the job, financing difficulties, payroll difficulties and so on. It was a curtailment of cash flow. Only after strong intervention from the Winnipeg Construction Association did the administration change the practice, and yet quite properly now advises the owners to obtain clearance certificates from the board prior to paying out the final payments to the contractors. Of course, they have that money to hold to offset any lack of payment to the board.

In Section 104 it now appears that there is another attempt to interfere legislatively in the financial process of the industry. There was a time, a year or so ago, when the administration also attempted to overcollect against particular projects by requiring that the prime contractor pay to the board all of the money owing to the board by a subcontractor who was in default of assessments. The Builders' Liens Act clearly states that the funds provided to the job

can only be used for work performed on that job. Therefore, under existing legislation, the board appears to be barred from attaching any money owing to the contractor on a project beyond the actual amount of the assessments.

For example, if the premiums generated by a contractor on a job were $3,000, the board could not from the funding collect $8,000 from the prime contractor because that money, the balance of $5,000 belongs neither to the prime contractor nor to the defaulting subcontractor nor to the board, but to all the other subcontractors who are on the project.

By having Section 104 passed into legislation and by giving it priority over the security interest of any person including the Crown, "notwithstanding any other Act," it appears that there is an attempt to bypass The Builders' Liens Act and deprive contractors and lien holders on those projects of the security to which they are now entitled by that legislation.

This section also appears to be very poorly worded. For example, it states that notwithstanding any other act, a lien or charge under this section has priority over the security interest of any person. However, it then goes on to state that the registration under this section is enforceable as if it were a certificate of judgment under The Judgment Act. However, a certificate of judgment only has priority from the time that it is registered. It does not have priority over any other judgments registered prior to that time. So it seems there has to be some clarification of wording in that in order to reach the intent that the board wanted.

* (2000)

In summary then, the proposed registration of Section 104 in its present form poses a serious threat to the operations and financial stability, in our opinion, of the construction projects and contractors and is a serious overreaction in order to compensate the board for its inability of the present system to effectively collect its accounts payable.

As far as the construction industry operations are concerned, this section is likely to cause far more harm and create far more problems than it will solve. We recommend that it be withdrawn from the proposed Bill 59 until such time as it can, through consultation with the construction industry, be drafted in a form which achieves the objectives of the board without seriously impairing the operations and financing of one of Manitoba's largest employer industries.

With regard to assessments, under Section 81(1), the board will have the authority to develop optional payment periods for assessments of employers. This section refers to the assessments for the accident fund. The timing of assessments has always been a problem for our industry, particularly since the board has introduced penalties for those who under-report or underestimate their payrolls and then later on end up with higher payrolls and subsequently are subject to penalties.

If a contractor was to be totally honest when completing his assessment form in January, he would report that he has no current work, no known work forthcoming, and he would pay nothing to the board. However, in August, had he been successful in bidding some jobs, he might run up a payroll of a million dollars, and he would be subject to fines from the board for having understated seriously his annual assessment. Here again is a situation where the construction industry cannot be lumped with other industries when developing legislation and regulations.

Contractors do not create a product and they do not take it to their clients to market. In the beginning they have no project, no work. They have no idea when a project will be tendered or by whom. Even when the tender call is advertised and they prepare their bids, they have no idea whether they will be successful in winning that award for that work. Also, January is the slowest time for construction in Manitoba. How could then a contractor reasonably guess at what his work volume and payroll will be six months from then, let alone a full year? How could he be expected to determine and pay a reasonable assessment to the board that early in the year? The answer obviously is that he cannot, and yet he is required to do so or be subjected to penalties.

What we need here is an assessment system which is more closely aligned to the industry work pattern, similar to what it is in British Columbia and also in other provinces. We need a quarterly assessment in payment system. In British Columbia, the assessment comes after the three months work. I am not sure the board would be pleased with that in Manitoba, but whether the assessment is paid before or after is not as important as the fact that we have a quarterly system.

Now Section 81(1) provides opportunities regarding the accident fund, and we would like to think that section can be used by the board to implement, on negotiation with the industry, some alternative system of assessment and payment. I suggest to you that if you do, the board will have more revenue earlier in the year, because what happens now is everybody lowballs what their assessment is going to be and then makes their higher payment in August for the adjustments, whereas if you were doing it on a quarterly basis we would be paying you in advance, January, March and June. In the first three months you would have three of the four payments. I suggest that you seriously consider either through board policy or through, if necessary, some amendment getting a system whereby we can improve our assessment system for the industry.

In general, we commend the minister on his introduction of Bill 59 which, for the most part, we feel will improve a number of inequities in the current compensation and the resulting regulations and board policies. With careful consideration of the points that are raised in this presentation and the presentation of other groups before you and the resulting adjustment to some of the provisions, we are confident that your government will be able to put in place compensation legislation that will improve the system for both of the major stakeholders in this province. Thank you.

Mr. Chairman: Thank you, Mr. Greasley, for your presentation.

Mr. Ashton: Just a couple of brief questions in regard to the comments on the definition of "frivolous." This is perhaps one area of concern between employer and employee groups because it has been expressed by employee groups, and I think you pointed out that it may not be used. Because it is such a general term, there may be concern about using it. The ultimate possibility, of course, is that it might be used fairly widely, in which case it has a very subjective connotation to it and a lot of, presumably, not only employees but employers would end up being subject to this particular penalty when, in fact, their intent may not have been frivolous at all. It may just have been judged to be so.

I just want to check in terms of your suggestion. Are you suggesting that the section be dropped, or are you suggesting that the term "frivolous" be dropped and another term be used, and if so, do you have any suggested term?

Mr. Greasley: I would love to have a different word, but I tell you we have agonized over alternative words and not been too successful. I would not like to be a member of the Appeal Commission determining whether or not something was frivolous without a lot clearer definition or direction. As you say, the decision of frivolous can go both ways. It would be my impression that neither the employer nor the employee—if they made what appeared to be a relatively reasonable presentation and subsequently lost the appeal, I would hope that would not necessarily be considered frivolous simply because they lost.

Mr. Ashton: I want to indicate as well, I found the comments on the assessment system to be fairly interesting because I know it is a concern that is expressed, too, by many small business people in terms of the timing of it. I realize there are cost factors involved with any shift, but I can see that particular problems in the construction industry, obviously where you have a very unpredictable type of cash flow and, given the seasonal basis as well, so I appreciate the input on that area. Thanks very much.

Mr. Chairman: Any other questions?

Mr. Praznik: Thank you, Mr. Greasley, for your presentation. I just wanted to comment on the rate assessment Mr. Ashton made reference to. As you may be aware, we have the power to do that now, but what we did not have the power to do was to gazette the rates so that we could deal with the invoices. So this piece of legislation, as I am sure you know, will provide that ability and we hope to be more accommodating in assessments and more realistic to the time frame in which people are working and salaries are paid, so I appreciate your comments.

Mr. Greasley: Perhaps this is an appropriate time then to go a little in the other direction and say that while we have been through the province of Manitoba several times talking to contractors in dozens of towns and cities, and there is widespread support for, for example, a quarterly billing system; there is not very much support for a monthly billing system. I am sure in the administration of the board they would not be very happy with a monthly billing system, so let us not go too far in the other direction either.

Mr. Praznik: So noted.

Mr. Chairman: Thank you, Mr. Greasley. We proceed then to No. 4, Mr. John Huta. Mr. Huta, are you here? Will you come forward please. Have you a presentation to distribute to committee members?

Mr. John Huta (Private Citizen): My presentation had been distributed this morning.

Mr. Chairman: Thank you very much. Will you proceed then with your presentation?

Mr. Huta: Mr. Chairman, honourable members of this committee, we, injured workers and myself, find the author of these proposed amendments most inhumane. He may consider himself very knowledgeable and respectable, but he is just totally unreliable. He does not realize he could be next in line to be injured.

* (2010)

In these proposals to amend The Workers Compensation Act, he is doing everything for the employers and simply nothing for the injured workers. We believe employers have had it too good up until now. He is even making it more beneficial to the employers. He is taking all those sections out of the act that we had fought for so long, precisely 20 years of our hard work to improve the system. He is taking it all away. He just makes us injured workers sick to our stomachs. He should resign from being chairman of such a valuable committee—and we are referring to the author, not to you, Mr. Chairman—and furthermore resign from the position he is holding at the WCB, because he is just untrustworthy.

It gives us great pleasure to make a presentation in regard to these significant proposed amendments. I will try to address some of these proposed amendments which he is trying so desperately to put through for the benefit of all employers and nothing for injured workers.

First of all, I wish to congratulate Mr. Darren Praznik, Minister responsible for The Workers Compensation Act, for introducing a pension increase which will reflect the full change in the consumer price index in Manitoba. British Columbia had this bill legislated several years ago. We believe it is time for Manitoba to follow suit.

It has been long overdue now to have the pensions of the deceased injured workers awarded to the spouses or dependents of the deceased on a 100-percent basis. The reason for this is that spouses had suffered severe traumas, nervous breakdowns, anxieties, abuse, suicide by the injured workers. We believe it is time the spouses should receive some compensation for looking after injured workers.

To design the compensation system on the fault coverage, in my opinion, would be a total disaster to all injured workers, because the system has been bad enough without making it worse. The fault coverage would be more beneficial to the employers, and injured workers would be left holding the bag. Employers always come up on top. It will give more power to the mandatory industries to find ways to evade coverage for their injured workers and shift all the responsibilities on to the workers.

The medical reports submitted to the board shall be open for review by the injured workers and their representatives. The board staff places too much burden upon the doctors who are submitting medical reports to the board. I am sure if the doctors were left alone and not placed in an extremely precarious position, they would be more sympathetic toward injured workers. Many doctors are very reluctant to even treat injured workers because their reports are ignored by the board's staff, and board officials interfere and constantly pressure the doctors to rule in the board's favour.

On September 15, 1982, there were legislated changes passed to allow the release of all medical information on file to the injured workers or their representatives. The rules of natural justice and fairness would be seriously affected if medical reports were released to the employers or his or her agent. Then a summary conviction should be imposed of all, and above $500,000 penalty on each of the offences, plus 10 years in prison, or both.

The release of this medical information on file would infringe on workers' rights and limit protection for the workers found with related diseases or illnesses against employers who would use this information to terminate the workers' employment without cause. To permit the board to charge any fee for copies requested from the board's file would cause a total disaster because no injured worker can afford to pay for copies.

This violates the sections of the act which had been magistrated years ago to allow injured workers to have copies made at no charge. There is a

section in the act which permits the medical doctor to give all reasonable medical information free of charge to the workers. Now, the author, you are a most inhumane, despicable, untrustworthy, arrogant person, to even have the nerve to have these sections of the act changed.

Asking for this change is most unethical. Freedom of Information guidelines were enacted to provide copies of individual files to injured workers free of charge. This would place a further burden on workers; this is nothing but discrimination.

To provide the board with discretion to allow funds from accident employers to the uninsured firm would allow the accident firms to get off free of any liability while the uninsured firm pays for someone elses liability costs. To allow the expansion of the board's exclusive jurisdiction to establish annuities and commutation of pensions would be inhumane and unethical. The board has been known to misuse funds.

This would only encourage the board's staff to do more of that dirty work. This is totally absurd. To commute the little pensions into lump sums in order to establish annuities, you are forcing workers to place themselves further below poverty level and more restricted social life than they are now experiencing.

Injured workers shall not be forced to pay the cost of appeals. It is the board's responsibility. How can the board say that the case is frivolous? The board has rejected the claim in the first instance even though it was a legitimate claim, and all of a sudden, it is frivolous. You are totally out of your mind. The author says it is appropriate to have the facility to discourage abuse of the system. Could you tell us what you are going to do with all the money that you will save from screwing all injured workers? It is a most honest opinion that you are going to abuse the system and you will misuse all the funds, not the workers.

Canadian Pacific Railway and the Canadian National Railway shall be placed under greater scrutiny to ensure that they do not harass their workers not to report their injuries to the WCB. This was their practice previously. If no accidents were reported to the board, they had received rebates. Workers suffered because, if it was a serious injury with time limit, it was too late to report because the worker had been asked to come to work and was given a sitting down job reading a magazine so that he or she did not report the accident. This would permit the board to reduce assessments for these employers and levy a surcharge against other employees. This discriminates against other employers to pay higher assessments while CP and CN benefited.

The board shall have no greater flexibility in levying of assessment because it has been a known fact that the board has been lenient with some firms, Safeway and Manfor, and did not charge them any assessment because the board members benefited from such firms while workers suffered. Their claims were not compensated.

The board shall not be permitted to reduce assessments. However, firms with fewer accidents should pay their normal rate of assessments, but firms with higher accident rates shall pay a higher penalty according to the accident rate.

Workplace Safety and Health division costs shall not be limited. More safety officers shall be employed to provide workers with an increased level of protection. However, assurance shall be achieved that no safety officer notifies the firms in advance that he or she is coming to inspect the safety working conditions in that company. If any safety officers are found to disobey these regulations, they shall be charged a penalty of $50,000 on each such offence and/or five years in prison or both.

The board shall under no circumstances be given greater flexibility in financial matters. The board shall establish a satisfactory accounting system and permit an inspection of the records at any time by outside certified auditors. The inspection shall be on a monthly basis and the report shall be made public in all newspapers on a monthly basis.

* (2020)

I has been brought to my attention that the board has removed the neurosis and psychoneurosis sections of the act. This is totally absurd, inhumane, despicable, arrogant. The board shall be responsible for mental and emotional disability arising out of personnel action such as a transfer, promotion, demotion, termination or layoff or for stress and an acute reaction to a traumatic event. This line of reaction shall be covered under the WCB neurosis and psychoneurosis of the act. Under no circumstances shall these sections on neurosis or psychoneurosis be removed from the act.

All injured workers, after their at-work injuries, do develop some neurosis because they are going through severe traumatic changes in their life. They have to adjust to a totally different lifestyle. They are worried about how they will look after their family, wife and children, if they will have a job to go back to, how they will pay their mortgage payments on the house and car, where their next piece of bread will come from. Families and marriages break down, spouses go through nervous breakdowns with worries and concerns, suicides, et cetera.

We had fought for these sections and coverage in the act for the last 20 years, and now the author has destroyed all we have achieved and worked so hard to get.

Instead of improving the system, he is actually destroying it. He wants the board to establish their own definition of what constitutes personnel actions. What does that mean? He also states that the proposals would not affect the WCB's liability for proven claims. If he deletes these sections, the board will not have any proven cases to deal with. The board would have to lay off staff because all claims would be rejected.

To establish a deductible period during which time loss of benefits would not be paid would only lead into more delays for workers in receiving their cheques. How much more time does the board want? According to some claimants, it is now a three-month waiting period before they are paid their first cheque, and this I was told by some of the claimants that I work on their cases.

To permit the board to charge workers the cost for medical review panels is totally absurd and inhumane. No worker can afford to pay any costs for the medical review panel. The board has rated the claim was frivolous. What chance does the worker have to win his or her case? None.

Therefore, the board is discouraging all workers from appealing their cases so they can pocket all that money for the employers. There will be no claims appealed to the medical review panels. In addition, the board had been persuading the panel to support their decision of the board's physicians. The board staff, members, physicians shall have no right or authority to discuss the particulars of the case once a medical review panel has been requested. If the board staff, members, physicians have been found guilty of any such offence, a maximum penalty for each such an offence shall be no less than $100,000 or five years in prison or both for each person involved in such offences and for each such offence committed.

Why should workers elect for Autopac when they are injured in a motor vehicle accident when the worker of another employer was negligent, and when he or she are on company business, therefore it is the WCB's responsibilities and not Autopac?

If the board has provided the worker with rehabilitative assistance to become employable, another form of employment is terrific. However, the board has been known to push workers into positions or another form of employment that is totally unfit for the worker's condition, and if he or she refuses to take that position because it is not suitable, benefits are terminated and the board states, worker was unco-operative. This practice must cease at once. The position must be that the worker is happy in performing which replaces his or her pre-accident employment or position.

Compensation benefits shall, under no circumstances, be subject to seizure or attachment in the same manner as wages under The Garnishment Act. This practice would be totally unconstitutional. The author's wages should be garnished for recommending all these drastic, inhumane, absurd, despicable and arrogant changes to the WC act.

On page 11, under proposed new benefits, how can the author treat Section 42 dealing with pre-existing conditions under new benefits? He figured he will put it in under new benefits and nobody will ever suspect that he wants to delete the pre-existing conditions sections. He is very sneaky. We had worked so hard for over 20 years to have this section included in the act, and now he wants to delete it entirely.

There are many workers, including yourselves, who are suffering from one form or another pre-existing conditions. However, they were able to carry out the duties of their positions until the unfortunate accident happened and aggravated that pre-existing condition.

I do not believe that workers should be penalized because they have a pre-existing condition. They should be allowed to earn a living by working, but if the workplace is not safe and the accident happens, the employer should be responsible for allowing employees to work in a hazardous, unsafe workplace. To remove these sections from the act

would be the most inhumane, despicable, arrogant, sneakiest attempt for anyone to do.

Wage loss shall be based on a maximum entitlement of 90 percent of the worker's gross average earnings and should not be reorganized to 80 percent. This would be totally discrimination and unconstitutional. Pensions and group life insurance shall not have any bearing on compensation wage loss benefits. To revert to 80 percent of net income, the WCB will take advantage of these tactics and force the injured workers back to work before they have fully recovered from their injuries. These tactics will only force injured workers to more suicides and family breakups.

It is obvious that the author of these proposals has no heart for anybody, not even for himself. I honestly feel that the author has no heart for an injured worker who has given his or her heart, body and soul to his or her job, only to have such an unfortunate accident happen to bring on such a burden upon himself or herself and their families which prevents them from carrying on with their jobs.

The broadened methods of payments of compensation benefits and the annuities are most discriminatory and unconstitutional. This method will only place greater burden upon the workers and their families, and put them further below the poverty level. The disability insurance, social insurance, unemployment insurance and refunds arising from the tax-free status shall not be attached to the WC benefits. If the worker had paid into these extra coverages out of their own pocket to better themselves in case of an accident, then these extra benefits shall not be deducted from the compensation benefits.

To reduce the impairment awards for workers over 45 years of age by 2 percent for each year of age over 45 is totally unconstitutional and discriminatory. How can the board determine and anticipate a retirement date if there is no retirement age any more? The Supreme Court has ruled that a person can work as long as they wish, and no company shall use 65 as the retirement age. This is against the Canadian human rights regulations. The board shall have no authority to withhold any wage loss benefits from workers over age 65. The board is penalizing workers because of their age. This is an issue for Canadian Human Rights to deal with.

* (2030)

How can the board define the loss of earning capacity before the injury and determine how much the worker is capable of earning after the injury? If the worker earned $10 an hour at the time of the injury and has been off work for two years and that position, after two years, has increased to $15 an hour, then the worker shall receive the full benefits he or she is entitled to. If the worker has suffered severe injury and is not capable of earning any money, that worker shall be paid the full amount he or she is entitled to with the increases according to his or her wage paid to the co-workers.

The board shall have no authority to enforce that workers participate in their annuities and set aside 5 percent of all the workers' future wage loss benefits and they be locked in once the plan is implemented. This is ridiculous and inhumane. The whole issue about the pensions and annuities is totally unacceptable. The board would take advantage of the worker and his/her family. If the board paid the full benefits and the pensions to which workers are entitled, the workers would not need any other fringe benefits.

Pensions and benefits shall be indexed according to the consumer price index annually, or semiannually, according to the increase in the cost of living.

The board shall have no authority to penalize the spouse because the worker was over 45 years of age at the time of the worker's death by 2 percent for every year of age over 45. This is totally absurd and discriminatory. The spouse shall not be forced to convert the lump sum into an annuity to be retained by the board. The spouse's monthly payments shall not be reduced to equal the wage loss benefits the worker would have received had the worker lived and suffered a total loss of earning capacity. The spouse shall not be penalized if the spouse if over 60 years of age. The spouse shall be paid the full benefits he/she is entitled to under the act. There shall be no time limit of 71 years of age. This is totally absurd, inhumane, unconstitutional and discriminatory.

The board shall determine whether the dependents' benefits should continue or not. These benefits are the dependents' benefits and they shall receive them. These benefits shall be based upon the consumer price indexing and according to the cost of living increases. These benefits shall also be based upon the current salary the worker would have been earning if he/she were not fatally killed.

Dependents' periodic payments should not be offset by the CPP or QPP survivors' benefits.

The lump sum payments are unconstitutional and by no means shall these benefits be converted into annuities and annuities shall not be retained in the accident fund. The employers are paying in to the accident fund and I am of a firm opinion that should be enough if the board handled the money properly.

The third party adjudicators should be established but not of the agents of the employers. It shall be comprised of community representatives and injured workers who have some knowledge of the WCB system. The majority shall be comprised of injured workers. The exact nature of their relationship shall be developed by the community representatives and the injured workers. There would need to be effective monitoring to ensure that employers would not use this program as a means of suppressing claims through intimidation. The employers shall be compelled to keep injured workers on their staff. Seniority shall have no effect on injured workers' employment to continue to work with the same employer. The employer shall make every effort to accommodate these workers in suitable employment so as not to aggravate the injuries any further. The employers shall not take advantage of these workers to make it difficult for them to continue with their employment. If that should happen, the employer shall pay 100 percent of the benefits to the worker and pay a penalty of $100,000 for each and every such offence committed.

The formation of an employers committee and a workers committee—these committees shall be appointed by the community representatives board and the injured workers covered under the act. The community representatives and the injured workers shall determine the procedure for the appointments to each of the committees and that each committee shall have access to the board whenever it becomes necessary to carry out the business of these committees.

In conclusion, I wish to state that the entire proposed amendments shall be totally ignored because the changes proposed are totally absurd, discriminatory and unconstitutional. If these proposals are accepted, then the Canadian and Manitoba Human Rights will be very busy, and it will be challenged before the Supreme Court of Canada.

We have worked so hard for at least 20 years to improve the WCB and these proposed amendments are destroying everything we have worked for and injured workers will be forced to live far below the recommended poverty level. It will force more injured workers to commit more suicides because of the impossible situations the workers will be put in. We certainly do not want to see the Manitoba workers compensation system deteriorate beyond repair. The author of these proposed amendments is the most despicable, arrogant, inhumane, untrustworthy, sneaky two-faced person walking on this earth, who no doubt would sell his own mother for a penny and certainly has no feelings for anyone but himself. He should just look in the mirror and see his face.

The pensions of the deceased injured workers shall be awarded to the spouses 100 percent. The pensions shall be indexed annually or semiannually according to the consumers price index and the increases in cost of living. Thank you.

Mr. Chairman: Thank you, Mr. Huta. Before we continue questions, I want to indicate to the committee that we are going to allow Hansard staff to make tape changes. We will break for a few minutes for that allowance. We will continue the questioning of Mr. Huta right after the slight break.

* * *

The committee took recess at 8:39 p.m.

After Recess

The committee resumed at 8:44 p.m.

Mr. Chairman: Are there any questions of Mr. Huta?

Mr. Ashton: Mr. Chairperson, I want to first of all thank Mr. Huta for a very in-depth brief. I know he has been involved with these issues for many years through the injured workers association of which he essentially was the founder. I also must say that it is in keeping with your style, you never pull punches. I remember from our discussion about this bill just recently, your position does surprise me.

What I do want to ask though, and I have asked this of other presenters as well who have expressed major concerns about this bill, is where the committee should go from here. Many people I have spoken to have concerns about this bill, said their concerns are so far-reaching that really the only

way to deal with the bill is to either drop it or at least table it until a lot of those very major concerns that you have pointed to are dealt with. Do you agree with that approach? Do you think that it should be dropped or tabled?

Mr. Huta: I think that these proposals that are made are very discriminatory and unconstitutional. For example, taking out neurosis and psychoneurosis sections out of the act even before these amendments were proposed, I do not think there were very many who knew that those sections were taken out, and yet they have been taken out. Now, sneaking the pre-existing conditions under new benefits, it took me a few times to read it through before I actually caught what the author was actually trying to do. So I feel that these amendments should be dropped.

Mr. Ashton: I know there are many discussions we could get into in terms of the specifics and, indeed, I have had the opportunity. We did talk, and I certainly appreciate to talk to you on a continuing basis on issues such as this, because I know you are basing this on experience. While I could ask many, many more questions, I know we have other presenters, and I would just like to thank you for a brief that I know represents not just your own views, but the many injured workers you have dealt with over the year.

Thanks very much.

Mr. Chairman: Thank you, Mr. Huta.

We will then continue with our next presenter, No. 5, Mr. Harry Mesman.

Mr. Praznik: Mr. Chair, I know that Mr. Mesman is representing the Manitoba Federation of Labour and is not able to be here tonight. He spoke to myself and another member of the committee. I think we can agree if we can have him speak first tomorrow.

Mr. Chairman: Thank you. Number 6, Mr. Bob Sample and Gord Fisher of the Canadian Union of Postal Workers. Would you come forward please. Have you a written presentation to put before the committee?

Mr. Bob Sample (Canadian Union of Postal Workers): Yes, I do.

Mr. Chairman: I will ask staff to distribute it. Who may I ask is making the presentation?

Mr. Sample: Bob Sample.

Mr. Chairman: Bob, would you continue, please.

Mr. Sample: This presentation is being prepared on behalf of the Prairie Region and the Winnipeg Local of the Canadian Union of Postal Workers. The Prairie Region is an extension of the national union of the Canadian Union of Postal Workers. It represents postal workers in Manitoba, Saskatchewan, Alberta and northwestern Ontario. The Winnipeg local represents workers in Winnipeg and five affiliate offices outside of Winnipeg.

Whether working as a letter carrier, mail sorter or maintenance worker, all postal workers are confronted with unsafe working conditions that at times result in workplace injuries. Statistics for a two-year period, September 1, '88 to August 31, 1990, show postal workers in Winnipeg alone suffering 623 workplace injuries that resulted in 9,156 lost days at a financial cost of $775,000 to Canada Post.

Postal workers require a Workers Compensation Act that will ensure an injured worker receives the best in medical aid, receives medical aid that continues until the injured worker's physician determines rehabilitation completed, does not suffer wage loss, is provided prompt efficient service, is not confronted with an adversarial system, does not suffer job loss or financially when a permanent disability is the result of the workplace injury, and is treated with dignity by the board that is sensitive to their problems.

The union would like it clearly understood that the consultation process involved in Bill 59 was a complete farce and meant to give the illusion of consultation only. In presenting the brief the union will focus on 25 issues. This does not represent the total number of regressive proposals contained in the bill. Changes requiring actuarial research and legal interpretation will be addressed by the major labour organization in Manitoba, the Manitoba Federation of Labour.

The union will begin its response on a positive note, acknowledging what seems to be a positive change. The indexing feature will help to reduce the negative effects of inflation for workers who require and receive long-term benefits.

The first series of proposals will be parallelled with recommendations proposed by the employers of Manitoba. These recommendations are contained in the Manitoba Employers' Task Force on Workers Compensation presented to the Workers Compensation review committee in March of 1986.

Financial accountability was a multifaceted recommendation of the Employers' Task Force. The overall effect of the proposed changes is to reduce the unfunded liability and to offer employers a more competitive rate. The elimination of the $222 million unfunded liability is being borne by injured workers through reduced benefits.

* (2050)

The creation of experience rating removes the consistent rate structure that steadily funded the workers compensation system. The further fine tuning of experience rating as seen in proposal 3, affecting Section 2 of the act, changes the application of Part 1 of the act from an industry to an employer undertaking or individual plant or department thereof within the scope of this part for the purpose of assessment.

This will further erode funding to the board. This change only serves employers whose accident rates are higher than the norm. It allows employers to refocus assessments to a singular department within a plant, thereby reducing assessments that they would normally have to pay. It is obvious who the government is serving with this particular change. What is difficult to understand is why the government would want to provide employers whose injury rate is higher than norm with a financial break.

The union is opposed to the entire concept of experience rating. Experience rating threatens the very existence of Workers Compensation. It promotes and encourages employers to circumvent the process by attempting to discourage workers from filing claims. This is pursued as a method to reduce assessment rates. Experience rating encourages an adversarial approach by employers towards injured workers. As workers whose employer is self-insured and responsible for the total costs related to workplace accidents, the union is quite familiar with tactics employers use to reduce compensation costs.

I would just like to add at this point in time, what we see as postal workers are harassment right off the bat for workers who are injured on the job, immediate push for return to work on modified duties and acceptance of modified duties for a period of about 12 weeks. Then the modified duties are no longer provided and the injured worker has a very difficult time getting back on claim with compensation. At the same time, the employer goes after a medical opinion of PPD and starts release proceedings. So that is the scenario for people affected by this type of a system.

The union would ask the committee to seriously consider the effects of experience rating and reinstate the common assessment rate applicable to all assessment employers. This will in turn force employers to exert pressure and police themselves as a whole in an effort to provide a safe workplace and overall reduced assessments.

The employer's task force recommended that pre-existing conditions be treated separately and distinctly from recognized accidents with reduced or no compensation provided. The proposals contained in Bill 59 eliminate Section 42(1), compensation for pre-existing condition, and Section 42(2), definition of pre-existing condition or underlying condition.

We have the government acting clearly on the instructions of the employers of Manitoba. To the knowledge of the union, the pre-existing sections of the current act have not resulted in large numbers of claims being accepted on the basis of a pre-existing condition. The paranoia of possibilities that resulted in the Employers' Task Force recommendation and the action of the government regarding this issue indicated little thought or research went into the proposal.

The pre-existing condition section served a specific category of worker who received benefits proportionate to their pre-existing condition. The union would ask the committee to reconsider this proposal and retain the protections currently contained in Sections 42(1) and 42(2) of the act.

The employer's task force recommended a change in the definition of accident. The government proposes change 2(2) adding a new Section 1(1.1) entitled, restriction on definition of accident. This proposal will be elaborated on when the union discusses the issue of stress.

The employer's task force recommended employer access to medical information contained in the WCB claimant file. The government proposes change 53(2) adding Section 101(1.1) to 101(1.7) providing employers with access to medical information. An appeal process has been included that seems to add legitimacy to the proposal, but in effect will simply result in a lengthier period of time to process an appeal.

The CUPW is opposed to this proposal. Employers have argued that the worker has the advantage over the employer in the appeal process because access to medical information is available to the worker, but not the employer. The union disagrees. Employers have the advantage in the appeal process financially, technically and with staff specifically dedicated to compensation matters. Outside consultative agencies provide expertise and assistance to smaller employers who do not employ staff dedicated to reducing compensation costs.

Employers have the ability to write off the costs associated with actively pursuing compensation costs. Employers have the ability to apply pressure on injured workers in the form of financial terrorism, discipline, threats, intimidation, harassment. The use of the word "financial terrorism" is not placed in this document lightly. Workers are left without any pay for weeks and months on end and expected to support their families, and that is nothing more than terrorism. Employers have the ultimate ability to release injured workers.

For the government to turn a blind eye to these employer advantages and provide them with an additional advantage is immoral. The union would ask the committee to reject this proposal. If the committee refuses to act on this request, the union would ask the committee to consider language that would prevent employers from sending workers for third party medical examinations once a claim has been filed. If employers are provided with medical information on file and have the ability to send injured workers to doctors chosen by the employer, they have the ability to build medical files that could be used to their advantage in the appeal process. This same concern exists if the physician is the one chosen by the employee. The employer could provide a focused set of questions for the physician to respond to that would work to their advantage in the appeal process.

Example one is an example of just that. It is a series of 11 questions that were presented from an employer to a physician to get a specific response in regard to an injured worker.

This problem has been recognized and addressed in other jurisdictions. Under the Ontario Workers Compensation Act, Section 21(1) and 21(2) are provided to protect injured workers from employers initiating medical examinations. That particular section of the act is shown in example two.

The employer's task force recommends the inclusion of collateral benefits as a determining factor in establishing wage loss. The government proposes a new Section 41(1) to 41(7) entitled, collateral benefits. This proposal forces mandatory application for benefits available from CPP, UIC, long-term disability plans, et cetera. The mandatory aspect of collateral benefits would result in the board deeming an equivalent amount of wage loss when a worker refuses to apply for one of these benefits that is determined mandatory. This proposal would reduce wage loss by an amount equal to that received in the form of any other income received. That could be accumulated overtime, yearly payout of annual leave, bonuses, gratuities. Legal opinions have advised the union that the proposal could be extended to include mortgage and loan insurance payments paid out to cover periods of disability.

At this point, the question to be asked is, at what point will the board begin to pay wage loss? Quoting from the board's own statistical information contained in a report to the MFL dated January 1991, the average claim duration is 28.1 days. Workers are eligible for 15 weeks or 105 days of UIC sick leave benefits yearly. With this being the mandatory benefit that must be applied for when claiming compensation, it is clear that the board will be responsible for paying very little, if any, wage loss on the vast majority of claims.

* (2100)

A noted specialist in the field of compensation is Professor Terence Ison. In his book, Workers Compensation in Canada, he refers to the practice of "deeming" in Section 5.3.5. Professor Ison states: "Provisions of this type, in their practical administration, have been one of the greatest causes of distress and injustices in the history of Workers Compensation."

Most injured workers rely on these other systems for protection when problems occur and their compensation wage loss is terminated. Contemplate this scenario: Mandatory benefits have been exhausted, and the board decides to terminate wage loss benefits. You are advised by your physician not to return to work, or you are told you can return to work with certain restrictions and your employer refuses to accommodate you. What would you do? Where would you go? The only alternative left to people in this situation is to go on

social assistance. All the other back-up forms of benefits are gone.

This entire proposal reeks of offloading at the expense of injured workers. The collateral benefits section goes beyond stripping workers of all sources of financial protections as a victim of an unsafe workplace. The collateral benefits section attacks and directly interferes with the rights of workers to act collectively and negotiate benefits that exceed what is meagerly established by legislation.

This facet of the proposal is Draconian and presents the changes contained in Bill 59 for what they really are, an attack on workers' rights. The proposal to restrict by penalty the ability of workers to negotiate "top-ups" has nothing to do with eliminating the unfunded liability. It has nothing to do with offering employers a more competitive rate. It is simply an attack on working people that serves no purpose. The union strongly recommends the collateral benefits section proposed in Bill 59 be rejected completely.

The Employers' Task Force recommended developing some type of pension plan in the form of annuities. The government adopted this recommendation in change 21, creating a new Section 42. This positive proposal has one major flaw. The pension is provided at the expense of the injured worker by reducing benefits 10 percent after a 24-month period. The 10 percent would be applied to purchasing a pension, a group life plan and some form of life insurance. The Employers' Task Force also recommended a 10 percent decrease in benefits. This is another regressive proposal being adopted by the government.

The union is aware of other jurisdictions that have dealt with the issue of pensions, Saskatchewan and New Brunswick, for example. These jurisdictions have recognized that injured workers are not only financially penalized but also lose income security in the form of pensions. In providing pensions, these jurisdictions have taken a sensible, humane approach. Benefits have not been reduced to the worker as a method of financing the pension.

The union would ask the committee to reconsider this proposal and develop pension financing that will not reduce the benefits to injured workers. The Employers' Task Force recommended changes in the method of calculating wage loss benefits from 75 percent of gross to 90 percent of net. The government proposes change 21, introducing a new section, 39(1) to 39(5), Wage Loss Benefits, contains the employer's recommendation. This change will have an overall effect of reducing benefits to a large number of injured workers.

The union is aware that many employers are of the opinion that workers are on compensation simply because they do not want to work. These same employers argue that reducing benefits will serve as an incentive to encourage people to go back to work. They are right on one point. Reducing benefits will force people back to work. In order to survive and meet their financial obligations, workers will be forced to return to work before rehabilitation has taken place.

The proposed formula will reduce income levels of workers who are already suffering a financial penalty. Most people maintain a standard of living that is determined by their normal salary earned. There are bills to pay, loans, mortgages, children to feed and clothe—quite simply, the same bills you would have if you were not injured. As a matter of fact, costs are likely to be higher. Transportation, nonprescription medication, caring for family members who are under your care, paying someone to do household chores you are no longer able to perform are just examples of those types of costs.

The union's position regarding wage loss is that workers should not be financially penalized for falling victim to an unsafe workplace. The union would ask the committee to reject the proposed wage loss formula and instead propose a 100 percent wage loss formula from the time of the injury. The people of Manitoba have elected a government that should be a government of the people, by the people and for the people. The union feels that this exercise in comparison between what has been proposed by the government and what has been recommended to the government from the employers of Manitoba clearly identifies which people this government is governing for.

Change 2(1), applying to Section 1(1) of the act, the union objects to the restrictive nature of the definition of occupational disease, in particular the specific reference excluding stress, other than an acute reaction to a traumatic event. The issue of stress injuries and the result on those who suffer these types of injuries is being dealt with realistically in other jurisdictions. In other countries, U.S.A. being one of them, awards are being provided through the courts in recognition of stress as an occupational disease. Changes in work methods

resulting in highly repetitive jobs that require technical skills that are continually changing are a factor in stress injuries.

Employers aggressively pushing workers to meet ever-increasing productivity levels is a factor in stress injuries. The Manitoba government's response to this serious problem is to simply stick its head in the sand and hope the issue will go away. It will not. Is the government opening the door to tort action regarding stress claims by specifically referencing it as an exclusion in the legislation? That is an unanswered question.

The same argument applies to Section 2(2), adding a new Section 1.1, "Restriction on the definition of 'accident'." The union is of the opinion that these specific changes have been drafted in an effort to legislatively refuse acceptance of specific types of stress injuries that have been accepted in other jurisdictions. The new restrictions note the definition of accident in subsection 1 does not include any change in respect of employment of a worker, including promotion, transfer, demotion, layoff or termination. Stress cases have been accepted in Ontario for time loss due to anxiety and depression that was a direct result of supervisory pressure and related to a transfer to another job.

Other recent stress-related claims involve work-related factors that were out of the control of the individual and stress due to racial and sexual harassment. If this legislation was in place in Quebec, 20-plus injured workers would not have received benefits for stress claims that were determined acceptable in that jurisdiction.

Change 5(1) affecting Section 4(2) retitled "Payment of wage loss benefits", this proposal restricts wage loss for the day of the injury. This results in an automatic financial penalty that could take the form of a few minutes to eight hours, depending on when during a person's shift they are injured. The union would ask the committee to follow the lead of Alberta, Quebec, Ontario, New Brunswick, Prince Edward Island, Newfoundland and Labrador, and a pending recommendation in Nova Scotia, and provide wage loss benefits the day of the injury.

Change 5(1), alters Section 4(3) of the act and is now entitled "Misconduct of worker." Up until November 1, 1990, board policy 13/84—it is provided in that package of examples—addressed this particular issue. A penalty of one week was imposed. On November 1, 1990, this policy was rescinded, and the current policy 33/90 came into effect. The new policy changed the wage loss penalty from one week to three weeks. We now have legislative language that takes the current board policy one step further. Not only will the worker be penalized three weeks wage loss, the government is proposing a three-week penalty applied to medical aid as well.

With the amendments that just came in late last night, we find that somebody has even tightened the noose a little tighter and recognized that somebody may not actually require medical aid from the day of the injury and put an amendment in to say medical aid is not payable for three weeks from the day the worker requires medical aid. That is pretty disgusting.

What has happened since 1984, when this issue was discussed and policy adopted, in 1984, there was no penalty on medical aid. There was a one-week financial penalty. In 1991, the government proposes a wage loss penalty of three weeks and a refusal to pay medical aid for three weeks or more. CUPW is concerned this proposal introduces a factor of fault into a no-fault system. The penalties to be imposed in cases of what is determined to be serious and willful misconduct are a labour relations issue and should remain in that realm. The act should not dictate or specify any penalty. The union would ask the committee to remove all references to penalties and ensure policies cannot be implemented that will penalize injured workers.

* (2110)

Change 5(1) alters Section 4(4), previously entitled "Proportional compensation in certain cases," now retitled "Cause for occupational disease." All references to proportional compensation have been removed completely. This effectively removes any possibility of receiving compensation in that manner.

If it was found in determining the cause for an injury and applying proportional compensation, that work was a factor measuring 25 percent towards the cause of the injury, compensation would be paid out based on this 25 percent figure. With the introduction of the word dominant, compensation will not be paid out unless the workplace contributed to over 50 percent of the causation.

What is the answer to this scenario? An injured worker is not accepted by the board because the workplace was not the dominant cause. However, it has been determined to have had an effect that would be measured anywhere up to 50 percent. Now that the legislation explicitly bars the worker from any proportional compensation and the effects of the new dominant factor, will the worker be able to seek satisfaction through the courts? The union believes this proposal will result in workers who are refused compensation in cases where it is obvious the workplace was a contributing factor will pursue the matter through the courts. The union is further alarmed that this proposal may enhance the ability to receive settlements through tort action.

Any legislative change that specifically removes the possibility of a worker whose workplace was a contributing factor to a disabling injury from receiving compensation for this injury leaves the worker with no choice but to seek justice elsewhere. This is a regressive proposal and one that makes it all but impossible to receive any compensation for injuries that are multifactoral. It also threatens to weaken the system by opening the door to tort action. The union would ask the committee to reject this proposal. The union would ask for the word "dominant" to be removed from the proposal and replaced with the phrase "a contributing factor causing," the last line to read: "the employment is a contributing factor causing the occupational disease."

Change 8(2) adds a new section to the act, 9(7.1), Exception of motor vehicle accident. This section removes the limit of right of action contained in Section 9(7), in the case where a workplace accident results from the use or operation of a motor vehicle that is registered or required to be registered under the act.

Attempts to seek financial restitution through the courts regarding work-related injuries have been on the increase over the past few years. The union is concerned about this issue and the effects it will have on the compensation system if final courts of appeal rule in favour of the plaintiff. It could result in a serious threat to a system that has provided protection for injured workers for years.

Any changes that would enhance the ability of injured workers to seek restitution from the courts should be removed. This will only serve to legitimize these types of actions and indicate that the pursuit of tort action for work-related injuries is acceptable by the government and by the board.

On another note, as with collateral benefits, this proposal is another attempt to offload responsibility, freeing the board of their responsibilities to injured workers. The union asks the committee to protect the integrity of the workers compensation system and reject this proposal.

Change 11 affecting Section 18(1) entitled "Employer to Report Accident." The union does not have a problem with the use of the words "business day" and attaching a definition of Monday to Friday, except a day that is a holiday as proposed in the new Section 18(1.1). The union objects to the change increasing the reporting time from three days to five days. The change to business days has provided employers with a reasonable adjustment that addresses problems of reporting in a timely manner when a weekend or stat holiday may be involved. To further increase this time period by another two business days is totally uncalled for.

Advancements in communication technology and the accessibility to courier services themselves speak to the unfairness of this proposal. There is no problem for any employer to have reports filed with workers compensation system within three business days, if accommodating injured workers is a priority of the employer. If it is not, it should be. The union asks the committee to leave the reporting time at three business days.

Change 12(2) creating a new Section 19.1(2), entitled "Offence and penalty." This section applies to Section 19.1(1), "Inducing worker not to make application." The union is surprised to see a fixed penalty and wording "to a fine not exceeding $5,000."

The union discussed this problem related to employers pursuing this unsavory practice in an effort to reduce their assessment ratings. This practice is a direct result of experience rating. It is interesting to see references to this practice in the proposal. The government recognizes that employers do resort to these disgusting practices as a method to reduce compensation costs, rather than addressing and investing in correcting the cause of the workplace injury.

If an employer is convicted of this offence repeatedly, that employer is continuing to violate Section 19.1(1) knowingly. The fine should be increased. The union would ask the committee to

readdress this issue and word the proposal to have the fine doubled for each conviction of the same employer. This would serve as a deterrent for employers who feel paying a $5,000 fine is cost effective in efforts to reduce the reporting of workplace injuries.

Change 15 affecting Section 22, entitled "Practices delaying worker's recovery." The union is concerned the use of the phrase "fails to mitigate the consequence of the accident" shifts the onus considerably onto the worker. Legal opinions warn that the application of this phrase could be applied to the detriment of injured workers with proposed Sections 27.1 and 41(1). The union suggests the phrase be removed.

Change 19(3) affecting Section 27(3), newly entitled "Compensation for repair, loss, breakage." The proposal completely alters the existing 27(3). It removes the phrase "occasioned by an accident arising out of, and in the course of, the employment of the worker whether or not there is any disablement to the worker." The proposal replaces this with: "may pay to a worker who suffers an injury resulting from an accident."

Many workers suffer workplace accidents that do not result in lost time. Clothing, hearing aids, glasses, dentures, contact lenses, artificial limbs, et cetera, could be damaged and need replacement. As these costs may be directly related to workplace accidents, the board should continue to accept responsibility.

The union asked the committee to reconsider this proposal and change it so compensation will be provided for repair, loss or breakage in all cases of an accident, whether or not injury is suffered as a result.

Change 20 adds a new Section, 27.1, entitled Limit on further claims. The union is concerned that this section adds fault to what is allegedly a no-fault system.

Some collective agreements contain provisions ensuring workers the right to return to work. The exercising of this clause would leave a worker unable to successfully claim compensation if injured a second time.

The union feels if specific categories of workers are to be identified and refused compensation based on previous injuries, the only option left to these workers is to seek satisfaction through the courts. The union also feels a specific exclusion will enhance the possibility of successful court action.

What would happen in the case of a worker who suffers a back injury? According to 27.1, the board could request the worker to discontinue employment in that particular class of employment. If the employer is unwilling, or unable, to accommodate the worker by providing work in an acceptable class of employment, the board will offer to provide vocational rehabilitation to enable the worker to become employable. No employment is guaranteed. Beyond this, if the worker is unable to find work, even after the board has gone through the vocational rehabilitation process, they must now seek approval from the board before accepting any future employment. To fail to do so may mean the worker has accepted employment that the board considers may aggravate or reinjure the previous injury, and thereby refuse to provide coverage.

* (2120)

This is not a proposal that provides any form of protection for injured workers. It is a form of blacklisting of injured workers. It provides employers with an easy out allowing them to dump workers once injured. Employers surely will not want to employ workers who have been refused further coverage from compensation. All employers will have to say is no, we cannot accommodate your restrictions with any other type of employment. When this happens the worker goes the route of vocational rehabilitation with no guarantee of employment and providing to the board that employment being sought will not reinjure or aggravate the previous injury.

The union would imagine that workers will have to be totally upfront with employers regarding their medical history. To do otherwise would provide employers with an opportunity to plead a defence of ignorance. Employers can state they were unaware of the workers restrictions and the fact that the injury meant the worker would no longer be covered by compensation. This would be done to avoid financial responsibility if the worker is injured.

This change will ensure employers have a constantly healthy work force and abandon injured workers to the unknown. If this government is serious about reform to protect the rights of workers once they suffer a work-related injury, guarantees will have to be provided. At a time when other jurisdictions such as Ontario, Quebec and New

Brunswick are writing in statutory rights for workers to return to work with the accident employer, it is outrageous that this government is not taking the same steps to protect workers in Manitoba.

A guarantee should be given to provide workers with vocational rehabilitation and work with the person until they are employed. A guarantee should be provided ensuring injured workers they will not suffer wage loss. A guarantee should be provided that employment after retraining will not last only as long as wage subsidies continue. A guarantee should be provided giving the workers a choice to return to the accident employer with their job modified to fit their restrictions.

The union would ask the committee to reconsider this proposal and provide the guarantees in the preceding paragraph. The union also asks the committee to insert the word "and" after each subclause. This will ensure the section will not be misinterpreted and applied separately by subclause.

Section 21 covers Sections 28 to 49. The union will address Section 38 addressing impairment awards. The union disagrees with this proposal, as would anyone who may be unfortunate enough to have to have this provision applied. This change will save a tremendous amount of money for the board. The proposals are being promoted as a change necessary to eliminate the unfunded liability and as a method to offer the employers of Manitoba a more competitive assessment rate.

With this change, it is easy to see who will carry the burden of eliminating the unfunded liability of $222 million and providing employers with a more competitive rate. Injured workers will pay these costs. In this case, it will be through significantly reduced amounts paid out for permanent disabilities.

Currently, when workers suffer disabilities, a formula is applied that measures the workers' loss of range of motion in degrees and then applies this measurement to the impairment ratings schedule to determine a percentage of disability. A financial figure is applied to the percentage of disability and the worker is paid a monthly permanent partial disability pension. The board has been encouraging workers to accept lump sum settlements in lieu of monthly pensions.

The changes being proposed in Section 38 would result in benefits paid out according to the following scale: 1 percent or greater, but less than 5 percent, $500; 5 percent or greater, but less than 10 percent, $1,000; 10 percent or greater, $1,000 plus $1,000 for each full 1 percent of impairment in excess of 10 percent. This figure is further reduced according to one's age over 45.

An example the union will provide will show the drastic reduction in monies paid to disabled workers with the introduction of this proposal. A postal worker suffered an injury that ultimately resulted in a 30 degree loss in range of motion. This loss was then applied to the board's impairment rating schedule and determined to be a disability of 1.9 percent.

The board then offered the worker a PPD pension of approximately $25 a month, or a lump sum settlement of approximately $3,500.

Under the proposed impairment award system, this worker would receive a pension and would be given $500. This worker would receive approximately $3,000 less for the same disability. This worker would receive 14 percent of the amount received under the PPD pension system.

Based on these figures, this worker would have received $1,824 for each full percentage of disability. With a disability of 4.9 percent, this worker would have received $9,000-plus dollars as a lump sum. With the present impairment award proposal the worker would receive $500 or 5.5 percent of the amount received with the lump-sum settlement.

Mr. Praznik, in promoting these proposals as detailed in a Winnipeg Sun article dated April 19, 1991, speaks glowingly about the changes affecting the lump sum payments and the proposed impairment award schedule. The minister specifically refers to one of his constituents who was receiving a pension and had it converted to a lump sum settlement. The minister states, the change will serve the workers better.

The union is not sure whether Mr. Praznik had the permission of his constituent to specifically refer to his particular situation when promoting this change. The union is quite sure that this particular constituent would not be in favour of this change if he knew the effects it would have on his lump sum settlement. This same constituent would likely be strongly opposed to the minister using his particular circumstances to propose a change that would

result in a loss of thousands of dollars from his lump sum settlement.

The constituent Mr. Praznik was speaking about was receiving a $50 per month PPD pension. This is twice as much as the worker discussed earlier. The pension of $50 a month is likely based on a percentage of disability below 5 percent. Based on the impairment awards schedule being proposed, Mr. Praznik's constituent would receive $500. Once a worker is permanently disabled, they are at a disadvantage. Opportunities for advancements, promotions and new jobs are reduced.

Proposal 27(1) applies another barrier that disabled workers must contend with. A disabled worker must suffer and live with restrictions that affect their lifestyles, social activities, family relations, to name a few. All of these issues must be taken into consideration and an element of fairness has to be maintained. Once again the possibilities of tort action surface. The reduction of impairment awards based on the age of a worker could be the subject of a challenge under the Charter of Rights and Freedoms based on age discrimination.

Disabled workers do not have the right to tort action other than the possibilities the legislation itself is creating. The union is not suggesting that they should. The union would ask the committee to reject this proposal and maintain the current system using the American Medical Association guides to the evaluation of impairment as a schedule for determining PPD pension and lump sum settlements.

Change 27(7) adds a new section 60.8(7) entitled, costs in frivolous appeals. This section levies a fine on workers and employers up to $250 for what is determined to be a frivolous appeal. Needless to say, employers are in a better financial position to pay fines than workers. Employers are also more familiar with the compensation system than workers, who may file a claim once or twice in their entire working life. The union objects to this proposal and any other proposal that fines workers. If the committee refuses to withdraw this change, the fine system should be increased considerably for employers, perhaps 10 times with a doubling of the amount for each subsequent conviction.

Change 30(2) introduces Section 67(4.1) entitled, board may order worker to pay costs. This cost is another form of worker fine up to $250. This fine applies to the determination that a request for a medical review panel was frivolous. The union cannot understand why this change has been proposed. The chairperson of the medical review panel, Dr. Murphy, conducted a seminar at the MFL occupational health centre. At this seminar, which took place May 28 of this year, Dr. Murphy was advised of this proposal and asked how many requests for medical review panels he would consider frivolous. He replied, out of approximately 40 panels in the last year, none would be considered frivolous.

Why was this change proposed? Did the steering committee or the government bother to research this issue? Was the chairperson of the medical review panel asked for input? The union would ask the committee to reject this proposal because it is totally without merit.

* (2130)

Change 44 adds a new Section 84.1(1) entitled, grant to government for expenses. This change removes substantial language contained in the current Section 81(1)(g) regarding the payment of salaries, costs and expenses of the worker advisors and staff. The present section provides for a yearly assessment to be levied and collected from employers to be placed in the accident fund to cover these particular costs among others.

The proposal indicates the board will make a grant from the accident fund to the government of Manitoba, as determined by the Lieutenant Governor in Council, to assist in defraying the reasonable expenses properly incurred by the government of Manitoba in the administration of The Workplace Safety and Health Act and the reasonable expenses of the worker advisors and employees appointed under subsection 108(1).

The union is concerned that this proposal weakens the funding and security of the worker advisor office and would ask the committee to reject the change and implement the status quo. The use of the phrase, will make a grant from the accident fund, with no provisions to recover this money from employers and replenish the fund, causes concern. The phrase, to assist in defraying reasonable expenses, in the proposal raises more questions. The services provided by the worker advisors must be maintained. Funding must be clearly available and maintained. The legislation should recognize a growth in caseloads and provide for increased

funding to the worker advisors when additional staff are required.

Change 59 introduces Section 109.5(1) to 109.5(5), specifically related to the board delegating to an outside agency. This proposal is a contracting out proposal. It allows the board to contract out adjudicative services and more. The union objects to this change. The union is satisfied with the job the present staff at the board has been doing in providing these services and wants to see this continue. If there is a need for additional services to be provided, perhaps additional staff should be employed.

The union is concerned with the issue of confidentiality and conflict of interest regarding the farming out of cases to outside providers. The proposal is so wide open, the board could feasibly delegate Canada Post to act as its agent in providing adjudicated services. This thought alone should be enough to prompt an immediate rejection from the committee.

In conclusion, the union has addressed 25 issues in this brief. The consultation process, as brief as it was, was anything but meaningful. The union feels the bill has addressed the concerns of the employers of Manitoba to the extreme. This is evident with the number of major changes the government has proposed that were identical to those contained in the employer's task force document. The union is of the opinion that the proposed changes will open the door to tort action on many fronts. Time will tell if this government will recognize the injustices being proposed and deal with the concerns raised at these committee hearings. If the government does not stop and listen to the concerns of working people, the process of legislative change will continue. Progressive changes that are sensitive to the needs of injured and disabled workers will be advanced at another time.

I thank the committee for your time.

Mr. Chairman: Thank you, Mr. Sample. Are there any questions?

Mr. Ashton: Mr. Chairperson, I certainly commend the presenter of CUPW for a very comprehensive brief. I just want to ask one very straightforward question, because I think the brief deals with a lot of the type of concerns we have been hearing from employee groups at these hearings. I just want to get a clear view of your view of the bill.

If the minister was to respond on one or two of these items, bring in a few minor amendments, would you consider that to be satisfactory, or do you feel without major changes that this bill should either be tabled or dropped?

Mr. Sample: Speaking on behalf of the Canadian Union of Postal Workers, we feel that this bill contains a practical rewrite of the entire act, and we feel substantial changes have to be made. If substantial changes are not made, then it should be scrapped.

Mr. Ashton: Thank you.

Mr. Paul Edwards (St. James): Thank you very much, Mr. Sample. This is very comprehensive and obviously took some time and thought to put together. It was very helpful to the committee members and will be studied, at least by myself and I am sure others, in more detail as these hearings go on before we get to clause by clause.

I had a couple of questions, which I noted as you were reading through it, which I wanted to ask you. Specifically, you go through the new impairment schedule and your examples are interesting and, I think, illustrative. I just wonder if you can give us some advice. I do not have in front of me here the American system which you cite which is used presently to judge impairment rates. Does it or does it not include as one of the factors, the remaining years available to work in the normal course?

Mr. Sample: I really cannot answer that question. No, I cannot answer that question. I have been led to believe that that particular guide is far superior than the one that we presently have. I know, speaking to colleagues of ours in Alberta, the compensation board in Alberta uses that guide in the course of administrating their compensation, and they have suggested that is something that we should advance here in Manitoba because it is superior to what we have.

Mr. Edwards: I am just looking at page 29 of your brief and you do say that the reduction of impairment awards based on the age of a worker, and that is the 2 percent for every year over 45 with a maximum of 40 percent, could be the subject of a challenge under the Charter of Rights and Freedoms based on age discrimination. You then go on to indicate that disabled workers do not have the right to tort action.

In my experience, in tort action, if it was an impairment and someone was successful in

showing that the defendant had liability, that would be considered in terms of impairment, would be the remaining years available to work and how the impairment affected those years. In other words, if you suffer an impairment to your ability to work at age 20, it is worth more than if you suffer that injury at age 45 or 50 in terms of your wage loss. That just makes sense. You are not suggesting that some prorating based on age is inappropriate, are you? Or are you saying that there should be absolutely no decrease based on age?

Mr. Sample: A worker at 44 has the same expenses as a worker at 46, and the arguments about the charter question are arguments that are being raised at this present date with the discussions taking place with the federal workers compensation act also.

Mr. Edwards: No doubt. In fact, it probably has greater costs at age 45 than 25. If we are talking about a monthly pension then, yes, it should be obviously the same, but what we are talking about here is lump-sum payments. It would be my reading, at least of present tort which you refer to, that age is a factor if you are considering a lump sum payment, I mean, if a lump sum for 20 years and a lump sum for 40 years are different amounts of money. That is my only point. I do not know that we need to pursue that further.

The other question I had—

Mr. Sample: Just on that one issue. The board is the one that is promoting lump sum settlements. I mean as far as labour is concerned, what we want to see is workers receive a pension.

* (2140)

Mr. Edwards: I understand that overriding point, so I am only asking for clarification on that smaller issue.

You also make the comment, and you refer to this in a number of cases, that you believe that the proposed changes will open the door to tort action on many fronts. On what do you base that conclusion?

Mr. Sample: On the basis that if workers are just—the argument that was raised on the dominant factor. If a worker is injured and you go through a study of the cause of that injury, and it is determined that, yes, the workplace was a 45 percent causing factor, but because of the language in the legislation, it means that worker does not qualify for compensation, what does that mean for that worker? He has proved the fact that the work was a 45 percent causing factor. It was a factor in the injury. He does not have the ability, or she does not have the ability to seek compensation through workers compensation. I think the only avenue left to that individual is to go through the courts. I think you would have to admit that the number of court actions launched in regard to workplace accidents has been increasing in the last couple of years, starting with the Piercey case. We are seeing—they are being reported more and more in the law journals.

Mr. Edwards: That is an interesting point. Perhaps later on the minister will want to address that, because I think it is an interesting one. It has not been raised, at least as I have heard, yet during these hearings. I think you for raising that with us.

You have suggested, I think your wording was, if it is—and I cannot recall exactly—not dominant purpose but primary purpose or—

Mr. Sample: A contributing factor.

Mr. Edwards: A contributing factor. What limits do you place on that, if any, for full compensation from workers compensation?

Mr. Sample: Recently there was a decision that came from the board where the proportional aspect was applied. A worker was injured, and it was determined that the injury was partially the responsibility of the workplace. Although there was not a very scientific approach taken to measuring how much, what was determined was there were five factors included. What the board did was just split the amount in five, and the worker did receive some compensation, although likely not what they would had expected or something that we would consider satisfactory; but right now, with this change, that worker would receive nothing.

Mr. Edwards: Are you aware of workers who would prefer a monthly pension as opposed to lump sum? Is it universally accepted, in your view, that workers would prefer a lump sum as opposed to a monthly payment, even if it is $50 a month or whatever the rate turns out to be?

Mr. Sample: I think it just depends on who the salesman is.

Mr. Edwards: Thank you again, Mr. Sample. We appreciate and acknowledge the work that has gone into this brief.

Mr. Praznik: Thank you, Mr. Sample, for your attendance here tonight.

I take it, very clearly, the position of your union is opposed to a dual award system and a lump sum payment. I just wondered if you were aware that the King committee recommendation some years ago was for a dual award system and for lump sum payments in impairment loss.

Mr. Sample: We are opposed to the impairment award proposal that is being presented in this bill.

Mr. Chairman: Thank you, Mr. Sample, for your presentation.

We will move on then to No. 7, Mr. Garth Whyte. Would you come forward, please? Mr. Whyte, have you a presentation to distribute?

Mr. Garth Whyte (Canadian Federation of Independent Business): Yes, I do.

Mr. Chairman: I ask staff to distribute.

Would you proceed with your presentation while the distribution is being made?

Mr. Whyte: Mr. Chairperson, the Canadian Federation of Independent Business appreciates the opportunity to present our views concerning The Workers Compensation Amendment and Consequential Amendments Act. We are a nonpartisan, nonprofit organization which promotes the interests of independently owned enterprises. We represent 88,000 small- and medium-sized businesses across Canada in all major industries.

After lengthy and detailed consultation with WCB officials and the government, CFIB supports Bill 59. We believe it is fair to our employees and it is fiscally responsible. It moves the Manitoba workers compensation system closer to the original principles of workers compensation and reaffirms that it is an insurance program not a social program.

As Manitoba director for the Canadian Federation of Independent Business, I am making this presentation on behalf of the CFIB. However, I am also the chairman of the Manitoba Employers' Task Force on Workers Compensation, and I can say quite confidently that the 24 members of the Employers' Task Force on Workers Compensation also support this bill. Many of our members will be presenting their specific association's concerns to you today. However, I should point out that there are many other associations, approximately 15, that will not be making a presentation, who strongly support this bill.

Before I discuss the specific details, it is important to discuss the events that led up to this bill. Since 1986, year after year, one of the most significant problems to running their business identified by our members has been workers compensation. In 1987, 1988 and 1989 approximately 50 percent of our members identified workers compensation as a problem. In 1991 the number of members identifying WCB as a problem have decreased. However, approximately one-third of our members still identify WCB as a problem.

(Mrs. Shirley Render, Acting Chairman, in the Chair)

Even more distressing is the fact that CFIB's recent survey shows that WCB premiums were ranked as Manitoba's number one tax concern, ahead of municipal property taxes, personal income taxes and corporate taxes. WCB premiums were identified as the tax which was most harmful to businesses. This is disconcerting especially during these tough times with record bankruptcy rates that are happening here in Manitoba and across the country.

All committee members are aware of CFIB's recent report called Taxing Ourselves to Death: The Small Business Tax Burden in Manitoba. It discusses the issue of competitiveness of small firms in Manitoba. It shows that before-profit taxes, such as local municipal taxes and payroll taxes, are higher than the total tax burden in many neighbouring states and twice as high as the tax burden in South Dakota.

High WCB premiums also hurt the competitiveness of Manitoba firms compared with firms from other provinces. Workers compensation premiums have put our firms at a disadvantage, because we have the highest workers compensation premiums in western Canada and one of the highest workers compensation premiums in Canada.

Now, these high rates led to the formation of the Manitoba Employers' Task Force on Workers Compensation in the fall of 1985. The task force was formed to co-ordinate the efforts and the activities of a significant cross section of Manitoba employers associations to address the 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 the common and high

level of concern that Manitoba employers have with regard to the workers compensation program in this province. There are 24 employers associations with a combined membership of over 10,000 employers represented by the task force. Over 300,000 people are employed by these employers.

Our membership consists of a wide variety of employer associations embracing most types of employers covered by the workers compensation program. Not only are we a major user of the workers compensation system, but we are the WCB's only stake shareholder since employers pay 100 percent of the costs. As employers, we want to ensure that our employees receive proper compensation for work-related injuries. At the same time, we want to avoid unwarranted costs that should hinder the survival and growth of Manitoba firms and in turn jeopardize job security and job creation in Manitoba.

The task force's first presentation was to the Legislative Review Committee, which had been appointed by the government of Manitoba in September 1985 to review Manitoba's workers compensation program.

* (2150)

The recommendations made to the Legislative Review Committee were the result of extensive consultation with employers throughout the province, and the task force members found that employers agree with and support the basic principles of a workers compensation program. However, they were very concerned about the exceptionally large increases in workers compensation costs that began in 1980 and the tendency of the program to move in the direction of becoming a welfare safety net, moving away from the original tenet of workers compensation being a basic insurance program which compensates employee accidents arising out of employment.

Specifically, there are three issues which the task force has consistently identified as their main concerns: 1) inadequately high compensation premiums; 2) the lack of financial accountability of the board; and 3) the board's loose adherence to Workers Compensation principles.

Improving the workers compensation system has been one of the top priorities of the CFIB and the Employers' Task Force. Over the past six years, we have spent a great deal of time and resources on this issue. We have made presentations to all three political parties, to three governments, three different WCB administrations and, throughout the process, we have stridently championed the same goals and stayed away from a political agenda. We have consistently stressed that the WCB should be improved for the good of employees and employers, not to benefit employer associations or labour organizations.

Some would suggest that it is inconsistent to argue for fair rates and still have a WCB that will meet the needs of injured employees. Others will argue that workers compensation benefits to injured employees in Manitoba have decreased over the years. Well, the facts show the contrary is true. Last year, at the request of the Employers' Task Force, the WCB completed a study of the Workers Compensation claims costs for 1980-88. The study identified that the board's annual operating costs increased from $32 million in 1980 to $121 million in 1988, resulting in cumulative increased costs to $387 million.

When compared to other provincial Workers Compensation Boards, such as, Alberta, Ontario and Quebec, the Manitoba board had the fastest growing rates of expenditure increases in Canada. Even after discounting inflation, the combined average increase in expenditures amounted to an astounding 11.7 percent per year. This significant increase in costs resulted in average Workers Compensation rate increases of 20 percent per year for four years in a row and an unfunded liability that was doubling every two years until it reached $232 million in 1988.

Now the study has confirmed a long-standing contention of the task force members that the rapidly escalating compensation costs were not due to the increased number of accidents. The severity and number of accidents were relatively stable during the study period and contributed to less than 1 percent of the cumulative increase in temporary time loss compensation expenditures and less than 1 percent of the increases in pension costs. The study showed that the significant increases in WCB expenditures and the WCB's unfunded liability up to 1988 were caused by external costs, poor internal management and the board's loose adherence to Workers Compensation principles.

CFIB's and the Manitoba Employers' Task Force's goals are consistent with the goals of this bill, to provide a fair and reasonable benefit program to employees, to address the issue of the unfunded

liability and to provide the competitive assessment rates. These amendments are financially viable and provide fair benefits to injured employees and surviving spouses. However, there are some amendments in this bill which labour groups will not like, and there are some amendments which employer groups will not like. For example, some employers will be upset with the annual indexing of benefits, increased maximum earnings up to $45,500 and increased maximum impairment awards up to $91,000, which is the highest in Canada. However, CFIB believes that these changes are fair.

This act maintains a fragile balance that should not be pushed to one side or the other. The critical sections pertaining to the benefits package should not be changed. Employers and the Workers Compensation Board should not be responsible for non-work-related injuries. CFIB strongly recommends that this committee should not tamper with this bill by changing or introducing new amendments, especially in areas such as occupational disease, pre-existing conditions and the firefighters presumption clause.

Now in order for us to be consistent with our statement that changes should not be made to the benefit section of the bill, we are only suggesting two additions which will impact on the board's administrative procedures. I have others, but we are restricting it to two. The following are two amendments which the CFIB proposes for Bill 59.

First, the employer should have the right to request for a medical review panel. CFIB strongly recommends that employers be given the right, similar to employees under Section 67(4) of the act, to be able to request a medical review panel when the employer feels there is a conflict in medical evidence. Currently, this right is not available to employers. The employer will be able to access medical reports, but is powerless to call for a medical review panel, even though they may have a medical opinion that differs from that held by the Workers Compensation Board. CFIB believes that employers are entitled to the same rights as those extended to workers. Therefore, amendment to Section 67(4) should be made to provide employers, along with workers, the right to request a medical review panel.

Secondly, public consultation—Section 68(1) Regulations of Board of Directors, which you can find on page 37 and 38 of the bill in Section 31, states that the Workers Compensation Board of Directors have the power to make regulations respecting any matter it considers necessary or advisable to carry out the intent and purposes of this act. This is similar to many other acts. However, acts such as The Business Practices Act and the WRAP Act have included an additional section which ensures that there is public consultation prior to the legal adoption of any new regulation. CFIB strongly recommends that the following section, which I took from The Business Practices Act, be inserted into Bill 59.

That section says: Public consultation—"Except in circumstances that the minister considers to be of an urgent nature, the minister shall provide an opportunity for public consultation and seek the advice and recommendations of the public with respect to any regulation proposed to be made under subsection (1), before the regulation is made."

Now this section would ensure that both employer and employee representatives would have the opportunity to provide input into any new regulation that would impact on them. All labour and employer organizations would support this addition. It allows us to be able to comment on any new regulations that are put forward by the board.

In summary, CFIB is only recommending the above two administrative recommendations because we believe that major changes to this proposed bill are not necessary. All three political parties have played a significant role to improve the effectiveness and efficiency of the Workers Compensation Board. Over the past four years, we have seen significant improvements which have benefited injured employees and employers. However, further improvements are necessary, and CFIB believes that Bill 59 will bring Manitoba one step further to having one of the best workers compensation systems in Canada.

The Acting Chairman (Mrs. Render): Thank you, Mr. Whyte.

Mr. Edwards: Thank you, Mr. Whyte, for your presentation. I do acknowledge that you certainly visited myself. I assume you have visited the other parties as well. You say that in your brief and given us the views of your organization.

I want to ask you a couple of questions, turning to page 7 of your brief, your recommendations. You indicate that you would like a right for the employer to not just access medical reports, which of course

is in the bill, but to call for a medical review panel which they cannot do even though they may have a medical opinion that differs from that held by the Workers Compensation Board. Where would they get that medical opinion? Are you suggesting that they would have the right to send an employee to a doctor of their choice?

* (2200)

Mr. Whyte: First off, why would they want the medical information? They would like it, first off, to prepare to go into an appeal and be prepared, but secondly, they may disagree with some of the findings, and they may want to go to a medical review panel to contest it.

Mr. Edwards: So you are only talking about employers who get a hold of the medical reports and subsequently feel that they should be pursued beyond what the board wants to do. Is that right?

Mr. Whyte: Yes.

Mr. Edwards: Is there a problem with employers thinking that the board is being too lenient in accepting cases where there is perhaps conflicting medical evidence? Is that a problem?

Mr. Whyte: There are instances where, if the employer had have had access to a medical review panel, they could have improved the circumstances that not only the board would have overturned the decision but would have improved the circumstances for the employer and the employee.

Mr. Edwards: Page 8, you indicate that, with respect to your second recommendation, public consultation, all labour and employer organizations will support this edition. I accept that you, in this, speak for employer organizations. Do you purport to speak for labour organizations on this amendment?

Mr. Whyte: No, I cannot speak on behalf of the labour organizations. I can say, though, on The Business Practices Act, there was a myriad of different groups. There were employer groups, the Consumers' Association, senior citizen association, and I would be surprised, and perhaps I am wrong, that labour organizations will not want public consultation on regulations. I made an assumption, I agree, but if you are assuming that they will not, I disagree. I think that they would.

Mr. Edwards: I am not assuming that, and I just wanted to know if you had canvassed them or if there was anything to substantiate that. The only other comment I have is, I do—and there is some explanation later on about how your organization feels about Workers Compensation. You mention on many occasions the principles and the tenets of Workers Compensation. It seems to be sort of incapsulated at page 1 of your report, where you say that this moves the Manitoba Workers Compensation system closer to the original principles of workers compensation and reaffirms that it is an insurance program, not a social program. I am not clear on the distinction myself. For instance, many would suggest that the unemployment insurance system is a social program. Many would suggest—and a social program—that medicare is both. Many would suggest that welfare itself is both. I am not clear on the distinction. Can you enlighten us?

Mr. Whyte: I will try. Workers Compensation was put in place so that workers would be compensated for work-related injuries, not non-work-related injuries. In other jurisdictions, workers have been compensated for non-work-related injuries. Now if it is compensation for work-related injuries, it is like an insurance program, because it is a program that employers pay to protect their employees when they are injured on the job. In other jurisdictions, they have moved to more of a broader definition of what workers comp should be. When someone is injured, you feel they should be compensated, but the question is, who should pay for that compensation? In Ontario, for example, a person who had a perspiration problem—it was in The Globe and Mail, had a perspiration problem, which we all have right now at this moment—again, I should not speak on behalf of other groups. What happened was the person's fellow employees were giving him some grief about his perspiration problem, and he had a stress-related injury which was deemed compensable by Ontario's Workers Compensation board.

They have a $9 billion deficit, and one of the reasons is because they are going beyond the scope of Workers Compensation to compensate people for work-related injuries. I think when you look at it and view it as a program to protect employees as an insurance program during actions that happen in the workplace because of work versus a universal 24-hour coverage which is more of a social-type program, which means then that if it is a social program, if that is what is determined, then

everybody should pay for it, not just one particular sector.

Mr. Edwards: I take it that your definition, what you mean by social is anything which would deviate from compensating for a work-related injury. In that respect, do your members suggest that the board was moving in Manitoba beyond compensating for work-related injuries? Is that the allegation? If so, do you have any specifics? Are there cases you can tell, because I am not aware of them?

Mr. Whyte: I have several cases and, again, I suggest you read the study of the costs and claims for this period, and I will make sure that you get a copy, which says in detail you would assume that costs would increase because of increases. If it was an insurance-type program, it would increase because of basic increase in administrative cost, a little bit of increase for inflation, and also an increase because of an increase in accidents or severity of accidents. This report shows that costs, after discounting inflation, increased at 11.7 percent per year and, at the same time, accidents remained the same. You have to ask yourself why. We did ask why, and we found examples.

Mr. Edwards: You have touched on it. One of the reasons I think that may have been is because—let us just throw this out to you—psychological psychiatric illnesses, stress related, can be very real and can certainly disable individuals but, traditionally, private insurance companies and, I think, in the courts there has been a reluctance to acknowledge them as being debilitating because they are not like losing an arm or losing a leg. They are not something tangible that you can say, yes, absolutely, it happened. It is a little more ephemeral than that, and I am concerned that these amendments sort of pull us back. In other words, they are saying we are going to go back to looking for that concrete physical proof of injury, and I see that in terms of the changes this bill makes on stress-related injuries.

Do you not acknowledge that we should be progressive and we should keep our mind open to stress-related injuries which, in a very real sense, can debilitate one from performing one's occupation?

Mr. Whyte: I agree we should be progressive. I believe the bill is progressive. I do believe though that employers and employees have to work out compensation packages among themselves to cover those things, and I believe that there are options in that where employees and employers can jointly look at options and there are options for 24-hour coverage. The issue that we have though is, should one specific sector, my members, who for a majority have less than five employees, carry the weight of that social responsibility? My answer is no.

Mr. Edwards: You have used it twice now, 24-hour coverage. If someone is injured, and they are injured 24 hours a day, is there another definition? What do you mean by 24-hour coverage?

Mr. Whyte: Twenty-four hour coverage means that if you are not at the workplace and you are at home and you have injured yourself, you still would be covered. Twenty-four hour coverage means that if you are waking up to go to work, and you are not at work yet, but you have injured yourself, you should not be covered under workers comp, but you should be covered. In other words, you are covered all the time.

Mr. Edwards: You and I may part ways on this, but I am inclined to think that at this point in time we should probably be broadening rather than limiting our compensation for stress-related injuries simply because, in my experience in dealing with some of these cases, doctors admit that they are learning more every day. These are not areas that are set in stone, and I am not sure that we should at this point be moving backwards rather than forward in recognizing some injuries which may indeed be psychological, mental, from the workplace. You are not suggesting that we rule out all psychological illnesses, are you or are you? I am not clear.

Mr. Whyte: What I believe is the bill should be crystal clear to define what it will cover. Of course, there are psychological and stressful relationships. The point that no one can do is determine, was it work related? Was it family related? Was it because the person was overweight? Are there other reasons that have caused these psychological problems? You are right, it is a new area, and I agree that we should work to try to find out ways to deal with it.

* (2210)

At the same time, we are always talking about stress as a negative factor. There are a lot of studies that talk about stress in a positive sense as well, and stress can be positive. I think what we have to look at is workers comp should not be the

soft spot, which it has been in many jurisdictions, because other people do not want to pick up the mantle to deal with it, and they have been using workers comp. Again, our members and a lot of employers are paying 100 percent of the cost, and they are not protected.

The Acting Chairman (Mrs. Render): Are there any—Mr. Edwards, are you just hitting mosquitoes? -(interjection)- Okay. Are there any other questions?

Mr. Praznik: I just want to take this opportunity to thank Mr. Whyte, and members of the Employers' Task Force, I know, have been working on this for a very, very long time and have always been more than prepared to participate in discussions, et cetera. I would like to thank him for his presentation tonight.

The Acting Chairman (Mrs. Render): Thank you, Mr. Whyte.

Mr. Whyte: Thank you.

The Acting Chairman (Mrs. Render): I would like to call on No. 8, Mr. George Croft. Do you have a presentation to distribute?

Mr. George Croft (Canadian National Railway): Yes I do, Madam Acting Chairperson.

The Acting Chairman (Mrs. Render): Okay, if you would like to start.

Mr. Croft: Madam Acting Chairperson, Mr. Minister, ladies and gentlemen of the committee, my name is George Croft, and I am appearing this evening on behalf of Canadian National Railway company.

Canadian National is pleased that the government of Manitoba has undertaken a review of The Workers Compensation Act and program. As our firm, as a self-insurer, pays the full cost of the program for CN employees injured at work, we have a definite stake in the outcome of this committee's deliberations.

Our firm feels the committee must recognize the need to consider program costs, as well as the requirements of injured workers in your deliberations and recommendations. We want to ensure that our employees receive reasonable, correct and expeditious compensation payments for work-related injuries. However, we want to avoid unwarranted workers compensation costs. Every dollar which unduly increases the cost of doing business in Manitoba erodes this province's ability to compete both nationally and in the world marketplace.

CN is concerned for the welfare of its employees and maintains a safety and loss control department to monitor health concerns and safety in the workplace, assists in training both management and workers in safe practices and procedures and promotes safety in all our workplaces.

Canadian National also has an active rehabilitation committee comprised jointly of union and management personnel, operating under the direction of our human resources department. This committee secures suitable placement within our firm for employees who cannot perform their normal duties.

We fully support the basic principles of workers compensation. We have had significant concerns with the system in Manitoba, with particular reference to the board's financial accountability, board structure, the definition of an accident, the method of calculation of compensation benefits and the current permanent disability pension system. We have felt there was insufficient emphasis on practical vocational rehabilitation in the past.

We strongly believe that deposit employer status should be retained to ensure that our firm pays its fair share under the Manitoba legislation. We feel the inequities with respect to the appeal process wherein employers are denied full access to all evidence relative to an issue in dispute, including medical evidence on the board's file, and having no opportunity to request medical review panels, must be corrected. These were some of the primary issues addressed in our brief to the Legislative Review Committee on 11 June 1986.

We compliment the government, minister, Legislative Review Committee, steering committee chaired by Mr. Lane, which drafted Bill 59, for their excellent work and dedication which, in our view, has produced a bill which, when passed with some modifications, will greatly improve the compensation system in Manitoba for the benefit of injured workers, their employers and the province generally.

Canadian National is a member of the Winnipeg Chamber of Commerce and the Manitoba Employers' Task Force on Workers Compensation. We share their recommendations and generally support Bill 59.

Mr. Justice G. A. McGillivray, in the report of the royal commission in the matter of The Workmen's Compensation Act, Ontario, 1967, quoted Mr. Justice W. D. Roach, as follows: "This act should be considered for what it is and was originally intended to be, namely, a scheme by which compensation is provided in respect of injuries to workers in industry. It is not a system for dispensing charity. It is not unemployment insurance. It is not social legislation for the purpose of elevating the standard of one group in society at the expense of another.

"If the true purposes and objective of the act are adhered to, justice will be done as between industry and labour. If, on the other hand, those purposes are lost sight of, or this act from time to time be regarded as a convenient place into which to put legislation which in substance is social and not compensatory, it may become very much distorted. In the result, labour will continue to be relieved from unjust burdens from which it suffered too long under the common law, but an injustice will be done to industry by placing on its shoulders burdens which should be borne by society generally."

The amendments CN supports, in particular, are:

1(1.1)—Restriction on definition of "accident". We strongly support the exclusion of personnel action, i.e. promotion, transfer, demotion, layoff and termination.

We support 4(4)—Cause of occupational disease. The board may determine an injury is as a result of an accident arising out of and in the course of the employment only where in its opinion the employment is the dominant cause of the occupational disease.

We support the two-tiered award system. We feel it will be equitable to injured workers and encourage rehabilitation and an early return to work.

We fully support the change in the method of calculation to 90 percent of net earnings, rather than the current 75 percent of gross earnings. We are in agreement with Section 40 dealing with Loss of Earning Capacity as it will ensure workers are treated fairly, but not overcompensated for injuries.

41(1), Collateral Benefits, is an excellent improvement. This integration will eliminate stacking of benefits.

We are in full agreement with 101(1.2), providing the employer access to documents in the board's possession which the board considers relevant to an issue under reconsideration or appeal. We have, however, Madam Acting Chairperson, certain concerns. Canadian National feels this committee should review proposed changes to ensure equitable legislation for all stakeholders. Our particular concerns are as follows:

* (2220)

Amendment 21 deletes Sections 28 through 49. This, in our view, has the unfortunate effect of deleting Sections 42(1) and 42(2) of the current act dealing with compensation for pre-existing or underlying conditions. We feel strongly these sections should be retained or similar sections inserted. We do not feel, in other words, that compensation is really intended to deal with the results of congenital deformities or pre-existing, non-work-related conditions or disabilities, but rather disabilities or other disablement arising directly out of the employment.

We are concerned with Section 68(1). The board of directors may make regulations. Echoing Mr. Whyte on behalf of the CFIB, we feel that inasmuch as the regulations enunciated under subsections (a) to (s) affect all stakeholders, there must be a requirement for public consultation to secure input from both employers and labour.

We respectfully suggest that wording be added to require public consultation with respect to proposed regulations in all instances other than those deemed to be of an emergency nature by the board of directors. This procedure would provide both the board of directors and stakeholders with sufficient opportunity to properly and fully consider all ramifications of proposed new regulations.

Our concern extends to Section 81(1), Annual assessment for accident fund. Canadian National, as a self-insured employer, keeps funds on deposit with the board to cover the cost of compensation, medical aid, pensions and administration charges for its workers. We note, however, that 81(1) proposes to create and maintain an accident fund by annually assessing and collecting from employers from each class, assessments based upon payroll: "(b) to provide a stabilization fund to meet the costs arising from extraordinary events that would otherwise unfairly burden the employers in a class, sub-class, group or sub-group in the year of the events; (c) to provide a fund to meet the part of the cost of claims of workers that, in the opinion of the board, results from (i) pre-existing or

underlying conditions; (ii) an occupational disease where the exposure to the probable cause of the injury occurs outside Manitoba; (iii) a loss of earnings from an employment other than that of a worker's employer at the time of the accident; (iv) an increase in benefits under subsection 40(5), 45(3) or 45(4), or (v) such other circumstances as the board determines would unfairly burden a particular class, sub-class, group or sub-group;".

CN believes these amendments will provide benefits not related to the specific employer or class of employers assigned to said fund. We reiterate that our monies on deposit with the board fully pay for benefits for our injured workers. We feel, in particular, that payment for an occupational disease where the exposure was outside Manitoba would place an unfair burden upon Manitoba employers.

We have a concern with Section 67, medical review panel. Manitoba employers, as we have heard from Mr. Whyte and others, have no right to request a medical review panel whereas injured workers have, under Section 67(4) of the current act. We feel this is a denial of natural justice, which is long overdue for remedy.

Medical examinations, there is no provision in the current act for an employer, for justifiable reasons, to request an examination by a physician of the employer's choice. We feel Bill 59 should include sections similar to Section 21 of the Ontario act, which reads as follows:

21(1) Subject to subsection (2), where an employer so requires, a worker who has made a claim for compensation or to whom compensation is payable under this act shall submit to a medical examination by a medical practitioner selected, and paid for by the employer. 21(2) Where a worker objects to the requirement of the employer to submit to a medical examination or to the nature and extent of the medical examination being conducted by a medical practitioner the worker or the employer may, within a period of fourteen days of the objection having been made, apply to the Appeals Tribunal to hear and determine the matter and the Appeals Tribunal may set aside the requirement or order the worker to submit to and undergo a medical examination by a medical practitioner or make such further or other order as may be just.

We feel such an addition would reduce doctor shopping and ensure as objective medical evidence as possible is available to the board for the adjudication of claims. The foregoing would be consistent with civil rules of procedure, wherein an independent medical examination is required in personal injury actions. This procedure alleviates problems with sympathetic medical reports and incorrect diagnoses.

We have a concern relative to 101(1.4), Notice of request for access. Prior to granting the employer or their agent access to documents under subsection (1.2), the board is required to notify the worker of the documents it feels are relevant and permit written objections to be made within a period of time to be determined by the board and, after considering the objections, the board may refuse access to the documents with or without conditions.

CN feels this amendment, if enacted, will prove to be time consuming and costly, as is the case currently in Ontario. Section 1.1(1.2) states that the board shall determine relevancy prior to releasing any medical information. We believe this in itself provides the necessary protection for injured workers while avoiding excessive delays and costs.

In conclusion, Canadian National believes that Bill 59, with the foregoing modifications, will greatly enhance the workers compensation system in Manitoba for the benefit of injured workers, employees and the population generally. The changes will ensure greater accountability by the Workers Compensation Board for the benefit of all stakeholders. It is important to ensure that the provincial Workers Compensation system remains one which fairly and expeditiously compensates injured workers for employment-related injuries or disease but is not extended to address general social concerns which are not employment related.

We wish to thank and congratulate the government, the minister, the Legislative Review Committee, compensation boards during committee and indeed yourself, Madam Acting Chairperson, and members of the committee for the fine effort toward improving Workers Compensation in Manitoba.

The Acting Chairman (Mrs. Render): Thank you, Mr. Croft. Are there any questions?

Mr. Praznik: Yes, I just wanted to thank the presenter for his presentation and coming out this evening. We appreciate it.

The Acting Chairman (Mrs. Render): I would now like to call No. 9, Mr. Robert Ross; No. 10, Mr. Bruno Zimmer. Mr. Zimmer, do you have presentations?

Mr. Bruno Zimmer (United Food & Commercial Workers, Local 832): Yes, I do.

The Acting Chairman (Mrs. Render): Okay. Would you like to proceed, please.

Mr. Zimmer: Madam Acting Chairperson and members of the committee, the presenter is appearing before you today as a citizen who is fortunate enough of never having to be on workers compensation—I guess that is fortunate after having spent some 20 years in the meat packing industry—and being subjected to the utter frustrations and hardship that so many workers experience today in dealing with the Workers Compensation Board of Manitoba.

United Food and Commercial Workers, Local 832, represents approximately 12,000 workers in the province of Manitoba in various industries. We have been representing workers before the compensation board for a number of years, and we can tell you that the job is not getting any easier. In fact, it is getting more difficult almost by the month, trying to get just treatment for injured workers in a system that becomes more and more adversarial by the day. We do not believe that it was ever the intent of workers compensation when it was first introduced. We believe that the role of Workers Compensation Boards should be to assist workers and not become agents for the employers.

Bill 59 is an employers' bill and will only further the role of the Workers Compensation Board as the agent for the employer in this province, having only the interests of the employers in the name of fiscal responsibility in mind, and God help the worker who has not a union or someone knowledgeable of the system to represent him or her before the board.

The only agency available to workers besides his or her union is the Workers Advisor office, which is severely understaffed. Anyone seeking assistance can expect to wait up to six months before even an advisor is assigned to his or her case. Maybe perhaps the money that is being saved by Bill 59 could be channelled to assist injured workers in this province and could be channelled to the advisor's office.

* (2230)

(Mr. Chairman in the Chair)

Back to Bill 59. Being an affiliate of the Federation of Labour, United Food and Commercial Workers, Local 832, fully endorses the brief submitted by the Manitoba Federation of Labour which is I believe going to be submitted tomorrow. We are not here to repeat word for word what is contained in that brief. We will, however, point out to the members of this Legislative committee what in our opinion are the most objectionable and onerous parts of this bill.

Amendments to Subsection 1(1). Occupational disease means a disease arising out of and in the course of employment and resulting from causes and conditions (a) peculiar to or characteristic of a particular trade or occupation; or (b) peculiar to the particular employment, but does not include (c) an ordinary disease of life; and (d) stress, other than an acute reaction to a traumatic event.

Occupational diseases are grossly undercompensated by the Workers Compensation Board right now. The amendment only will make it even more difficult to attain compensation benefits for workers who suffer from occupational diseases and overcoming the already impossible standard of proof asked by the board while they ignore the present rule of presumption in the act. We are requesting that an occupational disease schedule be established.

We are also excluding stress. Stress other than specified in this section should be acceptable. There are many other forms of stress than the reaction to a traumatic event. So I would like the committee to take that under consideration.

Amending Section 4(4). When an injury consists of an occupational disease that is, in the opinion of the board, due to the employment of the worker and in part to a cause or causes other than the employment, the board may determine that the injury is a result of an accident arising out of and in the course of the employment only where, in its opinion, the employment is the dominant cause of the occupational disease.

How in God's name are we ever going to prove what dominant cause is? The discretion is again entirely left to the board to determine whether the worker will be compensated for the occupational disease. It does not allow proportioning. That is disgusting and regressive, in our opinion.

Amendment of Section 2, in clause (b) by striking out "industries" and substituting "an employer's undertaking or any individual plant or department thereof."

This is experience rating to the limit. Have you ever heard of the walking wounded? In order to

keep their rating down, employers will attempt anything to hide workers compensation claims and convince workers to come to work whether they are able or not—and I am from experience, Mr. Chairman—or convince them to claim weekly indemnity or other benefits with the convincing argument that he will get paid faster, and that might be a convincing argument.

New subsection 4(3), Notwithstanding subsection (2) where the accident is attributable solely to the serious and willful misconduct of the worker, as determined by the board, wage loss benefits and medical aid are not payable for three weeks following the accident.

What is willful misconduct? Someone who is not wearing safety equipment? We would like to remind the committee that The Workers Compensation Act operates under a no-fault system and there are provisions in labour relations today, in collective agreements, et cetera, where there is a disciplinary procedure in the agreement between employer and employees where the employer can take appropriate action if the employee has conducted himself or herself not in accordance with safety rules and regulations or if there is willful misconduct.

New section, Impairment, impairment awards will be based upon the degree of disability provided in the form of a lump sum payment and considered separate from the worker's entitlement to wage loss. While we are willing to give this amendment the benefit of the doubt, experience will tell us, however, whether workers will benefit as a result of this amendment. However, we strongly disagree with the Workers Compensation Board's rating schedule which is presently in effect, the so-called "meat chart" which is totally inadequate and should be revised.

We also disagree that impairment awards for workers over 45 years of age will be reduced by 2 percent of the award amount each year of age over 45 at the time the permanent impairment is sustained. We think that provision is discriminatory and contrary to the Charter of Rights. Since the minister is so very conscious of the courts, he should perhaps have another look at this amendment.

Section 38(8), no workers may apply under subsection (6) within 24 months of a decision by the board or the Appeal Commission respecting the degree of impairment of the worker.

This is totally unacceptable. It should be amended to read at least six months rather than 24 months. An impairment could significantly increase shortly after the establishment of the impairment rating. It would be unfair to deprive that worker for two years of an increase in this impairment award.

Wage loss benefits, Section 39(1) to 39(5): as we stated early in the brief, we are not going to repeat word for word what the Federation of Labour has stated, will state adequately in its brief, but we echo the Federation of Labour's strong objection to this particular amendment. The move to 90 percent of net accompanied by the drop to 80 percent after two years is totally unacceptable. There is no justification for paying 1 percent less than 100 percent of net earnings.

Workers suffer greatly as a result of a work-related injury and contrary to the beliefs of some of our politicians, employers and Worker Compensation Board administrators, workers would rather go to work and be active than sit at home and suffer the consequences of a work-related injury. This government is attempting to penalize the worker further by imposing a financial hardship on the workers and their families. There are other benefits being lost by someone on compensation than wages. There are pension benefits, dental, life insurance, other benefits, which the worker will lose if he or she is on workers compensation. So even at 100 percent net, there is still a loss incurred by the worker on compensation.

I might also add that an employee who is not covered by a collective agreement is subject to termination and he or she would like very much to go back to work, not to lose the job.

Section 39(2): subject to subsection (3), wage loss benefits are payable until (b) the worker reaches the age of 65 years.

We believe that placing a restriction based on age into legislation is contrary to the Charter of Rights and totally unacceptable.

Section 39(5): to offset wage loss benefits by the amount of all collateral benefits to which the worker is entitled to as a result of the injury only lets the Workers Compensation Board and in turn lets the employers off the hook to pay their fair share of compensation to injured workers. Since collateral benefits and such other benefits as Canada Pension and unemployment insurance are taxable, it means again the injured worker is penalized by having his

income further reduced. Those programs are not designed to compensate workers for work-related injuries.

Section 40(1): the loss of earnings capacity of a worker is the difference between (a) the worker's net average earnings before the accident; and (b) the net average amount the board determines the worker is capable of earning after the accident; which amount will not be less than zero.

To have the board deem a worker's income is totally unacceptable to us. We are recommending the deeming of income be used only in those cases where the injured worker has failed or has refused a job that he or she can be shown to be able to perform. How can the board deem someone if there are no jobs available? That is absolutely unacceptable to us.

* (2240)

Section 41(5): this section prohibits the top-up of workers compensation benefits by employers. Our position is that if an employer agrees in collective bargaining to top up compensation benefits, then so be it. The government has no business intervening in the collective bargaining process between employers and employees.

Section 60.8(7): Where, in the opinion of the Appeal Commission, an appeal is frivolous, the Appeal Commission may order the person who makes the appeal to pay a cost of not more than $250 to the board, and the board may enforce payment of the cost in the same manner as the payment of an assessment. This amendment is absolutely ludicrous. Who decides that the appeal is frivolous, the board? Perhaps this is a further attempt by this government to discourage appeals from workers. A $250 cost is certainly less significant to an employer than it would be to a worker. If this government insists on fines, maybe the fine to the employer should be in the neighbourhood of $5,000 instead of $250.

Section 67(4.1): Our position on this amendment which deals with the medical panels and also imposes a $250 fine, our position on this amendment is the same as above. We suggest that this amendment be withdrawn.

Section 101(1.2): Notwithstanding subsection (1) and Section 20.1, medical report, an employer or the agent of the employer who requests a reconsideration of a decision by the board or appeals the Appeal Commission may examine and copy such documents in the board's possession as the board considers relevant to an issue in reconsideration or appeal, and the information shall not be used for any purpose other than reconsideration of an appeal under this act except with the approval of the board.

Here again, we are re-emphasizing the Manitoba Federation of Labour's position on the above amendment and object in the strongest terms possible to providing employers with access to medical information on file. Medical reports on file should only be released with the injured worker's consent. In our opening remarks, we are referring to the system becoming more and more adversarial. This amendment would further enhance the adversarial approach and provide the employer with knowledge that could be used in a discriminatory manner against the employee.

Indexing: The indexing of workers compensation benefits and pension is long overdue. We object, however, that the wage increases in a workplace a worker would have received if he or she would have been at work are no longer passed on as compensable benefit, especially in the first two years when indexing of workers compensation benefits is not in effect.

In conclusion, we are hereby requesting that the government and the Minister of Labour (Mr. Praznik) go back to the drawing board and review all of the proposed amendments in consultation with representatives of labour. New legislation should be based on the report of the Workers Compensation Review Committee published in May of 1987 which we are all familiar with and which was unanimously recommended by members of that committee representing labour and business. Thank you.

Mr. Chairman: Thank you, Mr. Zimmer, for your report.

Mr. Ashton: I want to ask a question based on your last comments and conclusions, because the Minister of Labour (Mr. Praznik) has suggested that the basis for this bill goes back a number of years, presumably including the report of the Workers Compensation Review Committee, but we are seeing increasingly in terms of presentations from employer representatives that they feel that many of the recommendations of the report have been either ignored or else are being implemented in ways that

are a totally different concept than was the recommendation of the review committee.

I would like to ask you for your opinion to elaborate on the conclusion as to whether you feel this bill before us reflects that review committee, which you correctly point out included many unanimous recommendations, the vast majority of which actually were unanimous.

Mr. Zimmer: I cannot go into details. I guess one of the amendments has been adopted in terms of the impairment. The lump sum has been adopted from the King Report, but most of it has not been adopted. Most of the contents of the King Report have been ignored. Our position is that, again, as I said in my conclusion, go back to the drawing board and have more consultation, and obviously not only with labour, but we feel that we have not been consulted enough.

Mr. Ashton: I just want to deal specifically with that, because that has been a point raised by a number of presenters. If the minister was to amend one or two or three sections or deal with some of the technical language problems, you are still saying this bill was so fundamentally flawed in many areas that the minister should essentially table the bill until those major flaws are corrected by true consultation with people and, particularly, including representatives of employees.

Mr. Zimmer: We do not want a piecemeal bill. We want to go over the entire act. I think it should be reviewed totally, and we would not be satisfied with a few changes here and there. My brief here is relatively short. As I said, I quoted what in my opinion, in my organization's opinion, is the most objectionable parts of the bill, but there are many more parts in the bill. That is why I make reference to the Federation of Labour's submission. We are an affiliate, and you will have a much more extensive brief tomorrow by the Manitoba Federation of Labour which will address our concern.

Mr. Ashton: Thanks.

Mr. Connery: One question to Mr. Zimmer. The CFIB presentation indicated the consultation process, and I think you were here when he read that out. What is labour's position or your position on having the consultation process before regulation or policy is put into effect?

Mr. Zimmer: I do not see anything wrong with consultation. If it is real consultation, I do not see anything wrong with it.

Mr. Connery: I gather you would support that particular amendment.

Mr. Zimmer: I would think so.

Mr. Connery: Thank you.

Mr. Chairman: Thank you very much, Mr. Zimmer.

I am sorry, Mr. Minister, we are going to have to change tapes in a minute or two, so hopefully this can be brief. If not, then we will break and change tapes.

Mr. Praznik: Yes, I just wanted to thank Mr. Zimmer for his presentation. There were a couple of points he raised with respect to the so-called "meat chart." There is obviously a debate as to the appropriate one. That was raised with me by labour representatives, and that is one reason I specifically made sure there was no reference in the act to what chart would be used, because that is obviously a debate that should be looked at every number of years as to charts that are there. I recognize that point.

Mr. Zimmer also made reference to the offsets with CPP and UIC. I think you made a comments about those being taxable. That point was also raised with labour by me. The only offset will be the net benefit of those benefits, taking into account the tax being payable. I know you may not agree with that, but I wanted to just let you know that the tax portion was accounted for in the offset.

Mr. Zimmer: That is, of course, as you said, not our only objection.

In many cases when we have compensation appeals pending, when we end an appeal procedure, many times that is—for instance, the unemployment insurance is something to fall back on for workers if they are rejected on workers compensation. These programs, even though they are sometimes paid partly by the employer or totally by the employer or shared 50-50, are designed for other emergency, for illness, et cetera. They are not designed for workers compensation. That is not the intent. We will be totally opposed to topping off with those programs.

Mr. Praznik: I just wanted to make sure that you knew it was only the net taxes.

* (2250)

Mr. Chairman: Thank you, Mr. Zimmer, for your presentation.

I am going to break now and allow the Hansard people to change the tapes in the machine. If there

are further questions of you, I will ask you to come back after that. Thank you.

* * *

The committee took recess at 10:50 p.m.

After Recess

The committee resumed at 10:54 p.m.

Mr. Chairman: Could we come back to order.

Are there any further questions from the committee to Mr. Zimmer at this time? If not—oh, well, Ms. Cerilli. You just about missed it by two seconds.

Ms. Marianne Cerilli (Radisson): It was a very—

Mr. Chairman: Would you, Ms. Cerilli, pull up your mike a bit so we can hear you?

Ms. Cerilli: It was a very good brief. It has made the bill very clear to me.

I just wanted to clarify, though, the report you referred to in your conclusion, is that the same report that was referred to by the Federation of Independent Business?

Mr. Zimmer: It is the review, the King commission. It is the same thing the Federation of Labour would be referring to.

Ms. Cerilli: Does that mean there is an agreement on that report between employee and employer representative groups?

Mr. Zimmer: Certainly, agreement from the labour side. The report was unanimous. Mr. King was the chairperson, and we had labour and employer representative on that commission. It was a unanimous report.

Ms. Cerilli: Mr. Chairperson, am I to understand that the bill does not flow from that report?

Mr. Zimmer: No, it does not.

Ms. Cerilli: Thank you.

Mr. Chairman: Thank you, Mr. Zimmer, for your presentation.

We would like to move to No. 11, Mr. Wayne Desiatnyk—Ms. Debra Ram. Are you going to be making the presentation for the group, Ms. Ram?

Ms. Debra Ram (Injured Workers Association): Yes, I am.

Mr. Chairman: Have you a presentation to distribute? I will ask staff to distribute it.

While they distribute, you may begin.

Ms. Ram: Mr. Chairman, we have prepared a written brief for the committee to review. Because the hour is getting late and some of the submissions that we are making have been dealt with already and will be dealt with in much greater depth tomorrow, particularly in the Manitoba Federation of Labour submission, which we endorse, we would like to drop Items No. 3, 4 and 5 from the oral presentation and leave the written part of it for the committee's consideration, as I believe the impairment, loss of earning capacity and wage loss benefits are going to be dealt with quite thoroughly.

On behalf of the Injured Workers Association of Manitoba, whom I am representing here tonight, I would like to direct some comments to four particular kinds of provisions in the draft act. Those are: medical reports and their use as evidence; the limit on further claims; costs of appeal; and board delegation to aged.

On the first, medical reports as evidence, I would like to refer the committee's attention to the summary of significant proposals that was released by the Steering Committee on Legislative Reform in April 1991 which discussed access to medical reports and the use to which the reports may be put.

In that summary it was stated that the amendment was designed to ensure that professionals submitting the reports are protected by a qualified privilege against civil actions for honestly held opinions. In fact, according to the new Section 20.1, the professionals will be insulated from all civil liability for their reports, unless it is proved the report is made maliciously.

We have some serious concerns which are raised by this provision. They relate to the threshold of liability that is being set, the role of the board's medical advisors, and the need for such a high standard of immunity.

As the committee no doubt knows, the accepted tort law standard for liability in civil actions against medical practitioners is that of negligence. Because of the high degree of reliance placed upon doctors and serious consequences of error, patients have the right to expect due care to be taken in relation to medical treatment and opinions. Because doctors are not perfect as human beings, the standard of care is that of due diligence based on their knowledge and experience as applied to the circumstances. A doctor adhering to this standard

will not attract civil liability for an honestly held belief or opinion. The College of Physicians and Surgeons also holds its membership to this standard and disciplines practitioners who provide services in a negligent manner.

However, the amended Workers Compensation Act will insulate medical advisors against civil liability for negligent opinions and even opinions and reports made with a reckless disregard for the physical well-being and safety of a claimant. If the threshold is not that of negligence or even that of recklessness, what is the standard that we are seeing in this act? It would be that of proving actual malice against the claimant by the doctor, which is the highest threshold you can get.

Turning to the role that board medical advisors play, we have a concern that even if the role of these advisors was limited to explaining medical reports to board staff or conducting physical examinations to rate permanent impairment as was recommended in the King Report, there would still be serious concerns with such a legislative provision that insulates even those activities from liability for failure to apply proper knowledge and exercise due care.

* (2300)

However, we at the Injured Workers have experienced, and we believe everyone who deals with the compensation system knows how very extensive is the role actually played by the board's medical advisors. These doctors intervene at every stage of a claimant's involvement with the board. They conduct examinations of claimants to look for what they call objective signs supporting symptomatology. They review the reports of attending physicians and specialists, and they offer their comments on these reports. We have seen reports that comment upon claimants' attitudes, presentation of the medical complaints and general lifestyle. They decide whether a claim for benefits and services is supported by medical evidence. They decide whether an injured worker is fit to return to work, irrespective of an attending physician's opinion.

Considering the weight that is accorded the opinions of board medical advisors by adjudicators and review officers, it can fairly be stated that these advisors effectively adjudicate claims that rely upon medical evidence. At the Injured Workers Association we have seen numerous claims where an attending physician's series of reports, in combination with specialists' opinions, have been ignored in favour of a note scribbled on an interoffice memo by one of the board's medical officers who has not ever seen the injured worker. It is very difficult to displace these opinions that may be expressed in a one-word answer to a question which is yes or no, and that is the medical opinion.

When asked for a list of physical restrictions pertaining to a claim, a medical officer may respond that the injured worker has surely had sufficient time to recover, that the continuing problems are probably caused by preexisting conditions and that the injured worker should go back to regular work, despite the attending physicians's opinion, and would also state that any physical restrictions would be preventive only. This effectively shuts the door on further entitlement for a still injured worker.

This is not merely example. It is based on actual cases that we have at the Injured Workers office that are ongoing, but it is an example of many cases that we deal with.

Board medical advisors should not be exercising adjudicatory functions. The King Report deplored the board's interventionist approach with respect to medical treatment, and said at page 131 of that report: "The Medical Officer should describe the medical condition only. It is not appropriate that she/he comment on the individual case, since it is the job of the adjudicator to relate the general medical information to the specific case at hand."

Not only do the proposed amendments not remedy this situation, but the new section now proposes to wrap a shield of immunity around the problem.

The standard of malice is in practical terms almost impossible to provide in civil court. It is a very, very high threshold. Effectively, there would be no remedy for an opinion given to the board by a medical advisor, or indeed, an attending physician that shows a reckless disregard for the facts, the claim and the injured worker's physical well-being. If the board means to set a threshold shielding reports given in good faith, the standards should be that of honestly and reasonably held opinions, but that is already the standard and needs no legislation to enshrine it.

We must seriously query why it is the board and the government, indeed, feels it is necessary to insulate medical advisors at the level that is

proposed. We query what kinds of activities would board doctors be involved in that would require such kind of immunity. Are the board doctors providing opinions without properly reviewing the medical evidence? Are they contradicting advice and treatment given by attending physicians and accredited specialists? Are they refusing to accept injured workers' complaints of pain as honest? Are they passing judgment on lifestyle matters unrelated to an injured worker's claim and using it to determine appeals? Are the board doctors ignoring symptomatology and sending workers back to work while still injured? Are the board doctors failing to acknowledge legitimate physical restrictions, and, indeed, are they sending injured workers back to jobs that invite further incapacitating injury? If the board doctor's role was properly limited to advisory functions only, this provision would have no context.

It has occurred to us while sitting here that there is a further comment to be made which is that there seems to be two classes of patients being created by this section—those who have rights to competent medical treatment and those who do not, because medical reports will form the basis of board decisions with respect to whether an injured worker has recovered or should go back to work or risk further injury. As such, we feel that it is probably open to an argument under the Charter that there is a class of patients being created in the province of Manitoba who effectively have no rights to sue doctors when a compensation claim is involved and that this is not equal treatment under the law.

With respect to the new Section 27.1, limit on further claims, we have considered at first blush, it looks like a movement forward for injured workers. The board cannot deny certain claims for reinjury, unless specific conditions are present including the prior offer of vocational and rehabilitative assistance by the board. However, after a careful reading of the section, we have come to the conclusion that there is a different perspective.

The board's point of view would be revealed by the section heading which reads limit on further claims. The purpose, we believe, is not to aid an injured worker but to save money on further claims where a worker has returned to employment for which he or she is medically unfit, despite economic necessities which may have compelled the worker to do so. This interpretation, we believe, is borne out by the fact that there is no guarantee, any meaningful vocational or rehabilitation services will be provided, merely the offer of such assistance as the board considers necessary to enable the worker to become employable.

This is vague. It is as vague as the section setting out the offer of vocational rehabilitative and academic assistance. We query where is a mandatory scheme of vocational assessment and service delivery that injured workers who require it will be able to access? We also query where is there a requirement for employers to provide modified jobs for returning workers where possible, so that it is codified especially in these difficult times that injured workers may indeed have a place to go back to where it is possible.

In this light, we propose the provisions of Section 27.1 would make sense, because then an injured worker would have no reason to return to a dangerous work environment. As it stands, the legislation merely affords the board an opportunity to limit or deny a claim. At the very least, there must be a positive onus on the board to have demonstrably made reasonable efforts to rehabilitate an injured worker, not merely to become employable, but to become employed before moving to limit or deny a claim under this new section.

I would like to skip ahead to costs of appeal which is at page 7 of our brief. The current act gives a board power to award reasonable costs to a successful party in a contested compensation claim or matter to compensate for expenses incurred. Awarding costs is a common incident of an adjudication process and serves two functions—defraying expenses incurred and disciplining parties for any misconduct. The second function is used usually by courts to safeguard the integrity of the administration of justice and costs that are thus obtained go to the opposing party. Costs are not used as a collection agency.

As the steering committee's report rightly pointed out, awarding costs from party to party in nonadversarial administrative systems is not appropriate. However, we submit it is also not appropriate to attempt to award costs to the board itself for appeals that are considered to be frivolous. In this situation, the terminology of costs is being used to describe what is in its essence, a pure fine levied upon a party by the Appeal Commission.

While there is certainly some concern to be expressed that the Appeal Commission has at

present very little power to control and discourage unwarranted appeals, the greater concern that we have with respect to the new section is its deterrence value for all appeals. While trying to get some, it will have a very large impact on all. The potential exists for claimants with valid appeals to be scared off by this threat of costs. The ceiling amount of $250 may be a significant financial deterrent to injured workers fighting for compensation benefits.

* (2310)

It is not clear exactly what would be held to be frivolous in a claim, whether it is a question of dollars, hours of work being argued over, hours of rest time, restrictions, disabilities, lost time injuries, totally unclear. We would find it interesting if we could have a look at any statistics that are available on the number of appeals that have actually gone before the Appeal Commission that were considered frivolous or could have been considered frivolous. In other words, is the proposed legislative change responding to a real identifiable, quantifiable problem?

If so, what have the actual costs been to the Appeal Commission of these so-called frivolous appeals in terms of time and money, board resources, or could this new provision simply exist as a scare tactic to deter appeals altogether from being brought by injured workers where the issues may not involve significant enough dollars for them to ignore the risk that they will face?

We submit that the proposed section is a fine to be exacted upon injured workers who may simply be exercising their full rights under the act. We would add also our objection extends to the costs on medical review panels, that section as well, whether it is applicable here, is applicable there, is a concern.

The last comment I would like to make is with respect to board delegation to agent. We find this a very astounding provision. It purports to give the board the power to delegate its adjudicatory functions to an agent or a local representative. As the terms are defined, the board would be able to delegate decision-making responsibilities to an employer.

Although the system is not an adversarial structure, nevertheless it is an administrative tribunal endowed with quasi-judicial functions and to the extent that an injured worker's claim may be opposed by his or her employer, they may properly be said to be parties to the adjudication. For such a body to delegate its authority to make determinations affecting entitlement and rights to one of the parties to a potential appeal is simply insupportable.

At these hearings here today, I recall the minister mentioning the intention of the section with respect to large employers. However, I would add a caveat that the road to hell is paved with good intentions. The way the section is in fact drafted, it gives very much greater powers than that intention expresses. The powers delegated are not merely administrative functions of receiving reports for the board which we submit is in itself objectionable because of our concerns for confidentiality and privacy.

We submit that the powers go far beyond and are enumerated in the proposed section calculating the loss of earning capacity determining entitlement to wage loss benefits, and these are crucial areas of primary adjudication. Moreover, the potential delegation of powers is unlimited as the board may delegate under this section such other matters as the board may determine. The section goes on to permit access to information from a claimant's file that would potentially not be permitted under the proposed new Section 101 (1.2), and there is no right for the claimant to object under this section.

Again, we would point out that two classes of claimants are being created: those whose privacy is protected, and those whose privacy is not. This again may offend against the charter.

In conclusion, the Injured Workers Association of Manitoba submits that this bill should be completely withdrawn and rethought. It should provide benefits that compensate injured workers for actual wage losses suffered, an even-handed adjudication system that treats injured workers with respect, an impartial appeal structure dedicated to doing justice, acceptance of the treatment and opinions of injured workers, attending physicians and specialists. Protection of the confidentiality of claimant files, responsive and effective rehabilitation, vocational retraining services that will enable injured workers to re-engage in productive work lives, an obligation on the part of employers to continue providing employment with necessary modifications for returning employees where that is feasible and generally to show an attitude that the board is in existence as part of a remedial scheme that serves

needs and interests of injured workers as much as employers.

With this good start, the compensation system would begin to go places. As it is, the system will remain mired in technical deeming sections, illusory offers of retraining and the kinds of attitudes that are based on the premise of deny and deny and deny. We submit this bill is defective and unjust and should be completely rethought and redrafted.

On behalf of the Injured Workers Association, I thank this committee for the opportunity to make these submissions in our presentation.

Mr. Chairman: Thank you very much, Ms. Ram. Are there any questions?

Mr. Ashton: Mr. Chairperson, I do not have to ask the position. It is very clear. That is a question I have been asking other organizations, but I do want to ask a question on the section where you analyzed the gross-net shift, because this is a point that has been raised by others with me. I was wondering if you would elaborate to the committee, because if you look at the impact, dollar for dollar, you can see that many workers wind up with less, but you are stating in a more direct way here that, in many ways, the actual effect of this is quite a bit more Draconian than initially indicated. It is not equivalent. You are saying in effect we have gone from 75 percent of gross earnings to 75 percent of net, and I was wondering if you could explain exactly how that was arrived at for the committee.

Ms. Ram: I would make some comments on that. Simply following the numbers, this is the impression that we received, was that when you start out at 90 percent for the first 24 months and then you move to an 80 percent and then you factor in, of course, the further 5 percent for the group insurance plan costs, and you get the number of 75 percent and, of course, you are dealing with net instead of gross, that it suddenly struck us as a very interesting number, that you had 75 percent of gross and you moved to 75 percent of net.

Of course, there are all manner of additional financial factors that are going to be factored in, and as I have said, of course, our brief on these matters is really to give our impressions of it, and really we are leaving the details of the calculations to the very thorough presentation you will hear tomorrow from the Manitoba Federation of Labour, which we have had the advantage of reading.

* (2320)

Mr. Ashton: In fact, I have seen figures showing it upwards of $3,000 is the amount that claimants could lose because of this formula, but I just wanted to get that clear. You are saying the bottom line with this bill is going to be a significant shift which is going to result, for a significant number of workers, in reduced benefits because of the fact that it will not be the 90 percent of net that it appears at first glance. As you point out, it becomes 80 percent and it is interesting, the development of the 75 percent figure. Either way, it eventually become 80 percent, netting out all the other factors, so most workers will end up with fewer benefits under this, rather than the previous format.

Ms. Ram: We feel it might be said of the whole new scheme that although there may be a phantom job, there will be some very real dollar losses.

Mr. Ashton: Thanks for the presentation.

Mr. Edwards: I regret not being able to hear you present your full report, but we will certainly consider it. It appears very thorough, and I caught the last part of it. I wanted to ask you, I have just noted on page 5 of your brief where you talk about impairment—the first question I have is where you talk about the reduction by 2 percent of the amount payable for each year of age over 45 on the basis that the injured worker will live less long and, therefore, be hampered less by the impairment.

I may be mistaken. I did not think the theory behind that was that the injured worker would live less long. I assumed it was that the person was closer to the normal age of retirement. Does that coincide with what you think, or can you explain that comment?

Ms. Ram: You are quite right. It was not very felicitously expressed.

Mr. Edwards: Thanks, that just clears that up. I have to agree where you conclude that this new section appears to look like a pretty bad bargain in terms of the numbers which we had explained to us by the Canadian Union of Postal Workers earlier. It does not amount to a lot of money in these cases.

What would you suggest? Would you suggest that we leave it the way it is, that we make the numbers we have in there now higher? What is the answer in this regard?

Ms. Ram: In general, we, at the Injured Workers Association do not favour the idea of a lump sum payment. We prefer the pension idea. We feel there is a degree of certainty that goes with it, and

it is over a period of time. If one is going to go to a lump sum payment, we are not sure, and I think we express it here, we do not have a certainty, but we do not like the way it is done now. We do not think that enough has been factored in, and perhaps the rating schedule might not be appropriate.

It is difficult to know, and certainly any bill that proposes a scheme is going to have critics, but as one observation, if there is going to be a reduction by 2 percent of the amount payable over 45, one would think, on logic, there would be a greater award by 2 percent for years under 45. We do not feel there has been a lot of balancing done.

Mr. Edwards: In your experience working with injured workers themselves, would some of them prefer, do you think, the option of lump sum or a pension, whatever that pension may be? It seems clear that the decision is to impose lump sum payments. Is that regrettable in your view? Do I take it from your comments that some people you deal with would actually prefer to at least have the option of retaining a pension amount?

Ms. Ram: We have not put the question directly to our general membership. It might be a good idea to explore the concept of an elective commutation of a pension into a lump sum, perhaps where an injured worker has a specific plan where that lump sum could be used for rehabilitative purposes. That might be an option that would certainly benefit an injured worker, to have that form of election.

Mr. Edwards: The other thing, on page 8 of your brief, you talk about the board delegation to an agent and the proposed new section 109.5. Maybe the minister will explain this in due course. I am not clear on why they need that power, are you?

Ms. Ram: Excuse me, you mean the power to delegate?

Mr. Edwards: Yes.

Ms. Ram: I certainly cannot answer for the minister.

Mr. Edwards: We may get an answer from him. You indicate here that the board would be able to delegate its decision-making power, responsibly, sensibly, I guess, legally to an employer. In your work with the Workers Compensation, have you ever come across a case where they did delegate or they said they wanted to delegate any of these powers?

Ms. Ram: I have never run across it. It certainly would not be permissible under the act as it stands now. This is a bold new section that I am quite sure would be challenged very, very quickly on the basis of fairness and on the basis of the Charter.

Mr. Edwards: I have had the same thoughts, and I was at a loss myself to understand why exactly it was coming in, and perhaps that reason will be forthcoming, but I share with you your concerns about it. Thank you very much for your presentation.

Mr. Praznik: I would like to also echo other members of the committee and thank you for your presentation tonight. I have basically two or three comments or questions.

You made reference to 75 percent of net, and I think you would acknowledge that someone to be receiving 75 percent of net, they would also be having a 5 percent contribution to a tax-free pension plan. They would also be making a voluntary 5 percent contribution to that tax-free pension plan and would also have up to 5 percent of their benefits towards a tax-free life insurance plan, so 75 percent also has additional benefits. I think you would acknowledge that, to get to that calculation?

Ms. Ram: Yes, I would certainly concede that point.

Mr. Praznik: My other question—actually you and other presenters have touched on a great dilemma in drafting this particular legislation, and that is with respect to the lump sum and the reduction by age. Of course, the lump sum is paid along with a wage loss or partial wage loss pension if the injured worker is not able to be at his or her same earning capacity. It is in addition to that.

We looked at a couple of ways of making that payment, and we followed the Ontario example. I am just wondering if you would recommend to us if we took the $91,000 lump sum at age 18 and reduced it by 2 percent a year thereafter, as opposed to giving everyone the same up to age 45 and reducing it by 2 percent a year from age 45 on, if you would prefer that way of calculating it.

Ms. Ram: Mr. Minister, I am not quite sure what the rational basis is for choosing 45. I suppose it is some mean average or simply is a benchmark. I certainly would not agree with starting at 18 and reducing from there. If we are using 45 as the benchmark, if it is going to go down after 45, one would think it would go up before 45.

* (2330)

Mr. Praznik: The point is we established an amount of dollars highest in Canada for a lump sum award, and we were trying to figure out a way to also take into account—it is to cover the things that a person cannot do, of course, with his or her injury. It is not for pain and suffering. Life expectancy fits into that. We are struggling with ways to do it and I appreciate your comment.

The third query I have for you is in the area of—you acknowledged that there are appeals, et cetera, that from time to time are frivolous, and you recognized our dilemma of how one discourages that. I am advised the cases that this refers to are often after you have a change in the Appeal Commission or a change in management at the board. You get a lot of people who have had appeals over the years coming back to have it readjudicated with no new medical evidence, and, you know, one is not tied to every vehicle that is there.

I am just curious if you had a suggestion how one could deal with those matters where you have those people who come back with no new information simply because the players have changed who would be hearing the appeal.

Ms. Ram: Mr. Minister, before I would be prepared to try and come up with a plan to deal with that, even as a suggestion, I would really want to know how many appeals are we talking about. How much time did this take out of the total caseload? What kind of backlog was generated? Then I would want to factor in the concept of a right to appeal and try to balance that out and say, is this going to deter legitimate appeals, which, of course, nobody wants to do.

Mr. Praznik: Yes, it is a balance. I appreciate that.

Mr. Chairman: Thank you very much, Ms. Ram, for your presentation.

I would like to call now No. 12, Mr. Al Harris, Manitoba Trucking Association. Mr. Harris, would you come forward, please? Have you a written presentation for the committee?

Mr. Al Harris (Manitoba Trucking Association): I do, Mr. Chairperson.

Mr. Chairman: I will ask the staff to distribute it.

Would you proceed, please, with your presentation?

Mr. Harris: Mr. Chairperson, I am Al Harris. I am the general manager of the Manitoba Trucking Association.

We are pleased to have this opportunity to present our views and recommendations. We represent about 280 companies engaged in the trucking industry in Manitoba and supplies to the trucking industry. Our member companies directly employ in excess of 5,000 people. We have been involved with the Employers' Task Force from inception. We are generally supportive of the thrust of this legislation.

We believe that Bill 59 addresses a number of concerns of both employers and employees. It appears the authors have attempted to provide a package. We acknowledge that the removal of some new or amended sections of this bill could impact on the total package.

The intent of legislation in this bill is not always clear or specified, but we do want to make the point that has been made before, that we do not support broadening the original intent of workers compensation legislation which, of course, is for workplace-related injury.

We do recommend six changes to the bill. First of all, we have consistently requested there be increased openness and fiscal accountability on the part of the board. We are very disappointed that this bill does not contain a provision that mandates the board to engage in an effective consultative process prior to bringing any new regulation or policy into force.

We have been adamant for many years that board policy should be gazetted or the opportunity for public input be mandated prior to board approval, as this is effectively legislation through the back door. This deficiency in Section 68(2.3), in our view, must be addressed to allow for outside advice, just as we are allowed to address issues in this forum.

Number 2 point, we are extremely concerned with Section 9(7.1), as it appears our industry in particular will now be subject to lawsuits. Before I go further, perhaps this can be explained in better detail to me because I do not think the kind of gap we think is in the legislation can possibly be there. It has been well too thought out for that.

The majority of our member employees' workplace are the motor vehicles they operate. Yet this section envisages an exemption from the ability to take legal action if the accident results from the

use or operation of a motor vehicle. If the intent of the legislation is to be preserved and if our thoughts are correct on this, this section must be deleted or at least amended appropriately.

We are concerned, Mr. Chairman, that the employees in the trucking industry have their claims treated with dispatch and fairly. We are concerned that to have to go through another vehicle such as Autopac or the Manitoba Public Insurance Corporation may create some delay for those employees. As I said, perhaps this can be explained to me in detail and maybe the concern is not there, but we would not want employees to be inconvenienced in any way because of trying to get funds through another source rather than through Workers Compensation. I would assume that if Workers Compensation comes forward initially, then funds could be recovered later from MPIC.

The No. 3 point we have is that employers have repeatedly requested medical access to an employee's file not only for appeal purposes, but also so that employers are able to return their employees to a job in keeping with any disability or restriction. The request for this access and information is relevant and valid and is also consistent with the requirements of workplace safety and health legislation. We wish to bring our strong support behind this request for a further amendment to the bill.

The fourth point is that the existing legislation provides for pro-ration for nonwork pre-existing or underlying conditions. Legislation on this particular issue, which was introduced in legislation in 1972, which does not relate to workplace injuries has added multimillions of dollars of cost to the system. We are concerned that too much discretion is left to administrators to pay these benefits through the Workers Compensation Accident Fund. This shortcoming must be addressed as Section 4(4) does not appear to give the board the opportunity to assess the percentage of occupational disease involved in the claim.

The fifth point we have is the new benefit provisions not related to the intent of Workers Compensation are being introduced under the "collateral benefits" section of the bill, and we are extremely concerned that the new Section 43(3) gives the board discretion in the manner in which they fund these new benefit plans. We ask that the new legislation not permit another cost to be added on to employers who already provide the kinds of benefits, in most cases, that this bill addresses.

The last point we have is the board has indicated in their summary of significant proposed amendments to The Workers Compensation Act made public in April 1991, that the new legislation will give the board jurisdiction to provide preventative rehabilitation. We know that the board has provided compensation benefits for the effects of the economy, lack of education, age, et cetera. Our members do support rehabilitation, but we do not support compensation for nonwork issues. We ask the committee to address this concern. In this regard, you may wish to refer to Section 27(20).

We would be remiss if we did not mention the rapid escalation in the maximum annual earnings ceiling to $45,500 as this adds considerable cost to employers. I think you will appreciate that WCB premiums are essentially a business tax, and we would ask you to be sensitive to this as the tax burden and the profit opportunity have a direct relationship to labour levels in this province.

I hope our comments will be helpful. We mean to be constructive, and if we can add anything further, we will be pleased to try to do so. Thank you, Mr. Chairperson.

Mr. Chairman: Thank you very much, Mr. Harris. Are there any questions of Mr. Harris?

Mr. Praznik: Mr. Harris, you made a request I guess for information with respect to your recommendation No. 2 on the MPIC provisions. I just wanted to point out to you that the intention of that clause is where someone, say for example in your employ, is involved in a traffic accident where someone else has run into them. They would then have the election of choosing to be compensated under Workers Compensation because they were injured while in the workplace, in essence, in the vehicle in which they operate, or at their decision, their choice, to opt to proceed under MPIC benefits. The reason why that is being offered to them is because, in many cases, not all, in many cases those benefits will result in substantially higher award to the injured worker. The motorist who would have, of course, been responsible for that accident has paid for that coverage under MPIC. So that is what that provision was designed to do, and it should not affect your situation.

* (2340)

Mr. Harris: I have no problem with that, Mr. Chairman. I guess my concern is—to give an example as you have done, Mr. Minister. We have a lot of problems in northwestern Ontario with running into moose and deer and stuff like this. I should not smile, because it is a very serious situation. In that case, we could have a co-driver in the cab. There is not another vehicle involved. Yet, from how I read this, any vehicle registered under The Motor Vehicle Traffic Act is exempt.

Mr. Praznik: The provision prohibits the suing of one's own employer in those situations. It only is in reference to a third party, not the employer. If it was another two people in the cab, as you pointed out, and let us say the accident took place in Manitoba, they would not be able to pursue that against their fellow employee's employer, which would be you. It is only in the case where they have been hit by a third party, not the third party who is in the employ of the same employer, but a totally different third party. It was simply done to give an injured worker the access to potentially much better benefits only if they so choose to do that. So I think your point is covered. It does not put you at risk.

Mr. Harris: I have no problem with that, Mr. Chairman, but the act does not say that as I read it.

Mr. Praznik: It does. Legal counsel—

Mr. Chairman: Thank you very much, Mr. Harris, for your presentation.

Mr. Harris: Thank you very much, sir.

Mr. Chairman: We will move on to 13, Ms. Judy Cook, but before we do, could I have an indication by show of hands as to how many people would not be able to come tomorrow to a presentation? We have four. We will hear at least those today before we would close hearings today. I do not know whether there are any others in the coffee shop or in the area that we would want some indication from.

So, Ms. Cook, would you come forward, please. Have you a presentation to distribute? Thank you.

Floor Comment: Just a question, Mr. Chairperson, before Ms. Cook takes the podium.

Mr. Chairman: Yes.

Floor Comment: Does that mean that outside Ms. Cook there will be another four that you are going to finish tonight and resume tomorrow?

Mr. Chairman: We will resume tomorrow at one o'clock. We had indicated before that we would continue tomorrow at one o'clock, yes.

Mr. Praznik: Mr. Chair, I may, just for Mr. Cerilli's benefit—I see him here tonight. As I just look at the list, we have four people who cannot come back tomorrow, and we have Ms. Cook from the Occupational Health Centre. I do not know how long all those presentations would take, but I would be surprised if we got onto the second page, so, Al, if you want to go home, we will cover you tomorrow.

Floor Comment: See you tomorrow.

Mr. Chairman: Would you proceed, please, Ms. Cook.

Ms. Judy Cook (MFL Occupational Health Centre Inc.): On behalf of the MFL Occupational Health Centre, we thank the legislative committee on Bill 59 for the opportunity to respond to those parts of the proposed legislative amendments that pertain to our mandate. The Occupational Health Centre, which opened its doors in 1983, is a publicly funded centre for the medical assessment and diagnosis of work-related illness, injury and disease for all Manitobans. As a public health facility, our goal is to prevent disease and injury and to promote healthy workplaces.

In addition, with a library reputed to be the finest in western Canada on occupational health, the centre's staff answers hundreds of requests for information annually from health care professionals, government, workers, students and employers. We work jointly with employers and workers in determining whether hazards exist in a workplace that might impact adversely on workers' health.

Our staff consists of one full-time and two part-time positions, two of whom are specialists in occupational medicine, one occupational hygienist, one occupational health nurse; and two administrative staff that includes myself as the director.

It is within the context of the work that we do that we wish to respond to the following amendments to the Workers Compensation Act. You will see that I say "we" and I was to have had a doctor with me tonight but he was not able to attend.

Our first concern is amendment to subsection 1(1)(j), page 2, which I have quoted here. I do not think I need to read it.

If passed, this new and restricted definition of occupational disease will be a retrogressive step and go counter to internationally accepted norms. It has the potential for grave repercussions on our health care system. The attribution of cause of

disease to the workplace will be so limiting that it will enable the workers compensation system to escape responsibility for a large amount of disease and disability caused by the workplace.

Many diseases are (a) peculiar to or characteristic of a particular trade or occupation; and (b) peculiar to the particular employment, but many others are not. For instance, if a mechanic is responsible for ensuring proper running of machinery in a plant, she/he may be subsequently exposed to hazardous chemicals used in the production process and develop a disease from them. In terms of the amendment, the worker might not be compensated because that disease is not peculiar to, characteristic of or particular to the trade or occupation of a mechanic.

It is our recommendation that the amendment should read as follows: occupational disease means a disease arising out of and in the course of employment. This is precisely what occupational disease is—a disease arising out of and in the course of employment.

It is often decades after the fact that epidemiological studies and investigations can pinpoint particular trades or occupations or types of employment that pertain to certain diseases in the aggregate. From our knowledge of the hazardous effects of many chemicals, we can link exposure to a particular substance to a workers' illness or disease. However, we cannot say it is necessarily characteristic of that particular trade or occupation or peculiar to the particular employment.

In the new act, occupational diseases would not include those conditions that are defined as an ordinary disease of life. As the body has a limited number of responses to injury, disease manifests itself in a relatively limited number of patterns. Occupational exposures can cause diseases which can also be caused by other things. For example, lung cancer can be caused by occupational and nonoccupational factors. As cancer and chronic heart and lung disease occur quite commonly in our society, these diseases may be referred to by some as ordinary diseases of life. This subsection reflects a misunderstanding of what occupational disease is and would need so many clarifications and restrictions as to make adjudication of work-relatedness impossible.

Dr. Phillip Landrigan, Director of Environmental and Occupational Medicine at the Mount Sinai School of Medicine of the City University of New York wrote the following definition of occupational disease in a report prepared for the New York State Legislature in 1987:

> Occupational diseases are a public health problem. They are not rare; they are not restricted to a limited number of factory workers exposed to exotic hazards under unusual working conditions. Like the communicable diseases, the appearance of a single case of occupational disease often heralds the appearance of other individuals with the same illness, or at least indicates that others are at risk.
>
> Occupational diseases encompass a broad range of human illness. They include lung cancer and mesothelioma in asbestos workers, cancer of the bladder in dye workers, leukemia in workers exposed to benzene, chronic bronchitis in workers exposed to dust, disorders of the nervous system in workers exposed to solvents, chronic kidney disease in workers exposed to lead, premature senility in workers with chronic exposure to neural toxins, heart disease in workers exposed to carbon monoxide, impairment of reproductive function in men and women exposed to lead in pesticides, and chronic diseases of the musculoskeletal system in workers who suffer repetitive trauma.

* (2350)

A further limitation in the occupational disease definition refers to stress-related conditions. Only acute reactions to traumatic events would be compensable under the current legislation. The varied influences of stress on bodily function and in the etiology of disease are well recognized. Chronic exposure to workplace stressors may lead to both physical and psychological symptoms. Burnout in the helping professions such as social workers or health care workers is a well-known manifestation of stress. These cases would not be compensated under the act, although the work-relatedness of this disorder is well recognized by all those working in the field.

In 1975, the World Health Organization issued Technical Report No. 571, "Identification and Control of Work-Related Diseases"—if my memory serves me right, I think it is No. 175, and I had only caught that tonight—which proposed that there are

at least four categories of occupational disease syndromes: diseases that are only occupational in origin, such as pneumoconiosis; those in which occupation is one of the causal factors, for instance, bronchogenic carcinoma; those in which occupation is a contributing factor in complex situations such as chronic bronchitis; and those in which occupation may aggravate pre-existing disease, such as in asthma.

Amendment to Section 4(4), cause of occupational disease, which, if I may pull out the key word there, dominant cause of the occupational disease. This amendment, if brought into law, has an enormous potential for injustice to workers made ill or disabled by exposure to workplace hazards. Adjudicators may decide that dominant means more than 50 percent. This opens the door to unfair and arbitrary rejection of claims where work relatedness is not in dispute, but dominance is difficult to prove. Due to the multifactorial nature of many diseases, it can be extremely difficult and at times impossible to determine which cause dominates. In many situations, for example, the combined effects of asbestos and cigarette smoking in the causation of lung cancer, it is the combination of the two factors which leads to the greatly elevated risk and not one or the other.

As it will be difficult or impossible to conclusively show which factor dominates, it is likely that many medical review panels will need to be convened to address this point. Unfortunately, in many cases, even the medical review panel will be handicapped by the need to decide whether or not employment was the dominant cause. In cases where occupational exposures have been epidemiologically linked with the 40 percent excess of the disease in question, these exposures would still not meet this dominant criteria. In many situations, many workers would have occupational diseases, but they would not get compensated. We would suggest that Section 4(4) read: "where employment is a contributory cause of the occupational disease."

In Section 20.1, which is, medical reports not admissible as evidence, page eight, it is difficult for us to understand why this section has been added unless doctors and hospitals are concerned that their reports are being used against them. We do not know of any situations that would call for this addition. All of us sitting here today have doctors and that makes us patients with certain rights, one being our right to confidentiality of our medical records.

In addition, there is another right that should remain for every one of us, the right to protect ourselves against erroneous information being submitted to a third party. Physicians and institutions, functioning in a competent and professional manner, need not fear such scrutiny. On the other hand, incompetent practice or unprofessional conduct should be brought to the attention of, for example, the College of Physicians and Surgeons. This is a responsibility not only of the injured worker but also of the medical department of the Workers Compensation Board.

Section 101 (1.2), employer's access to information, page 51: Patients have a right to expect that the information they share with their doctors is confidential. Furthermore, they have a right to assume that no part of their medical records will be forwarded to a third party without their signed authorization. This amendment will undermine confidentiality between the patient and the physician.

In an April 1991 position paper, the College of Physicians and Surgeons stated the following: "The patient and doctor have a relationship that is known for its confidence and trust. The expression, 'It is between me and my doctor', reflects this trust. It is a two party relationship. A third party can be involved only as may be relevant to the patient's care. The patient knows that information given during an interview or results of examinations will be shared with such third parties only to the extent that it is appropriate in order to advance the patient's care."

It is our recommendation that the current legislation remain in effect.

In summary, what we have presented today are our concerns with those parts of Bill 59 which run counter to the prevailing thinking and principles of the international occupational health community. We hope that in your deliberations you implement the changes which we have suggested today. Thank you.

Mr. Chairman: Thank you very much, Ms. Cook.

Mr. Edwards: I want to thank the presenter for a very useful presentation. I think it was, as I was reading along with you, you made some very persuasive points, ones that I have not heard yet in

our deliberations, so I think we owe you a debt of gratitude.

I am particularly interested in your comments on the occupational disease. You refer to a quote from Dr. Landrigan, and he seems to suggest, and it seems obvious now that we see it, that in many cases, the appearance of a single case, as he says, often heralds the appearance of other individuals with the same illness or at least indicates that others are at risk. If that were the case, would you suggest, and I think I would be inclined to agree, that person would have a heck of a time qualifying under this definition, which restricts that person to a disease that is—let me get the exact wording here—peculiar to or characteristic of that trade, occupation or employment. How would you know that if it was one of the first cases? Is that the point you would leave us with? It is a point I took from your brief and it seems particularly persuasive to me.

Ms. Cook: That is certainly one of the points of the brief that I would add to that point, and I think it is very important to recognize that there are so many chemicals that are being introduced daily into our workplace, so many new types of equipment, so many situations. To rely, say, as we often do, on research into all the studies that might have been done on particular things when you do not have those, you use the knowledge that you have available about that particular case. The specialists at our clinic rely on their training as well as a huge source of information through the international community.

Mr. Edwards: I recognize that you are coming from a medical background, and you have restricted your comments. Do you have any comments to make about the—I did not see them, perhaps they are in here—cost awards which can be—or the workers can be required to pay the $250 to get to a medical review panel, for instance?

Ms. Cook: I do not have too much to say on that as we have deliberately kept our comments to medical concerns. I will tell you this though, as long as it is open, that of the several hundred workers who come through our doors every year, I do not know of any who believe or would go on appeals not believing that they have a case, that they feel that they are justified in bringing, that they will win. There are many times, there are often some times in which our doctors say to someone, we do not believe your problem, your injury, your illness, is really related to your work. More often now, we say we do not think you are going to get it through.

Mr. Edwards: I do not mean to pursue this point, because I recognize that you have restricted your brief, and fair enough, but you do work with people who are trying to deal with this system. Do you think that the prospect, even though there is the need to find that it is frivolous, but do you think that even the prospect that there might be a penalty of $250 down the road is going to act as a deterrent to someone, it is going to factor into their thinking about whether or not they are going to take an appeal?

Ms. Cook: I think so. I believe it will, and I believe based on a number of workers whom we see who are in the prospect of losing a number of things, for instance their house, that they could not take on another debt.

Mr. Edwards: Again, thank you very much for your brief.

Mr. Ashton: Mr. Chairperson, I realize the focus of the presentation and I find it very useful in that regard. In other questions of the presenters I have asked about the impact on individual claimants, and I am not asking you the same question, because there is the concern that individual claimants, current and future, will be receiving less. My question is in regard to the number of claimants who will be successful, because I want to tie in the medical perspective in your contact. I know you have daily contact, through referrals, with people who are claimants of Workers Compensation.

If these concerns are not dealt with that are outlined in this brief, what impact will that have on the number of claimants who are successful? Will it essentially result in individuals who might otherwise have received compensation in not receiving it?

Ms. Cook: If I understand your question right, yes it will. It will be very restrictive. There will be fewer than now. The lack of understanding around occupational disease is quite great, and this will further restrict not just a misunderstanding, but certainly the ability to be successful in obtaining compensation.

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Mr. Ashton: I am wondering, too, in looking at the future perspectives as you point out so clearly in the brief, a lot of the medical knowledge in this area is changing rapidly, changing with the knowledge itself and changing with substances that are in the

workplace, et cetera. So would it be fair to say that will become an increasing problem? Currently, there might be a certain number of individuals who will not receive compensation, but that number will grow as the increased evidence comes in, but is not reflected through the changes in the act that the minister is proposing.

Ms. Cook: I think that is true and more so it is reflected in, if nothing else, the amount of paper on new indoor air problem newsletters or that type of thing coming across that it is so large out there, the scope of the problem. We are seeing the narrowing of recourse for a lot of people whether it is through safer workplaces, the people who are afraid to say anything about their workplace or cannot take time off because their injury might not be compensable.

Mr. Ashton: I appreciate your focus on that. I just want to finish off with one final question to really put it into perspective, because this bill essentially is legislation that presumably is intended to be in place for a significant period of time. It is being billed as a major overhaul. So you are essentially saying that this is going to impact particularly on future workers affected by injuries or occupational illnesses.

Ms. Cook: I believe so.

Mr. Ashton: Thanks.

Mr. Chairman: Thank you.

Ms. Cerilli: The minister, I think, has some questions as well. Your presentation deals with some of the questions that I had in mind raised by some of the other briefs, specifically to try and address the way that this bill seems to give even more power to doctors. I am wondering how we can deal with that. It seems like the legislation—correct me if I am wrong—is requiring that we will not only have to prove negligence but malice in some situations.

Ms. Cook: The part that addressed that would be in which workers would be denied recourse to, I believe it says, tribunals outside the Workers Comp Board of any reports that had been submitted to the board.

Ms. Cerilli: The bill is taking the same approach that the mental health bill takes in terms of handing over more authority to the authorities, the medical professionals. I am wondering what is holding these medical advisors on the board accountable.

Ms. Cook: I do not know. One only has to read through minutes from the appeals to see the differences.

Mr. Chairman: Thank you very much, Ms. Cook.

Mr. Praznik: Mr. Chair, just for Ms. Cerilli's information, the section that she was referring to and Ms. Cook referred to which is now numbered in the proposed act No. 20.1 is exactly the same as the current Section 63.3 in its protection from defamation. All this act does, I believe, is change the numbering of that particular section.

Ms. Cook, my listening to your presentation—and I have a comment-question for you. I notice you make reference to the multifactorial nature of many diseases. That is the great difficulty for all of us, whether we be ministers or heads of occupational health centres, in dealing with occupational disease. Obviously, one has to, when one looks at that multifactorial approach or one multifactorial cause of disease, who bears the cost or the cost of benefits when one has occupational disease or disease as an issue when you are dealing with Workers Compensation? Currently, some 55 percent to 60 percent of Canadian employees have long-term disability, and that is part of it, of course. Workers Compensation is the other part.

You made some references to the definition, and the difficulty I had as minister with my drafts people in putting together this definition is we wanted to ensure that any disease that clearly was an occupational disease, again, within the "dominant cause" provision which we are proposing, and I appreciate the disagreement there, was caught by this definition.

We played with a host of words, worked through a host of words, and of course, diseases that are peculiar or characteristic to a particular trade or occupation—asbestosis is one that comes to mind—et cetera. We also wanted to be able to cover situations where the disease may not have been one that is peculiar to a trade or occupation but was caused by something in the workplace.

The legal advice I received was that, peculiar to the particular employment that judiciously has been defined such that it would cover the situations where you had someone who contacted any disease in their course of occupation would be covered by that definition. So I just wanted to point out that I appreciate very much the argument that you make. It is one I agree with in trying to address this problem.

The particular definition we use in that case was not meant to be so restrictive that it would, if it was the first person in place who had that disease at a particular workplace, not be covered. I am, of course, having to rely on the legal advice that I get in drafting. I wanted to say to you today that the concern you raise is the dilemma that I have struggled with with this bill, and I certainly appreciate your comments.

Mr. Chairman: Call for order. I am not going to allow debate. I will allow questions to the presenters, but from now on, I will no longer allow long commentaries on the various issues.

Mr. Edwards: I have a question, Mr. Chairperson, but it does flow the minister's comment which I take issue with, not his intentions but what he has achieved in his definition here.

The presenter has indicated, you have indicated, that you would just leave it. It means "a disease arising out of and in the course of employment . . ." What troubles me is not so much that the rest is there but the next word which is "and" not "or" but "and" which means it is a cumulative definition. You must have all of those things before you get inside.

Mr. Chairman: Excuse me, is there a question?

Mr. Edwards: Yes, my question is: Where occupational disease is defined as "means a disease arising out of and in the course of employment . . .," you have told us you would like it restricted to that. If we change that word to "or" resulting from causes and conditions (a), (b), (c), (d), would that achieve in effect what you have put to us already? I think it would achieve what the minister just told us he wants to achieve.

Ms. Cook: I do not believe that it will satisfy the point that I was making, and particularly, I would have to think about it. Maybe when Dr. Kraut is up here tomorrow or Saturday morning or Sunday afternoon, whatever, he will address those. Also, (c) an ordinary disease of life, is very important and the definition for stress. If I may say, as much as I respect the legal profession of which there are a number in this room—and I also respect the medical profession—as the minister's comments were being made about the multifactorial approach and clearly trying to identify causation to deal with that arising out of the workplace, there are specialists in occupational medicine. There might not be many in this town, but we have at least two at the university who service our centre and another full-time person who is there and who is getting training in occupational medicine, who could address this as well, who were not consulted.

Mr. Edwards: Thank you.

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Mr. Chairman: Thank you very much, Ms. Cook, for your presentation. We will move on then to No. 14, Mr. Richard Kerylko. Mr. Kerylko, would you come forward, please. Have you a written presentation for distribution?

Mr. Richard Kerylko (Private Citizen): Yes, I do.

Mr. Chairman: Would you proceed then while it is being distributed.

Mr. Kerylko: I would like you to bear my scribbling, sir. I could not afford to get it done properly, never mind $250.

Mr. Chairman: Would you proceed, please.

Mr. Kerylko: I am an injured worker who has been a victim of a bureaucratic injustice. I was sent back to a job, I was fired from this job and then cut off WCB benefits.

I would like to propose an amendment to Bill 59. The proposal is that injured workers with employment-related injuries who are sent back to their employer to work by the WCB cannot be fired by their employers. Also, to help speed up the process, I was thinking I would like propose that, say, within one week of a claimant being cut off benefits, a senior adjudicator should talk to the claimant personally and explain to the claimant what has happened. Then the claimant can go or can speak to the worker advisor right away and not have to wait for however long they have to wait before they get this written information from an adjudicator. It might be a month or whatever, so you would save some time there.

At present, I believe there is a four-month waiting period to see a worker advisor, another three months to get to the review office and four or five months to get to the appeal panel. I also feel that, if the WCB is driven by costs rather than fair benefits to workers by making it even more difficult for injured workers to collect and maintain benefits, then there should be better support for the worker advisor's office to sort of even things out for the injured worker a little bit.

I would just like to briefly describe what happened to me, and this involves parts of the act. After being off work for about 13 months for carpal tunnel

syndrome and epicondylitis—I was a meat cutter—I was sent back to alternate work with my employer, Burns Meats, on March 14, 1990.

When I raised concerns about my return to work to an environment dangerous to my health, I was told that, if I did not return to work, I would be cut off WCB benefits and fired from Burns Meats. I have had numerous problems with allergies for years. Before I returned to work, I told my vocational rehab consultant about this. She says, well, you have to go back to work. She says, file a claim, but get back to work. So I went back to work.

There is a note on file with Burns Meats dated May 27, 1986, from a doctor saying that I am allergic to something on the kill floor, and I have been advised by the doctor to try and work elsewhere in the plant. I was tested for allergies. I went for tests on my own. I was not tested for any airborne contaminants or whatever, okay. So here I am, I am sitting in this hog barn at Burns Meats in an environment that I was told not to go back to, you know, not to work in, in 1986. As far as I am concerned, the Compensation Board knew that I should not be working there, Burns Meats knew that I should not be working there, yet I was told to get back there and work.

On March 14, I was sent back to work in this hog barn chasing hogs. I had an allergic asthmatic attack after and sought medical attention the same day. That same day, I saw my doctor, who advised me not to return to this job. The next day, I was terminated from my employment at Burns Meats. I have been told that the people have heard management laughing, placing bets on me—this is after they stuck me in this hog barn—and they are saying how long would I last and things like that.

I was told by Dave Brown of the WCB that Burns Meats did not want me back there, and I knew this myself without him telling me. I mean, how would you like to go back to an employer who does not want you there? An employer knows that his WCB assessments, or whatever you want to call it, will go down if he can get rid of these employees who are on WCB, any way he can.

Also, this alternate job of chasing hogs was not the job originally agreed upon between the WCB, Burns Meats and me. I did not work at the job determined beforehand to be within or designed to be within the restrictions for my right arm injury, restrictions that were placed on my right arm and are still in effect. The employer changed my initial job assignment and gave me a job which was harder for me and which was not within my restrictions of avoidance of supination and pronation, a job which the employer later made look easier to WCB representatives and the doctor.

I appealed to the review board and was placed back on benefits June 29, 1990. I was actively engaged in a vocational rehab program. As a result of an appeal by Burns Meats, I was cut off benefits February 21, 1991. Dr. Laing from the WCB Looked at this improper job presentation and apparently lifted the restrictions on my right arm. He said, this job was made to look so easy; it did not matter if I had restrictions. I can prove this.

Four doctors have said that the job was not suitable for me, including a doctor from the Workers Compensation Board. He sent a letter to George Davis in May 1990, saying this job was outside of my restrictions for an individual with injuries like mine. The Workplace Health and Safety has also agreed that this job is not suitable for me, and I have a report which I could read.

If the employers were not allowed to terminate disabled workers, I could still receive disability benefits through the employers' sick benefits program. Today, I have no life insurance; I am cut off a dental plan; no pension plan; my credit rating is ruined; and I am on the verge, within the next week or two, of severe financial problems. I am walking around angry most of the time. I did not realize this, but people have told me. A couple of doctors that I have seen said, do you realize how angry you are? I said, no, I did not. So this is how I know.

I am also quite upset about my wife. She seems to be suffering in more ways, more than I am with this mental stress, this fear of the future. She does not know what is happening. She is suffering from increased migraine headaches, and my relationship is strained.

I feel that I was set up to be removed from the system. This is the way I felt at the beginning before I was sent back to work. I also feel that the emotional affliction of unnecessary mental stress is being used as a tool to cause injured workers to give up and fall through the cracks in the system, as I felt like giving up and just going some place and staying there. I do not know where.

I have written numerous appeals, and I have spoken briefly on the Peter Warren show. I believe

I spoke to you, Mr. Praznik. I was told by Graham Lane that I would be given some help. I am still being given an indescribable bureaucratic runaround.

One example is this lawyer; he wrote a letter to me. He said: Your application for reconsideration under Section 60.9 of the act, you requested I provide an explanation as to the manner in which sections of the act have been misapplied. Refer to specific policies—which I did not have a copy of; there must be maybe 1,000 policies, I do not know. Explain as to the manner in which these policies have been misapplied. I am just a meat cutter; I am not a lawyer. I am fighting for myself here.

I have communicated with Judge Kopstein, Graham Lane, yourself, Karn Sandy, Kathryn Cayer, Pat Orloff, George Davis and all these people sitting up there on their pedestal, or whatever. Here we have all these people with a combined salary of probably half a million dollars, and there is me down there. Sort of a David and Goliath. Like I say, is this fair? I am not a lawyer. Okay?

As a result of being allowed the multiple appeals, the Workers Compensation Board has finally agreed that this job is not suitable for me. This is after months and months and months.

* (0020)

Three weeks ago, George Davis, the Chief Appeal Commissioner, sent a memo to Karn Sandy stating that he felt that I should be granted reconsideration, or I am not sure exactly what, that they finally agreed that this job was not suitable for me. They say there is not enough medical evidence to prove that I had an asthma attack, and all this. This was three weeks ago. I phoned there and I found out that this Karn Sandy, the deputy chief executive officer—she has tried to help me; I am not saying anything bad about her—was on holidays. I waited three weeks after this memo was sent. She is back from holidays now. She has sent this recommendation or memo by George Davis back to George Davis. I am just talking about this because I want to give you an example of how an injured worker—I hope not everybody is treated like me.

Now this is back at George Davis' office. It may be a month before this is resolved. In the meantime, I am sinking down lower and lower and lower, and always financially, physically, mentally and emotionally. I am not here to be placed back on benefits; I am here because I am angry at the way I have been treated. I feel that I, an injured worker, should be placed back on benefits immediately because there is all this evidence in my favour. I should not be made to wait for another month for a rehearing or reconsideration or whatever they are going to do with me, in view of this overwhelming evidence.

Also, I am angry with my employer. I would like to see all of us—I believe there are about 40 or 50 of us workers that have been fired, that have been disabled—get together and go after the employer in the form of a class action suit or whatever—like I said here—employees who have been terminated because of their work-related disabilities. That is all I have to say right now. Are there any questions?

Mr. Chairman: Thank you, Mr. Kerylko. Are there any questions?

Ms. Cerilli: I would just like to commend you on your tenacity. I appreciate your presentation, and I am glad that I was here to hear your presentation.

Mr. Kerylko: Thank you.

Mr. Chairman: Thank you very much.

Mr. Edwards: Thank you for coming forward, Mr. Kerylko. Can you just tell me if, did you ever bring this—have you brought this to the attention of the minister, or has this been pursued through other channels than directly through WCB?

Mr. Kerylko: I brought this attention to the minister on the Peter Warren radio show. That was a few months ago.

Mr. Edwards: Thank you.

Mr. Chairman: Thank you very much. We will proceed to the next presenter, Ms. Sandra Oakley. Is Ms. Sandra Oakley here? Have you a written presentation for distribution?

Ms. Sandra Oakley (Canadian Union of Public Employees, Local 1063): Yes, I do.

Mr. Chairman: Could I ask staff to distribute it? Would you proceed please?

Ms. Oakley: Yes. Before proceeding to present the brief, I would like to introduce the two gentlemen with me. On my left is Mr. Don High. Mr. High is the first vice-president of CUPE Local 1063 and is employed in the assessment department of the Workers Compensation Board. On my right is Mr. David Cutler. Mr. Cutler is the president of CUPE Local 1063 and is an adjudicator employed at the Workers Compensation Board.

We would like to thank the committee for the opportunity to appear before it and to present our concerns. Local 1063 of the Canadian Union of Public Employees is recognized as the bargaining agent for unionized employees of the Workers Compensation Board of Manitoba. The local represents 280 of the board's current staff complement of 360.

The executive of CUPE Local 1063 has reviewed the strategic overview and the significant summary of the proposed amendments of The Workers Compensation Act, as well as a review of Bill 59, and wishes to comment on those aspects of the proposal which have a direct and, we believe, adverse impact on the membership of CUPE Local 1063. Our brief in particular will deal with Section 109.5 of the proposed amendments, a proposal which will allow for duties or work performed by our members to be contracted out, a proposal which refers, at this time, specifically to adjudication.

While we understand that other aspects of this legislation will have far-reaching impact on injured workers in Manitoba, we as a local representing employees at the Workers Compensation Board will not address those issues in this brief, as we feel those issues will be addressed by the Manitoba Federation of Labour, a group of which we are a member, and we do sit on the compensation committee of the MFL and other groups representing organized labour and injured workers.

We, the members of Local 1063 are already seriously concerned with the recent administrative decision of the Workers Compensation Board to contract out work currently performed through vocational services in the benefits division and see Section 109.5 as an attempt to entrench in legislation an allowance for contracting out with The Workers Compensation Act, with a view to eroding the rights of current and future members of Local 1063. It is also our view that the contracting out of adjudication cannot possibly be in the best interests of injured workers in the province of Manitoba. We also view this proposal as an intrusion into the collective bargaining process, in that it could prohibit the union from improving the current provisions of the agreement in future negotiations, thereby preventing the local from negotiating job security provisions for its members.

CUPE is, of course, committed to protecting the jobs of its members and maintaining the best possible wages, working conditions and promotional opportunities. We are also, however, vitally concerned with ensuring that efficient and economic services of the highest standards possible are provided to employers and to injured workers, services and standards that we believe are representative of current board employees.

The most obvious and direct impact of contracting out is that CUPE members lose their jobs. The union understands that the collective agreement currently contains a provision which would prohibit direct job loss, but we believe that all members of Local 1063 will be hurt by the indirect consequences of contracting out. Contracting out will reduce the employment opportunities for members of the bargaining unit and will create a fragmented labour force.

By contracting out, we would also note that the board will lose its ability to ensure that qualified employees are performing the job. The contractor hires employees to do the job and determines the qualifications necessary—qualifications which by necessity would be less than the standard expected by the Workers Compensation Board—a copy of the current job descriptions for the positions of Adjudicators I, II and III is attached to this brief for your review—unless, of course, those employers scheduled as third parties were successfully able to entice and hire from within the ranks of current adjudicative staff at the Workers Compensation Board, a factor which would deplete an already, we believe, understaffed area at the Workers Compensation Board and which would ultimately adversely affect injured workers.

The union notes the following statistics which were compiled by CUPE's research department in 1989 and which, in fact, were shared with the administration of the Workers Compensation Board during our last set of negotiations.

You will note that in 1988, there were 55,000 claims in Manitoba, but there were 27 adjudicative staff employed by the Workers Compensation Board to deal with those 55,000 claims in a department with a total staff at that time of 160 members.

The current breakdown of adjudicative staff at the Manitoba Workers Compensation Board is as follows. There are three units in the benefit divisions. Each unit's jurisdiction is determined by geographical area and industrial criteria. For

example, Unit 1 deals with cases in northern Manitoba.

There are six adjudicators in each unit: three Adjudicator I's, and three adjudicators who are categorized as Adjudicator II's. Those are the individuals who deal with what are known as complexity C cases, in other words those cases which have been determined, using the board's criteria, to be more complex claims.

Each unit has an Adjudicator III assigned to it, but those people who perform in a review of the job descriptions will clearly indicate they perform in a supervisory capacity, although they are members of the bargaining unit.

There are three adjudicators in the special claims unit; there are six adjudicators in initial adjudication, for a total of 30 adjudicators.

* (0030)

This union has maintained consistently in meetings between 1983 and this year that this board is seriously understaffed when it comes to the issue of people doing actual adjudication.

We also note that each of the three units is also staffed with vocational rehabilitiation consultants, a vocational rehabilitation supervisor, payment assessors, unit clerks and field investigators, all of whom are responsible to the unit manager in their particular unit.

The union estimates that an adjudicator at the board is carrying, on average, a caseload of approximately 400 cases at any given time. The union recognizes that the initial impact of scheduling certain third parties would be to reduce the workload of board adjudicators but we note that, in the long run, this may not be the ultimate result. As Section 109.5(4) would allow: "A person who has a direct interest in a decision made under subsection (1) may request that the board reconsider the decision under subsection 60.1(2)." We note that as a quasijudicial body the board is required to do its own investigation in order to prevent allegations of bias due to an outside decision. We believe that this may also impact adversely on injured workers in that it has the possibility of ultimately increasing the waiting period for a decision.

The union is also seriously concerned about the provisions of Article (f) of Section 109.5(1) in that we believe that it would allow the board to contract out other services currently performed by members of our bargaining unit, for example, collections, assessments, computer services. We note that no member of administration has been able to assure us that the aforementioned services would not be contracted out once Bill 59 is passed and Section 109.5 is in effect. Indeed, comments made by management in the collections audit area have led us to conclude that this possibility does, in fact, exist and that it will be acted on.

The union believes that our members as employees of the Workers Compensation Board take pride in their work and are concerned that a quality stakeholder-oriented job is done. We believe that contracting out will lead to a decrease in services provided to injured workers and to employers in this province. We cannot also minimize the demoralizing effect this proposal has on our membership. They view it as ultimately limiting their promotional opportunities within the board, and they also feel that it implies that they are viewed as doing their job poorly.

In conclusion, it is our belief that the interests of injured works and employers will not be better served under the provisions of Section 109.5, and it is our sincere hope that the right to contract out will not be enshrined in the legislative amendments to The Workers Compensation Act. Thank you.

Mr. Chairman: Thank you very much, Ms. Oakley.

Mr. Edwards: Thank you for your presentation. You may have been here when I asked the question of another presenter, why she thought this was in there and she was not sure. So it is nice to have your view of why it is here. It makes as much sense as anything we have heard, and I will eagerly look forward to—and maybe the minster will want to respond here or at committee as to what he has this in this act for.

My question to you is, to the presenter, in your brief I believe you indicated that there was some contracting out happening now?

Ms. Oakley: Yes.

Mr. Edwards: Can you give some details of that?

Ms. Oakley: Yes. There has been some contracting out of some rehabilitation services in the benefits division, that has not cost any job loss or anything, which has been done on the issue of a two-year plan. We were assured that this would only be done for two years and that ultimately the work would be brought back into scope, and that was the only reason that we did not protest it at the time.

There has also been recently, because of the hiring freeze that has been maintained by the government, the union agreed with a request by the employer to contract out one of the entry level computer services positions into Manitoba Data Services. There is also, and we have willingly gone along with this, investigations where there is surveillance done, the union has agreed that we would allow the board to contract with private surveillance firms, since it is the belief of our members that it is not their job to do surveillance work on fellow workers and fellow members of the trade union movement.

Mr. Edwards: You also make the statement on page two of your brief that the current collective agreement contains a provision which would prohibit direct job loss. Are you facing negotiations in the near future? In your past negotiations, was this raised? This contracting out, is this a circuitous way of achieving what was not achieved at the bargaining table?

Ms. Oakley: Well, I mean, even if we were in, I guess, the ability to negotiate, we would no longer have that ability to negotiate. We are, however, lucky in that we were exempted from the bill because we are in the third year of a collective agreement.

I would indicate that I do have some concern in that. I have just reviewed my notes of negotiations, and the issue of contracting out was discussed and was raised at the bargaining table. However, we reached assurances from the employer at that time that they had no plans to contract out any work and that we should be satisfied with the current provisions of the collective agreement. Those just indicate that no one currently employed in the board would lose their job or suffer a reduction in hours as a result of the board contracting out work.

Mr. Edwards: Has anyone given you another explanation for this section than the one you put forward?

Ms. Oakley: No. We have met with the employer, and they have indicated to us that they believe that it is an enabling clause. That is exactly in the terms that it has been described to us. We have indicated to them that on the basis of the current administration, we may perhaps feel comfortable with that. However, given that I have been assigned to this local for 10 years and I believe there have probably been about six different administrations, longevity is not an attribute that I would put to either boards of commissioners or management at the board.

Mr. Ashton: An interesting comment. I just want to pursue this very important concern. It is one I share, and I know our caucus does.

I am just wondering how you reconcile what is happening with this clause and whether it is an enabling clause or not. Obviously it would not be put in there to my mind if it was not intended to do something with it. If that was not the case it could be brought in the form of amendment.

How does this reconcile with the attempts in recent times to improve morale of employees with The Workers Compensation Board, recognizing it is a high-stress job? As you say, there is a real sense, and I know from talking to employees, of trying to do the best job and also provide some support in a morale sense for the fact that people are doing a quality job. How is this impacting on that morale?

Ms. Oakley: It is obviously having a serious impact on the morale of workers. People who are employed at the Workers Compensation Board know that in many ways they have a thankless task. For the most part, the auditors who work in the assessment department rarely get thanked when they go out to audit the books of an employer and when they tell them what they are going to be assessed.

In many cases, people who work in adjudication do not have a particularly pleasant task when they have to tell someone that because of board policy their claim is not approved, but we note that our members do not create that policy, they simply carry out policy directives. In this case, the sense that we get from our members is that there appears to be an attitude out there that government, particularly the minister, that these employees are responsible, somehow believes that they are not doing their job properly and that perhaps it would be done better by a third party.

Mr. Ashton: Indeed, some of us feel that the difficulty may increase with the rest of the bill too in terms of some of the difficult situations.

I just want to finish off finally by asking you for your recommendation in this regard. Is it to amend that particular section in any way, shape or form, or is it to delete it entirely from this bill?

Ms. Oakley: The only amendment that we would find acceptable would be the deletion of it from the

bill. We believe that any matters would be dealt with between the two parties because that is who our agreement is with, and we believe that we have been fair when the administration has approached us.

Ms. Cerilli: Just to clarify, what kind of services are being contracted out and who are they being contracted out to?

* (0040)

Ms. Oakley: Well, there are computer services being contracted out particularly, to an entry level position. It has been contracted out to Manitoba Data Services, strictly because of the issue of not being able to create any higher level positions in computer services. So, we gave up a lower position to get a higher position, not something that unions necessarily like to do.

There is no question that there is some work currently being done by—what has been known as the long-term claims project has been developed. That work has been contracted out to Mercers, which ultimately is contracting out to at least three separate consulting firms for their recommendations as to whether or not those long-term claims should have been allowed and whether there should be any change in how those claims were handled.

Ms. Cerilli: This sounds very similar to what this government is doing with Child and Family Services, blame the workers for mismanagement.

Mr. Chairman: Ms. Cerilli, I would remind you to keep your comments relevant to the bill.

Ms. Cerilli: I will. I am. Really then what you are saying is that part of the problem is that the employees are overburdened, that their caseloads are too high. Is that part of what is happening?

Ms. Oakley: I do not think there is any question that when one looks at it and when one looks at claims that the issue is that, yes, there are too many claims. There are not enough adjudicators. I think what you have to look at, if you take a look at the job descriptions, an adjudicator does not merely get a claim and say, yes, I approve it, or, no, I do not approve it.

They have to look at the claim. They have to do research. In many cases they have to wait for information from an employer. They have to wait for information from a physician. They then have to interpret how all that is according to board policy and determine whether or not a claim is, in fact, a valid claim and whether they will allocate it.

They also have to have discussions with the rehabilitation consultants in those cases where they are passing the claim into voc/rehab.

Ms. Cerilli: I am wondering how many of these amendments would not be necessary if we would just have more staff to deal with the number of problems that are arising in workplaces because of a variety of reasons, some that were mentioned by the presenter from the Occupational Health Centre.

Ms. Oakley: Certainly, from our point of view one of the drawbacks has been, and this is something that we have maintained consistently through different administrations at the board, that while we sincerely want to do a job for injured workers, we do not have enough staff, and that prohibits us. I think that there are a number of things that adjudicative and other staff at the board could be doing if staffing levels, in fact, allowed them that opportunity to be able to have a decent size caseload that would enable them to get claims through and out to injured workers.

Mr. Chairman: Thank you very much, Ms. Oakley. We will proceed to the next presenter. Is Mr. Lend Wheeler here? Mr. Wheeler, would you come forward, please? Have you a presentation to distribute?

Mr. Lend Wheeler (International Association of Machinists and Aerospace Workers, Lodge 484): No, I do not. I just have a few comments I would like to make.

Mr. Chairman: Proceed, please.

Mr. Wheeler: Okay, thank you. I just have some comments I would like to make. There has been much discussion on the issues and on the things that are raised.

Just a bit of history before I start, and that is from a book by John Stanton. It was copyrighted in 1987, and it talks about some of the issues that were presented here today, in my mind anyway. It talks about the traditional trade-off and all these other kinds of things.

One of things that struck me the most here was, the union movement finally won a government-sponsored system of insurance paid by employers and run by a government-appointed board of three persons: one representing labour;

one, employers; and a third, a supposedly neutral chairman.

No longer was blame relevant. Any injury or death arising out of and in a course of employment was compensable. In return, the right of workers to sue employers was taken away. The authority of the courts in this field was eliminated. In its place, the board had full power to decide if an injury or death arose out of and in the course of the job. Only if it did so was compensation payable.

Compensation is paid out of a fund the board raises from taxes it imposes on employers in virtually every industry. The fund exists not only to compensate injured workers but to assist dependents of those killed on the job, and to pay all medical benefits, rehabilitation costs and administrative charges. It is illegal to deduct any part of such costs from workers' wages.

Nonetheless, a dollar not spent by the board is a dollar saved for employers. Accordingly, employer-oriented governments have appointed chairmen whose neutrality leans towards the employers. This has resulted in injuries being minimized, in injured workers being cut off compensation before they are able to return to work so that smaller pensions are paid. Boards have also refused to recognize industrial diseases, in this case, such as silicosis. Most decisions are based on opinions of doctors who are hired by the board and who often see issues from the capitalist rather than from the humanist point of view. Knowing the employer's wishes can, and does, override scientific impartiality. Now that to me reminds me of what is happening here.

I read some things that come from Darren Praznik, and I looked for motivating factors and what would prompt these legislative historical changes as was written in this news release of May 31, 1991, modernization of 1916 legislation followed by six years of research. So what prompted it? A $225 million deficit. Whose deficit? Darren Praznik, the minister, says that this is employer funded. Well, good. It should be employer funded. We gave up that right to sue them. They pay the assessment. The $225 million belong to the employers not to the workers. If there was proper assessment to these employers then maybe there would not be a $225 million deficit. I believe that this deficit is created, not by frivolous claims or by people trying to get something out of this system that they are not entitled to get, I believe that it comes from large overhead, administration and adjudication processes. I am not suggesting that you eliminate adjudicators. What I am suggesting is that the period of time to do an adjudication is ridiculous.

The author—and CNR stood up here and says the author of the bill is Graham Lane, and I did not hear anybody refute that. So I take that as the gospel that Graham Lane is the author of Bill 59.

I have a big problem with steering committees. I have a problem with standing committees. I think they are self-serving. I do not think they serve the interest of the worker, especially in this case. I think this serves the interest of the employer. This is an employer-oriented government and I believe that the workers are going to be suffering for this. I think that we would have been better served if we had a royal commission into this problem of workers compensation.

I am a labour rep from the railway and a large percentage of my time is spent on compensation appeals. I watch people lose their houses. I watch people lose their families because of the old compensation. I hate to see what they are going to lose under all these changes that you people want to make. You know, we sit in appeals. For two years I sat in appeal for a guy who lost everything that two years later was ruled in his favour through a medical review panel. Big deal. The guy got paid $29,000, got a permanent partial disability. He got all kinds of things. Is that a victory? That is not a victory. That was something that should have happened two years ago. So now we make it harder. Now we make it extremely hard. Now we charge people for these types of things.

* (0050)

I would like to maybe stop being a little bit so negative here. Okay? Because I think there is something that is positive that could happen here. Rehabilitation for injured workers is very high on my list. I think that rehabilitation is the way to go. I think that people can be rehabbed back after proper medical intervention, can be rehabbed back to either their past work or to some work that is suitable with the disability that they unfortunately have to carry around for the rest of their lives. Instead of looking at the disability, we can look at the abilities that are left, but that has to come through support. That has to come through support from the Compensation Board, through the assessments to the employers. Those are the type of things that

should be developed, you know. Not a way of trying to say, well, if you do not go back to a particular type of industry or if you do not do this or you do not do that you are not going to get any support from us at all. That is counterproductive and that does not help anybody. It does not decrease—well, it might, I guess, decrease the deficiency of the board but it certainly does not help the people that I represent.

We have been successful in the railway to get people back to modified work and it was not easy. I listened to the railway stand up here saying that they were very proud of the fact that they had a rehabilitation program. Well, I would not be very proud if I was that gentleman because in all the years that I have been with the railway, they have never once brought a person back to work through that committee.

I represent the machinist's union in the railway. We have, through help from the Compensation Board, the rehab department and, specifically, the vocational consultant that was assigned to the railway—we were able to get people back to suitable work and we have had success there. We have had people come back to work in suitable modified jobs without even—in the middle of an appeal process when they were not even being paid claims, because traditionally in the past, the only time the companies would ever listen to wanting to bring people back to modified work was because of the claim being paid. We were successful in bringing a person back to work in a modified job when he was still in the middle of an appeal process. How do they do that? I did that by embarrassing the company at the Board of Commissioners because they tried to say that they had a program and they did not. So we were successful there.

So I guess, in closing, what I would like to see, I would have liked to see a royal commission. I have stated that. I think that the initiatives that have been put forth are self-serving. They serve the employer. They do not serve the worker and I think the worker in this province, whoever is unfortunate enough to get hurt, is going to really suffer. I would love to see the authors of this type of bill, I would love to see the people that say we support this type of bill, try living under that type of bill. I would like to see a guy making $70,000 a year-plus go to 90 percent of net, go to 80 percent of net, turn 45, lose 2 percent here, lose 2 percent there, lose this there, lose that, right? I would like to see the person who says I believe in this, be willing to live under it. I think what is happening is that instead of the employer totally funding compensation, it is being put on the backs of workers. The workers are having to fund it, and that to me is not right.

Thank you.

Mr. Chairman: Thank you, Mr. Wheeler. Are there any questions?

Mr. Ashton: Mr. Chairperson, I have had the opportunity to discuss these matters, I know, compensation matters, previous on a number of occasions with the presenter. I know that he is basing his presentation on direct experience dealing with workers involved. I want to ask you, because I think you have been very clear in your perspective on this, if effectively what you are saying is that whereas the original deal, and it has been described, by the way, by some people as the employer protection scheme because it has that element as well as some benefits for workers, whereby it was funded by employers as an insurance against lawsuits. Essentially, you are saying to this committee then that you feel the injured workers, through some of the reductions in benefits and also through claims that will not be recognized, will, in effect, be increasingly indirectly subsidizing that deficit situation the board is in.

Mr. Wheeler: I agree full heartedly. When I am being told or when I read that 90 percent of net and 80 percent of net is what people are going to receive I say, well, who is funding it? It is coming off of me. It is coming off the injured worker, not me. I have been fortunate enough not to ever be injured, but that is where I have the big problem, and the taxpayer, I think they are going to be funding—when we hear things like Autopac or collateral benefits or we are going to deduct from here? When I am working, I get X number of dollars a week. When I get injured, I expect that I should get X number of dollars a week with the same deductions, if deductions are made. I think that you should make the same deductions. I think you should pay my pension. I think you should make all the same things that I would get as if I was at work. Why should I get less? I do not understand that. The only reason I am getting less is so I can help get rid of a $225 million deficit. That is what I believe.

Mr. Ashton: I thank you for your perspective. I just have one further question because, obviously, this committee will be making a decision in regard to this bill and you made an interesting suggestion. We

have heard various presenters indicate they do not feel it lives up to, probably, the major piece of consultation and discussion that took place, the King Report, back in '87. So you are essentially saying to this committee that this bill should not pass through in its current state and instead should be subject to some real consultation. I take it you are suggesting broad consultation, including with a lot of the injured workers themselves.

Mr. Wheeler: Right.

Mr. Ashton: Thanks for that suggestion.

Mr. Wheeler: Yes, I agree.

Mr. Ashton: Thank you.

Mr. Edwards: Thank you, Mr. Wheeler, for your presentation.

Mr. Wheeler: I cannot hear you, I am sorry.

Mr. Edwards: I am sorry. Thank you for your presentation. You mentioned that it was not all bad. You started talking about rehabilitation and said—you had some positive things to say. What sections were you talking about in this that you felt were positive?

Mr. Wheeler: The way I understand the changes in the act—well, let us go to the old act. The old act says that rehab is not a right; it is a "maybe" you are going to get. The way I understand the new act is that rehab is a possibility. I think that rehab is a necessity. If you can rehab injured workers back to work through proper programs, then we have success. Then we get rid of the losing the houses or losing this or losing that. Then we have something that we can be proud of. But boy oh boy, if anybody is proud of what is happening here with some of these changes, they have to get their head in shape.

Mr. Edwards: One thing that you would, I think, be able to comment on is someone who works with claimants. What effect is the spectre of a $250 cost award being levied against them going to have on their willingness and their desire to pursue appeals?

Mr. Wheeler: I have not even informed my membership that there may be a $250 cost. The people whom I represent, I am having more trouble keeping them out of welfare lines than giving them more bad news. I do not think they will be very happy to hear that this could be a possibility upon appeal, because in the appeals that we have dealt with, I have never in all the time I have been doing this—in my heart, if I know that if somebody is lying to me, then there is no way I am going to proceed with it. I cannot. I cannot because we lose our credibility. But I will tell you, I have almost 500 members, and the people that I have dealt with who have been injured, I can say to you honestly that I have never had one where I felt he was trying to get something that he was not entitled to have.

I have watched people lose their houses; I have watched families break up. I have seen it happen; I have seen the impact that these types of things have. These types of decisions coming from very, very restrictive, very legalistic interpretations and applications of the act; a very hard line, hard approach, no room for movement; decisions made by doctors who work for the board who do things from a perspective of money all the time.

I am not saying, I am not suggesting that people should not be fiscally responsible. I am not suggesting that. All I am saying is, you have to be fair.

Mr. Chairman: I am going to have to cut things off here to change tapes, unless you have a very quick answer. Then we will dispense with these discussions for a short while till we change the tapes on the machine, and I thank you very much for your presentation, Mr. Wheeler.

Mr. Wheeler: Thank you.

* (0100)

Mr. Chairman: We will adjourn for a few minutes. We have two more presenters.

* * *

The committee took recess at 1 a.m.

After Recess

The committee resumed at 1:03 a.m.

Mr. Chairman: Come to order, please. I would call now, Mr. Bob Hykaway, Amalgamated Transit Union, Local 1505. Mr. Hykaway, have you a presentation to distribute?

Mr. Bob Hykaway (Amalgamated Transit Union, Local 1505): Yes, I do.

Mr. Chairman: Can we have it distributed, please? I would ask you to proceed with your presentation.

Mr. Hykaway: Yes, thank you.

I am Bob Hykaway, Executive Vice-President of Amalgamated Transit Union. I know it has been a very long day for all of us; I have been here through

all of this too. I just appreciate you hearing me today.

Local 1505 of the Amalgamated Transit Union welcomes the opportunity to address this committee of the Manitoba Legislature about Bill 59, The Workers Compensation Amendment and Consequential Amendments Act. This bill is not for the workers but an employer's bill. Why is it that every time there is a change in Workers Compensation Act, it is the workers who suffer? I represent over 1,600 members of Winnipeg Transit, and we must deal with one of the most demanding and cynical employers: Winnipeg Transit.

On September 30th, 1987, City of Winnipeg Council approved a number of recommendations regarding the city's continuing initiative aimed at reducing both the number of workers' compensation claims filed by city workers and the associated costs. The workers compensation co-ordinator was provided a mandate to appeal claims that were considered undeserving. Within its structure, the City of Winnipeg has a workers compensation section, which employs a full-time compensation co-ordinator, a compensation supervisor, along with support staff. The compensation co-ordinator is constantly appealing claims of our ATU members yet loses over 95 percent of the appeals.

Through contract negotiations, ATU Local 1505 went to 75 percent legislative benefits. This meant that our members would not be paid until the claim was approved by the adjudication process. The city then really put pressure on by delaying claims, processing by phone calls, or sending letters of the doubt to the adjudication officers. They would appeal virtually every claim that there were no witnesses to, and we have 965 bus operators who work alone.

The compensation co-ordinator does, in my opinion, duplicate the WCB work; as well, he hires private investigators to spy on our members for weeks at a time to try and catch them doing some physical task, so WCB benefits should be cut off. These are the type of people who will have more control to make the workers, our members, suffer more if this bill goes through as proposed.

At this time, I would just like to mention, off my notes, that we have had three of our members—we have successfully won through arbitration cases—who were off on compensation put back to their regular jobs. This is through the City of Winnipeg; Winnipeg Transit did not want these employees back at their jobs. We had to arbitrate them to get them back to their original positions. This is our rehab employment from the City of Winnipeg.

At this time, I would like to take issue with some of the proposed amendments and give you my opinion on those so-called changes.

New subsection 4(2): Payment of wage loss benefits. "Where workers injured in an accident, wage loss benefits are payable for his or her loss of earning capacity resulting from the accident on any working day after the day of the accident, but no wage loss benefits are payable where the injury does not result in a loss of earning capacity during any period after the day on which the accident happens."

I cannot believe that the powers that be actually want an injured worker to lose pay for getting injured in the course of employment. This does reflect a change in policy; however, one is needed to provide a wage loss benefits for the day of injury.

New subsection 4(3): Misconduct of worker. "Notwithstanding subsection (2), where the accident is attributed solely to the serious and willful misconduct of the worker, as determined by the board, wage loss benefits and medical aid are not payable for three weeks following the accident."

It has always been my opinion that the WCB was a no-fault system, and yet with this change it becomes a fault system. This section has come under scrutiny several times and will be left wide open for the employers to use against the employees.

New subsection 27(3): "Compensation for repair, loss, breakage . . . . In addition to any other compensation under this Part, the board may pay to a worker who suffers an injury resulting from an accident or sustains damage to an artificial limb arising out of and in the course of employment the cost, or part of the cost, of repairing or replacing the worker's eye glasses, contact lenses, dentures, hearing aid, artificial eye, artificial limb and any other prosthetic device, and clothing worn at the time of the accident."

The words "who suffers an injury resulting from an accident" are there to save some money due to claims that no injury had occurred, then no coverage. Example: the bus operator assists an elderly person onto his bus in the middle of winter

and his glasses are knocked down and damaged. The act at presently covers repairs or payment for replacement glasses. In this incident there was no injury. I would just like to reflect one other one that was a little more serious, where one of our bus operators was involved in a scuffle on the bus where a couple of passengers—one had pulled out a knife and attacked the bus operator. All he received was a cut to his shirt, but in the scuffle his glasses were knocked down and damaged. They were a very expensive pair of glasses and the operator did not have a back-up pair. He was off work for three days. Compensation was covered. If I understand this act, in the new changes, he would not be covered and that does not make sense to me.

New subsection 39(1) to 39(5): Wage Loss Benefits. This is a direct attack on the negotiation process and violates our members' rights. I have trouble understanding why this government wants to penalize an injured worker by paying him 90 percent of net. What is more astounding is the proposed 80 percent pay after 24 months.

The City of Winnipeg is a self-insurer and pays all costs related to the claim of an injured worker. I interpret this change as to be a cost saving to the City of Winnipeg and other employers.

If the board has a problem with a few claims, why should all claimants suffer? The board should solve their problem, not create a bigger problem.

Subsection 109.5(1): The board may delegate to agent. The board may delegate its powers under this act to an agent or local representative for the purpose of: (a) receiving application for compensation, reports of accidents, physician's reports and other such proofs of claims as the board requires; (b) determining entitlement to wage loss benefits; (c) calculating the loss of earning capacity of a worker; (d) calculating the wage loss benefits payable to a worker; (e) paying compensation to workers or their dependents on behalf of the board; or (f) such matters as the board may determine.

* (0110)

This change is the most damaging clause of all. The board wants to contract out its work, but the people they want to contract it out to are the advocates for the employers. Now isn't that ridiculous? Many of these so-called agents work for employers, and now they will be adjudicating other fellow employers' claims. If the board is overloaded with work, then hire more people and train them to look at claims.

At this time, I would like to mention that ATU endorses the MFL brief that will be presented tomorrow and, in conclusion, I would just like to state that we ask that this committee reject the amendments that were put forward in Bill 59 and take a hard look at the injured workers that will require improvements not regressive amendments to The Workers Compensation Act. Thank you.

Mr. Chairman: Thank you very much, Mr. Hykaway.

Mr. Connery: Your comment about the City of Winnipeg and appealing and losing 95 percent of their appeals, is that verified?

Mr. Hykaway: With Winnipeg Transit, yes, I can verify it, and I took issue with the old compensation co-ordinator, who was Ian Irvine, and he sort of danced around the issue, but the proof is in the pudding. I have been in office now for five years as a full-time officer, and I handle the majority of our claims. I keep a backlog or a computer tally of all my appeals and all my members' files, and I have attached a certain code detecting who gets appeals. Then we go through the list and see win-loss because when I do appeals, if I want to refer back to cases I have done before, that is my easiest method.

Mr. Connery: I would like to follow up with that one later, because if indeed they are losing 95 percent of the appeals that they are lodging, that to me is bordering on harassment.

Mr. Hykaway: We have taken issue with our management at Transit. It was last year when the management went away to Indian Bay for a week to strategize management policies and how they have been handling our employees. We have been complaining about the support that our employees are getting. The City of Winnipeg is spending, I think it is approximately $3 million on an ambassador training program where it teaches the bus drivers at the top and the support works downward. Our complaint is that our bus operators do not get the support. That was brought up in there on their claims and different situations through compensation that have been happening.

Mr. Connery: How many bus drivers do you have in your union?

Mr. Hykaway: We have 965 operators and approximately 300 maintenance staff, and the rest

are retirees. Maybe to get around why I mentioned the 1,600, I have been involved in approximately four hearing loss claims for retirees after retirement.

Mr. Connery: How many claims would you have out of that, whatever number, 1,600—

Mr. Hykaway: Here is the problem. I have asked the City of Winnipeg for a count. They will not provide me with a count. They will provide me with costs, but they will not provide me with exact counts of claims. I have informed them of my computer program and what I do.

The only thing they will give me at the end of the year is a cost-sheet estimate which I keep and it tells—like what I was doing is keeping a cost. We have Great-West Life. We are not like other city departments. We do not have accumulated sick leave. We have a cost-sharing plan, an insurance plan with Great-West Life, and I was keeping the tallies on both.

We put out what we call a monthly personnel report, or Transit does, and I would getthe estimates from there but I would not get the costs, so I would have to contact them personally, through Mr. Rick Borland who is the director, and he has given them the permission to provide me with the cost on compensation to City of Winnipeg for Transit department.

Mr. Ashton: I could ask more questions, but I know it is late. I just wanted to say thank you for the presentation and ask very briefly, you addressed a number of the key elements of this bill. If, say, the minister was to amend certain sections, a few sections, I take it you still feel there is so much difficulty with the bill, so much, as you say, bias against the workers, the injured workers, that you are essentially saying, apart from maybe one or two positive sections, the rest of the bill should either be tabled or killed, essentially.

Mr. Hykaway: Yes, in my conclusion I ask that the committee reject the amendments that were put forward. I do not feel they have properly reflected my members or the injured workers that I think we should look at.

Mr. Chairman: Thank you very much, Mr. Hykaway.

Mr. Praznik: Mr. Hykaway, you outline a very great problem dealing with the City of Winnipeg claims and an excessive number of appeals being filed against your members. Can I ask you, would you be in support of a deterrent penalty with respect to those appeals on the part of your employer?

Mr. Hykaway: Yes, I have sat and listened to quite a few of the speakers mention—and I feel the City of Winnipeg, as I have outlined in my thing, is a very powerful organization that employs a co-ordinator and a supervisor and support staff. I am the only person at ATU who takes care of our things, and I fight a whole department. They have the money and the resources behind them, the hiring of the private investigators.

If they can go through all that cost, I think they should pay a very high penalty for doing it. I just want to expand on that. I have a problem with our co-ordinator in going past the appeal level. He uses little clauses 60.9 that I have never known about or heard about in five years and he proceeds it to the end, yet he gets an answer from the board stating through Mr. Scramstead there, a legal opinion that I look at and I say, hey look, that is the end. Yet the city writes back and says, no, we still want to proceed.

I have trouble with that, and, as you know, I have tried to approach you on this and I said I wanted to talk to you because we do have a lot of concerns, and we are sort of singled out from the other departments. As in (1) we do not have top-up, and (2) we do not have accumulated sick leave, we have Great-West Life. So it is a major problem with us.

Mr. Chairman: Thank you, Mr. Hykaway, for your presentation. I call at this time Mr. Michael Chuchmuch. Have you a presentation to distribute.

Mr. Michael Chuchmuch (Private Citizen): No, I do not. I have an oral presentation here. Just a few thoughts I would like to share.

Mr. Chairman: Mr. Chuchmuch, would you please proceed with your presentation.

Mr. Chuchmuch: Very good. I am not here representing any particular group, I am here just as a private citizen. I am not a professional speechmaker, and as a result my comments will be very brief this evening.

My employment history in the past 12 years: I have worked with Canadian National Railways, I worked with Canada Packers, I have worked in the garment industry, and currently I am involved in the field of education. As an employee in these different areas I have seen injured employees rightly acquire compensation benefits, and that is a good thing. As many of the presenters shared with us

tonight, you know, people losing homes and that sort of thing, well, nobody wants to see that, but the reason that I am here this morning is to bring to your attention what I perceive as the abuse of the compensation system that I have observed over the past 12 years.

Due to what appears to be the relative ease of application for benefit and again what appears to be the ease in which monies are paid out, many of my co-workers have engaged in falsely representing themselves as injured so as to acquire what really I believe is amounting to a paid holiday. Amazingly enough, the bulk of these so-called injuries takes place either for the duration of a particular hunting season or for several days during the commencement of Manitoba's sport fishing season.

One of the reasons I am here as well is to express my anger with the system's apparent inability to police this type of abuse. I myself enjoy the sport of hunting and fishing; however, I schedule my weekends and part of my holiday time for these activities, but, ladies and gentlemen, every season I go out, I find two or three guys who are out hunting and they are on compensation. Okay? Somehow it does not seem right to me that these individuals cannot work, but they have no problem hiking five or 10 miles through the bush and hauling out a deer carcass. It does not seem right.

I have also witnessed co-workers who are legitimately hurt at work, but extend their legitimate leave because of economic benefits of being on compensation. As ridiculous as it may sound, I have even witnessed an individual deliberately go on compensation just prior to Christmas and boast to the rest of his co-workers that there would be a few extra dollars available for presents.

What really galls me about this whole situation is that some of these guys laugh at the relative ease with which they could get away with this, and that they receive a little extra cash for their deceptive efforts. Of course, we need a system of worker compensation to protect employees in time of injury. I think there is no question there; however, the system should not provide what appears to be a reward for getting injured. As well, there must be a better follow-up procedure to ensure that those who claim for an injury are indeed injured. There should be an incentive in place to promote employee attention to safety in the workplace, not the reverse.

* (0120)

As an employee, I know that the vast majority of claimants are indeed honest about their injuries, and they should be looked after. No question. Nobody should be made to suffer if they are injured. That is a must if we are to maintain a humane employment structure, but the WCB and honest employees should not be put into a position of supporting those individuals willing to fraudulently use the system for personal economic gain.

One consideration would be to move away from the current benefit payment equalling 75 percent of the individual's gross pay. I support the movement towards net wages as fair compensation due to the individual's reduction in workplace expenses: fuel, tools, uniform, et cetera. If this were the case, I believe that employees with a legitimate injury would still be looked after economically. The economic incentive currently being realized by those fraudulently representing themselves would hopefully decrease.

In closing, I do not wish to give anyone here the impression that I do not care about any of my injured co-workers. Indeed, I do care enough to speak up for a fair system, one that compensates, not one that rewards. As I stated in the beginning of this presentation, I am here as a private citizen. I have presented one man's views based on one man's observations. Thank you very much.

Mr. Chairman: Thank you very much, Mr. Chuchmuch. Are there any questions?

Mr. Praznik: Mr. Chair, I just wanted to thank Mr. Chuchmuch for staying so late into the early morning to put his comments on the record. Thank you.

Mr. Chairman: The committee will reconvene tomorrow at one o'clock in the afternoon.

COMMITTEE ROSE AT: 1:22 a.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: The Workers' Compensation Amendment and Consequential Amendments Act:

The writer represents the administration of the City of Brandon in regard to the review of the above-noted legislation. Accordingly, I attended a public information session which was arranged by the Chamber of Commerce of the City of Brandon at which members of the committee established by the Workers Compensation Board to review the legislation addressed, in general terms, the

proposed amendments to the act. Subsequent to that meeting, I reviewed all the materials made available to the public and requested a copy of the proposed legislation for review as soon as same was available. Upon receipt of the proposed legislation, I requested an opportunity to attend the legislative committee and address the general impact of the proposed legislation as well as any concerns the city had in regard to the proposed amendments.

Unfortunately, when my office was made aware of the date of the proposed legislative committee review of the legislation, I was already in the city of Winnipeg attending a Public Utilities Board hearing regarding direct purchases of natural gas. I was, therefore, unable to finalize my review of the legislation and make arrangements to attend in Winnipeg to directly address your committee. As a result of my inability to attend, I am writing this letter to address the proposed amendments to The Workers Compensation Act. As indicated above, the position being advanced is the position of the administration of the City of Brand, and not the position of City Council, as we have been unable to review the legislation early enough to present the legislation to our council for its consideration.

In general, we support the proposed amendments for several reasons:

1.The existing Workers Compensation Act is dated, and in our opinion needed a comprehensive review in order to clarify the aims and objectives of the legislation and to provide for reasonable benefits within clearly defined benefit guidelines;

2.We believe the proposed amendments go a long way towards addressing a very real problem which exists, at least in the public sector, of the pyramiding of benefits, which now include sick pay, long-term disability, unemployment insurance, as well as workers compensation, and indeed other benefits on occasion;

3.Under the existing Workers Compensation Act, in conjunction with existing collective agreements, workers on occasion earn more between compensation benefits and top-up provisions in collective agreements while on compensation than they would have earned while working, a situation which we would suggest is contrary to public policy in that it unintentionally encourages employees to remain off of work which we fear unnecessarily increases, to some degree at least, the overall costs to employers, employees and government in relation to compensable injury or illness.

The following are a list of provisions which the writer suggests are particularly beneficial in the draft legislation:

1.The inclusion of a definition of "occupational disease" is of benefit in particular because it clarifies the fact that an occupation disease will not include stress, other than acute reaction to a traumatic event. We believe this provision is necessary in that all of us face stress in our employment and this is a natural consequence of working and, therefore, should be excluded other than for the stated exception;

2.Paragraph 1(7)(d) clarifies the benefits available to a casual emergency worker while on training course, something we believe to be very important;

3.Subsectlon 4(4) more clearly defines the distinction between an occupational disease that arises in part due to employment and in part due to other causes. This is something we believe to be critical if individuals are to become responsible for their own habitual damage to their overall health, for example, smoking in the face of chronic cardiovascular conditions;

4.Paragraphs 4(8)(c) and (d) also clarify the situation where duplicate assessments can take place and provide for the sharing of claims between jurisdictions, something we feel to be a major improvement resulting in reduced costs;

5.Section 22 makes it clear that employees must co-operate in medical treatment designed to mitigate the consequences of compensable injury. Such co-operation is absolutely critical;

6.Subparagraph 29(1)(a)(i) providing for, in effect, payment to the dependents of a deceased to a maximum of 90 percent of the net income is, for reasons set out hereinafter, an important improvement;

7.Sections 39 through 41 are also a major improvement in that earnings to be received by someone on compensation will be restricted to 90 percent of their lost earning capacity for the first two years and 80 percent of their lost earning capacity thereafter. These provisions, so long as they have the desired effect upon public sector employers such as the City of Brandon, who are subject to collective agreements containing top-up provisions,

are of major importance in relation to the public policy concern which was addressed above.

Other sections in the proposed legislation have provisions relating to collateral benefits and restrictions to compensation payable, but we make no comment in regard to these provisions as we believe they are consistent with Sections 39 through 41.

Our only major concerns in relation to the proposed legislation relate to Section 39 through 41 which were addressed above as an improvement. The reason for addressing this provision both under our major benefits and major concerns sections of this letter is simple. The City of Brandon presently has four collective agreements, all of which contain provisions similar to the following:

1401. All employees included under this agreement shall be subject to the provisions of The Workers Compensation Act.

1402. All employees with 12 months or more continuous service and drawing compensation benefits under the act, shall be entitled to payment by the city of the difference between such benefits and their regular wage, for a period not exceeding 26 weeks.

It is agreed that notwithstanding the number of times which an employee may be off work and receiving compensation benefits as a result of one particular accident, the maximum benefit payable by the city under this clause is the difference between the compensation benefits paid and the employee's regular wage for a maximum of 26 weeks. The city agrees to notify the employee at least two (2) weeks prior to the termination of the supplement.

1403. When an employee is absent due to injuries or disabilities for which compensation is paid under The Workers Compensation Act, vacation leave and statutory leave shall accumulate as if the employee were not absent, but the extent of such accumulation shall not continue beyond twelve (12) consecutive calendar months from the date the injury or disability occurred.

As Workers Compensation benefits are not subject to income tax and there is no reference in the collective agreement to deductions from gross salary when determining the top-up, employees subject to such collective agreement provisions while on compensation may well receive benefits in excess of the take-home income they would have received while actually working. This situation may well be compounded by the accumulation of vacation and other benefits as referred to in the quoted provisions of the working agreement. Section 41 of the proposed amendments of The Workers Compensation Act makes reference to a collateral benefit and by paragraph 41(1)(b), a benefit paid by an employer is to be considered as such a collateral benefit. Pursuant to subsection 41(4) collateral benefits are only considered if such benefits increase the compensation to an employee above the 90 percent of actual lost earnings capacity, but as indicated, such will almost inevitably be the case for a City of Brandon employee who is receiving compensation benefits and is unable to work at all.

Subsection 41(5), I believe, has been added to the amendments to the act specifically to address the problem of collective agreements such as those in effect for the City of Brandon and would appear to give a 24-month exemption for clauses such as we are faced with. It is the writer's understanding that top-up provisions such as those referenced above are a common occurrence in public sector collective agreements. This may well not be as major a problem for other business groups subject to the act.

At this point in time, it appears that the proposed legislation may well address the concerns of the City of Brandon; however, the provisions are complicated and, of course, will be subject to some interpretation once the legislation is passed and disputes arise involving employers, employees and the Compensation Board. It is the writer's opinion that the public interest concerns which were addressed repeatedly above may well be better addressed if the proposed amendments to The Workers Compensation Act were amended to include a specific prohibition against any collective agreement containing a provision therein whereby any worker would be in a position to receive a top-up to Workers Compensation benefits which would result in a total compensation top-up including vacation and other benefits which equals or exceeds the amount of income any employee would have earned while actually working.

Nothing in the concern being addressed above is directed in any way toward dependent or other benefits that are referred to in the legislation, but only in relation to ensuring that people earn no more while on compensation than they would have earned when actually working.

In conclusion, therefore, the administration of the City of Brandon supports the proposed amendments to The Workers Compensation Act subject to our stated concerns regarding lost earning capacity and collateral benefits and our suggested restrictions on top-up of benefits due to collective agreement provisions. We would encourage further review of the legislation in future, in co-operation with other levels of government, directed to ensuring a comprehensive package of benefits will be made available to employees which would provide a maximum amount of protection to the employees while minimizing the overlapping benefits so that the costs of such protection are made as reasonable as possible to employers, employees and the various levels of governments funding such benefits.

Yours truly,

R. W. Singleton, Q.C.
City Solicitor
City of Brandon

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The Winnipeg Chamber of Commerce, with a membership of about 4,700 individual representatives from 1,700 member firms is the voice of business on issues of common interest to the business community.

The Chamber wishes to express its support for the main principles advanced in Bill 59 and draw attention to the following:

Definition of Accident: Our members have been concerned that over time, the definition of an accident has been unduly expanded to include events or illnesses which have no cause or relationship to the work being performed. We strongly support the amendments to clearly define occupational diseases. Employers must not be called upon to bear the burden of ordinary diseases of life. Only diseases arising out of and in the course of employment, where the cause is peculiar to the trade or occupation, and the employment is the dominant cause, should be considered to fall within the definition of an accident.

Benefits: The Chamber applauds the initiative to replace the current permanent pension award system plus wage loss, with an impairment award based upon the degree of disability, provided as a lump sum or annuity and reduced by 2 percent of each year the worker is over age 45 at the time of injury.

The separate wage loss payments based upon loss of earning capacity and calculated on 90 percent of net earnings, dropping to 80 percent after 24 months, will be more equitable to injured workers.

The proposal to offset wage loss benefits by the amount of all collateral benefits to which the worker is entitled as a result of the injury is excellent.

Medical Review Panel: One area where we believe an inequity still exists is in accessing a medical review panel. While workers may do so, employers continue to be denied the right to request an issue be referred to a medical review panel. The rights of employers and employees should be balanced and we request that the committee redress this inequity.

Conclusion: The chamber, on behalf of its membership, compliments the government and the Steering Committee on Legislative Reform for the significant effort expended in drafting the proposed legislative changes. Bill 59 will create a new Workers Compensation Act for Manitoba which will be fair to all stakeholders and at the forefront of compensation legislation in Canada.

Shelley Morris
The Winnipeg Chamber of Commerce

* * *

The Mining Association of Manitoba is pleased to have this opportunity to present its recommendations on Bill 59, The Workers Compensation Amendment and Consequential Amendments Act, to the Standing Committee on Public Utilities and Natural Resources.

Our association is the representative body for 11 companies engaged in exploring for and the production and processing of metallic minerals in Manitoba. Our member companies directly employ in excess of 4,300 people, all of whom are covered by The Workers Compensation Act.

The association is a founding member of the Employers' Task Force on Workers Compensation and we are generally supportive of all the representations which will be made to this committee by other task force members.

Along with the other members of the task force, we believe that Bill 59 addresses a number of the concerns of both employers and employees, remedies many of the defects in the current legislation and that it merits our support.

We recommend three changes to this act which, in our view, will significantly improve the legislation:

I. The Employers' Task Force has consistently pressed for increased openness and fiscal accountability on the part of the board and consistent with this thrust, we are extremely disappointed that the act contains no provision requiring the board to engage in an effective consultative process prior to bringing any new regulations into force. This shortcoming must be addressed.

II. The act has met a long-standing request of employers to have access to relevant employee medical records for appeal purposes, but it has done so in a manner which is unduly cumbersome and time consuming. We agree that the board is competent to rule on relevance and that the employee should be notified that the information has been requested, but once the request has been made it should be responded to with no further delay.

III. We believe that the employer should have the same right to request a medical review panel as does the employee, subject to the same terms and conditions as are imposed on the employee.

In conclusion, I would point out that there are numerous concerns which could be raised. Among them is the rationale for such a rapid increase in the maximum annual earnings to $45,500. We have refrained from pursuing these concerns, however, in recognition of the apparent effort of the authors of the legislation to package many of the provisions and that modification of one element of the package could create an imbalance in the package as a whole. Hopefully, this committee will share this concern when considering any amendments to this act.

Our comments are intended to be supportive and are offered with a view to making good legislation better.

Winton Newman
The Mining Association of Manitoba Inc.

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Dear Committee Chairperson:

Re: Bill 59

I am writing on behalf of the Manitoba Nurses' Union regarding Bill 59. The Nurses' Union is Manitoba's largest health care union, with a membership of 11,000 nurses who work in health care facilities throughout the province.

It is our position that Bill 59, if enacted, will produce significant changes in the workers compensation system, which will have a negative impact on workers in this province.

Concerns about Bill 59 are being expressed by many thousands of workers and their representatives throughout Manitoba. The Manitoba Nurses' Union fully endorses and supports the brief presented by the Manitoba Federation of Labour. (reference presentation July 19, 1991 at 1 p.m., Harry Mesman)

We urge the legislative committee to carefully consider the Manitoba Federation of Labour brief and to advise a redrafted bill based on the recommendations contained therein.

If you have any question, please do not hesitate to contact me.

Sincerely,

Irene Giesbrecht, R.N.
Executive Director
Manitoba Nurses' Union