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of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

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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

Friday, July 19, 1991

TIME — 1 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Jack Penner (Emerson)

ATTENDANCE - 9 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Praznik

Messrs. Ashton, Edwards, Helwer, Penner, Reimer, Rose, Sveinson

APPEARING:

Dave Chomiak, MLA for Kildonan

Doug Martindale, MLA for Burrows

WITNESSES:

George Provost, Canadian Manufacturers' Association

Harry Mesman, Manitoba Federation of Labour

Albert Cerilli, Canadian Brotherhood of Railway Transport and General Workers

Kelvin Dow, Canadian Auto Workers

John Irvine, Canadian Union of Public Employees, Local 500

Allen Kraut, Private Citizen

Glenn Michalchuk, International Association of Machinists and Aerospace Workers, Lodge 122

Robert Olien, Private Citizen

Howard Raper, Communications and Electrical Workers of Canada

Allan Ludkiewicz, Regional Council, Canadian Pacific Limited

Ted Dempster, Private Citizen

Kenneth Emberley, Private Citizen

Robert Ross, Private Citizen

Wayne Bell, Private Citizen

Written Presentations Submitted:

Roger Rickwood, Co-Chairman, FETCO WCB Subcommittee and Director, Health, Safety and Environmental Affairs, Canada Post Corporation

Jeanette Breman, Private Citizen

MATTERS UNDER DISCUSSION:

Bill 59, The Workers Compensation Amendment and Consequential Amendments Act

* * *

Mr. Chairman: I would like to call the Standing Committee on Industrial Relations to order this afternoon. The committee will be resuming consideration of Bill 59, The Workers Compensation Amendment and Consequential Amendments Act. Mr. Minister, I understand you have a statement.

* (1310)

Hon. Darren Praznik (Minister responsible for and charged with the administration of The Workers Compensation Act): Yes, Mr. Chair, I know Mr. Mesman from the Manitoba Federation of Labour was unable to stay yesterday, and we had agreed, I believe, for him to present first. Mr. Provost from the Canadian Manufacturers' Association indicated that he spoke to a number of committee members and indicated that he had to be leaving to go out of town and only required 10 to 15 minutes. I had the opportunity to speak with Mr. Mesman who very kindly agreed to allow him to go for 10 or 15 minutes, if that is the agreement of the committee.

Mr. Steve Ashton (Thompson): I do not see any difficulty with that. I was wondering also if we might wish to give some signal to members of the public as to our intentions in terms of sitting hours and looking at the fact that we are essentially about halfway through the process. There were 19 people I think that presented yesterday and 18 on the list today. I suspect that we may sit quite a bit today, but we probably will complete it. I was going to suggest, and we can assess this as time goes on, that we certainly not sit past midnight trying to accommodate everybody today, but if there are one or two people left, we can always deal with that Monday morning. We have another committee scheduled. I guess the main thing I want to do is suggest that if we as a committee can give some

signal so that people know whether they have to stay around all day. I would suggest that we probably will be finished today.

Mr. Chairman: Thank you.

Mr. Praznik: I would generally concur with Mr. Ashton. I would hope that we could complete the list today and sit to a reasonable hour in completing the list. I would hope we would be able to accommodate everyone by late this evening. I understand as well that it is the intention of this committee, Mr. Chair, not to review clause by clause today, but to do that on Monday morning. Committee has been called, I understand, for Monday at 10 a.m., I believe. Thank you.

Mr. Chairman: That is correct. What is the will of the committee?

Mr. Ashton: The other point I forgot to mention, too, is there had been some discussion of a possible Saturday meeting. I do not think that is going to be necessary. That is the key thing, I think, that we can signal that to members of the public and members of the committee. I think we can complete tonight most likely, and if we run into a problem with one or two presenters, we can deal with that Monday.

Mr. Chairman: Is there agreement in the committee that we proceed as has been indicated?

Some Honourable Members: Agreed.

Mr. Chairman: Thank you.

I would like to inform the committee that a written submission has been sent by Dr. Roger Rickwood, co-chair of the FETCO WCB Subcommittee. If there are any persons wishing to appear before the committee who have not already registered, I would ask them to please do so. Please contact the Clerk of the committee and she will ensure your name is added to the list.

We do have 18 presenters presently and, as was indicated, the first one is Mr. Mesman, and as agreed to, we will allow Mr. Provost of the Canadian Manufacturers' Association to make the presentation first.

Mr. Provost, would you proceed. Your brief I understand has been distributed.

Mr. George Provost (Canadian Manufacturers' Association): I am sorry.

Mr. Chairman: I say, your brief has been distributed, I understand, so would you proceed, please.

Mr. Provost: Mr. Chairman and members of the committee, first of all i want to thank Harry Mesman very much for allowing me the courtesy of preceding him in the presentations.

I would just like to do a little review on the Canadian Manufacturers' Association who have had a long history of active involvement in workers compensation systems in this country. Indeed, while preparing for this discussion with you today, I happened to come across a brief filed by the CMA 78 years ago before Mr. Justice W. R. Meredith, who was responsible for the establishment of the Ontario system. That system, of course, was to serve as the model for legislation in our other provinces.

* (1315)

What we said in that document is as relevant today as it was in 1913. It began with the premise that priority must be given to the prevention and reduction of work-related accidents, that only victims of such accidents be compensated regardless of proof of fault. Such a collective system to which employers would contribute, we noted, would benefit an injured employee by providing an assured income without putting undue pressure on industry.

We also urged efficient management of a workers compensation system to ensure that as large a proportion of the funding as possible be earmarked for compensation of accident victims rather than for overhead, a simple but workable procedure for the adjustment of claims in order to involve a minimum of friction between employer and employee, and a system of medical attendance to mitigate the effective injuries. Lastly, we recommended the establishment of an independent nonpolitical commission to administer the system.

These principles and recommendations became the foundation for workers compensation systems across the country. They are today under siege through court challenges, too liberal interpretations of what constitutes accident and injury, and government intervention via the legislative process.

As Canada's largest association of manufacturers and one with more than just a passing interest in the evolution of our provincial systems, I do not mind telling you that we and our members are greatly disturbed at what we see as an undermining of the concept of workers compensation. The situation is of sufficient concern that it has become a top CMA policy priority. The

CMA firmly believes that the foundation of the Canadian workers compensation system is valid.

What we and others are currently debating are the components of the system and their application rather than the basic principles.

On a national basis, CMA is celebrating its 120th anniversary this year. CMA Manitoba is this year celebrating its 75th anniversary. CMA Manitoba promotes the interests of Manitoba manufacturers and exporters in an ever-changing international climate. Within a broad mandate of service and representation, the CMA accepts its responsibility to communicate the views of the manufacturing community to government.

Member companies of the Manitoba Division of CMA represent 75 percent to 80 percent of the Manitoba manufactured goods and are representative of most major sectors of the manufacturing community, for example, high technology, mining, clothing, food, electronics, metals and furniture as well. All sizes of companies are represented.

In 1989 CMA released a position paper nationally on workers compensation called Workers Compensation in Canada: Facing New Realities. The executive summary of our paper states the following: The reduction and eventual eradication of workplace accidents and diseases is a goal that the Canadian Manufacturers' Association has striven to achieve since it was founded 118 years ago. However, until this goal is realized, workplace accidents and diseases must be dealt with in a humane and equitable manner. Consequently, the CMA remains supportive of the basic principles that underlie workers compensation since its inception in Ontario in 1914.

The CMA still endorses a no-fault system funded by employers that protects both workers and employers while providing prompt payment of benefits to workers who are injured at the workplace. These principles are fundamentally sound. They should be preserved and strengthened in every jurisdiction. Notwithstanding the soundness of the principles, many workers compensation systems have strayed from their original intent resulting in a financial crisis situation in some provinces.

Action must be taken quickly to alleviate this situation now facing WC systems in all jurisdictions. WC systems must adhere to the original principles and intentions. Only workers who are injured at work should be eligible for benefits. All other situations should be covered by more appropriate public programs that are available, for example, UI, CPP, QPP, social welfare, et cetera.

The expansion of coverage to non-work-related injuries has resulted in substantial increase in costs that is both onerous and unreasonable to employers. Because employers bear all expenses including total contributions, the costs of WC has a significant impact on business ability to compete in today's global economy. Consequently, the CMA is recommending that immediate steps be taken to correct the deviation in our WC systems.

Amendments to the legislation and changes in WC policy and procedure are necessary. Major areas for reform include: the definition of work-related injuries and diseases, admissibility criteria, claims management, wage loss replacement benefits, the appeals mechanisms, the rehabilitation systems, and the assessment systems.

* (1320)

The two major parties in WC systems are the employers who fund them and the workers who receive benefits under them. Legislators, WC boards and physicians have important roles to play, but they are only the facilitators. Their role is to ensure that the system serve the needs of the employers and workers while adhering to the original intent of WC.

This CMA position paper presents a national review of the problems associated with WC systems in Canada and recommendations to rectify them. Some of the key recommendations that are made in this paper, included the original intent of the WC scheme to compensate workers of work-related injuries only, should be reinforced so as to again constitute the first basic principle of the system.

The definitions of workplace injury should be amended to insure that only work-related injuries are compensated through WC. The actual wage-loss system should be implemented in all jurisdictions. The legislation should be amended so the necessary grounds for appeal are specifically stated in the legislation and the appellant state the grounds for appeal in writing. The benefits paid by the WC Board must be integrated with other public sources. The WC Board shall initiate and improve rehabilitation programs through early evaluation, careful planning and realistic programs. WC

benefits should cease when employability is achieved.

Experience rating should be implemented as an equitable assessment system which recognizes good practices and performance of individual employers while still maintaining the aspects of a collective insurance scheme. In jurisdiction where funding is a problem, a major reform must be undertaken to return the system to its original principles and intent. This would involve the adoption of a business plan to address the issue of unfunded liability through tighter controls and not simply rely on increased assessments.

The medical profession plays an essential role in the entire WC system. Physicians provide the first diagnosis and the certificate which initiates the file. They are an integral part of the rehabilitation process. They supply the medical expertise used by WC Boards, the employer or the worker when the file is contested or reviewed. In addition, the medical profession must be actively involved in the worker's early return to work. The physician must, first and foremost, consider the worker as his patient and give him the medical care warranted by his condition. However, the physician must also be well versed in the WC system and of the consequences of his actions in a work accident file.

The medical profession is not always aware of the cost aspects and implications of its decisions. WC boards should ensure that the medical profession is provided with necessary information so that it understands the consequences of its decisions.

Finally, work-related accident files must not become a field for medical expertise battles or legal conflicts. The primary objectives are to give appropriate care of the injured worker, to correctly assess his/her condition—I mean his/her throughout the whole presentation—and to set a rehabilitation program geared to a speedy return to work.

Many of the CMA's concerns with respect to workers compensation in Manitoba have already been explored in prior submissions to this review committee. CMA Manitoba is fortunate in having a very knowledgeable chairman, well versed in workers compensation matters, looking after a committee in the person of Ron Koslowsky of Palliser Furniture. Unfortunately, Ron is away on vacation or he would be here. As a result of this, Mr. Chairman, we have enjoyed several discussions but with yourself, but it is with the minister and Mr. Graham Lane and members of his senior staff prior to the drafting of these amendments to The Workers Compensation Act and Bill 59.

Without dissecting the 94 proposals contained in the summary of significant proposed amendments to The Workers Compensation Act, I would like to indicate that, while Bill 59 is still not utopian, it certainly addresses and rights many wrongs that will allow the administration to adhere closer to the principles of workers compensation.

In closing, Mr. Chairman, I would like to restate CMA Manitoba's position, stated in a brief to the Workers Compensation Review Committee on July 29, 1986, that we must ensure that all accident-related facts be known quickly as well as the medical implications. This data must be available to those concerned and must promote communications among the employer, worker, attending physician and compensation officer.

Thank you, Mr. Chairman and members, for the opportunity to participate in this important process.

* (1325)

Mr. Chairman: Thank you, Mr. Provost, for your presentation. Are there any questions?

Mr. Paul Edwards (St. James): Thank you, Mr. Provost, for your presentation. I appreciate that Mr. Koslowsky, as you have indicated, is not here and is perhaps the specialist in your organization, but I would like to ask you, if you could, on page 6 of your presentation, you indicate that one of the key recommendations made in the CMA position paper is that the actual wage loss system should be implemented in all jurisdictions. I assume you are therefore in favour of moving to net loss as opposed to a percentage of gross, but actual wage loss in my experience, certainly in MPIC cases where there is a finding of no liability on the part of the claimant, means 100 percent of wage losses. Is that what you are suggesting?

Mr. Provost: Mr. Chairman, through you to the questioner, I think that, by moving to 90 percent of the net, you will probably be closer to the actual wage than you are at 75 percent of the gross.

Mr. Edwards: I understand that. I am just wondering, if we take actual wage loss at its face value, which is 100 percent net.

Mr. Provost: Well, 90 percent of net is as close to the actual as you can get without having 100 percent.

Mr. Edwards: That is right, and you do say actual wage loss, which is 100 percent. Do you oppose 100 percent and therefore this actual wage loss which you recommend is not really what you want? You want 90 percent of actual wage loss.

Mr. Provost: Probably the right answer is, yes, we would be satisfied with 100 percent, but moving away from 75 percent of the gross to 90 percent is a move in the right direction and is certainly an increase or a more fair way of settling it than 75 percent of the gross is.

Mr. Edwards: I just want to take it from your last comment, you would agree with me that the fairest system would be in fact actual wage loss, which would be 100 percent net.

Mr. Provost: If it is total incapacity to do your work, I would say 100 percent of the wages would be utopia.

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

Mr. Dave Chomiak (Kildonan): Mr. Provost, on page 8 of your submission, you indicate about the second paragraph, about the middle, and I quote: The medical profession is not always aware of the cost aspects and implications of its decisions.

I wonder if you might elaborate on that statement for me. I am interested in what you are getting at in terms of that particular statement.

Mr. Provost: I guess the intent was that they do not really know when they give someone a certificate to be off work that they could be off work a lot longer than they really have to be, that there could be some form of work—like a disability sometimes is gauged as a total disability when it is only partial disability. I guess what some of the doctors are not taking into consideration is that the employer could bring them back part time and, as a result, would only have to have part of their compensation fees paid. I think the medical profession is not aware of that.

Mr. Chomiak: That is a point. That is one aspect of actually what you are saying in this presentation. Are you saying to us then—I want to make this clear—that in that statement you were saying the medical profession should be more precise in its determination of the extent of an injury?

* (1330)

Mr. Provost: I think basically what we are saying is there has to be more communication between the Workers Compensation and the medical profession.

Mr. Chomiak: I could certainly accept that fact, but I have real difficulty, I have to tell you, in the way that I see this stated, in fact, in your responses as to what you mean by that statement, because I think that it reflects poorly on the medical profession, and it somehow implies that there might be individuals out there who might be taking advantage of that particular aspect.

I have a real problem with that statement in your presentation. I do not know if you want to comment or not.

Mr. Chairman: Thank you, Mr. Provost, for your presentation. I want to make one thing very clear to committee members. I will rein in rather harshly a lot of comments and remarks about various presentations. I will entertain questions to the presenters, but I will restrict any debate or long-winded comments on what the presenters have said.

The next is Mr. Harry Mesman, Manitoba Federation of Labour. Mr. Mesman, would you come forward, please. I understand you have a presentation to distribute. I would ask staff to do so. Mr. Mesman, would you proceed, please.

Mr. Harry Mesman (Manitoba Federation of Labour): Mr. Chairperson, members of the committee, thank you for this opportunity for allowing me to give the views of the Federation of Labour on Bill 59.

I would like to start off by saying we wholeheartedly support the position of the Canadian Manufacturers' Association for 100 percent wage loss benefits. On behalf, not only of the 90,000 members affiliated to our organization but also, we believe, of all workers in Manitoba, the Manitoba Federation of Labour, as I have indicated, is very pleased to have this opportunity to attempt to convince this committee that Bill 59 is an assault on the workers we represent and, as I say, all the workers of this province as far as we are concerned, and that it should not become law in its present form.

This is, from our perspective, an employers bill. It responds to the employers' recommendation of what a workers compensation system should be as laid out in the Employers' Task Force Report of 1968 to the Legislative Review Committee, and the 1989 position papers of the Canadian Manufacturers' Association and the Canadian Chamber of Commerce.

(Mr. Ben Sveinson, Acting Chairman, in the Chair)

Although I have not been here for all the hearings, I understand some of the employers did have some concerns and were complaining about some aspects of this bill, but I suggest to you that was only to drown out the sound of the popping corks to celebrate this bill, because they are very happy about this package.

We would propose instead that the legislation should be based on the findings of the most comprehensive look at the subject of workers compensation that this province has ever seen, namely the report of the Workers Compensation Review Committee published in May of 1987. This committee had input from workers, from employers, from advocates of all stripes, professionals in the field and the Workers Compensation Board itself. The committee was tripartite with a representative of labour, a representative of employers and a neutral chairperson.

* (1335)

When it was published, workers injured or made ill as a result of their employment had much cause to be optimistic that compensation in Manitoba would finally truly meet their needs. How bitter an irony it is then that little more than four years later they are facing legislation which turns that report upside down—legislation that transforms the report's positive progressive recommendations into negative regressive ones; legislation that appears like a sick joke version of all that was healthy in the original report. It is a joke that becomes even more twisted when we have its authors and even the minister himself professing it to be an improvement over the earlier model.

The Workers Compensation Board can hire, and indeed has hired, a public relations expert and staff, a public relations department that, as far as we can see, is there to carry out what we perceive to be somewhat of a bunker mentality on the part of the current Workers Compensation Board. We referenced the Workers Compensation Review Committee and we will do it frequently, so more often than not we will be referring to it as the WCRC, and we reference that report for two reasons.

We consider it to be as fine a blueprint as exists in this country for a just and sound workers compensation structure, and our members have democratically voiced their approval of its recommendations through our convention process. The appalling attempt to portray this bill as an improvement on the recommendations of that report is tantamount to making the case that a washboard is an improvement on a washing machine. We know the authors have been offended by attempts to portray their work as the first step toward this "final" product, and I put final in quotes in the desperate hope that somehow we can have this bill withdrawn or hoisted or dramatically altered.

This brief will try to show why so much of the bill is bad in and of itself and also how unfavourably it compares to the consensus—I emphasize that word—achieved on the same issues by the WCRC. We ask the members of the committee to give serious consideration to these comparisons and honestly determine which proposals truly provide justice to workers and employers in terms of the original deal, namely workers giving up the right to sue in exchange for employers funding a no-fault system.

We also ask that in making this determination you keep in mind the words of the original architect of this structure, Sir William Ralph Meredith, who wrote in 1913—and perhaps these are some of the original principles that Mr. Provost referred to that we should be adhering to today: It would, in my judgment, be the gravest mistake if questions as to the scope and character of the proposed remedial legislation were to be determined, not by a consideration of what is just to the working person, but of what is the least he or she can be put off with—I am modernizing the language and perhaps should not—or if the legislation were to be deterred from passing a law designed to do full justice, owing to groundless fears that disaster to the industries of the province would follow from the enactment of it.

It was understood by the workers of that time that workers compensation, while a definite improvement over what was then a poor tort remedy, was an achievement to build on. We emphasize the word "then" because the expansion of the common law interpretation of negligence, combined with the contraction in importance of traditional employer defences, those of contributory negligence, common employment and assumption of risk, means that the loss of the right to sue in 1991 is the loss of a remedy of far greater significance than that which existed in 1913. It can be objectively stated that the workers compensation system has not kept pace with these tort developments. Now we are faced with a bill that, rather than addressing these inequities, widens the

gap and provides a defence against any policy attempts to narrow it.

Before commencing with our critique of the specific components of this bill, we must note our frustration with, and objections to, the absence of a true consultative process. As a result, we were expected to make a detailed and cogent analysis in four weeks' time of a bill that took a steering committee, on which we were not represented, two years to develop. This committee's membership included a law firm, a consulting firm, as well as the actuarial and systems expertise of the board's own senior management. We, in turn, with extremely limited resources, are expected to interpret this intricate web spun by these legal and actuarial spiders in two fortnights. We respectfully suggest that the game is rigged.

In an attempt to proceed as clearly as possible in what is always a complex process, we will refer both to the change number—and I am not sure how relevant this is; I understand you may be working from a binder provided by the minister in terms of comparisons, but we are talking about the actual draft bill here. We will refer both to the change number, those in larger bold type in the draft, and the section number, the smaller bold type which reference the act, as well as the page number of the draft.

* (1340)

Other than to record our approval of those few items that represent a meaningful improvement over what presently exists, we will be silent on those items to which we have no objection. As such lack of objection may conceivably be due to a misperception of intent or effect, it should not be construed as approval of any item not commented on. If that sounds like a bit of a cop-out, so be it; but, again, it relates to the complexity of this bill and the limited amount of time we have had and, frankly, the amateur level that we approach some of this stuff on, particularly the actuarial stuff.

Change No. 2(1), amendments to subsection 1(1), pages 1, 2 and 3. Our main concern with the amendments to this subsection, and one of the main concerns we have with this bill, is the definition of occupational disease. This bill defines occupational disease as meaning "a disease arising out of and in the course of employment," and that is where the period should be incidentally. That is what the definition of it should be, but it goes on to say, 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 what that may be we still do not comprehend—"and (d) stress, other than an acute reaction to a traumatic event."

We have carried on at some length in various forms on the matter of how to compensate for occupational diseases. We have noted the overwhelming evidence that occupational diseases are grossly undercompensated by workers compensation boards. We have railed against the impossible standards of proof asked for by these same boards, while they ignore the rule of presumption that natural justice dictates be brought to such cases. We have asked for an occupational disease schedule that would entrench such a presumption. We have pointed out that while industrial diseases account for a maximum 2 percent, 0.32 percent in Manitoba in 1990, of Workers Compensation Board claims in most jurisdictions, 80 percent of the premature deaths are due to diseases, and they account for 95 percent of all total disability pensions. Even Paul Weiler, a conservative critic, estimates that only one in 17 occupational cancer claims are compensated. The Canadian Centre for Occupational Health and Safety estimates that some 10,000 Canadians suffer from job-related diseases. Our full views on this matter are appended to this brief, and that appendix is an excerpt from our presentation to the Legislative Review Committee back in 1986, the section on occupational diseases. Apparently, unfortunately, 0.32 percent is still too much as far as the drafters of this bill are concerned.

Despite all of this, this bill slams the door on any possibility of righting this prima facie case of injustice. Clearly, the intent of the bill is not to enable the system to address the problem, but to shut the door on any likelihood of doing so. This amendment concerns itself not with determining how to compensate but solely with how to predict cost. What matters, says this amendment, is not that workers risk being made ill and are dying from exposure to toxic substances in the workplace but that employers risk having to pay the cost of this poisoning. I have underlined that sentence; I would appreciate if you did so.

While we are safeguarding employers from that expense, says this amendment, let us also bar the door to chronic stress claims which are rising in

direct proportion to the modern pressures of shift work, deskilling, speed-up, et cetera. Having created a workplace that is causing more and more workers to suffer from this condition, employers in Manitoba are looking to this government to protect them from paying the price. Shamefully, this bill proposes to give them just such protection by removing the ability of adjudicators to determine such cases on their own merit and simply barring the door to everyone, no matter how compelling their case may be.

The current legislation has certainly not led to widespread acceptance of chronic stress claims. Due perhaps largely to a policy that makes such acceptance extremely difficult, the number of chronic stress claims awarded by the Manitoba board can be counted on the fingers of one hand. There is a fear on the part of administrators and particularly employers that the policy may be challenged in court and found to be illegal. "Fear" is very much the right word here because stress is the current workers compensation bogeyman. Indeed, employers have some, though we believe not much, cause for concern. It will continue to be difficult to gain compensation for stress with or without the present restrictive policy, although there will certainly be some increase without it. There are jurisdictions that do not have a policy along that line, that do not mention stress in their legislation. We do not see a great acceptance of stress claims. We understand the concern of employers that they just do not know how many of these may be accepted, but again to suggest that is a reason for just shutting the door altogether is totally illogical.

If there is an increase in accepted claims, all that will tell us is that there is a serious problem with the health conditions of some workplaces in this province, and those should be addressed. Sad to say, as the following chart shows, here again, the proper addressor of this condition, the Workplace Safety and Support Services Division, continues to be understaffed, underfunded and apparently unwilling to exercise its authority. The chart that follows gives you an indication of the total accidents reported by the Workers Comp Board, the Workplace Safety and Health Division inspections and investigations, and the orders issued for the decade 1980 through 1990. You can see quite clearly, while the decade started off with a fairly high level—certainly high compared to today—of inspections and investigations and orders issued for that matter, as we get into 1985 and on, those levels start to drop dramatically.

They are still dropping, although it is interesting to note that the inspections recently are starting, whether an ongoing assent we do not know, but are moving upward a little bit, but more interesting the fact that the orders are actually going down while the inspections are going up. So that certainly suggests that a false front is being put forward because no orders are being issued by these people, and I find it next to impossible to believe that they do not find some conditions that warrant issuing orders.

This government is proposing a one-two punch to the solar plexus of worker protection in terms of occupational stress, do absolutely nothing to remedy the causes and then bar the door to compensation to the afflicted. We hope it realizes, and the employers that believe they are served by this approach realize, that in doing so they have opened the door to tort action on the part of workers who suffer from this much-documented condition. Surely it is understood that there are cases of chronic stress that people can make very compelling cases for, that there is a relationship to the employment in these cases.

It is beyond my comprehension how an act that is set up to compensate people for injuries and illness arising in and out of the course of employment, to borrow the language of the legislation, can say, yes, but not this one, not this one. It is too unpredictable. We are not going to compensate for this one. There has to be a court somewhere that says that is illegal. You cannot do that in this act. It is staggering.

Sad to say, this is only the first of several sections that open that door, that is the door to court action. Why employers do not object to this eating away of their primary gain from the historic compromise, protection from suit, can only be attributed to the blinders that the narrow mindedness of cost control has placed on them. So fixed are they on the notion that Workers Compensation is out of control, that they seemingly cannot recognize that the solution proffered, this very Bill 59, is a self-destructive one.

We beseech this committee to protect the integrity of the system and withdraw this and all other amendments that would bar the door to determining the possible work relatedness of any condition.

Change No. 5(1), amending Section 4(4) on page 5 of the draft. Where an injury consists of an occupational disease that is, in the opinion of the

board, due in part 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 the result of an accident arising out of and in the course of employment only where, in its opinion, the employment is the dominant cause of the occupational disease.

While this section replaces one that enabled the board to carry out the odious practice of proportioning, it does so by ensuring that any claim that might have been subject to it will now not be accepted at all. I recall very recently having a worker approach me who had their permanent partial disability award, their pension, their impairment award, lopped from—and I am not going to get the figures right, but he had something like 11 point something PPD awarded, but the termination was that there were four other factors that may have played a role in the disease that he incurred. So arbitrarily the award was divided by five, and he wound up with 2.3.

So we are certainly not wild about what the current act enables the board to do, but the key phrase in this new one is dominant cause. I did explain to the person, well, if the new bill was in you would not have this problem, because you would not be entitled in the first place at all. You would get absolutely nothing.

So the key phrase here is this dominant cause phrase. This means that the workplace must prevail over all other causes. It has to be more than 50 percent responsible for the condition. Those who recognize the difficulty with diagnosis and etiology and the influence of labour relations on the establishment of occupational disease know that "dominant cause" will bar the door to all but smoking gun cases such as mesothelioma.

A paper written by Terence Ison recognized as Canada's leading authority on the subject of workers compensation and entitled "The Dimensions of Industrial Disease" examines these problems in detail. Professor Ison outlines the ways in which the determination of eligibility for benefits in a workers compensation scheme is actually a question of law and policy, not of medicine. He notes importantly: "On any question of employment causation, there appears to be a widespread feeling in the medical profession that the absence of positive data requires a negative assumption," a very dangerous precept considering how often the board doctors seem to be the adjudicators. "Uncertainty about the cause of a disease can, therefore, lead automatically to the denial of a claim without any intermediate reference to the evidentiary criteria prescribed by law." In other words, the boards are already limiting acceptance of occupational disease claims by applying medical standards of proof to the adjudication of statutory rights.

* (1350)

The primary point we wish to make here pertaining to the occupational disease amendments in this bill is that they deprive adjudicators of the ability to determine the answer to the question, would this individual be impaired were it not for the work that he or she does? If the injured individual's employment was a significant factor in the creation of the injury, surely it is immoral to deny that link and the responsibility for it on the part of the Workers Compensation Board.

We are constantly hearing that the system cannot compensate due to the scientific uncertainty. The Canadian Labour Congress Policy Paper on Workers Compensation addresses this question thusly: "We in labour only wish that the same concern had been expressed about scientific uncertainty when the tens of thousands of untested chemicals were allowed into our workplaces in the first place. Regulators and legislators go merrily along setting exposure limits and allowing workplace exposures based on a major lack of information. This is accepted by government and industry, but a similar lack of information when presented by a worker trying to get compensation, suddenly becomes unacceptable."

(Mr. Chairman in the Chair)

The paper goes on to cite the problems with epidemiology and the failure of medical schools to train doctors to recognize workplace connections and concludes: "It is simply not fair that for most health hazards, there is no requirement to test for degree and type of hazard, yet workers suffering from disease are expected to provide just such evidence in order to validate their case. It is simply not fair that workers suffering from disease should be expected to provide the requisite medical expertise when society itself fails to provide the training for the medical profession, nor is it fair that we as taxpayers and society as a whole bear the cost of failing to compensate occupational disease victims due to these complexities."

Now this quote is clearly citing legislation as it presently stands. With the new bill, again, the taxpayers will be paying, I suggest, the entire shot with maybe an exception here and there to prove the rule.

There is no jurisdiction in Canada that provides the level of justice to victims of occupational disease that we would like to see, but at least until now there have not been any who have legalized the very restrictive adjudication practices of the various boards. At this point, I would like to point out somewhat of a hole in our brief which we do not provide any alternative as such, and much of our brief does not, mind you. We are reacting, I suppose.

We certainly have all kinds of ideas as to what the system should consist of, but one of the things I would like to point out for no other reason than it was raised yesterday by Mr. Bill Laird of the firefighters, and he referenced a schedule of occupational diseases in British Columbia. I thought the members of the committee might find it interesting to see that, which has been handed out I believe. Also of note—I may be wrong—I thought I saw the CO of the Compensation Board yesterday shaking his head that, no, they do not cover firefighters in B.C. He may have been saying, no, I do not want a cup of coffee. I do not know, to be fair. As you can see from there, there is—I do not think I kept a copy for myself—a line for heart diseases of all types and if you are a firefighter, you incur one of these diseases, it is deemed to be caused by that employment unless proved otherwise. So you have to knock off the presumption, so to speak.

Change No. 2(2) new subsection 1(1.1) page 3, 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. This new restriction on the definition of accident is already contained within a present board policy, which at the time of its introduction was, we believe, properly labelled ultra vires, that is, beyond the powers conferred by law by the dissenting labour representative at the time. Its inclusion here would appear to bolster that position.

Our objections are the same as those raised by that commissioner, namely, the act should never restrict the possibility of board adjudicators determining that a particular injury or impairment arose "out of and in the course of employment."

At this point we have dealt with three proposed revisions to the act. Our objection to all of them is a very common thread. They are attempts to take the life out of the legislation, to take away the uncertainty that comes from people bringing intellect and heart to a determination of the merits of an individual case and replacing it with the certainty that comes from knowing someone in a cage can only move within the parameters of that cage.

They enshrine the "least the worker can be put off with" approach that Meredith decried. They narrow the chance of fairness by serving accounting rather than human needs. They reflect the mind-set that places fiscal stability above all, which is not to suggest that such stability cannot be part of an equitable system. Worst of all, by doing this they enhance the arguments of those who would prefer to see the system resort back to the rough justice of tort law, for who wants to continue defending a deal that is so clearly unbalanced.

Change No. 3, the amendment of Section 2 on page 4 of the draft: "(a) in clause (b), by striking out 'industries' and substituting 'an employer's undertaking or any individual plant or department thereof';"

This is the first of numerous sections that will enable the board to carry experience rating to the nth degree in Manitoba. We have appended as Appendix B the dissent of the labour commission written in 1989 when a highly muted version of experience rating was first introduced in this province. For that rare committee member who may not bother to read it, we offer this excerpted conclusion.

It is really quite remarkable. What we appear to have here is a program that impacts negatively on rehabilitation, on health and safety, on claims control, on statistical data and probably even on assessments for many employers, particularly the small ones. Yet its use is expanding by the proverbial leaps and bounds.

Now this horrendous break with the collective liability principle which has already, in its muted form, arguably, led to a noted increase in workers being fired for being injured on the job, is being expanded for the simple but not rationally defensible reason that employers want it.

Again, it is in the appendix where it is noted that there is not one shred of empirical evidence that experience rating does anything to carry out the avowed goals of experience rating, which is to

create safer workplaces and for that matter to create equitable assessments. In fact it is our experience—and more and more of that is coming in—and we have the experience of the self-insurers who are in essence experience rated that all it does is encourage nefarious practices on the part of employers to discourage legitimate claimants.

Change No. 5(1), new subsection 4(2), page 4: "Where a worker is 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."

While this does not represent a change in meaning from the section it replaces, we register our objection to any penalty to the worker for incurring an injury and recommend that wage loss benefits be paid from the moment wage loss commences. We also note the luck element of such a section. That is if you were injured at the start of the work day you may lose a day's pay, while those who were injured at or near day's end lose nothing or next to nothing.

Change 5(1), new subsection 4(3), page 4 of the draft: "Notwithstanding subsection (2), where the accident is attributable solely to the serious and wilful misconduct of the worker, as determined by the board, wage loss benefits and medical aid are not payable for three weeks following the accident."

We have always objected to this introduction of fault into a no-fault system. We believe this section has been abused by employers and adjudicators. All circumstances to which this section have been applied could have been handled in other ways without the introduction of a fault section in the act. If it is felt that an injury resulted from an unsafe act, then the matter is a labour relations one—where, we would ask, is the employer's responsibility to provide adequate supervision—or perhaps this would be a matter for the Health and Safety division to deal with. If it is believed the injury was deliberately self-inflicted, then it is a matter of fraud.

In no event do we require a section so open to abuse as this one for every time an employer or an adjudicator believes the accident resulted from a rule being broken or a moral standard not being met.

I have a footnote there having to do with a personal experience of mine working in the packing house industry in this province. Doing a job called boning picnics, my knife slipped and I was stabbed here, in fact to the point literally a gusher. It was not a high ceiling, but the blood literally went up and hit the ceiling. Luckily the doctor who comes to the plant once or twice a month happened to be there and immediately stopped the bleeding somehow and got me to the hospital and stitched me up and what not. I was in the sling for some time. While I was at home, suffering greatly—I am the most incredible picture of the saddest looking individual you every saw—somebody took a picture of me when I was not looking. I get a letter from the Workers Compensation Board saying, well, you broke a safety rule. You did not wear an arm shield while you were doing this job. First of all, no one on that floor wore an arm shield. I am not even sure at the time if they were available. When I came back from the injury, certainly everybody on the line had one on, but nobody was wearing one at the time. Nobody had instructed us to wear one. I get a letter from the Compensation Board saying, failure to follow safety regulations may lead to disqualification of any future claim.

I found that more than offensive. Again, fault does not belong in this system. It is a basic principle.

Change 8(2), new subsection 9(7.1), page 6 of the draft: "Subsection (7) does not apply where the accident results from the use or operation of a motor vehicle, as defined in The Highway Traffic Act, that is registered or required to be registered under that Act."

The objection to this section should probably be voiced as loudly by employers as ourselves, for it threatens the very foundation of the entire workers compensation system. We do not know why it is so difficult to understand the basic deal of workers compensation benefits—automatic benefits, irrespective of fault, in return for giving up the right to sue.

In other words, there should not be the ability to have law suits anywhere in here, at least for covered workers to covered employers. While this particular one, I think, clearly could be quite positive for a small number of workers, we feel the whole system just starts to tremor whenever you introduce the possibility of people taking their workers compensation case to court. In fact, on numerous occasions, particularly in the past decade, individual workers have attempted to create exceptions to this cardinal rule. So far the Supreme Court has turned their efforts aside. To date, labour and employer

groups have been united in their opposition to these attempts, with labour recognizing that a possible major gain for a few individuals is not worth sacrificing a system that generally has served the majority of injured/ill workers well and employers understanding the benefits of freedom from tort action. Why then would this government open the door repeatedly to something that could lead to the demise of the system?

Change 11(1), amendment to subsection 18(1), page 7: By striking out the words "preceding clause (a)" and substituting "in case of an accident giving rise to a claim for compensation, the employer of the worker shall within five business days."

Other than the change to business days, which we find to be sensible, there is absolutely no reason for altering this reporting period. Three business days is clearly sufficient in the 1990s for anyone to put through a relatively straightforward report. It also recognizes by being a very short but makeable time line, that this is a matter of great urgency, a top priority. This is not a minor point. This amendment sends a symbolic message to workers of a decreased concern for the seriousness of their situation.

* (1400)

If it survives final passage, which it does not deserve to, it is to be hoped that it will be amended to ensure for an automatic penalty of a significant amount to anyone who does not meet the new impossible-not-to-make deadline. Otherwise, the only thing accomplished is that employers who now often take two to three weeks or more to comply will take three to four more.

This could also make Section 18(5), relief from penalty, meaningful, rather than the present laughable situation where it provides the ability to gain relief from a penalty that to our knowledge no one has ever been found liable to pay.

Change 12(1), new Section 19(1), page 8: A worker or dependant entitled to compensation under this part shall file with the board an application and the certificate of any physician who tends the worker in a form acceptable to the board with such proof or other information as the board requires, and pending the receipt of proof or information, the board may withhold compensation.

We have a problem here with the words "or other information." The current wording limits the board's ability to withhold compensation benefits to a situation where proof has not been provided—a reasonable restriction. Now with the addition of the words "or other information" the board may withhold or deny payment for who knows what reasons. We would expect, for example, for an agreed level of benefits to be paid in a case where there is a dispute over average earnings but the validity of claim has been established. It should be noted here that we are getting deep into the land of theory. In practice the Workers Compensation Board has withheld payment for numerous reasons unrelated to direct proof.

We are not commenting here—again a hole in our brief, if you like—on Section 20.1, although I know you have had some comment on it, and we agree with some of the concerns that have been expressed, and this is the business of medical reports not being admissible as evidence. On the whole, we would agree with that, but we are not clear on just what it is that we are indemnifying the Workers Compensation Board doctors from. Does this mean that we could not bring them up before a tribunal?—which, heaven knows, we have had some situations where that was warranted as far as I am concerned, to the College of Physicians and Surgeons, for example. We would want some clarification on that.

Change 15, amendment to Section 22, page 9: By striking out "promote his recovery" and substituting "promote his or her recovery, or fails in the opinion of the board to mitigate the consequences of the accident."

We just do not understand how this phrase, "mitigate the consequences of the accident" should be interpreted. It would appear to distinguish itself from the other restrictions within the section by being applicable to financial as well as physical recovery. In any event, it is such a broad statement and therefore so subject to potential abuse that we urge its removal.

Change 19(2), amendment to Section 27(1.1), page 10: Subsection 27(1.1) is amended by striking out "members" and substituting "one member."

I do not know if we are nitpicking or misunderstanding here again, but for that reason—perhaps again the lack of consultation, we should have raised it another time—but this is one we also have a mild concern with. It is one of those amendments which, if we are interpreting it correctly, and the bill is dotted with them, it could be labelled niggardly. When we connect these dots,

again this picture is revealed of financial obsessiveness, an almost paranoid level of concern that someone, somewhere out there is getting more than they should.

If the intent is to simplify the process of reimbursing immediate family members by paying only one member of the family, then we would like to see the words "by the immediate family" after the word "incurred" to clarify that fact. If the intent is to avoid having to pay for more than one individual's expenses, then clearly it deserves the niggardly label.

I also wonder what the experience is, seeing that this particular section only came in last year with Bill 56. If there was some problem that happened with it in the meantime that led to this amendment, I would be interested in hearing about it.

Change 19(3), amendment to subsection 27(3), page 10: 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—and that is our emphasis—sustains damage to an artificial limb arising out of the course of employment, the cost or part of the cost of repairing or replacing the worker's eyeglasses, contact lens, dentures, hearing aid, artificial eye, artificial limb or any other prosthetic device and clothing worn at the time of the accident. We recommend an amendment here to delete the words "suffers an injury resulting from an accident or"—the underlined words there—and replacing them with the words "as the result of an accident."

As the change now stands, this is just another of the squeeze-the-benefit-dollar items. The current act acknowledges that the damages referred to in this subsection may occur without an accompanying injury. One could, for example, trip and fall down owing to a hazard in the workplace and break one's glasses without incurring an injury. The act presently does and should continue to—I will not say always has, but in my memory it has—recognized that payment should be made in such cases.

Change 19(6), new Section 27(20), page 11: The board may make such expenditures from the accident fund as it considers necessary or advisable to provide academic or vocational training or rehabilitative or other assistance to a worker for such a period of time as the board determines where, as a result of an accident, the worker (a) could, in the opinion of the board, experience a long-term loss of earning capacity, (b) requires assistance to reduce or remove the effect of a handicap resulting from the injury, or (c) requires assistance in the activities of daily living.

This section is, all in all, a better-worded rehabilitation clause than the present act, but it still lacks the component we have asked for for so many years, the entitlement to rehabilitation services for those unable to return to their pre-injury work. That entitlement would include the services outlined in recommendations 67 through 78 of the WCRC report with particular emphasis placed on recommendation 72 which reads, in part: "Once a worker has been accepted for rehabilitation services, due to permanent disability, there should be no termination of benefits and services prior to completion of the mutually agreed upon rehabilitation plan."

Also imperative is the inclusion of recommendation 77 which severely restricts the board's ability to deem income. The entire list of recommendations, with zeros beside the 50 percent or so not acted upon—all the relevant ones, I might add, is appended as Appendix C.

Change 20, new Section 27.1, page 11: The board may limit or deny a claim for medical aid, impairment benefits or wage loss benefits where: The worker previously made a claim for an injury of the same nature as the nature in respect to which the claim is made; the worker has a medical condition that, in the opinion of the board, requires the worker to be removed temporarily or permanently from working in a particular class of employment because the medical condition could result in an injury of the same nature as the injury in respect to which the claim is made; the claim is made after the board has requested the worker to discontinue employment in the particular class of employment in order to avoid injuries of that nature; the board has provided or offered to provide the worker with such academic, vocational or rehabilitative assistance as the board considers necessary to enable the worker to become employable in another class of employment, and the worker continues or returns to employment in the particular class of employment without the approval of the board.

* (1410)

Our assumption is that this section is intended to be taken as a whole, but seeing as this does require some assumption, we recommend that each subclause be connected with conjunction "ands." In

other words, the "and" that appears at the end of subclause (d) should also appear at the end of subclauses (a), (b) and (c). This would make it clear that all these factors must be in place for the board to "limit or deny a claim for medical aid, impairment benefits, or wage loss benefits."

Going on the basis of having made a correct assumption of intent—now if we are wrong, I cannot believe we are wrong—clearly this is meant to be taken in its entirety. If we are not, bring on the revolution, I guess. Surely the board does not intend, for example, to have (a) isolated by itself. Granted there are a number of things in here that I would deem to be illegal actions, but this one is just too blatant to be intended that way.

So going on the basis of having made a correct assumption of intent, the real problem with this section is not the intent, for who wants someone to return to work who is guaranteed to injure them or make them ill, but the need for a thorough and reliable rehabilitation service that results in employment and not just employability. To compensate must mean to make whole, at the very least in the financial sense. To have someone lose their job as a result of a compensable injury and then be told they are compensated because they are employable yet they have no job, is a mockery of compensation as so defined. Again, an adherence to the rehabilitation sections of the Workers Compensation Review Committee, recommendations 67 through 78 would go a very long way to providing a level of comfort for those affected by this section.

This amendment has the potential for being the most positive change proposed by this bill. The tragic drawback is that the board is not perceived to have a credible rehabilitation program. To ask a worker to give up a long-term, well-paid position with all the benefits, pension credits and seniority that that provides, in exchange for a system that may declare them employable, after spending a week or two teaching them how to do a resume, is simply not acceptable.

If, despite the board's best efforts, effective rehabilitation does not occur, and the only way that the worker can hope to earn a decent living is by returning to the class of employment that "could result in an injury of the same nature" the board's refusal of such a claim, should that injury occur, would be unconscionable. This amendment would make that unconscionable act legal and again open the way for lawsuits. The only way to insure against this injustice is to oblige the board to rehabilitate to actual meaningful employment rather to employability. That same employment should also be of at least two years duration before the board can consider someone rehabilitated, so that we do not get the circumstances where the board takes the worker off the books, but three weeks later, that worker is let go and certainly not rehabilitated.

Again, the business of opening the way for lawsuits, I think, is probably the No. 1 problem with this bill because it has half a dozen sections that invite people to take tort action rather than receive compensation for work-related injuries. Again, that situation I set up there where the board has made its best efforts, shall we say, to rehabilitate someone, but that person, despite their own best effort, is not able to get other employment, is undoubtedly going to go back to the work that they understand, the industry that they come out of and attempt to seek employment there, especially if they can, to earn a living, and if they do so, you are now saying that worker is not covered.

Besides blacklisting those kind of workers in a sense, you have also created a worker who, if he or she does get injured in that circumstance, is off to court to sue that employer. I again question the extent to which employers are saluting this bill, I do not think they are thinking it through.

Change 21, Sections 28(1) to 35, the section headed Compensation on Death of Worker that starts on page 12 of the draft, there are some positive changes for dependants within this section. The increase in benefits to dependent children and the ability of dependent spouses to receive rehabilitation services are commendable. Still, the actual benefits accruing to the spouse of the worker are decreased considerably in most cases. Whereas, for example, a spouse of a deceased worker making $20,000 gross would presently be entitled to 75 percent of that $20,000 indexed for life, under the proposed entitlement, that same dependent spouse would receive 90 percent of $15,000, $1,500 less, and that for only five years.

If we include the $45,500 lump sum, possibly reduced by Section 29(2) that calls for a 2 percent reduction for each year the worker is past the age of 45, then generously, the new act calls for eight years of benefits as opposed to lifetime payments. This is admittedly relief for spouses 50 years of age or more, by Section 29(9), which allows those

individuals to take a benefit similar, differentiated by the 90 percent of net, to what is now available. However, the fact remains that almost all dependent spouses will receive less under these proposals, many of the significantly so. The comparisons on the next two pages show how dramatic these increases can be, and I would suggest that there is no more dramatic example.

I believe I have—no I have not provided it. I cannot recall now. There is some problem with the pluses and the X's on the next page. The figures are correct; the formula is not expressed quite correctly and—did I distribute something that gives a proper—yes, I did. Okay, that has the pluses and X's in the right place, but again, the bottom line is as it is there, which is that a dependent spouse whose spouse is killed at work, at the present time, receives indexed for life—again these payments, this is using an example of someone earning the current maximum of $38,000—over his or her lifetime, a million and some dollars, $1,000,305.

Under what you are proposing, that spouse would receive $191,291. Now, that is the most dramatic example we have there, and there are other things in place to—I hesitate to use the word "compensate" because I think you are making a bit of a mockery of that phrase—alleviate that difference, but still there it is. Again, we had to rush to get these out, certainly did not have anywhere near the—in fact we did not have an actuarial person at our disposal. So I am open to be corrected on those figures, but I believe those are right on. If they are not right on, they are close enough to show how appalling the difference is. And the others, you can see for yourself, there are no benefits virtually to—well, not literally to all workers. There are few where the circumstances actually slightly improved, but for the vast majority, the differences are dramatic and negative.

Change 21 - Section 36(3), page 17: "A worker or a spouse of a deceased worker eligible to receive an annuity under a provision referred to in subsection (1) may obtain independent financial advice from a person approved by the board, and the board may pay the fee, or a portion of the fee, of the person out of the accident fund." This is a minor item that we are commenting on. I will just quickly get over that then.

To have the board pay for the financial advice sought by the worker or spouse making such a vital decision should not be discretionary. The word "may" in this section should be changed to "shall." The annuities overall deserve more comment and unfortunately, again, we simply did not have time, the ability, the resources, to have an actuarial person go through those in detail. It is our overall understanding that virtually everyone is worse off on annuities than the present pensions provided, again, considerably worse off. We wish we were able to provide more detailed comments on those, but again, the effect is negative financially.

The new section on impairment starting on page 18, we are going to begin a slew of complaints that we have in regard to this section with our concern that the Manitoba WCB is going to continue using its own rating schedule. The limitations of this schedule are myriad. It is inconsistent, it is unclear, it is incomprehensive and it has no general acceptance in the medical community. For that matter, there is no general knowledge of its contents or even its existence. With a chart like this you can afford to be generous at the top end, the 91,000, because you pay so little overall and certainly a lot less than current benefit levels.

The WCRC report cites, as will we, the findings of Professor John Burton who conducted the study of rating schedules for a major study of the Ontario workers compensation system. Professor Burton concluded that the American Medical Association guides to the evaluation of impairment are the best because (1) they have clear concepts as to what is being measured, (2) they are more comprehensive than the other schedules. They are more understandable by all parties. They are more consistent in arriving at a similar rating for similar impairments. They have achieved a higher acceptance level by doctors, employers and workers than any other guide. Given that this list is a description of everything that the Manitoba WCB ratings schedule is not, it is not surprising that the report recommended, as do we, the implementation of the AMA impairment rating guide for Manitoba.

* (1420)

It should be noted also that moving to a lump sum award from a lifetime pension award removes the only possible justification for a schedule of lower percentages than the AMA guides. If this committee did agree to an amendment to incorporate the AMA guide, but then still left the rest of the impairment section as it is, then the section would serve as a microcosm of the bill itself, a grain

of sugar to sweeten a pitcher of bitter lemonade, that grain of sugar in terms of the bill being the indexing.

What is a worker to think who, knowing the awards available through court action are potentially munificent and sees the presently inadequate system of impairment awards drastically reduced—what are we as advocates for injured workers supposed to say when they tell us they would be better off if they could sue?—and believe me, they tell us that all the time. They always have. All of us who have advocated for injured workers have had some of those workers say to us, what do you mean I cannot sue? Why would I give up that right? I want to sue the bastards. I have been injured as a result of the unsafe workplace, why can I not sue? Whether they accepted them or not is another matter, but we have always been able to make some very potent arguments that giving up that right was worthwhile.

We are not sure with this kind of legislation coming in that we can really convincingly make those arguments anymore. The process for obtaining the current figures for impairment is not terribly clear to anyone, but we believe the following figures are accurate. When I say to anyone, you ask board personnel how to go about getting these figures, you are hard pressed to come along some that can figure it out. This chart is taking the chart provided with the material that the board provided in terms of the steering committee proposals and we have inserted the current, as it is disparagingly known, "meat chart" percentages that the board uses, and there you have the age of the worker, the amount per month that worker would get as a pension, and in brackets, the capitalized sum of that award.

On the next page, this all being based on a compensation rate of $300 per week, you see what happens to people who are getting PPD awards from the system currently and what they will receive from the system being proposed. The examples we site are a 25-year-old worker with a 2 percent permanent partial disability rating who would currently receive a lump sum of $74,416.75 and the new system would give him $500. A 45-year-old worker with a 10 percent PPD rating would currently receive a lump sum of $16,818. The new system proposes giving them $1,000. A 40-year-old worker with 20 percent PPD rating would currently receive a lump sum of $27,531.

Again, these are somewhat approximate in that we are taking the guesstimate that it works out to 75 percent of the capitalized award, but we are told that is more or less what it works out to and if there are differences they are minimal and the gap would still be there. Certainly the figures we are giving for the proposed bill, because it is a simple system, I will give it that much, are accurate. Again, this 40-year-old worker with a 20 percent PPD would get a lump sum of $27,531 under the current act. The new system proposes to give them $11,000.

The last example of a 25-year-old worker with a 35 percent PPD rating currently would receive a lump sum of $77,000-and-some. The new system proposes giving them $26,000.

Members of the committee, with personal injury actions taking into account such matters as pain and suffering and lifestyle effects, as well as punitive damages, it is difficult to describe current payments as adequate. To drastically reduce these payments is, we repeat, to encourage the demise of the system. Please, for everyone's sake, do not allow this to happen.

This example does not take into account Section 38(3), which like the dependant benefits, reduces the sum payable by 2 percent for each year the worker is over 45 years of age. This, of course, makes the comparison even more unfavourable. We say that the value of an impairment must be worth the same to all workers regardless of age and regardless of what the actuarial tables may show as the difference for people overall. We are concerned about the individual worker here.

Change 21, Section 38(8), page 19. No worker 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 another objectionable component of the impairment awards section. It should be amended to read six months rather than 24 months. If a worker's condition significantly deteriorates shortly after his or her impairment rating has been established, we say it is simply unfair to deprive that worker for two years of a corresponding significant increase in the impairment award.

The removal of Sections 42(1) and 42(2), the pre-existing conditions sections, another grave concern we have with the proposals for a dual award system is the removal of Section 42(1) and 42(2) pertaining to pre-existing conditions. We consider these sections to be unduly restrictive as they are.

They are certainly worthy of revision, but simply deleting them without any replacement is extremely disconcerting. There has to be an amendment to prevent the board from denying compensation to workers who were labelled as having a pre-existing condition.

These amendments should reflect recommendations 33, 34, and 35 of the Workers Compensation Review Committee which recognized the Workers Compensation Board's obligation to return the injured worker to his or her pre-injury condition or to provide fair compensation for the reduced health and/or financial status of that worker. They also spell out clearly that workers with static pre-existing conditions should not lose entitlement to compensation or receive reduced benefits and workers with deteriorating pre-existing conditions should be paid for the period of temporary aggravation and for any permanent aggravation or enhancement resulting from the compensable injury.

We maintain that the current sections on pre-existing conditions were introduced to achieve these ends. To simply remove them is to take the system back to the time predating these sections when workers were routinely denied benefits because of some pre-existing condition that had no effect prior to the workplace injury and that was often not even known to the worker.

We propose, as per the Canadian Labour Congress national policy position paper on workers compensation, an award based on the maximum of $150,000 payable directly to the injured worker or at the injured worker's option monthly for the life of that worker. This would still be less than the capitalization of current permanent pensions. The impairment award should be accompanied by a prospective wage loss pension based on a once-only calculation. It would be calculated in reference to an actual job which the injured worker does or can take. To quote directly from the CLC policy which in this respect mirrors the WCRC recommendations: "under no circumstances should the calculation be made in reference to a hypothetical job which the worker is deemed able to perform."

The new section, Wage Loss Benefits, Sections 39(1) through 39(5) on pages 19 and 20 of the bill: Our discussion on the wage benefits portion of the bill has to begin with our objection to the move to 90 percent of net accompanied by the appalling drop to 80 percent of net after two years. There is absolutely no justification for paying one cent less than 100 percent of net earnings. Again, Mr. Provost, we agree with you.

The arguments put forth for paying less range from the offensive, a return-to-work incentive, to the highly suspect, the able-bodied incur greater expenses. The return-to-work incentive is offensive because it asserts a propensity on the part of workers to cheat. Those rare individuals who do, can and should be dealt with according to existing fraud provisions and because it fails to recognize that almost all injured workers are desperate to return to work. The social isolation of a disabled worker, combined with the fact that all of us derive so much of our self-identity from our work provides sufficient incentive.

The idea that an injured worker gains financially because work-related expenses are not incurred may be applicable in some situations. When we see that these same work-related expenses sometimes can be tax deductible and that injured workers may actually face extra expenses as a result of attempting to fill their leisure time, we see that this is merely another insurance statistic being utilized against participants in a social contract in order to minimize the system's financial outlay. There already is a very powerful incentive to return to work, namely, the board's ability to cut the claimant off if they conclude the worker is able to do so. This approach penalizes the claimant who cannot return to work.

We believe it better to tolerate the odd malingerer than penalize those innocent workers. That last sentence gets at the heart of what is wrong with so much of this bill. It sends out the message over and over again that it really does not matter that thousands of workers or their dependants may not be justly compensated. What really matters is that not one single worker receive one penny more than permitted.

We acknowledge that 75 percent of gross method of benefit payment results in overcompensation for some. If converting to 90 percent of net meant that these situations would be rectified without affecting those who are not overcompensated, our objections would be muted. This method goes well beyond eliminating overcompensation. It gravely compounds the present undercompensation. It is considerably less advantageous to most workers

than 75 percent of gross, and the single worker and the better-paid worker will be particularly affected.

* (1430)

The following board document taken from the strategic overview of these proposed legislative amendments reveals the extent of benefit loss incurred by workers under the 90 percent of net method. We see that a reduction in benefits occurs for virtually all single workers and for all married workers with a dependent spouse and two children starting at just over $25,000 gross annual earnings, so a fairly low-income earning level. Those figures are somewhat darkened. If you can make those out, fine. If not, the picture I think is still quite clear from the numbers that are clear.

What in the world is the justification for doing this? What possible reason can there be for deciding that an injured worker should be paid less in 1992 than 1991? The unfunded liability is what we hear over and over again. We have to address that unfunded liability. I have to mention here that those exist pretty well in every jurisdiction, some in considerably larger sums even proportionately than they do in Manitoba. I think that this is an item that needs to be addressed. I do not think it is a panic-button item, but certainly it is not healthy to have that large of an unfunded liability, albeit a large part of it is more of a paper deficit; but that said, yes, that needs to be addressed. I do not think it needs to be addressed by taking a hatchet to workers' benefits, however.

Of all the reasons put forth for the existence of this deficit, none of them could possibly warrant concluding that the worker who gets injured today should be made responsible for it. It reflects only one simple fact, that the employers, those who should be responsible for that liability and indeed for all workers compensation expenses, are more powerful than injured workers, and they can convince and influence the lawmakers—you people—to do things their way. That is all it is, just a bottom-line situation, it seems to us. Justice and principles have nothing to do with it.

Again, Mr. Provost's presentation was interesting, because it seemed to be more of a pre-bill presentation rather than a post-bill presentation in that all that he was saying the system should have was already in this bill. He should, instead of saying thank you for all the items that were in there—and I recall the presentation of the postal workers who pointed out quite clearly how all the major proposals in this brief simply reflect what they had put forth to the Legislative Review Committee some years ago, almost paralleling their recommendations word for word in some cases.

Change 21, Section 39(2), page 20: Subject to subsection (3), wage loss benefits are payable until (a) the loss of earning capacity ends, as determined by the board; or (b) the worker attains the age of 65 years. It is really hard to conceive how in this Charter of Rights era, it is possible to place such an obvious restriction based on age into legislation. I heard the minister yesterday indicating that while there were a number of court cases across the land that upheld doing this, I frankly do not care unless this board literally is told by a court to do it. The fact is there are workers. We have seen the cases. I have seen them as a worker advisor. I have seen them as a labour commissioner hearing appeals on behalf of the workers compensation system.

We have seen cases of people who can prove conclusively that they would have worked beyond age 65. These people, obviously still being workers, regardless of age surely in 1991, should be compensated for the wages they are losing. People do work past age 65. A system that hires doctors well into retirement for their medical department can appreciate that fact. Simply put, anyone who can make their case that they would continue to receive a working income past age 65 should receive compensation for loss of that income owing to a compensable injury.

This legislation, by now predictably, opts instead for the financially safe method of arbitrarily cutting benefits off at age 65. That this assuredly means that some workers will be unjustly treated does not seem to matter. What matters is making cost predictable so business can be assured of avoiding financial shocks like the three years of 20 percent increases they received in 1986, 1987 and 1988. Never again, they determined, and here is the bill to see to it.

Yet, according to a 1990 study by the board's favourite consultants, Peat Marwick Stevenson and Kellogg, entitled "Employee Benefit Costs in Canada," the average cost of WCB payments is less than 2 percent of gross payroll. If all employee benefits are included, WCB benefits represent only 2 percent of 133 percentage points based on gross payroll. Still today, workers compensation is cheap insurance indeed.

Section 39(5)(d),(e),(f), Limit to wage loss benefits payable: This new section provides the first authority for the actions proposed in the upcoming section on collateral benefits, and thus our first opportunity to voice our opposition to this authority. The collateral benefits section will make the wage loss component of this bill illusory in many cases. We believe the only deductions properly made from workers compensation benefits are the standard deductions of Canada Pension Plan, unemployment insurance and income tax.

This bill proposes to depart widely from the principle that workers compensation should be contributed to only by the employer. By allowing the deduction of disability insurance, very likely paid for in part or whole by the worker, payments made by employers and any other statutory benefit prescribed by the board by regulation, the legislation will create situations that could result in the WCB, that is, employers, not paying anything at all for work-related injuries.

This offence will be further compounded by placing those workers, who have traditionally relied on these sources of income as a safety net when workers compensation benefits are terminated, in a position where welfare will be their only option. Anyone who has worked on behalf of injured workers knows that the first source of income they are advised to access, on termination of their benefits, is UIC sick pay. This and virtually all other options could be removed by this proposed legislation.

It should be noted here that even those acceptable deductions, that is, CPP and UIC, are taxable and therefore mean a further reduction, in that if all benefits flowed from the WCB, they would not be taxable. Again, the fear of paying out one cent that could be sloughed off onto some other funding source—and read "the worker" there—is expressed in this sledgehammer approach.

Change 21, Section 40(1), on page 21 of the bill, Calculation of the loss of earning capacity: The loss of earning 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 shall not be less than zero.

Here again is a section that enables the board to deem a worker's income. Our position on this practice is simple and straightforward and again mirrors the opinion of the Workers Compensation Review Committee, namely, that the deeming of income be used only in those rare cases where the injured worker has refused a job which she or he can be shown to be able to perform at a verifiable level of income within the physical restrictions as determined by the treating physician.

To say that this bill goes beyond the sensible recommendation is to say that Pavarotti sings better than Tiny Tim. This bill proposes deeming income, deeming tax refunds and deeming collateral benefits. Workers will be made to pay for having phantom jobs and phantom incomes. Under this approach, it becomes the workers' fault if they are not earning what they are deemed capable of earning. It reflects the thinking that compensation is the result of employer charity rather than a fundamental legal right.

To quote from the Alberta Federation of Labour submission of that province's task force on workers compensation: not only is it wrong to ask injured workers to accept miserly wage substitute schemes; it is also wrong to ask the taxpaying public to assume an even greater portion of costs which properly belong to the WCB and the employer.

We will reiterate our message on deeming where it occurs elsewhere in this bill. For now, suffice to say, we deem this bill to be a travesty of fair treatment for workers.

Change 21, Section 40(2), page 21: The net average earnings referred to in Clause 1(a) shall be adjusted as of the first day of the month following the second anniversary of the accident and annually thereafter by applying the indexing factor determined under Section 47.

Despite not meeting our long-standing position for automatic full indexing of all benefits, we applaud the significant move this amendment makes toward rectifying a blatant historic injustice, particularly in terms of pensions. Unfortunately, it does nothing for the victims of that injustice, the workers who received pensions years ago that seemed adequate at the time but now have them living in poverty. Workers injured before these amendments become law should at least see a slowing down, perhaps even a stoppage, in the deterioration of their pensions, but they will continue to suffer the effects of previous erosion. The legislation should look for something other to do with the millions of dollars that this bill will save the WCB than lowering the employers' assessment rates. It should address

the inequality between new, and old, injured workers' pensions.

Change 21, Section 40(3)(d), page 21, Calculation of net average earnings: For the purposes of this act, the net average earnings of a worker, are his or her average earnings calculated in accordance to Section 45, less the probable deductions for the following: (d) such other deductions as the board may establish by regulation. Given our earlier stated opposition of limiting deductions for the purposes of calculating average earnings, we are understandably opposed to this section. There is no reason, other than the aforementioned fiscal paranoia, to go beyond these basic deductions.

Section 41(5)—it is still Change 21 on page 23: Notwithstanding subsections 1 to 4, where a worker of an employer is entitled pursuant to a collective agreement with the employer to receive the payment within the meaning of Clause 1(b) while receiving wage loss benefits under this part, he shall, for the first 24 months of the payment, consider collateral benefits which the worker receives or is entitled to receive only to the extent that such collateral benefits, together with the wage loss benefits, otherwise payable under this part, have the effect of compensating the worker in excess of the worker's actual loss of earning capacity.

We may have misprinted this. I note that it has only the "he" there and you have made corrections and you are commended for it. You have taken the sexism out of the bill and put "he or she" everywhere and neutered it, if you like, in terms of language, while in other ways, too. If that is our misprint, then so be it. If not, then maybe I have noted one other place where you should make that change.

This government has already clearly signaled its willingness to step on collective bargaining rights with Bill 70, so this section should come as no real surprise. Nevertheless, we object most vigorously here, as we did with that bill, to this autocratic intrusion. To make the point as clearly as we can, if an employer has agreed to pay a worker on compensation 100 times the amount they would normally earn, it is none of the board's or the government's business—surely a position that Conservatives could understand.

Of course, while there are some examples of overpayment resulting from negotiated top-ups, most employers are not so foolish as to place themselves in the position of providing, if you like, a reward for being injured. The point is, if they are, it is their right to do so.

Change 21, Section 42, pages 24 and 25, Retirement annuities: One of the rare times that this bill has a good idea and look what it does with it. Recognizing that too many workers, whose employee relationship is severed due to injury, do not replace the provisions that relationship made in terms of financing the retirement years, this bill proposes amendments that will ensure at least some coverage of that financial hole. It does so not by compensating for this loss that the injury has created, but by making the worker pay for it. Where this is done elsewhere, Saskatchewan and New Brunswick, for example—although New Brunswick not to as great an extent—additional payments were made by the board to provide for annuities after age 65.

* (1440)

We congratulate the drafters of this bill for recognizing the gaping hole in the compensation package for long-term injured workers, but we castigate them for rather than having the system fill it, making the worker pay for the repairs. Rather than taking this make-the-worker-pay approach, the bill could adopt our long-standing position of paying 100 percent of net income for disability benefits, and continuing all the normal deductions and contributions to private pension and benefit plans. Instead, this bill proposes making all workers pay for these benefits and perhaps, not incidentally, provides a lot of potential business for insurance companies.

Our recommendation, again, is that of the WCRC, namely, that an additional 10 percent of all compensation payments for permanent disabilities be set aside by the board to provide for retirement annuity when the worker reaches normal retirement age.

Change 21, Section 45(3) and 45(4) on page 27. Given the length of these amendments and the shortness of our comment, I will not bother reading the amendments except to say that what we say there is that these are some actual positive amendments of deeming that we have recommended and they do correct an injustice that has been around a long time that all of us have noted, and again the drafters are to be commended for this rare instance of heeding the WCRC's advice.

Change 21, Section 46(2) on page 28. Subject to the regulations, the maximum annual earnings are $45,500. While any increase in the maximum ceiling is a positive step—and obviously we are not going to argue against increasing the ceiling, it is far too low—this still falls well short of our recommendation of a ceiling set at the nearest 1000 multiple of 2 1/2 times the average wage in the province of Manitoba, which currently would make our ceiling $62,000. Adopting this recommendation would go a long way towards ensuring that all our members are fully covered, and all workers in this province. For that matter, the majority recommendation of the WCRC would have set the ceiling at $50,000, the one that the employer community agreed to.

We note also that while the proponents of this bill have pointed to this increase as being generous, it in fact merely brings Manitoba in line with other jurisdictions and up to a level that, for example, Newfoundland was at in 1983.

Change 24, Subsection 60(2)(d)(i).

By repealing clause (i) and substituting the following:

(i)whether or not an employer's undertaking or any part, branch or department of an employer's undertaking is in an industry within the scope of this part, and the class, sub-class, group or sub-group to which an employer's undertaking or any part, branch or department thereof should be assigned;

We have said our piece on experience rating, but are so convinced of its negative impact that we feel obliged to note our opposition again at this point. Here we see the board being given the jurisdiction to determine that the risk inherent in one part of an operation or, worse still, the accident rate in one part of an operation exceeds that of another and, therefore, the employer should pay a different rate for that group. Not only does this encourage the inequities we mentioned earlier—I can just see the reporting now of how many employees work in the section of the industry that has the lowest rating going up—but it ignores the fact that while most operations do have various functions with different degrees of risk, these differences are shared by all and should result in similar rates. The distinction is clear, assessments can now vary from one employer to another within the same industry based on supposed accident records. Collective liability, a founding principle of the whole system, goes right out the window.

Change 27, Section 60.8(7), page 34.

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 costs of not more than $250 to the board, and the board may enforce payment of the costs in the same manner as the payment of an assessment.

I have trouble proceeding with this so maybe I should check with the Chairperson as to what proper language is before I go ahead talking about this section. It is truly disgusting, frankly. It is a terrible affront to all appellants by inferring that they had best think twice before appealing in case their appeal might be considered "frivolous." Of course, to the individual involved the appeal is definitely anything but frivolous and to even have it suggested that it may be is to add to the natural level of resentment that already exists from the individual to the system.

It is interesting to note that the fine applies to the "person" who makes the appeal, suggesting it is workers, and not employers, that drafters were thinking of. I believe there has been some amendment made to this effect which I have in another document, so that may not be a relevant comment. Speaking of employers, what kind of a deterrent is $250 to those large employers who operate on an "appeal lots, win some" approach, and they exist in the city of Winnipeg, indeed.

We ask this question simply to point out the inequity of monetary penalties and not to suggest that providing for a larger one for employers would erase our objections. Providing for one solely for employers would erase our objections, however. With rare exception, so-called frivolous appeals will weed themselves out very early in the process. We feel it is worth paying the minimal price of those rare exceptions, rather than discouraging legitimate ones by coming across with a "don't mess with us, we will get you" attitude. Minimal price is what we mean, I do not know what the exact figure would be. I ask the board to provide it if they are able to do so here, but we know that the costs of these so-called—again, I guess it is an impossible figure to provide because no one has made a determination of what frivolous appeals are in the past. We do not believe there is a great problem here, not to suggest that there may not be the occasional one, but again we think it is worthwhile suffering the minimal cost of those occasional ones, rather than sending out that message to all workers

that again "look out we will get you, you had better watch yourself, this better be a serious appeal." These are workers quite likely, in many cases, who lost, or are in the process of losing their house and having their marriage affected, and on and on, and being financially devastated, and then wants to appeal that decision and are told, watch it or we will charge you $250. It is disgusting.

Change 32, subsection 67(4.1), page 35.

67(4.1) The board may order a worker to pay costs of not more than $250, and may enforce payment of the costs in the same manner as the payment of an assessment, where:

a) the worker requests the board to refer a matter to a panel under subsection (4);

b) the opinion of the panel supports the opinion of the medical officer of the board; and

c) in the opinion of the board the request to refer the matter to a panel was frivolous.

What we do not point out here is that it certainly is possible for a board decision at the final level to be made that could lead to the need for a medical review panel afterwards, but again this apparently upsets employers, so here is something to take care of it.

Like the penalty for frivolous appeals this is a truly contemptuous amendment, and it also does not make any sense whatsoever. Once the requirements of the legislation placed on those seeking a medical review panel have been met, those requirements being a difference of opinion between a board doctor and a worker's doctor, then that worker has legal entitlement to such a review. When we add to this fact that Section 67(1) requires the outside doctor to provide a full statement of the facts and reasons supporting a medical opinion, we have to ask where the sense is in labelling requests that meet those requirements "frivolous." In fact, we think it is impossible.

I do not know how you can do it where the person has met all those criteria, they have an opinion from their doctor, an opinion that they, as a layperson cannot really be responsible for. That doctor, thanks to the previous Bill 56, has to really make that opinion stand up. It is no longer enough for them to say, no, I do not think he/she is ready to go back to work. They have to say why and back up that opinion. That leads to a medical review panel, period. It is impossible after that to deem it frivolous. As a matter of fact, I asked Dr. Murphy, the chairperson of the medical review panels, if he had ever come across what he would label a frivolous appeal. It was not a loaded question. I told him exactly why I was asking it, and his response was not one. So, again, throw this nonsense out, please.

Change 33, Section 73, page 37. This section enables the board to create new self-assurers. Owing primarily to the limited time we have had to deal with this bill, we are not completely sure just what the full effect of this section might be. The presentation of the Metis Federation suggested some scenarios which I will not comment on whether they are accurate or not, but they are frightening in their potential. With the lack of knowledge, it does not prevent us from stating we are gravely concerned at the possibility of larger employers being labelled as self-assurers and thereby potentially saddling the citizens of Manitoba with any deficit resulting from their demise.

In this day and age, no matter what the employer may be, certainly they can disappear from sight or at least from Canada. We can add that self-assurers, with the exception of the railroads, have historically been only those employers who have the ability to tax. I recall the head of the Workers Compensation Association of Canada, I think I have the title right, as saying that that should exactly be how it is and those are the only ones who should be self-assurers. We suggest there is considerable danger inherent in deviating from this principle.

Change 44, Section 84.1(1) and 84.1(2) on page 48. The Worker Advisor and Workplace Safety and Health Division Funding. We are not quite clear on what the effect of these sections might be, but what is very apparent is that the legislation is moving from what was a concrete funding commitment to these two invaluable agencies, the Workplace Safety and Support Services Division and the Worker Advisor Office, to some nebulous offer to "assist in defraying the reasonable expenses of" these operations. We do not know what is afoot here.

If the Workers Compensation Board has it in mind to take over the inspection duties or perhaps all the duties of the Health and Safety Division, let us put that on the table and discuss the merging of these two entities if that is what is proposed, but we just do not know what it means. If the legislation is now only going—the words are assistance, so if the legislation is only going to be providing assistance

in defraying the expenses, just who is it that is being assisted? Who is paying the rest of this? Is this another case for the legitimate costs of the employer being offloaded onto the taxpayer? Even more importantly, what does this kind of limp commitment to the security of these vital operations mean? We ask that this section be amended to provide that security.

Change 53(2), subsection 101(1.2), page 51. Notwithstanding subsection 1 and Section 20.1, an employer or the agent of the employer requests the reconsideration of a decision by the board or appeals to the Appeal Commission may examine and copy such documents in the board's possession as the board considers relevant to an issue in the reconsideration or appeal, and the information shall not be used for any purpose other than a reconsideration or appeal under this act except with the approval of the board.

* (1450)

The media perhaps, because they like simple issues, seemingly have made this the issue of this bill. We do not agree it is. We think it is very important. It is not the number after what you have gone through. You can appreciate we have other more graver concerns, but we do object very strongly to providing employers with access to the medical information on the file. We do so because, firstly, it is our position that the employer has subrogated his or her rights to the ensurer and should not even be involved in the appeal process at all as far as we are concerned.

Secondly, despite every effort to limit the information provided, the knowledge gained can and will be used to discriminate in other aspects of the employer-employee relationship. Thirdly, the provision of such material enhances the adversarial approach to Workers Compensation appeals. The employer is appealing the judgment of the system and is not in a personal battle with the worker which is what this encourages. I will comment if there are questions.

Change 59, Section 109.5(1), page 54. The board may delegate its powers under this act to an agent or local representative for the purpose of receiving application for compensation, reports of accidents, physicians' reports and such other proofs of claims the board requires, determining entitlement to wage loss benefits, calculating the loss of earning capacity of a worker, paying compensation to workers or their dependants on behalf of the board or any other matter the board may determine giving them full access to heaven knows what. Again, I must say, boy, we are just lining up with the Canadian Manufacturers' Association over and over here. I heard Mr. Provost refer over and over again to an independent system. We agree, the system should be independent.

Without realizing the full potential impact of this section though, who these agents might be or who these representatives might be, we would appreciate an answer to that. We are just flabbergasted by this amendment. Regardless of the number of assurances we are going to receive and have received in terms of the intent, it clearly enables the board to carry out its authority in function to virtually anyone including employers and that has been made clear over the past few days.

As an organization representing workers, we are of course fundamentally opposed to contracting out for one thing as a union issue, but that traditional concern is even greater when we realize that this amendment could result in employers adjudicating Workers Compensation claims. This board, as all boards, they have a job to do. We suggest you let the board do that job. If you are going to farm this stuff out, I can tell you that the 30-odd members of the MFL executive council are ready and waiting to adjudicate Workers Compensation claims also if that is the way it is going to be.

As indicated at the outset, we are totally dismayed that the promise set out by the Workers Compensation Review Committee in 1987 has been betrayed by this bill. We find it distasteful that the Steering Committee Report and even the minister has implied that the findings of the WCRC amounted to the first step down the road that led to this bill. In reality, this bill is the other side of the coin in terms of the WCRC report, its evil twin if you will. Rather than fostering and supporting a proactive preventive approach, this bill is far more concerned with limiting and restricting workers' rights to fair compensation for work-related injuries and disease.

We ask this committee to recognize that this is not the way to create a just and equitable Workers Compensation system. We ask you to revisit the only major study of this system that reflects the input of workers and employers and to advise a redrafted bill based on the recommendations of that study. Most importantly, we ask you to consider seriously that the passage of this, Canada's first free trade workers compensation act, will lead to a serious

re-evaluation on the part of labour of the whole deal and perhaps a conclusion that, despite the many pitfalls of civil suits for negligence, if this is the best workers can get, they may be better off to forgo the historic compromise of Workers Compensation. That is not a conclusion made lightly. That is a conclusion made with great trepidation on the part of labour. Thank you for your time.

Mr. Chairman: Mr. Mesman, thank you very much. I am going to recess for a few minutes to allow Hansard to change tapes. You made it just under the wire. Thank you.

* * *

The committee took recess at 2:55 p.m.

After Recess

The committee resumed at 2:58 p.m.

Mr. Chairman: Could the committee come back to order.

If there are no questions then we will proceed—oh, there are. Well, I have asked the committee to come back to order. If you cannot do that, then we will proceed to the next presenter.

Mr. Chomiak: Mr. Chairperson, I have just a couple of questions, and I will limit my initial comments. I just do want to state this is a very thorough presentation, and the issues canvassed are very, very complex. I think the document is well put together and highlights the major issues.

* (1500)

I want to just ask a couple of questions. The first is your comments on the very last page in the conclusion where you referenced the fact that this is Canada's first free trade workers compensation act. I wonder if you might elaborate for the committee a little bit on those particular comments.

Mr. Mesman: It just strikes me that more and more across this country, and it is one of the things that differentiates our country from the one we have the free trade deal with, that so many of the social contracts are being whittled away at in order to create that legendary level playing field. Knowing that the benefits provided in so many of the states do not compare to what our workers compensation system provides, I am not suggesting there is a direct link here to the free trade act per se, but again the juggernaut, if you like, of diminishing our social contracts in order to parallel them with the minimal levels that are available in the States is something that this bill seems to be doing also. I am not saying that is specifically the thinking behind the bill but it is what the result is in terms of these kind of changes.

Mr. Chomiak: I would like to maybe have you elaborate a little bit on what seems to me to be a major and significant change and that is in reference to page 16, the "meat chart" that you referred to. I want to make certain that I understand completely what is meant by these changes. Perhaps we will look on page 17 to the examples that you cite.

Mr. Mesman: You say to understand completely, and as I say ahead of there, this thing is not terribly clear to anyone, so I am not sure that I can provide you with a complete understanding. I do not have one myself. Again, some things are self-evident, which is that those examples I have given, and obviously I could have filled up six, seven pages with examples, the methods—and I had some assistance on this—of producing what they currently call a PPD results in those kind of sums to workers who have an injury today, depending on the injury, depending on the age of the worker, depending on the earning income of the worker. In this case we are talking about quite a low paid one, $300 per week, a $10 an hour paid worker, I suppose.

These are the results that we came up with in doing our estimates on these. They are estimates, but I invite the representative of the board to make what corrections, if any, need to be made on those. Again, what it means is that not only do they not have access to a pension which often is the better way to go, particularly for those who have a fairly high level of impairment, but in taking the lump sum the amount that winds up in the worker's hand, in the worker's pocket is decreased by the type of figures you see there, the dramatic differences.

Mr. Chomiak: The percentages that you refer to where you put current "meat chart" percentages on page 16, could you just highlight for me what those refer to?

Mr. Mesman: An explanation of this thing is something that I cannot do with any thoroughness. Those percentages there are taken from the guide to impairment that the board uses internally. When they say, if you have lopped off your index finger, it is worth 5 percent. That then gets put against a number of components, actuarial ingredients, if you like, in coming up with a final sum of what that impaired worker would receive. It is a percentage

of a 100 percent able individual. They have lost 0.8 percent of their ability if you like using the first—

Mr. Chomiak: That is how I understand it, because I have considerable number of constituents who are on workers compensation and who are on the PPD category. What you are saying on page 17 is that the new system, if the bill is passed unamended, will result in a significant loss of benefits based on the proposed "meat chart." Is that the correct assumption?

Mr. Mesman: Yes.

Mr. Chomiak: One of the areas that causes me grave concern as a lawyer and as a legislator is the Change 59 that you cited, Section 109.5.1, and that is the complete delegation of authority from the board to other individuals or agencies. I am not even sure if that is legal, frankly, but I suspect we as legislators can do what we want. I am quite surprised by it to the extent that it goes. I wonder, do you have any further comment on that because I was not as familiar with this delegation section as I am now after your presentation.

Mr. Mesman: Well, we have heard from one lawyer that it supposedly is legal. Then again that does not make it legal. That only means somebody has an opinion that it may be.

Our concern with it, already we see the City of Winnipeg practically drooling at the thought of adjudicating their employees' claims, so our concerns with it are deep.

The fact that we do not know what else it enables the board to do, seemingly, to confer all of its authority and power with that Section D or whatever the final section was to again whomever.

Mr. Chairman: Mr. Ashton.

Mr. Ashton: Mr. Chairperson—

Mr. Chairman: I should correct that. I had Mr. Edwards on before I had you on, Mr. Ashton, so I am going to leave you and let Mr. Edwards ask his question first.

Mr. Edwards: Thank you, Mr. Chairperson. I will be brief.

I wanted to put on the record, Mr. Mesman, you and I had spoken briefly privately during the break, what an outstanding job you have done putting this brief together. You obviously have put a significant amount of work into it and have a significant amount of expertise in this area. I am thankful that we will have the weekend before clause by clause to give it a more thorough read which it most decidedly deserves.

I wanted to go back to pages 3 and 4 of your brief, right at the beginning. I was intrigued by your comment, and it has been made before, that the—

Mr. Chairman: Mr. Edwards, would you put your question, please?

Mr. Edwards: Yes, my question is, given that your conclusion is that occupational disease in the new definition may lead to tort action, what is your—can you lead me to the section, other than Section 13(1)of the existing act which limits the right to turn to an employer? I looked at it briefly. Are you aware of another section other than 13(1) of the existing act that limits the right, because I read that section to be restricted to accidents?

Maybe the minister can help me out at some point. Is there another section I am missing?

Mr. Mesman: Thank you for your comments, Mr. Edwards.

Unfortunately, I do not have the current act with me, but the definition of accident includes disease the way it is defined in the present act. That would cover that.

The concern with people going to court, of course, is because the bill is saying you must—the disease must be more than 50 percent caused by the employment before we will compensate. We suggest there are people forgetting the ridiculousness of trying to attribute 10 percent, 20 percent. It is a very difficult thing to do, but people do it. People come to a determination, judges all the time, that 10 percent, 20 percent, 30 percent, 49 percent of a disease is related to the employment.

That person is told by this legislation, you cannot have anything from us, so again assumedly they can go to court and sue that employer.

Mr. Edwards: Section 13(1), the restriction I am looking at, it looks to me like the restriction flows from where someone "... or his dependants, are or may be entitled against the employer ...." Given that, if someone was turned down—let us say someone was turned down that was not found to be dominant purpose, is your argument, your suggestion that they may still well sue the employer and that they would have a right to under the present Section 13(1)?

Mr. Mesman: Certainly no legal mind operating here, but I would assume if The Workers Compensation Act clearly states we do not

compensate for any percentages under 50, then that individual who has a percentage clearly established under 50 has recourse to sue that employer for that 30 percent of their disease that they caused.

These arguments get preposterous anyway, the idea that you can divvy things up this way are really insane. We have extensive arguments appended to this brief and others I could present you as to how to properly go about doing this.

Yes, to answer your question, that is my position or our belief unless proven otherwise. These people could go to court, sue the employer.

Mr. Edwards: I take your point that would be a backward move not just for employees but for employers, surely.

Mr. Chairman: Mr. Mesman.

Mr. Edwards: Mr. Chairperson, I have not put my question.

Mr. Mesman, with respect to the definition of occupational disease—and perhaps I missed it—what would you have us do, because I look at the industrial disease definition, which does still take us back to a certain amount of looking at the particular industry involved? Industrial disease is defined in the present act, just to refresh your memory, as any disease that is peculiar to or characteristic of an industrial process trade or occupation.

What would you have us do? I must confess I have not looked at your appendix to this, which may give me the answers to what you can support. Can you refresh us on what you would have us do with occupational . . . .

Mr. Mesman: Well, there is any number of approaches you can take. One, as I suggested, is just to put a period after that occupational disease means a disease arising out of and in the course of employment and thereby treating it as you would any other injury. The proof has to be that it did—it is still not going to be an easy case to establish, as we know, because that is basically what we have now. What you have read there, yes, does define industrial disease, but it does so for relating it to certain sections in the act.

* (1510)

Again, the definition of accident encompasses disease and the proof required currently is no different than for an accident. It is just a hell of a lot more difficult to obtain and to make the case.

Mr. Edwards: I put to the minister, last night, that concern about this definition, because other presenters have raised it, as you know. What was indicated to me was how do we deal with the common cold in the workplace; how do we not compensate for the diseases of life as it were?

What is your response to that?

Mr. Mesman: My response to that is how indeed do we not compensate for those. How do we not compensate for an instructor who catches measles from one of the students they are instructing. I assume that is considered an ordinary disease of life. It is beyond me why that person would not be entitled to compensation. It is certainly related to the employment and arising in and out of the course of.

This bill proposes to accomplish what it traditionally would have been looked on as illegal. They had nasty little policies to handle that before, but now we are going to put it in legislation.

Mr. Edwards: You would suggest that we not shy away from including those types of illnesses if we can show, and it becomes very difficult, as you said—

Mr. Mesman: Extremely.

Mr. Edwards: —that they are tied to the workplace.

Mr. Mesman: Again the magic phrase is "buck for the work." If you can prove that, were it not for the work, this individual would not have incurred whatever the disease may be, and I think you have got yourself a compensable situation, yes.

Mr. Edwards: Okay, thank you.

Mr. Ashton: I appreciated the detailed brief and also the bluntness in which you have analyzed this bill. You talked about the evil twin; I suppose there is a strong resemblance in this to Jekyll and Hyde and, I think, increasingly, we are seeing Mr. Hyde in this bill.

I want to ask on a couple of those points. In terms of the frivolous appeals, I take it from your presentation you are saying there are really two effects this will either have: either none, because if appeals are dealt with in the same way that you feel in your experience, obviously with the system, that there are very few appeals, if any, that could be categorized as frivolous; or, if they attempt to deal with this, there could be many, presumably, because what is frivolous, it could be opened up.

I just want to make it very clear to the committee, you are saying that this whole section should be dropped, period.

Mr. Mesman: Absolutely, the whole bill.

Mr. Ashton: I want to deal with some of the other points, as well, because I do not think there has been that much attention paid to this particular area in terms of survivor's benefits, and I know there have been a number of other questions, but I want to get it very clear for the committee again. What you are suggesting is that changes in this bill could result in significantly reduced benefits for survivors in the future.

Mr. Mesman: Yes, it is apparent. I do not expect that to be denied; certainly, it may be said that that is offset by certain other factors of the bill, but certainly in terms of the actual money that a beneficiary would receive it is dramatically reduced.

Mr. Ashton: The same being the case in terms of the discussions, and I know there were questions previously about the impact of the "meat chart" system.

Mr. Mesman: Exactly the same, if not more dramatic.

Mr. Ashton: You also referenced, I think, a very interesting point about your feeling that this act has gone so far toward trying to stop one or two or whatever number of individuals from receiving benefits that they might not be entitled to, that it has netted many other people in the process. Are you saying they are based on one or two sections, or is that the result of other sections of the bill, a number of sections?

Mr. Mesman: It seems to be woven throughout this bill, yes. The few things that needed rectifying in terms of what you might call overcompensation, and that we would not disagree with setting right, have been taken care of all right, and then a slew of other things have been attacked also and benefits slashed.

Mr. Ashton: I also want to deal with the historic trade-off that you reference, and it is interesting that both yourself and the previous presenter talked about the original historic trade-off that was made, the social contract, if you like. I think you referenced that a number of times in the presentation.

I just want to deal with the fact that obviously this government in the bill is dealing with the unfunded liability, and this is their way of dealing with it. I am wondering, and looking at your brief, whether you feel that essentially what they are doing is, instead of dealing with it in terms of assessment base, they are essentially dealing with it in terms of either reduced benefits for claimants or reducing the number of claimants who will be successful.

Mr. Mesman: Absolutely, that is what they are doing. We are not even suggesting that assessments is the only way to address the unfunded liability, although clearly that is one of the ways that you can and should be addressing it because it is a proper expense that should be put where it belongs, which is on the employers. But there are numerous other ways, including running a more efficient operation, including making the workplaces safer, et cetera, that can attack that problem.

Mr. Ashton: Indeed, your particular latter point about safer workplaces may be the long-term route, but I just really want to focus in on what is happening, according to your analysis, and that is essentially that we kept hearing earlier from employer groups saying that this is solely employer funded. What you are suggesting is essentially what this bill is doing is asking workers to pick up the cost too in the form of those reduced benefits we just referred to, and in form of some workers going without benefits they might otherwise be entitled to under existing definitions in the act.

Mr. Mesman: Yes, and you are right, the constant emphasis by employers that this was solely employer funded. Big deal. I mean, my insurance is solely Harry Mesman funded; I cannot imagine that someone else should have to pay for it also. Again, it is the suggestion that it is some kind of gift from employers. Well, it is not; it is an insurance. We all know the deal and we have gone through this a number of times before, and now, yes, I believe they are trying to load more and more of that off onto the workers. Of course, ultimately, and it is the reason why we all want to see an efficient system that is financially sound and so on, the workers, the citizens pay for this all because clearly it is passed on in the cost of the products that those employers manufacture, et cetera.

Mr. Ashton: I am wondering, in terms of its impact, obviously it will impact on some existing injured workers and their families, but you are suggesting from the brief that it will particularly impact on future injured workers and their families.

Mr. Mesman: It will impact on every worker who gets injured from January 1, 1992 on, yes, and really on the previous injured workers, too, but in less direct ways. It is not that they are going to see a slash in their benefits on that date, the ones who are already in the system, if you like.

Mr. Ashton: I find it ironic that the government talks about deficits in other contexts being paid by future generations. In this case, you are saying that the deficit, the unfunded liability, is going to be paid for by future generations of injured workers.

Mr. Mesman: That is exactly what I am saying, yes.

Mr. Ashton: One final question, and I want once again to congratulate you on a very comprehensive brief, and it is a very difficult bill to analyze. It has many far-reaching, unpredictable consequences. I just want to make it clear for members of the committee what your recommendation is again on behalf of the Manitoba Federation of Labour. If the minister was to amend one or two or three of these sections, would that be sufficient, or are you suggesting that the minister go back to the drawing board, particularly to look at the report from 1987, the Compensation Review Committee Report, in the meantime, essentially table this bill until that process has been completed?

Mr. Mesman: Yes, I would suggest a complete overhaul of this bill, absolutely.

Mr. Ashton: Thank you.

Mr. Chairman: Thank you, Mr. Mesman.

* (1520)

Mr. Praznik: Mr. Mesman, as usual, a very thorough job in evaluating areas of concern, policy decisions and, of course, some areas where there is obviously a disagreement in policy.

I have a few clarification questions for you and questions for your response. If I may go through them, firstly with respect to occupational disease, some reference has been made, some questions asked by Mr. Edwards, you also made reference to board policies in practice now. Would it be fair to say that the current definition proposed in this act, in essence, enshrines the status quo and adjudication at WCB on occupational disease, more or less?

Mr. Mesman: Less. No, I do not think so. I think it goes well beyond, makes it more stringent. The fact is, we have had, perhaps due to people not paying close enough attention of those policies, but whatever, chronic stress claims accepted. We have had, and I emphasize "have" because it is definitely in the past now it seems, a semi-independent final review, final adjudication body, who were able to make decisions based on the merits of the case. So, no, I think it was possible to get compensation and properly so for occupational diseases and stress under the current system, very, very difficult, mind you, but possible, even with the restrictive policies that were in place which this very clearly defined. Well, I should not say "clearly" because I am still not clear on the ordinary diseases of life, for one. No, it is not more or less the same; I think it makes it considerably more difficult.

Mr. Praznik: In other words, it draws the line where that line more or less currently is, but my question to you, you may comment on it, but I am trying to get two questions in one, I guess—comment about the line. The second area is in the area of proposed wage loss benefits. I appreciate very fully that the position of the MFL is to have 100 percent of a net system, I take it.

Mr. Mesman: Yes.

Mr. Praznik: My question is: Are you aware and could you tell the committee of any jurisdictions in North America that currently have a 100 percent of net wage loss system?

Mr. Mesman: Not a one, but I always encourage whatever system I am dealing with to lead the way.

Mr. Praznik: In the area, Mr. Mesman, of indexation, I notice that you agree with that proposal, and you also make some reference to the need to index, I believe on page 23 of your brief, old pensions. I just wonder if you were aware that, under Section 48 of the proposed act, the old pensions would also be indexed.

Mr. Mesman: Yes, and I note that the deterioration of those pensions will now cease, but I am talking about making up for the previous erosion. In terms of the occupational disease section drawing the line, I think it does a little more than that. You can step over lines, but I think this closes the door tight.

Mr. Praznik: Yes, Mr. Mesman, referring to your chart at page 16 of your brief, I just would like you to acknowledge, I would hope that, with respect to impairment awards under the dual award system, they would be in addition to a wage loss or partial wage loss payment.

Mr. Mesman: I would acknowledge that. I would acknowledge that paying wage loss has always been an obligation of the Workers Compensation system also.

Mr. Praznik: I just ask that, when comparing it to the old disability pension which was a single payment, and to compare one to just the lump sum without adding the appropriate wage or partial wage loss would not be quite a fair comparison. They would have to be looked together. You would agree with that?

Mr. Mesman: Yes, I would.

Mr. Praznik: My last question, well, two questions actually, Mr. Chair. Mr. Mesman, you say that the board's treatment of pre-existing conditions should be based on recommendation, I believe 33, 34 and 35 of the King Commission Report, you make reference to that I believe on page 18 of your brief. In particular, workers with static pre-existing conditions should not receive reduced benefits, and workers with deteriorating conditions should be compensated for the period of temporary aggravation or any permanent enhancement resulting from the compensable injury.

We have, in preparing this—what we are doing, as you and I have talked about before, is eliminating that provision. As I have indicated to you, the intention here was to do exactly what in fact you are asking, and that is the opinion of the drafts people. So if that turns out to be the result, this effort then would not be objectionable, I take it.

Mr. Mesman: If that is the intention, then I suggest you spell it out. I would hate to come to the final level of appeal and make the argument that it was the intention of the drafters to do something. I would prefer to see it right there spelled out.

Mr. Praznik: Yes, and the last question I have for you, Mr. Mesman, is in the area of benefits to spouses where there has been a death. You make reference to the loss or the reduction in what a person could get totally. I just ask you if you would acknowledge that, when the act was originally passed, the expectations as to spouses, most of whom were women, to be dependent in a family has changed considerably since that time, particularly in the last 10-20 years, and that there are different obligations and expectations as to earning capacity, et cetera, since the act was initially passed.

Mr. Mesman: I understand that the women of the 1990s now have the freedom to be impoverished, which is what the statistics show is their situation for working women in this country.

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

We will move on to No. 2 on the list now, Mr. Albert Cerilli, Canadian Brotherhood of Railway Transport and General Workers. Mr. Cerilli, have you a presentation to distribute to the committee members?

Mr. Albert Cerilli, Canadian Brotherhood of Railway Transport and General Workers: No, Mr. Chairman, due to the fact of time and other commitments and, of course, the complexity of the bill—

Mr. Chairman: Mr. Cerilli, would you proceed then.

Mr. Cerilli: Mr. Chairperson, Mr. Minister, committee members, as regional vice-president of Canadian Brotherhood of Railway Transport and General Workers, after all of the cutbacks and responsible for all of the welfare of some 3,500 workers and their families who work in rail, bus, truck, warehousing, dock, garage, hotels, power houses and office workers, the workers who are exposed to all of the old and all of the new hazards of workplace, we strongly recommend and suggest to you that this government withdraw Bill 59.

The act to amend The Manitoba Workers Compensation Act, is an ill-conceived document that deserves no further debate until it is withdrawn and proper recommendations and time be given to all of the parties concerned. The act is being deliberately progressed for passage to accommodate the business community. This victory will be short-lived and for that brief moment the achievement will be at the expense of injured workers and their families.

The employers and the employer organizations have made it clear through their presentations that WCB premiums are a burden on what is being perceived as being noncompetitive in the global markets and in the environment of economic development today. Does this mean that Canadian workers must reduce their working standards to those of Mexico? Is this what this is all about, profit, not safety, money and not the environment of the workplace, money and not the well-being of workers? The fact of the matter is that some 30 percent of Manitoban workers in banks, insurance companies, investment industries, white collar workers in general, farmers, are still not covered by

the act. If you are looking for funds to alleviate the unfunded liability and the costs, then you should look at including those who are still out and looking in for coverage.

Mr. Chairperson and committee members, Bill 59 should include these workers and they must. The new hazards of the workplace are something that I believe the committee has not considered whatsoever, or the authors of the bill have not considered whatsoever. Bill 59 still excludes them.

* (1530)

Mr. Chairperson, the fact of the matter is that work stress from office and noise chemicals in the workplace is an area that the invisible injury has to be considered for coverage in this act. This act does not provide for any such stuff. We cannot look at injury simply by a broken limb or a broken arm or a broken leg. We can see that one million workers in Canada are injured at the workplace yearly and the total cost to employers is some $4 billion to $5 billion. The province of Manitoba shares in the injured workers figures by some 50,000-plus claims and at a cost of some $75 million assessed against employers. The total unfunded liability for workers compensation in Canada by 1990 may amount to over $7 billion. It is not surprising then that these disagreements exist regarding what is right for injured workers.

History under Bill 59 is being repeated. Workers compensation in the province and territories, different presenters have used different years, but was passed from my research in 1915 to 1977. Prior to the WCB, injured workers on the job had to rely on personal savings, family, friends or lawsuits against the employer. The financial trauma was exhausting. Legal actions against employers were fought with lengthy delays and negligence difficult to prove, or for that matter, unsafe conditions hard to prove. All these factors led to the players reaching an agreement that the only fair way to do it, as other presenters have told this committee, was to enact legislation entitled workers compensation acts across this country. Some employers prior to that were able to carry insurance to offset their costs. Other employers could not and the reliance on the courts caused a great deal of satisfaction on both sides. That reform, of course, took the form of workers compensation.

The principles of workers compensation had five basic cornerstones to the original workers compensation law. They were as follows: no fault coverage, workers gave up all rights of action against their employer in return for automatic benefits if injured on the job, irrespective of fault on the part of either worker or employer.

The second thing was collective liability. In return for freedom against the lawsuit by worker injured on the job, employers became collectively liable to pay for the cost of the program.

The third, guaranteed benefits. Workers were guaranteed payments of benefits at a legislative level irrespective of bankruptcy of individual employer or insurers.

The fourth, independent administration that designers of workers compensation envisage that an independent administrative body to operate the program free from potential lobby of workers and employers or in fact to the government.

The last was exclusive jurisdiction on the quasi-judicial boards with final authority to determine all matters pertaining to the law with no review by the courts.

The benefits I think have been clearly outlined, and I will skip those because it included all kinds of benefits for loss of life to the widowers and to the children and so on, but those were the basic principles for workers compensation benefits.

The fact is now that this bill introduces the exposure to the insurance company itself insured again. Really, what it is, is it the money end of it? Are the insurance company missing out on something that this government and other governments like you across the country are ready to accommodate by? The fact of the matter is the figure of $5 billion to $6 billion is something that these companies are looking at and maybe you are the ones who are accommodating them.

Certainly the author of this bill who has been referred to—and I will have a little more to say about that later—as a Mr. Lane, I think he is in the building—certainly has been given bouquets to the fact, by the employers, that is fait accompli this thing is passed, it is in our hip pockets and, by god, we are going to get it done, and as somebody said, we are going to open the corks and have some champagne later on. Let me tell you, you will be doing a disservice to this government and to yourselves and to the workers of Manitoba and their families if you do just that.

Of course, the other end of it is the legal end of it. Have we some law firms around that have been

lobbying Mr. Lane or cajoling him in regard to what it should be? The fact of the matter is that the bill itself takes on—and if he was the author, I do not know if he was the author, but the employer seems to think so—the turn of a legal adjuster for a private insurance company. Just think about it, of how the designs are and the mechanisms are of this act. That is exactly what the hell is going to happen, we are going to wind up in the courts, as previously said by the Manitoba Federation of Labour.

By the way, we support what the Manitoba Federation of Labour has said. We are here simply as an organization to tell you to withdraw this bill. We are not asking you, we are telling you, because you have not represented the bloody people of this province, and you are not going to break new grounds on the backs of these workers. The fact of the matter is that I would have brought witnesses here today that some of the provisions that are in that act are being implemented here already by this administration at the Workers Compensation Board, and I will go through some of those. The only reason I have not got the witnesses here is simply because of the uncertainty of time.

We do not hide anything from the work force. My last circular to my membership was June 21, when I first found out that this administration was asking the workers to fill out a career planner, skills you thought you never had. For the record, I want to tell you what these things say before I get into contracting out. I think that the members already asked a question. They do not believe in their legal profession that this contracting out to someone other than to Workers Compensation of an injured worker's file is legal. I think you have to stand challenged on the fact that I do not think it is legal, just simply because you ask some injured worker to sign some piece of paper that you could go to the toilet with.

Career planner, and this might take a while, because I am going to suffer you guys through with what I did not suffer you through with Bill 70, and I will get into that too. What is a career planner? Someone who wants to further their education but is uncertain as to what courses, programs, et cetera. Sounds great. There is in administration since I have been active in the labour movement in the rehabilitation department of any jurisdiction in Workers Compensation—and I have dealt with half a dozen administrations and in half a dozen jurisdictions—of rehabilitating an injured worker toward something different, but there is a humane way of doing it and not an inhumane way of doing it.

This is just what it means because what you are doing with these documents, and there are about 10 of them, you are torturing, you are mentally torturing, the injured worker, with all of the facts that are out there anyway and the conceived fact of suspicion against the administration of any Workers Compensation Board, particularly when the injured worker is being cut off from benefits and placed on rehabilitation.

We have gone through those committees. Just complete some of the training and eager to find employments so as to apply your recent training. By the way, has the committee been favoured with some of these documents? Has the minister been favoured with some of these documents? I just asked the question because if they have, it will save me some time, but if you have not been favoured with the documents of what is going on now before this act is passed, then we should know about it. The labour movement should know about it and the injured workers should know about it, Mr. Chairperson. That is the point I am making. If you have not been favoured with them, then I am going to go through every one of them with you. Have you been favoured with them, Mr. Minister?

* (1540)

Mr. Praznik: I am not sure specifically which documents Mr. Cerilli is talking about.

Mr. Cerilli: What is a career planner issued by the board? I am telling you, it is just mind-boggling of what the hell the torture these men and women are being put through.

Mr. Chairman: Mr. Cerilli, proceed.

Mr. Cerilli: Making career change for whatever reason, looking for another job, re-entering the paid labour market after raising a family, et cetera. Three steps to career planning: No. 1, skills, values, interests, i.e., your product. Note your prioritized career list which is arrived at after skill inventory and a value and interest examination of the whole person.

Then it has a circle divided in four: Employment, Education and Training, Volunteer and Community, Life's Experiences—great stuff. In fact, we have had so many success stories through rehabilitation with some of my members that right off the top it looks excellent because some of these people have

to be re-educated for retraining. Because of the illiteracy mode in our society, the present rehabilitation department provides for some re-education processes, nothing wrong with that.

Mr. Chairman: Mr. Cerilli, might I suggest that I could ask staff to make copies of the documents you have to distribute to the committee in order to save time.

Mr. Cerilli: These I will give you. These other ones, while I do that then, I will not because there are names in them of the injured workers who brought them to me. Certainly, I want to deal with this important aspect of contracting out an injured worker's file. This is what the hell this relates to. I would suggest you make enough for the Federation of Labour.

Mr. Chairman: Thank you, Mr. Cerilli. Proceed, please.

Mr. Cerilli: I was not here when CUPE made their presentation on contracting out. I just had the fortune of an arbitrator's award, which is historical in a sense, against VIA Rail of contracting out and creating jobs of a nature that it would diminish the integrity of the bargaining unit. Certainly, I was quite interested, but the hour being what it was and I knew that you would be calling me sometime today, I went home and got some sleep. I am not presenting CUPE's argument. I am presenting the argument for the injured worker and his rights under the present act and what the hell is being perceived as an act being passed by the present administration.

I suggest to you that I have never seen anything like it in my 40 years in the labour movement, as an injured worker and as a full-time representative. The authors of that bill should be ashamed of themselves, and the administration that is enacting those pieces of legislation already before it has even passed this House should also be ashamed of themselves because they are creating havoc with injured workers and their families.

I have no sympathy for those kinds of individuals who expound in one hand the rights of people all over the world and how good we are and then kick our own in the ass. Well, that is not good enough. This government should be ashamed of themselves and do the right thing by withdrawing this piece of legislation and going back to the drawing board. Take advantage of proper consultation processes that all of us are admired for all over the world and do it.

Here is a claim that deals with an individual who injured his back. He was advised that he might be cut off benefits and put onto rehab. He is advised on one day of the possibility of being interviewed by the rehabilitation department by way of consultation. Not even a week later, the administration—these are not the workers' ideas over there at 33 Maryland. The administration has to be the blame. A week later, he is given another ultimatum of saying either you do this, this and this, and if you do not get this medical stuff and so on, even though you cannot walk by the fact that we have referred you to the rehab department, we will cut you off your benefits by a certain date, by September.

My God, you know, on one hand we are saying, hey, you are only 55 years old, you are working toward your best two years of pension contributions. We might rehabilitate you to do something else because of your back injury at work. We forced you back to work once and it did not work. You are now back on workers comp because you were hurt again, but by September, if anything has happened, we are going to cut you off.

The same individual was told, sign a form for the purpose of income tax. Now this is Revenue Canada. Have you guys ever seen this one before, for Revenue Canada? I have never. I have never run across it. Here it is. This person, this injured worker and others like him had to sign an authority to give the Workers Compensation authority to investigate his earnings with Revenue Canada. Now what the hell has that got to do with rehab? An important notice is attached to it. Vocation rehabilitation benefits are intended to supplement benefits you may be receiving from other sources such as Canada Pension Plan, disability benefits, pension benefits, employment income, disability benefits from insurance policies and so on.

Well, I find it hard to believe and I think that the Manitoba Federation of Labour has probably put the best proposition to you that some of these things are paid for by the individuals through premiums. If you have a fight, go and fight the insurance company who enticed workers to go ahead and enroll these benefits in addition to workers comp, in addition to something else. Do not fight with the injured worker. Fight with the insurance company.

Of course, we have been aware for sometime about the Canada Pension Plan disabilities that are paid to workers because of these injuries, and they are deducted from the total amounts. They are nice

little letters, no question about it. Now we get to the authorization, unlike the regular authorization form that the unions and advocates have to get signed by the worker. I am not going to give you these because names are on them. I do not have a blank one.

This individual was told to come in, and they were going to give his file to somebody else, and it is going to be the best thing since sliced bread for him. I believe that this is part of the amendment of the present act. How can you justify putting some of this stuff out to an injured worker when, in fact, he has already signed an authorization form to give his union, or another advocate the right to deal on his behalf? This is really mindboggling. Nobody has yet to explain to us why my file, as an injured worker, has been contracted out? What right has anybody else got to that file? Under the present act the employers do not have the right to medical information. How in the hell can you intimidate an injured worker to sign a form of this kind so that you can contract out his file? That is my bloody job with your rehabilitation department, and the employer.

Here is another beauty. This injured worker was injured in a bus accident some four years ago and he has asked for an assessment for a permanent partial pension because of his leg. To date they have not done that. He was told, wait two years; he waited two years patiently. Now, four years later, they told him no, because you cannot work anymore, the doctor has said you cannot do that job anymore. Now we have placed you for three weeks on WCB benefits, we may put you on rehab benefits, but we are not going to assess your leg to see what kind of a percentage you are going to get, even under the present "meat chart." The guy has got no more use of his right leg.

* (1550)

Now what the hell have the three things got to do with each other? I can see rehab and benefits, but what has permanent partial pension assessment got to do with it? Believe me, this is mindboggling. Again, the administration has something to do with what is conceived to be the passage of this act prior to this Legislature acting on it.

The bottom line was dollars. The argument on cost for workers compensation and unfunded liability has been going on since 1984 when it really picked up momentum, and the employers, of course, use the arguments that, hey, this thing is going to skyrocket, it is going to hinder us, it is going to touch on the free trade negotiations, the deregulation of our country, the banking system and so on.

The plan was well conceived, and some of the authors of this document, believe me, are well aware of all of those notions and arguments by the employers, and it is highlighted in an article by Margaret Wente in Canadian Business, February 1984. Now I will just read a couple of chapters.

Most employers do not know it yet, but they have a $5 billion bill coming due. Many of the hardest hit industries will be those that can least afford to pay up, and that $5 billion may be just a start. Five billion dollars is a rough but fairly conservative—that is not a pun, that is the actual—guess at the total unfunded liability in the nation's 12 workers compensation schemes. The difference between that we have set aside to pay future benefits to workers who have already been injured and disabled and what those benefits will probably cost.

Mr. Chairperson and committee members, it is no longer a hidden secret. For as long as the issue has been out there, where workers compensation costs have escalated, and injury at work has escalated, the fact of the matter is the bottom line: dollars and cents. That is the issue and let us not hide behind it.

This provincial government is no different than anyone else. They are accommodating a business community interest that to me is unparalleled in any other debate. The agenda is clear, you have adopted the business community agenda and have abandoned the workers of the province.

Let us talk about free trade. The Manitoba Federation of Labour presented to this government their position on free trade in 1990 presentation.

Mr. Chairman: Mr. Cerilli, I would remind you that we are here to consider Bill 59.

Mr. Cerilli: You have got it, Mr. Chairman, I am very careful in my remarks, believe me.

Mr. Chairman: I would also suggest that you stick as close to as possible your remarks to the bill and make them relevant to 59—

Mr. Cerilli: And you will get that, Mr. Chairperson.

Mr. Chairman: —and I am not so sure—I am going to listen very carefully to what you say about free trade in judging whether I will allow the debate to continue.

Mr. Cerilli: Let us take a look at the labour legislation of this country, in Bill 59, in Bill 70 and others. Let us examine them very carefully of what has been said in the past by provincial governments and federal governments regarding the level playing field. Let us make no mistake about it, Mr. Chairperson, with all due respect, this has a significant impact on what the level playing field, what the costs are going to be on employers. They made no bones about it in their presentations to you and I will get into the global markets. I am not through yet. You are lucky. I only brought half of what the hell I was going to present as an argument of why you should withdraw this bill.

The level playing field, which has been talked about is exactly that. Workers compensation; push it back to the courts, push it towards insurance, private insurance. Labour laws, get rid of them. Environmental laws, get rid of them. What the level playing field is for Canada is to get down to the level of Mexico, and who the hell are we kidding. Europe did not do that; they told Spain and Portugal to get their act together and bring their level to the rest of the European community, and they have commenced the fund to do that, may it be labour legislation, workers injury legislation, or any other tripartite agreed-to legislation throughout Europe. The fact of the matter is that you chose, Mr. Minister, the opposite You are playing the employers' game and it will not last. Just to make sure that I do not step out of bounds, Mr. Chairperson, when we talked about clawbacks by the minister responsible at the time and some of the remarks made by your party, it included the infringement of labour legislation, may it be workers, compensation or any other legislation that affected workers.

When we talk about—and I think you have heard it not only from the Manitoba Federation of Labour, but you may have heard it from other presentations—that it is possible that this piece of legislation might revert us back to the courts and to the tort system. The employers have not said to you that if that is the case, let us go back to the law of the jungle then totally. You guys have heard that before. Let us give it a shot. Let us try it out. That means, Mr. Chairperson and Mr. Minister, the right to strike by workers when they found unsafe conditions, not simply the right to refuse but to walk out and to strike.

Those kinds of things are real out there because I will be dealing with civil disobedience as I get along. I have been involved in civil disobedience by the work force now in my lifetime, maybe not in yours, because of actions by governments or actions by employers that were unilateral and did not consider the effects on injured workers as in this case. I suggest to you that, if you want to return to the law of the jungle, let us do it all out. Let us quit jerking each other around and do it right.

We have heard enough about the carelessness of the workers and the sloughing off and all of that. Sometimes you know, there are means in collective agreements that deal with that through the grievance procedure. A lot of that has been overblown and if employers were wanting to do that they have a right to do so under the provisions of the collective agreement, rather than just simply ask for this kind of a wholesale change. The myth of workers carelessness was highlighted in our document a number of years ago. I will read it to you for the record.

The Myth of Workers Carelessness: Then there is a widely held myth common among many workers and employers that injuries and diseases are a result of workers carelessness and stupidity. This blame-the-victim myth is popular with management. It absolves them of both legal and moral responsibility providing safe, healthy workplaces. It is popular with some workers who have not had an accident or suffered ill health because they can personally feel superior to others who have been victims.

* (1600)

I would imagine that the names of those workers who I mentioned earlier, Mr. Chairman, who are not included in the act had been brainwashed in the past to say, hey, you know, we are never injured, we never lose time, the bank employees and so on. Now with the new work environment, the new machines in the workplace, they too are suffering stress and strain not only on themselves but their families.

Job loss is another area, and I will get into that as well for you and why this bill is so ill-conceived it makes one wonder who the hell really put it together. To go on with the quote, but there is another reason why the myth may attract some workers by blaming the victims. A worker can avoid having to get involved in what might become a nasty and costly conflict of management.

That is true, but the fact of the matter is that employers are intimidating the workers now not to

report their accidents, to be a nice guy or a nice person or a nice woman, because of fear of their jobs. What I am saying to you under this myth is that the employers do have some upper hands in regard to controlling the work force and how to report it. This bill will go beyond all of this by simply intimidating the work force to no end. The myth has to be dispelled.

I said that I would deal with the process of democracy as it is seen or conceived by this government. This government is under the impression that their type of democracy is something that is second to none. Here is what the people are really saying. Free Press, Wednesday, July 17, '91, and this can apply to Bill 59 simply because of the time that we were not given to deliberately deal with you and analyze the bill properly. I must say and I have already said this to the preparer of the Manitoba Federation of Labour, Brother Mesman, that he did a hell of a job. The fact of the matter is that kind of pressure by this government and by the workers administration should not be. If we are going to do it right we should do it right. A gag on democracy, that is the editorial title. Manitoba government played a low trick on people who were planning to speak at the public hearings on its pay freeze bill, and what has really happened here is that you have given us nothing in time to really prepare for Bill 59. You have read the editorial, I am sure.

Floor Comment: I would like to hear more of it.

Mr. Cerilli: I know, but I know there are other presenters.

Floor Comment: It was a good one, I remember.

Mr. Cerilli: Excellent editorial. I am reproducing it for all my members. They said you did not have a chance to speak on your six-hour presentation. I said, not even when I cut it down to four hours.

We want to talk about what happens in other jurisdictions and how this will lead us back to the court situations, may it be in the States or even what is perceived to be now.

My union subscribes to the National Council on Compensation Insurance. That is an American document. The reason I do that is simply because it gives us an opportunity of keeping track of what the liabilities are through the court systems.

I am going to put some on the record for you. By the way, anybody wants to subscribe to that I will give them the address.

The increase in claims on stress are on the rise, the statistics in the States show that in 1980 disabled worker injuries in a particular state was 373,959; mental stress injuries was 1,282 for a 0.3 percentage.

This report then goes to tell us the types of settlements that were made in the courts. $1.2 million, can you imagine CN crying the blues now about having no money to rehabilitate the branch lines or fix up the Port of Churchill line or anything like that, wanting to pay out $1.2 million or any other company for that fact—any other steel company, any other manufacturer. That is what will happen.

These are real by the way. If you want a copy of this, Mr. Chairperson, your staff here I am sure will be—I will give it to them for reproduction.

The types of claims that went to court: advertising manager, that is the occupation; alleged worker-related stress, overworked supervisor requesting early retirement; alleged mental disability anxiety depression. These are some of the awards that were given out and awarded and heard and paid by the courts. It goes on. The job loss, loss of pension benefits, fear of radiation exposure, job pressure, schizophrenia because of the work-related job, reaction to sensitivity of a seminar because of pressure by employers, conflict with supervisors, scaffolding incidents, transfer of work, office noise levels. These are all stress-related factors and injuries. The change in your presentation and bill will eliminate any notion of having these people ever covered. Three hundred and eighty-six thousand dollar settlements—they are all in the millions and hundreds of thousands of dollars, Mr. Chairperson. I think I made the point.

"Top of the News: The Law," Business Week, February 20, 1989—"This safety ruling could be hazardous to employer's health . . . Illinois' OSHA decision opens business up to more criminal charges." I am sure many of you have read it, the document reproduced and given to you. Again, the court system will kill you. If we think we are doing business a favour in this province, we had better think it over again. We did not come here lightly to tell you to withdraw the bill or ask you, whatever term you want. We are putting information before and on the record that will cripple industry in this province. You want to set the pattern, you want to be a hero in this country on workers compensation reform, by God, you are not doing anybody a service.

Let us talk about back pain: the epidemic. Pre-existing conditions because of an injury with one employer who moves to another employer with rehabilitation. They change employers. Let us see what this act does to that. It will kill it. Forget it. These articles appeared in Maclean's, April '86. You see, I did not come here with what the union or the labour movement thinks, I came here to present to you the facts as others see it. Who has ever had a back pain here? Is everybody here—okay, some of you guys never had a back pain. Misery: Who knows the misery of back pain as a result of an injury? What the hell are we doing then to these poor souls who are going to be counting on what we pass as legislation to cover them?

* (1610)

I would not read it all. How sad is it? They are all highlights in the articles. Abnormal: well, I will tell you back stress and strain and injury and pain is abnormal. Some 10 percent, the article goes on, are helped by surgery. Ten percent, that is not a hell of a lot, because it appears that the other 90 percent, surgery is no good for them. What happens to them? Do you put them back to work and say, hey, happy days are here again for the employer. No more reliance on workers comp? Well, let me tell you that is not the case. You will wind up in court.

Agony, stress, intense pressures: they are all outlined in the articles. The authors are excellent in exposing what this bill will hinder in achieving workers compensation benefits for. The invisible injury is something that this bill does not touch at all. Who has ever been involved in a car accident or a truck accident or a plane accident or a train accident or firefighters, as was pointed out by Brother Laird? Anybody here been involved in that trauma? Do you know what the hell happens after that? Have you ever been a person who goes there and tries to assist the victim with his bloody head blown off and one arm part here and a leg part there? Our workers have. What the hell are you going to do with them—take them out and shoot them? You cannot do that.

The legislation is ill-conceived. The authors, had they come to us, we would have given them all of this. Even when I had an opportunity to go to your briefing session, I had hardly any notice to come there and I could not stay for it all because of other commitments. Some very serious questions were asked and people were squirming in their chairs to find the answers. That is BS. You do not do it that way. You deal with it intelligently with the peoples involved. You deal with it intelligently with the three partners involved. The business community, the government and the workers and their representatives. You do not do that.

Repetitive motion is a disease that is now experienced in a hell of a lot of workplaces because of the machines that are introduced in the everyday workforce. The re-education stress through rehabilitation, the retraining stress through rehabilitation is all part of this big concept which this government is ignoring through Bill 59. How many studies have been done? Have you fellows really done your homework?

I went back to 1950, some of my people that were presenters here went back further than that. Our union is only 83 years old, I believe, but I have been involved in the work force for some 40-some-odd years, three years as a student and 41 years as a full-time person. The fact of the matter is, that the evolution that has taken place at the workplace and the responsibility of government was well documented in the Freedman report In 1964-65 on the Canadian National/CPR run-throughs when they wanted to introduce unilateral change without the consultation of the work force and the unions and the communities involved.

Before I go on to this one, it might be worthy, Mr. Chairperson, to deal with that aspect because it is certainly worth while repeating at this stage, because we have challenged you on the fact of consultation. We have challenged you to withdraw the bill until it is properly done.

On page 81 Justice Freedman agreed with the following, and I want to relate it to consultation on any matter. This government, on Bill 59 and others, has missed the boat. Here is what it says, and we can relate it—it does not matter if it is technological change, or workers compensation, or any benefit that affects the work force and the community, and the government of the country or the province.

We are confronted with the problem of how to deal with displacement and dislocation; with the need of retraining; with the development of new skills; with the survival of an enterprise and in the investment of new capital; with material and human losses; and with the question of how to distribute new benefit between wages, social welfare and leisure. These are complex and rapidly changing issues which cannot be tackled successfully unless, first, there is mutual concern and mutual recognition of the

legitimate role of each party. Second, there is a realization that neither the responsibility for, nor the cost of, adjustment can be imposed solely upon one of the parties, or let fall upon the weak. Third, there is a comprehension of the need for objective analysis for information for prior study; for consultation and forward planning; and for readiness to deal with realities—Dr. John T. Deutsch, Chairman of Economic Council of Canada, and proceeding in the national conference on labour management relations, Ottawa, November 9, '64, page 5.

Justice Freedman agreed with that concept, and at that time he suggested, dearly, that what should happen is, to ensure change is done in an intelligent manner, all parties must be consulted and given their day of input. You have failed. Does that add stress on the community, on the citizens of Manitoba? It sure as hell does.

In a study done in occupational health safety, the stress of job loss, which can be related to this Bill 59, deals with when you lose your job through work injury—and the disqualification of a workers compensation administration or no rehabilitation process properly put into place—it leads me to believe that the stress on an individual and his family through that job loss is a very serious concept. This bill has ignored totally what it really means.

Cardiovascular disease and environmental exposure—the thrust of the matter is that this bill touches on and destroys any means of approach toward disease. What are we faced with in our society today? Do you really think we are going to go back to the smokestack industries? Give your head a shake. Come on, where are you; are you in the 21st Century, or 1818?

Noise levels, chemicals—thousands of them, new ones being invented and discovered every year—that lead into all kinds of ailments that are causing stress and disease, cancers and so on amongst workers. You are all welcome to these documents, if you want to take the time to read them and do it right. We will present them to you through a proper process.

* (1620)

Let us talk about some of the people we represent: railway workers, truck drivers, bus drivers and so on. During the last decade attention has been paid to the health hazards, such as vibration and noise of driving heavy motor vehicles. These health problems are real. Hearing loss—we are having problems. These are job-related diseases. Back injuries, because of the vibration—they all relate to work. Instead of the administration coming along and saying, hey, let us do an in-depth study—oh no: let us take the private enterprise insurance approach to all of this workers compensation stuff and make it tough to get benefits.

There are all kinds of studies, Mr. Chairperson, on the health hazard and road transport industry—may it be air, or road, or rail, or water, or anything else—just like other studies dealing with factory workers, office workers, workers in general. You have not even gone to the well, getting that 30 percent of those workers that are not even included or covered. Why are you not going after the life insurance companies of the country to pay premiums and cover the workers? Why are you not going after the financial institutions? Why not go after the banks? The farmers would love to get coverage; you are not touching them. The same with owner/operators—it took us a hell of a long time to get owner/operators in trucking to be covered. So, these things are possible, but what you guys are doing is slamming the bloody door shut.

We had the privilege of getting involved in a worker-compensation-related noise regulation seminar some time ago. Since 1981, this workers compensation has been gradually working towards encompassing that. We have been massaging employers through consultations. We have been working with the rehab department on the review committee for rehabilitation, all of these things. What the hell—have this happen. You have slammed the door on us. All of that work gone down the drain.

I will not burden you with reading the bloody document because it had a hell of a lot of good research in it.

We do not come to those kinds of committee meetings empty handed. The Manitoba Federation representative, Brother Harry Mesman, had four weeks to prepare with what he brought to you, and the more research that went into that brief, the more consultation we had. We decided—my union decided to tell me to tell you to withdraw the bloody bill because it is no use, it does nothing.

In the worst of times—and I heard the comments the Anti-Inflation Board, six and five legislation, Schreyer getting defeated, you know, all of those things. Those are real, but in those worst of times,

the consultation process, the negotiation process, was ongoing.

I just want to quote a couple of things from the current Industrial Relations Scene in Canada prepared by the Industrial Relations Centre at Queen's University, Kingston, for '77 and '78, and it dealt with workers compensation. Those were the worst of times. We just came through '75, '76, '77. I went through those times personally in negotiations and consultation with The Workers Compensation Act changes.

Workers compensation: During '76, nearly all jurisdictions amended their Workers Compensation Acts—and I am quoting from them. Most changes related to increase in earnings, ceilings, disability benefits, or benefits to dependants. Alberta, Newfoundland and Manitoba extended the coverage of their acts to groups and individuals not previously covered.

That is the 1978 report. Excellent stuff. Manitoba being on the record forever that during those hard days of restraint we were able to look after our injured and their family. Let us take a look at another one here. Was that '77 or '78? Anyway, that is '77.

Let us look at '78, another hard year because we were coming off of those anti-inflation restrictions in negotiations. What we were doing is going into free collective bargaining, and all hell was breaking loose, even after strikes during those days.

Workers compensation, most jurisdictions again made only minor changes in their workers compensation legislation. Most of the changes centered around benefits adjustment, extension of coverage to new groups of employees and new occupational diseases subject to compensation.

So it was during '76, '77 and '78 that we talked about diseases subject to compensation. All of a sudden we are going to start bloody closing the door, not even 13 years later. Are we wacky or something in this bloody generation?

Mr. Chairman: Mr. Cerilli, I want to bring to your attention that you have been an hour at it now.

Mr. Cerilli: I am winding down.

Mr. Chairman: I hope so.

Mr. Cerilli: Now, it takes us to the good old self-insurers of society who make remarks like, you know, workers compensation benefits are not taxed and that is why we support this bill. Somebody said that the city of Winnipeg is drooling already and having a party, Thursday, July 18, '91, Free Press article in the front page. The fact of the matter is that the self-insurers, instead of moving towards the uniformity of coverage under the acts, you are allowing to escape and start administration their own.

Can you imagine having a two-tier system under The Workers Compensation Act? Where are we going? I do not believe it, and these guys are already dancing in the street saying, hey, we are going to have our own way, happy days are here again for us. How long do you think you are going to be the government? Are they crazy? Light duties and everything else.

I have got files here that would shake your head. Those employers are already not making their injured workers reporting accidents to you. Can you imagine what they would do under this act? I have to take them to task. I should not have to take them to task. We have a better way to go. That is to improve our transportation infrastructure, for example, not to worry about why the company forced him or her to not report his/her's injury, and this is broken legs, injured backs, which may have a reoccurrence down the years as they get older. So do not tell me that your provisions under this act will benefit the workers for those people who are self-insured and those companies. That is not true.

I am used to the fact that we still live in a free democracy and time is of no essence on important issues of this kind. I will be 61 in January, and I will be darned if I am going to be restricted from speaking at any gathering with any time limits. Now, it is no offence to you as Chairperson, but I want that on that record to make it clear that no one has ever restricted me from speaking. Mussolini tried it in Italy when my father and mother came here, and it did not succeed. Hitler tried it and it did not succeed. So do not give me none of that.

* (1630)

I mentioned earlier about worker's actions in civil disobedience. I have been involved in work stoppages that were not legal. I reported to you that Justice Samuel Freedman in his royal commission report indicated why it was necessary for a new beginning. Labour took it wholeheartedly, not only worked with industry, railways, trucking—all modes of transportation, may it be ferries in the east coast, or our representation of the seamen out west or the upper lakes, or air. The fact of the matter is that provisions were negotiated to account for

operational change, technological change. Legislation was passed to accommodate in all jurisdictions, including the federal and provincial governments. Disobedience comes when somebody imposes change on another person that will affect his well-being, his ability to provide for his family. Therefore, civil disobedience will result when you infringe your rights on those people for those needs.

Let us take a look at recent ones. Never mind going back to 1965 and the railway workers. Let us look at trucking, last year and this year. Two of our local officers in Toronto decided to take matters in their own hands as owner/operators and caused a national blockade of the trucking industry. They jumped on the bridges spanning across the United States and Canada and stopped everything. Ford and other companies were crying like you would not believe about lost production.

The union did not go there and say, hey, good for you guys, you know, we will show these buggers. We went there and suggested to them they get back to work. That is responsibility, and there is not a union that has appeared before you that will not take their responsibility seriously. The fact of the matter is that civil disobedience of that kind by individuals was caused because of hardship imposed by decisions of another party, as in this Bill 59. You will have those civil disobediences by injured workers who will suffer and cannot provide for their families. My God, do you not read? Do you not listen to the news where workers are going into offices and blowing people's brains out? Let us get serious.

Those two workers, we represented them. They are back to work. However, what they did this summer was their own individual action again. They caused another work stoppage in the trucking industry. Industry suffered hundreds and millions of dollars in production just for a couple of days, two or three days in a week. This is serious. Bill 59 will create that kind of reaction. Believe me, I have gone through it.

Workplace injury suffered by a worker and the benefits from legislation, The Workers Compensation Act, is not charity. I heard that word last night and I nearly went berserk. I just chewed my tongue. What makes people say statements like that, that it is some kind of charity? First of all, if the employer was operating a safe environment or there was not cause for that accident, the injured worker would not be going to Workers Compensation. So it is not charity. It has been well illustrated that the workers gave up the right to sue and the right to strike so that we can have an orderly manner in which to administer those injuries and get paid for them.

Statements of that kind deserve no further comment and they are not worthy of any further comment.

Bill 59, to amend the present act, is an ill-conceived document. Those employers who have showered Mr. Lane—and I have seen Mr. Lane there now, I have put my glasses on, you know—and if you were, I am afraid you are going to have to take it all back, but if you were not, say so. You know, they showered you with bouquets and I do not know why but they have. I was here. Well, if that is employer influence on this government and people who put this document together, let me tell you that labour has never had that kind of success in any lobbying, in any presentation, on any legislation in all the years that I have been involved.

This employer piece of legislation must be withdrawn. To suggest amendments is to agree that it has some merit, and I am not going to do that. We support the Manitoba Federation of Labour of their analysis, of their content of telling you what the changes will mean. We support that wholeheartedly. We support the Manitoba Federation of Labour in asking you to withdraw it, and we also do that. Give the injured workers a chance through proper legislation. Give legislation credibility. Let the public out there see you in action, not this kind of action.

Mr. Chairperson, those are the comments I have. It is unfortunate that I do not have a written document for you but let me tell you, it would have been a helluva lot worse.

Mr. Chairman: Thank you, Mr. Cerilli. Maybe just a comment, and I am going to sidestep the normal process that a chairman might be into and maybe just make a slight comment.

I think some of you know that I have been, in my previous lifetime, involved in trying to organize a farm organization in the farm community. So I respect deeply, Mr. Cerilli, your organization and the labour organization, and I always have. I think most of us around this table, all of us around this table, respect the union's ability and the union's desire to create a better atmosphere for the worker. I think that is well respected.

I respect the presentation that you made here on their behalf today and I think all of us do. I want to indicate to you, although I tried to restrict your comments because I thought you could have done so probably in less time, and I still do because I know of your abilities, and therefore I made the restriction, I apologize to you if you thought I was trying to indicate to you that I was trying to restrict your presentation. I was not trying to do that. I was trying to suggest that you restrain your comments to shorten the time, that your brothers and sisters might in fact have, be apprised of the same opportunity that you are being apprised of. So in essence of saving time—

Mr. Cerilli: No apology necessary, Mr. Chairman, enough said. All I am making a point is that this is a very important piece of legislation. Bill 70 was important. Other pieces of legislation affecting society are important. All I am saying is that we have to take all the time that is necessary to ensure that justice is done for a better day for all of us.

Mr. Chomiak: I am just as concerned in hearing some of your comments, Mr. Cerilli, as I was in hearing some of the comments of the other presenter with respect to information that you brought to light. I wonder if you might just elaborate slightly so that all members of the committee can be apprised of this, because I have taken notes on it. You have indicated that major parts of this legislation are already in effect, that they are already being utilized. Do I understand that correctly?

Mr. Cerilli: Some of the forms that I have not given you are actual release forms that an injured worker must sign for the Workers Compensation Board to give his file to a contract outfit that I do not know anything about and I do not have any access to. I suggest to you that that is a breach of the present legislation.

I challenge this administration and this minister to tell me otherwise and to prove to me otherwise, because I am telling you that is a complete infringement. Contracting out is something that is related to a normal situation of an employer and a union. This is not such a thing. I am not the lawyer; you guys are the lawyers. I am just suggesting to you that in my limited legal opinion, and only from experience, the legislation does not allow the contracting out of an injured worker's file to somebody else who, in fact, may misuse it.

I did not give you that form. It is different from the normal authorization form that we have to get signed. I am suggesting that is a violation of that person's rights and infringement, an intimidation on him or her.

* (1640)

Mr. Chomiak: I thank you for that elaboration, Mr. Cerilli. I am concerned again as a legislator and a member of this committee at this point about that, and I hope we get to the bottom of it when we go clause by clause.

The other couple of major points that you made were the whole instance of stress and stress-related diseases. Is it your opinion basically that this bill by its nature will not cover many new occupational diseases and many new stresses and stress-related diseases that are now affecting workers?

Mr. Cerilli: Yes, and we are going backwards, as I pointed out, the first time we started talking about diseases and the new work environment was back in the '70s. By God, you know, we are going backwards in that regard, and we are going to be doing a disservice to a lot of workers who may be female or men that are employed in different industries and the new industries of the 21st Century.

Mr. Chomiak: Another point that I took from your submission, Mr. Cerilli, and I am also greatly concerned about, is the question of individuals, employers or employees, not reporting injuries or diseases because of the implication of the act. That, to me, is very, very significant. It is something that all of us should take note of, and I wonder if you might comment on that.

Mr. Cerilli: That matter has been argued out between ourselves and the employers and the Workers Compensation Board. I have made a special effort, in the time that I have, to suggest to the board that, if they do not start taking action sooner or later, somebody is going to seriously be disadvantaged.

I went through an appeal not too long ago of a railway worker who, when the east yards were moved to the Symington new yards, and they were constructing the Symington yards, he injured his back. As a result of that injury, that employee now had to retire early. By the time I got involved in that we had no chance of an appeal; we lost. The fact of the matter is that certain records were mislaid, and that is what happens as time goes.

As you are a young person, your body can respond to those kinds of fixes by sitting on your butt

there for a while in the chair and waving a flag for the trucks to go by, but any motion of that kind on an injured back is a serious movement that should be diagnosed and recommended to do so by a doctor. That was not done and that individual now, with one more operation, would be a cripple.

Mr. Edwards: Thank you, Mr. Cerilli, for your comments today. They are obviously heartfelt, and you come to us as a person with considerable experience in the field.

I wanted to ask you if you have ever in all of your handling of cases been challenged, that one you have brought forward to appeal was frivolous. Have you ever had that accusation made about one of the people you were assisting, if and when they appealed the medical review panel or to the board itself?

Mr. Cerilli: Mr. Chairman, first of all, I do not consider what an injured worker has gone through frivolous. The injured worker is suffering from an injury that is only known by his own body. Medical evidence shows that sometimes different conditions are hard to detect. Scans are made now and so on to give us that advanced ability medically to determine certain things.

I have a case right now where the board is considering—and I referred to it in my remarks—that it is a possibility of being frivolous. I suggest to the board to watch that person walk around and see what he has to do because of his back injury.

So any time that an appeal is made and is considered frivolous, the person making the frivolous charge is responsible to prove that charge. It should not be the onus on the individual to do such. I suggest to you that I have never had any such occasion where somebody accused me or my workers that I represent as being frivolous on any injury and maybe because of my size.

Mr. Edwards: Just one other question on that same topic. What effect, if any, would the prospect, even the prospect, of a $250 levy at the end of the day have on a worker's willingness to pursue an appeal? Is it going to have a negative effect?

Let me just preface that. My first conclusion is as yours: we do not need it. It is ridiculous to suggest that people would frivolously bring these appeals, but if it goes ahead, can you also indicate whether or not you think it will have a negative impact in real terms on a worker who is quite likely desperate financially, if they have been cut off, in pursuing that appeal?

Mr. Cerilli: Well, Mr. Chairperson, I want to say this first. My first recommendation and only recommendation is for this government to withdraw or table this bill—

Floor Comment: Understood.

Mr. Cerilli: That is understood. The fact of the matter is, if a worker has been cut off of Workers Compensation benefits—and I guess we have to take a look at Mr. Lane for example. He knows only too well what happens. The individual, first of all, may have been in the process for about eight weeks—no money. His wife is not working, and she is probably pregnant. They have two kids, the mortgage is coming due, eight weeks without any kind of funds coming in; if they have any savings, they have already spent them. We have sent them down to welfare to get going on it, and if we have an agreement with the insurance carrier for wage loss insurance, we place them on that with the understanding, with a signed contract, that wages will be paid, vice versa or whatever.

All of those things take place, so the individual does not have any bloody money to begin with. So who is pipe dreaming that somebody is going to come up with $250 to put up front saying, hey, you know, this is a frivolous case or whatever. It is—forget it. Again, you know, it makes me angry to even visualize that kind of situation. Does it mean that the employer is going to be fined $50,000, for example, if they instructed the employees to pile steel on racks without any support and that rack falls down and cuts the employee's legs off? Is he going to be fined for that?

To me, that is not the issue. The issue is safety at the workplace and proper Workers Compensation coverage for those injuries—universal if you like.

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

I ask now that No. 3., Mr. Kelvin Dow, Canadian Auto Workers, come forward. Mr. Dow, have you a written presentation for distribution?

Mr. Kelvin Dow (Canadian Auto Workers): No, I do not. I have two sets of documents I am presenting from Professor Ison on experience rating and the right for re-employment.

Mr. Chairman: Would you proceed then with your presentation.

Mr. Dow: I would first like to say, I am here on behalf of the Canadian Auto Workers. I also support the presentation that the MFL has already presented.

I would like to start off by page 2, talk about occupational disease. I believe in the past experience, where I have dealt with occupational disease as worker advisor and a workers' advocate that it is difficult enough to get the claim accepted by the board, and the MFL has shown the stats that have been presented. By putting more restrictions on this, basically—what I have heard in the past couple of days is talk about natural justice. Natural justice is going through the system presenting the merits of the case, and what has happened now is restricting that course of natural justice. I would like all those sections revoked from it.

It talked about the definition of an accident. Again, I believe it is being more restrictive. The previous two speakers have talked about stress in the workplace, and there is more than enough information that shows that stress is being accepted in other parts of North America. Again, what I am asking is for natural justice and for the worker to go into the appeal process or to make a claim and have it adjudicated based on the merits of the case. What this legislation has done is restrict that. They have an opportunity to claim compensation, but they do not give the opportunity to the adjudicator to make that decision based on the merits.

I would like to refer to page 4. We talk about Section 4(2) Payment of wage loss benefits. Again, it has been previously noted that wage loss should begin on the day of the accident, not after. Why should a worker be penalized right off because he had a workplace injury, no matter how small amount of the time? It could have been in the morning when it occurred, or it could have been later in the day. So, again, I would like to see that, on the day of the accident, they are covered for wage loss.

* (1650)

Misconduct of workers, Section 4(3), again, I have a problem with this section. I have always had a problem with this section. I work for Boeing of Canada. I have seen the employer, based on this new experience rating, harassing workers. When somebody gets injured not wearing the proper safety equipment or using a hoist when they are basically told, hey, we run a company here; we have to produce products to make money, so let us get the product done. Then, bang, the worker gets injured, not using the proper safety equipment. What they have done is put down on the Workers Compensation forms: not using the proper safety equipment. Now my understanding is this is a no-fault system, and nobody is intentionally trying to injure themselves. They are, again, going on their production route of doing their job which they have been hired for, and employers are putting this on reports.

Boeing of Canada is putting on numerous reports that I have seen, and basically what it has done is sent messages to the Workers Compensation Board, the adjudicators, to investigate it. They have to investigate it, so they investigate it. It delays claims. We have had an investigator, in the past six, seven months, when I have seen him, he has been—every department that I have gone to as a co-chair of the health and safety committee and as a workers representative of compensation dealing with workers who are having problems with safety and Workers Comp, every time I turn around, I see this investigator in our building. I have approached management on it. I say, hey, if he is going to be here so often, you might as well hire him and set up his own office here.

I have also complained to the board about it. I am documenting this. I am getting files that I am appealing, showing how the employer has requested investigations from his conduct for not wearing safety shoes, for not wearing safety glasses or, when somebody is pushing a part and they get a back strain from it: why did you not ask somebody? A perfect example of this, when they do their accident investigation and somebody pushed a part and never asked for assistance, they say, well, we have always promoted that you always get help when you lift a 50-pound part or whatever. What we have seen in the past, I have seen workers walk by, and in one case, where a worker asked another worker to assist them on moving this part, the worker who assisted was injured, was from a different department, what the employer said was: This individual should not have helped this individual move this part, and he should not get compensation for it. Again, we see what experience rating and misconduct does.

What I have told my employer over and over again is it is not needed to put on the investigation reports. If there is a problem with people not working safely, not wearing the proper safety equipment, then deal with it with personnel and, again, with the union, with

discipline or whatever. So I believe this section should not be in the act at all. It is a no-fault system, and if there is anybody who seriously intends to hurt themselves and it can be proven, then it should be dealt with under fraud. It is that simple.

I would like to go to Section 4(4) on page 5 where it talks about cause of occupational disease. This replaces the proportionate section that was in the previous act, even though it was never used, except for recently, by my understanding, from previous speakers, and now it talks about dominant cause. Well, working at Boeing of Canada, we have, under the WHMIS legislation now, binders in each area. There are four huge binders. It talks about all the chemical and the precautions to use with those chemicals.

Now, when people are exposed to thousands and thousands of different chemicals, which we are at Boeing day in and day out, as we are getting transferred from different departments, doing different work and stuff like this, we are exposed to a lot of different chemicals. Now, down the line, when our workers start getting health problems and stuff like this, to be able to prove a dominant cause would just be unbelievable. Again, I would like to see a contributing factor replaced by the word dominant cause.

I refer to page 6, Section 9(7.1) regarding Section 9(7) Limitation of the right of action. Again, we have seen how the minister and others have talked about, it is more positive now, you have the option to go to Autopac and to get more on pain and suffering and stuff like that. I am just curious where he gets that information. Most people who are involved in motor vehicle accidents and stuff like that, again, they would have to hire a lawyer. There are fee costs there. There are time delays. If somebody wants a lawyer and they recommend delays, my understanding—I have heard some claims could go on for two years before the worker would be paid out any fees if they go to Autopac and claim.

Again, the major problem I have with this is this brings tort law into the situation, and some of the readings I have seen, we definitely do not want tort law brought into the Workers Compensation. We have gone away from that, and I believe this section should be taken out.

I would like to go on to page 7, Section 18(1) amended, change 11(1), again, this talks about moving the three business days sounds fine to me, but when we talk about five business days, I have had run-ins with our employers where it has taken them two to three weeks to send in a form. I have discussed it with supervisors who have delayed that process, and when I talked to a couple of supervisors recently, I said, you know, make sure you get that report in right away, and they made comments, such as one supervisor did to me—well, I have to wait until I see the medical report. I said, what would that accomplish? Well, I have to see if it is work related.

Again, with experience rating and the way employers are looking at experience rating, they are basically being the adjudicators and all sorts of things and have delayed claims and caused ongoing problems to send messages to workers at Boeing not to file compensation. They talk about red tape and they create that red tape. They have made it quite clear to the workers, hey, this red tape can be prolonged so why do you not apply for our insurance benefits? You do not want to go through Workers Comp, there are too many delays in there.

It could take eight to 12 weeks to get a cheque. We have seen that over and over again at Boeing. I think that is what I spend most of my time on is, getting the worker's initial cheque, with no help from the investigator and the company who are making frivolous accusations about how these people happen to go on compensation, with regard to babysitting and the whole bit. I just find it absurd why we would go to five days when employers can do it within three. I have requested them to do it, and I have showed them ways they can do it in their system to accomplish that.

I would like to go to page 10 now, Section 27.3 where it talks about: "In addition to any other compensation under this Part, the board may pay to a worker who suffers an injury resulting from an accident...." Again, as previous speakers already mentioned, you do not have to suffer injury in the previous section to be compensated for these devices. You can have an accident at work and not suffer any injury, and part of that wording should be taken out.

Go to page 11 now, Section 27(20) where it talks about academic and rehab. Again, it is a better wording than what I have seen in the previous act, except again, I think workers should have a right, not "may," and that is the problem I have had with rehabilitation all the time, is the board has total discretion, no matter what happens. They might not supply it at all based on speaking skills, lack of

education and stuff like this which I have experienced at the worker advisor office. They just say oh, wow, and what are we going to do with this individual? How are we going to rehabilitate him?

Well, that is not the attitude to take. The attitude should be how we can rehabilitate them so a job is out there? They should have all this in process, not just how are we going to do this. I am not trying to point any fingers at the adjudicators or the rehab counsellors. It is the people who have run that board who have caused these problems.

Again, as the previous speaker had talked on Section 27.1, Limit on further claims, I think it has been clear, the intent on it. I would still like to see different wording there so that we can make sure that it all coincides together.

* (1700)

I go on to page 12 now, Compensation payable to dependants, 29(1). I have looked at the King Commission Report and am disappointed in the $45,000 lump sum fee. In the King Commission Report, they recommended $175,000 even though they did not mention the five years of 90 percent net.

As mentioned by previous speakers, which I found disturbing and was unclear because of the amount of time we have had to look at this, and the MFL said to do research on this, I really believe there is a financial savings here. This is the only reason we see these numbers the way they are. To start deducting after the age of 45, 2 percent is just unbelievable. I have heard some of the arguments from some of the people on the committee regarding that, and they still do not wash, in my eyes. As far as I am concerned, this whole section should be rethought.

One positive note I noticed is to give possible rehab to spouses of deceased workers.. That is definitely a positive, and I think it should be commended to the steering committee which I would have enjoyed having a lot of consultation with, which I never had, unfortunately.

Other sections I would like to talk about now is the disposition of unclaimed annuities—not a big concern here. I am not sure why it is in there. When we met with the minister and Graham Lane on a briefing they had with us, they talked about Saskatchewan where I believe nobody really had a problem there, and they did not have to put this money into the accident fund because everybody would claim their annuities and stuff like this. I just feel there is no need to have it in there, unless it becomes a problem.

I will go into impairment. This is one of my major concerns here. Again, I believe the board, the steering committee and stuff are just looking at a way to cut costs, to wipe out this unfunded liability, to give cheaper assessments to employers. I have had workers at my plant where they had 2 percent disabilities, and they have ranged from lump sum payments which I have always discouraged them from taking, but, again, they have that right, and I believe that right should always be there for them. If they want to take it, they will learn their lesson and they have. After the money is gone, they have come back and said, I should have listened to you. They would receive anywhere from $4,000 to $6,000 for a 2 percent disability, and what you are saying is, they are going to accept $500 now?

You talked about pain and suffering. I could see a lot of emotion with one lady who had a 2 percent disability where two of her fingers were crushed and she still had movement and not severe loss of motion in it, but had suffered pain, stuff like that. Another worker had a shoulder injury, another 2 percent, who is suffering pain. That is part of this impairment. The minister said, yes, suffering and pain has always sort of been notioned into this impairment. Based on this, I do not see it, and again I recommend the AMA guide that should be used which is not being used.

Mr. Chairman: I would like to interrupt the presenter just for a moment. We are going to have to change tapes. I do not know— how long have you got?

Mr. Dow: I am late as it is, but—

Mr. Chairman: Okay, if you can wind it up in two minutes. I have two minutes.

Mr. Dow: I have two minutes.

Mr. Chairman: Okay, we will break then for two minutes and change the tapes.

* * *

The committee took recess at 17:04 p.m.

After Recess

The committee resumed at 17:06 p.m.

Mr. Chairman: I would call the committee back to order and I would ask Mr. Dow to continue his presentation. Proceed, Mr. Dow.

Mr. Dow: That was interesting. When I was reading the King Commission Report, page 167, which I would refer the committee to read when they are deliberating. It showed stats in 1985 and 1986 regarding impairments. How many impairments there were, and what percentage of impairments were quoted from 1 percent to total disability where you would receive full payment of impairment. What it showed on the number of impairments, most of the impairments went in between the 5 and 10 percent, between 60 and 70 percent of those ones went into the 5 to 10 percent, which is only $1,000.

So, again I would like to reiterate what other labour people have said and what I am saying again is, you are not even coming close to what the previous impairments were even rating people. You are far off and it is nothing but a cost saving. You have $91,000 there. What it showed in that schedule when I was looking at how many people actually received total disability, in '85 I believe it was .01 percent. In '86 it was zero. You have a high figure that you are never even going to use. So I would sure like to see that high figure come down and give it to the lower end where most of the impairments are going to occur.

Again, to take 2 percent off at the age of 45, I have heard the arguments and I disagree. Brother Mesman put it quite clearly, better than I could have done myself. He believed at whatever age you are at, and you received a permanent impairment, you should be covered the same as you would. So I would like to see that whole section looked at again and if any guide is going to be used it should be the AMA guide.

Going to wage loss benefits, the concern I have with the wage loss benefits, I heard a couple of the committee people say, or the minister say that there was a recommendation of the King Commission and it was a majority recommendation, and that is quite correct except the labour person in that review dissented and the labour people here today are dissenting. There is no way that we will accept anything less than 100 percent. To even think of asking workers to accept 80 percent after two years is just, again, another error in judgement, but I am sure it was not, it was more saving the employers' assessments and working out the unfunded liability, which is the main concern all the labour people have mentioned.

(Mr. Jack Reimer, Acting Chairman, in the Chair)

Again, we talk about Section 39(2) where they talk about limiting the wage loss to age 65. I just cannot believe that in this day and age we would be telling a democratic society, which we are supposed to be living in, people what they can get, and when they have to retire and stuff like this. You are injured at 63 and you were going to work until you are 70? In most cases you can see that on their files, because as a worker advisor, I have dealt with a couple of people who thought, hey, why do I not collect this until I am 75? It was well documented. They were going to retire before that and I have never seen a problem for it. As far as I am concerned, this should be wiped out and you have a policy on it, and I think that policy is discriminatory, too.

We go into these collateral benefit sections too, and we see, again I am not quite clear if the board would do this. If a worker was injured on the job and he was entitled to UIC sick benefits, would the Workers Compensation Board direct him to apply for UIC sick benefits first? I am still not clear on exactly their intent on that. If they are, a worker whose claim has been accepted should collect compensation and that is the end of it. Employers are responsible for that. When we start putting the burden on unemployment insurance, in most cases the workers will end up on social assistance, and again the taxpayers are going to be footing this bill and I am sure the employers do not have a problem with that. We sure will.

* (1710)

Interfere in the collective bargaining power—as a union member and involved in some of the collective bargaining during the past few years at Boeing, for the government to get involved in collective bargaining when employers and we negotiate a top-up, is again totally unacceptable. I am sure other unions who have a top-up will be expressing that quite clearly to you too.

Calculation of loss of earning capacity, Section 40(1), page 21: again we see deeming—deeming has always had a problem with me. When I was at the worker advisor office I saw the board use deeming quite recklessly, and it has always been a pet peeve of mine to, whenever I have seen a deeming, to appeal it, and in most cases when you looked at the file, the board had phantom jobs, or put people back into jobs that were outside of their restrictions.

I had a recent occurrence at my place of employment where the employer has been

requested by Seattle, which is the bigger plant, to bring the compensation costs down. So, what they are now doing, to the surprise of a lot of the rehabilitation people down at the board, they are trying to get some of their long term injured workers back to work.

What they have done is got the board down there and said, well, this is the job they are going to do, not involving the worker or the union, and bringing those workers back in and then delegating work that they never showed the board. Then, when they request the union's involvement, and I get involved, I request the board to come down. We examine a job. Why did you not have the union, why did you not have the worker involved in your assessment, and when the board came down, to their surprise, half the things that the employer said was what this worker was doing, was not? By luck we were able to accommodate them on modifying the job and stuff like this. But, again, the worker was back at work and when a worker phones the board saying, hey, I am outside of my restrictions now, we assessed that job and if that worker would have refused to do that work, or would have left and tried to get back on compensation. No, and they would have deemed those workers. That is my problem with it. The board does not follow up properly, and again I am not blaming board members, they are getting direction from their supervisors and upper management.

I believe they are definitely understaffed there too. I can see that by investigative officers. It takes months sometimes to get them out and then other times they are there every damn day.

Again, when we talk about calculation of net average earnings in 40(3) and then when you go down to "(d) such other deductions as the board may establish by regulation." Now it is just scary to even think what they might establish by regulations and that part should definitely be dropped.

When we talk about annuities on page 24, I am familiar with annuities. I would have sure liked to talk to the steering committee and had lengthy consultation with them on exactly what these annuities would have done. I have noticed other brothers and sisters have mentioned it and they are more knowledgeable on annuities than myself, and they definitely expressed concern about it.

If we go to page 29, Section 45(3), a couple of positive notes have been in there regarding adjusting, and mostly I see this from students and stuff like that who are first started in a welding job or stuff like this when they are injured. This way, these sections would enable the board to look at their probable earnings and that is the positive part of deeming. But most of the other deeming parts we have seen in this legislation in past practice have all been negative.

I want to talk about the maximum annual earnings set, Section 47(2). I believe it is too low. We have workers out there who are making $60,000 a year and stuff like that and why should they be penalized? They are usually in the heavy industry where most injuries happen, so I have a request that you look at raising that. We talk about what are the other jurisdictions doing? Let us lead the way, but let us lead the way in a positive way, not negative as a lot of this legislation put forward is.

I presented committee here an experience rating by Professor Ison, and I have read it over and would request the rest of the committee read it over. The negative impact it has on rehabilitation adjudication, the disability of workers, and what we see in this legislation is, okay, let us go experience rating all the way, abound. You could be doing more damage because, based on the research that people who are leading in workers compensation field, they are not sure what the impact is going to be. Now, for us just to leap and bound at this and go experience rating all the way and like, let us look again, let us go back to collective liability exactly where it should be.

They talk about other incentives to get workplace injuries down and stuff like this, and it talks about ergonomics in the workplace. I do not see anything like that in this act at all where penalties might be laid, or even encourage employers to start looking at ergonomics in the workplace. Where is the prevention here? Let us just cut the wages down and save that way, but where is the prevention? I do not see it.

I would like to see what I have been promoting in my workplace as a co-chair of our health and safety committee: good training for the supervisors for accident investigation; and, for the safety committee, prevention plans, ergonomic plans, and stuff like this. We can cut down and cut down on workers' benefits and stuff like that; we are still going to have injured workers. Let us think about preventing these injuries. That is going to save everybody money.

I have also given you a brief on re-employment. I am not advocating mandatory re-employment, by any means. Workers do have a right for re-employment. I believe modified work programs with union involvement would help that, and the union has to be a major part of that, or places with no unions, the workers would be involved in that modified work program. We need safety people.

We need people to investigate these modified work programs because I would hate to say: Okay, we will put it in there and it is incentive for employers to have it; we will give you less assessments and stuff like this and we can have a smoke screen program which we have seen and other labour people have mentioned, especially the postal workers, CN. Now, they have modified programs, yes, come back and play cards in the lunch room; do you want to sort out these 1,000 nuts and stuff like this? Those are not modified work programs, no incentive.

* (1720)

The worker should always have the right if he wants to back to an employer. I had this interesting conversation with personnel people at our plant regarding our modified work program that they have developed and they want our safety committee to support it, and foster its good will. I say, how can I foster its good will when I am not involved in it? And they said, well, we really want you to, so I have been convincing upper management to get the union involved in this and I think it would be beneficial to lowering their rates by getting injured workers back, plus there are ergonomics and prevention plans that we have also talked about. When I have talked to some of the personnel managers on stuff like this, I said, you know, I think you should even be giving the workers an option if they even want to come back to this environment. He said, how many workers? Why should we give them an option? They would not want to come back.

I have not seen that. I have talked to workers who are begging to come back, who want to come back. We have good benefits at Boeing which the union has negotiated. Workers do not want to sit at home and to do nothing. They are bored. There are more workers that come to me saying, hey, how can I get back in? I say, well, based on our contract, the employer has every right to bring injured workers back without any regard to seniority. We have given up that; we have given up that right. When they put it in there and it says "may," we said, no, make it stronger, "you shall." You know, you have that right. They have not done it. We have injured workers coming to me all the time—how do I get back to work? You know, we have a large employment there. We can accommodate workers but the only reason they are doing it now is because their compensation rates have skyrocketed, so many people with repetitive strain injuries and other injuries where the employers never looked at the ergonomics of the workplace and are starting to look at it now based on a lot of pressure from the union.

I will go back to the draft of legislation here, page 37, we talk about the "Costs in frivolous appeal." I have taken, I do not know 50, 60, something like that appeals to the Appeal Commissioner as a worker advisor, as an advocate for the union. I have not seen any frivolous appeals. I know the board has accused them of frivolous appeals. The way they have accused them is—a perfect example, myofacial pain syndrome. The board does not seem to recognize that it is a clear diagnosis, or if they do, it is for only a short limited time.

I appeal those claims all the time and I have heard from comments from board members and stuff like that, oh, myofacial pain, well, good luck. That is the attitude and I would hate to see this type of people deciding what is frivolous.

If they are going to start making these types of claims frivolous just because the board has not accepted this diagnosis and the length of the diagnosis which many other doctors in the medical community have, it is pretty scary. I would like to see that section dropped.

We talk about the medical panel, again, there is this policy right now where you have to show clear cut objective evidence based on not a general practitioner or a chiropractor, it usually has to be a specialist. So again, we do not need this section in there and previous comments from other brothers and sisters regarding Dr. Murphy at the board. It is clear cut; it does not need to be in there.

I would like to go to page 55 now, "Employer's access to information" in medical reports. Well, there is talk about natural justice, how the worker has access to this information during the appeal process. The employee should have this same right.

My past experience with the board—they monitor these files quite well. They look at the medical evidence, and they are always sending it to the medical officers for opinions. I might not agree with

those opinions and a fair amount of time I do not. I believe the Workers Compensation Board is doing a fine job when they are looking at the medical evidence because they are screening it quite well.

They are not even accepting a lot of the opinions by specialists and medical practitioners out there, so I do not see why the employer needs to start monitoring them and deciding. You know, just because the board might accept a couple of months longer on a myofacial pain claim which is never consistent, and we have advocated to see a policy on it and stuff like this. To see employers coming in with some of their parasites which I will talk about a little further on. What I will have to be doing is bringing a medical doctor down with me all the time. We have already overburdened the appeal system which the board cannot even keep up with them on appeals, because they are terminating workers earlier for whatever reasons to give this to the employers so they can start going through the appeal system. We are going to talk about major bucks being assessed back to employers because the appeal system itself would be overburdened. They cannot even keep up with it now.

I would like to see that section dropped right out. With that section out, we would not have to worry about "Notice of request for access" to the worker.

I will go on to my last part regarding this legislation and the "Board may delegate to agent." Again, I have heard the minister talk about Inco. Big employers like this would probably be the only people that would do that type of thing. Again, that would not be acceptable. If I was employed by Inco, I sure would not want Inco adjudicating my claim if I ever went on compensation. I do not believe employers should have that option.

I believe that this is so wide open—that includes all sorts of people out there. When I talked about parasites before, we have seen more and more parasites come into this system, where they have approached employers regarding how they would lower their premiums and assessments and stuff like that. It sounds like a good idea. If an outside agency came to me and said, hey, I know how to lower your rates and stuff like that. Okay, I am listening, how would you do it? You would think there would be prevention programs on making the work site more ergonomic, modified work programs that are viable and stuff like that. It is not.

How do we screw the workers? How do we get them cut off? Let us appeal. I will look after it. I will monitor the files for you. I will do it for you. We see more and more parasites coming out of, unfortunately, the Workers Compensation Board. We see the board educating these people about how the Workers Compensation system works. Then they go out there, start their own damn businesses and then they feed off of employers and then they feed off of a worker's demise because they get the benefits cut off early.

I do not know if that would spread to these type of people but based on this section of the act, it is so broad they could give it to anybody. So again, I would like to see that whole section deleted. It is not necessary. I am sure if there is a problem with this stopping at the Workers Compensation Board, increase it.

I think the problem at the Workers Compensation Board when we talk about it, the adjudicators cannot make their decisions. I have talked to adjudicators and said make a damn decision on this file. I have to talk to my supervisor; I have to talk to a medical officer. Then they get the information back from the medical officer, I have to talk to my supervisor. Gee, you have trained these people. At least you are telling me you have. Why can they not make the decision? Why do they have to talk to their supervisor? They cannot make that decision. If they approve ongoing benefits, there is going to be some—I believe and what I sense, I have not heard any of the adjudicators come right out and say it, but what I sense is they cannot make that decision. They are not allowed to make that decision.

I would like to end up part of my argument. I notice Mr. Ashton is back right now. I am not sure if he is going to ask me the same question that he asked a lot of the other people but as far as concerning what I think of this bill, I think what should happen is you roll up a BFI to the closest window here and throw all these drafts right in that BFI. Now there is no need to ask me this question Mr. Ashton; I have answered it for you.

The Acting Chairman (Mr. Reimer): Thank you very much, Mr. Dow.

Mr. Chomiak: Thanks for that presentation, Mr. Dow. I wish I could speak like those without that, but I guess it is because you feel so heartfelt a lot of the points you made in there. It was a very excellent presentation.

You handed out two articles, and I only had a chance to summarize them. I just want to read back quickly a point or two to you to see if you agree with

these conclusions. It deals with Experience Rating and it is Professor Ison's summary of Experience Rating and he says: "Its overall influence on occupational health and safety is probably negative; it causes therapeutic harm, increasing the gravity of disabilities; its influence on rehabilitation is probably beneficial in some circumstances, but in aggregate and on balance, is probably negative; its influence on the efficiency of the claims administration and on the quality of adjudication is negative."

Would you generally agree with those comments as indicated in that article?

* (1730)

Mr. Dow: Well, I have had the opportunity to hear Professor Ison talk on two different occasions. I have read a lot of his literature. I have no reason not to believe that.

Mr. Chomiak: You also made a significant point, I think, with respect to the frivolous claims, and I am concerned about that point. You indicated—did I get it correctly?—you indicated that the appeal board on occasion is suggesting that some of your appellants are bringing the claims frivolously? Is that correct?

Mr. Dow: That is correct. I have heard supposedly new to chairpersons make statements regarding myofacial pain. That there is no such diagnosis. It does not exist. Why are you here?

Mr. Chomiak: So what you are saying Mr. Dow is that because that particular symptom or that particular illness or disease is not recognized necessarily by the Workers Compensation Board, some individuals on appeal are deeming that to be a frivolous claim.

Mr. Dow: They have not come out and said frivolous but to me their intent was, why are you here. I would like to talk about one specific incident when I was at an appeal commission. Our employer was supporting that diagnosis of myofacial pain and that chairperson looked over at the employer. He could not understand why the employer was supporting that type of diagnosis because all the medical literature that he has read on it, and it is his opinion, that it is not valid.

Mr. Chomiak: Just a final point. I was also quite concerned about your discussion about parasites. Do I understand it correctly, that there are individuals or companies that are now formed that assist people in "improving their ratings with the Workers Compensation Board in order to keep costs down"? Could you elaborate on that a little bit for me, please?

Mr. Dow: When we talk about people, I talk about employers. I do not believe these firms really advocate the workers coming to them. Most of them would go to the employers and tell them how they can save them money and this is how they are going to do it. In my experience, for these people dealing with them, the Appeal Commission and other avenues at the Workers Compensation Board, they are dead against the worker's rights. They have expressed that on most of their appeals, where they totally have denied them, have never accepted a worker's claim, and stuff like this. That is why, when I talk to other labour leaders in the Canadian Auto Workers, out in Ontario, they have the same concern. There are too many parasites that are getting involved with the workers compensation and it should be left again with the stakeholders, the employer and the worker.

Mr. Ashton: Mr. Acting Chairperson, indeed you have answered the question I have been asking everyone, and I just want to go a little bit further. My apologies for missing the first part of your presentation, but you are very clear in your analysis of this bill. I just want to ask you—the comment I am hearing from a lot of people is that it has taken some time for people to see just how serious the implications of a lot of the changes are in this bill. There is a real concern that if this thing is pushed through we will be stuck with a bill that could affect people for generations.

I am just wondering what your sense is, with other people who are dealing with—are aware of—workers compensation issues. Are they of the same opinion too? Are they feeling this act, the more that you analyze it, really has serious implications? Are you finding people essentially saying the same thing you are, that it should be scrapped rather then attempting any cosmetic amendments, that might deal with one or two problems but leave all the basic problems still intact?

Mr. Dow: Again, most of the people I am dealing with are labour people and workers. Of course, they have not experienced the ramifications of this bill yet, if it goes through or not. I will make sure, after my arguments here that I have made today, I will be going back to the 1,400-odd people at Boeing that are in my membership and expressing my concern for the next time, if this bill ever goes into place. I

will be expressing that concern right to the day of the next election.

Mr. Ashton: Indeed, Mr. Acting Chairperson, it can only have those kinds of implications unless there is a change of government. You are essentially saying, then, that you are getting that kind of concern, and people are seriously saying this is a seriously flawed bill.

Mr. Dow: Yes, and I believe we have heard that from all the labour people, and we are going to hear it. We heard it from the Injured Workers Association, and I believe we have heard it from a couple of injured workers and private citizens. Not too many employers have complained about it, or if they have, it has been very little complaints.

The Acting Chairman (Mr. Reimer): Thank you very much for your presentation, Mr. Dow. I will now call on Mr. Cliff Anderson. Mr. Cliff Anderson. Mr. John Irvine. Do you have a presentation? If you could just allow the Clerk to pass it around before you start, please.

You may begin, Mr. Irvine. Thank you very much.

Mr. John Irvine (Canadian Union of Public Employees, Local 500): Mr. Acting Chairman, as mentioned, my name is John Irvine. I am the pension and benefits officer for CUPE Local 500, and I represent our members' interests as an advocate for workers compensation problems and pension problems. On behalf of the Canadian Union of Public Employees Local 500 and its 6,000 members, I wish to thank the committee for this opportunity to respond to the proposed changes to The Workers Compensation Act of Manitoba.

Our members are employed by the City of Winnipeg, which includes the Winnipeg Municipal Hospitals, the Winnipeg Convention Centre and the Winnipeg Housing Authority, which now forms part of the Manitoba Housing Authority. As municipal workers, our members work in many diverse and varied work classifications which encompass blue- and white-collar workers. We work in office buildings, hospitals, mechanical repair shops, parks, arenas, zoos, major construction sites, on the streets and also below and above them. We work on private construction sites as assessors, inspectors and hydro workers. For many of us our work sites and the work environment can change many times in the course of a workday.

Due to the nature of our work and the productivity pressures dictated by the global economy and the world business community, our members face many potential occupational hazards in the performance of our daily work. Our members who work in mechanical shops are oftentimes exposed to unsafe levels of hydrocarbons, noise pollution and the general hazards of working on, in, and around heavy equipment.

The same hazards from heavy equipment affect our street construction and maintenance workers, not to mention the additional hazards of the vast amounts of traffic on city streets. Our refuse workers face the same hazards of heavy equipment, along with the extremely repetitive task of collecting refuse from households, which generates by far the largest number of compensable back claims when compared to other departments.

Our members in the waterworks department are faced with the dangers of working in trenches and excavations, oftentimes in very unstable ground. In the course of excavating, these employees are also faced with the dangers of gas lines and high voltage cables, as are our hydro workers.

Our members who work in the sewer department face the dangers of working in confined spaces, along with exposure to various chemicals that are regularly flushed into the sewer system as waste products of numerous industrial processes.

The list of work sites and the potential hazards could go on and on, but let it suffice to say that the potential for minor, serious, and life-threatening injury is the most significant factor in the workers compensation experience of our employer, the City of Winnipeg.

There has been much dialogue in the past between Local 500 and the City of Winnipeg in relation to their compensation experience. We have steadfastly maintained that entering into a comprehensive Early Return to Work Program, along with a Rehabilitative Employment Program, would have a very positive financial influence on the city's compensation costs. These programs are now in effect due to persistent lobbying by our union, and for the three-year period, 1988 to 1990, have provided an indirect cost saving of $4.7 million to the City of Winnipeg's Workers Compensation Account and the Civic Employees Pension Plan Disability Program. Regardless of these documented cost savings, the City of Winnipeg remains committed to the philosophy that its high cost is due to the liberal provisions of The Workers Compensation Act, and

a perception of abuse by its employees, our members.

As a result of this philosophy, and to attach validity to it, they have become the most proactive employer in the province of Manitoba in lobbying for changes to the act which would be more restrictive. Since 1984, they have employed a workers compensation co-ordinator to scrutinize all compensation claims and appeal those which they feel are excessive or undeserving. They also appear at all worker-sponsored appeals filed by the employees to refute their rationale for having benefits continued.

As a union representative and workers compensation advocate for our members, I can honestly tell you there are very few WCB files which cross my desk that do not contain some form of letter or report from the co-ordinator which attempts to influence the adjudication process. I currently have over 400 files that are active. Employees of the city who are considered to be undeserving may be followed by private investigators, and any and all of their life placed under the scrutiny of videotape surveillance, even to the point of videotaping other family members and the home, while the employee is absent.

* (1740)

These cases have ultimately led to early termination of benefits and a great deal of hardship placed on these employees until the appeal process is completed, which can take up to one year or more, and the claim is either upheld or denied. These are irresponsible actions by the employer and further substantiate labour's claims that the employer should not be involved in the appeal process. Their interests appear to lie only in dollar savings, not in the medical, physiological, mental or financial well-being of their injured employees.

The balance of our submission will offer criticism of certain proposed changes contained in Bill 59. At the outset, we condemn the government for its almost total abandonment of the consultation process and the extremely short time frames which have been allowed to prepare convincing arguments against certain changes, especially since the government has had two years with legal and actuarial consultants to craft this terribly obscure document. Our submission would have dealt with many more proposed changes in much greater detail had we been afforded the time to consult with legal and actuarial professionals. All items not commented on should not in any way be construed to mean that we approve of those items. We wish to further state that we are in complete agreement with the brief that was submitted today by the Manitoba Federation of Labour, and the comments by all other labour groups made to this committee.

Change No. 2(1), Amendments to subsection 1(1), pages 1,2,3: Our major concern is with the definition of occupational disease, and it reads: "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 acute reaction to a traumatic event.

Compensation for occupational disease is grossly undercompensated by workers compensation boards both in Canada and the United States. We have been told that occupational disease claims account for only 2 percent of all claims submitted in most jurisdictions. These figures quickly become suspect when we compare them with a general backdrop of accident versus disease statistics in the general population.

These statistics show us that 80 percent of premature deaths among Canadians are from diseases and not accidents. These figures should not surprise us. When we look at testing of industrial and commercial chemicals by the National Research Council in the U.S., we find that for about four-fifths of the sample, researchers could not locate any toxicity information at all, yet workers are daily being exposed to at least some of these untested substances.

Exactly what is meant by "does not include any ordinary disease of life"? Does it mean that a worker who has been exposed to asbestos and develops a form of squamous cell carcinoma of the lung will not be compensated due to the fact that this is a fairly normal disease of life, even though epidemiological studies such as the Selikoff study show that this form of cancer is the most likely cancer to develop due to asbestos exposure.

What about occupational asthma? We have had two sewer workers develop asthma-like symptoms in the past six years from exposure to chemicals being flushed through the sewers. Neither of these employees can work in their regular occupation.

They continually suffer a wage lose for which they are not compensated. In fact, the only time they receive compensation benefits is if they are hospitalized. Based on this proposed change, it appears these workers would receive nothing from the WCB.

Certainly an enlightened society does not turn a blind eye to these circumstances. Surely the government of Manitoba does not support a proposal such as this which treats workers as a throw-away commodity.

Change 15, Amendment to Section 22 on page 9: "by striking out 'promote his recovery' and substituting 'promote his or her recovery, or fails in the opinion of the board to mitigate the consequences of the accident,';"

What is the interpretation of this additional phrase? For example, if a worker suffered a serious back injury and was advised by his physician that if surgery was performed, there would be a 50 percent chance that he would improve and a 50 percent chance that there would be no improvement or his condition may be made worse, and that worker then refused the surgical option, could it be held that he failed to mitigate the consequences of the accident and have his benefits reduced or terminated? If all of this committee cannot provide us with a resounding no, this could not be interpreted that way, then it is so broad and subject to abuse, it must be removed.

Change 20, New Section 27.1, page 11: "The Board may limit or deny a claim for medical aid, impairment benefits or wage loss benefits where (a) the worker previously made a claim for an injury of the same nature as the injury in respect of which the claim is made; (b) the worker has a medical condition that, in the opinion of the Board, requires the worker to be removed temporarily or permanently from working in a particular class of employment because the medical condition could result in an injury of the same nature as the injury in respect of which the claim is made; (c) the claim is made after the Board requested the worker to discontinue employment in the particular class of employment in order to avoid injuries of that nature; (d) the Board has provided or offered to provide the worker with such academic, vocational or rehabilitative assistance as the board considers necessary to enable the worker to become employable in another class of employment; (e) the worker continues or returns to employment in the particular class of employment without the approval of the Board."

We ask the committee to clarify whether this section is intended to be taken as a whole and, if so, make whatever changes necessary so this section clearly reflects that all of the above factors must be in place before any attempts are made to deny benefits.

The necessity for this is dictated by actions taken by our employer where they have refused to allow workers back to their regular work because of the possibility that they could injure themselves again. These specific cases were lost by the employer in arbitration proceedings but demonstrate the need for this section to be clearly and easily interpreted.

New section, Wage loss benefits, Section 39(1), Pages 19, 20: We state our basic objection to a formula which provides benefits at a rate of 90 percent of net earnings accompanied with a further drop to 80 percent of net earnings after two years.

We, along with many others, support the principle that an injured worker should not be out of pocket as a result of a workplace injury. We support 100 percent of net earnings along with the full benefit package that worker was entitled to in his workplace.

What possible justification can be put forward to pay injured workers less in 1992 than they received in 1991? The return-to-work-incentive argument simply does not withstand close scrutiny.

We have not experienced any major problems with our employer in returning injured workers to modified or alternate work. In fact, as mentioned earlier, our employer has realized a $4.7 million indirect cost saving over a three-year period due to our joint efforts in re-employment and rehabilitation. I have attached, as Appendix B, a joint presentation which was made by our union and the employer to a Canadian personnel management conference where it was very well received.

We have been invited to make a more in-depth presentation in 1992 to the Washington Business Group on Health who have described our initiatives as one of the most progressive efforts in workplace rehabilitation in North America today. All of these savings and programs have been achieved even though our members receive 100 percent of net plus benefits when they suffer a workplace injury. There is absolutely no reason why any other major employer in this province could not expect the same

experience if they were bold enough to enter into these types of programs.

Section 41(2), Earning capacity includes collateral benefit: "In determining the amount a worker is capable of earning after the accident, the board shall include as earnings any taxable collateral benefit the worker receives or is entitled to receive as a result of the injury."

We wish to be assured that this section does not relieve the WCB of its responsibility as first payer of benefits as compensation for loss as a result of an injury in the workplace. For example, if a worker is deemed eligible to receive disability payments from a policy of disability insurance, could they be required to make application for this benefit, thereby reducing the financial responsibility of the WCB or the employer, if self-insured, and transfer massive costs over to their disability program? As most disability programs are jointly funded or totally employee funded, this would have the effect of making the worker pay for his own injury, not to mention the increase in cost due to the increase in experience.

* (1750)

Section 41(4), Collateral benefit in excess of ceiling: "Notwithstanding subsections (1) to (3), the board shall consider collateral benefits which the worker receives or is entitled to receive only to the extent that such benefits, together with the wage loss benefits otherwise payable under this Part, have the effect of compensating the worker in excess of 90% of the worker's actual loss of earning capacity."

It was our belief that Section 41 was proposed to prevent a stacking of benefits. The major problem in the past, we have been told, is that workers can draw WCB benefits and CPP disability benefits at the same time. This section would therefore allow for a reduction in WCB payments by the board or a self-insured employer by the amount the worker receives from CPP. This situation has been deemed as unfair by most employers; however, if we examine the issue it may be more unfair to workers.

Workers in receipt of WCB benefits or CPP disability benefits have never been deemed eligible to receive credited service for CPP retirement pension benefits. Therefore, the likelihood of these workers receiving full Canada Pension retirement benefits are slim indeed. As a result, they will receive a reduced retirement pension for the rest of their life. We believe that it is a fair trade-off to allow stacking of these benefits due to the retirement penalty.

We would support this section and believe it would be more equitable if the WCB simply replaced the loss of Canada Pension retirement benefits which would result in the disabled worker receiving exactly what he would have been entitled to receive had he not been injured and continued to work.

Change 21, Section 41(5), Page 23, Collateral benefits payable to workers by collective agreement: "Notwithstanding subsections (1) to (4), where a worker of an employer is entitled pursuant to a collective agreement with the employer to receive a payment within the meaning of clause 1(b) while receiving wage loss benefits under this Part, the board shall, for the first 24 months of the payment, consider collateral benefits which the worker receives or is entitled to receive only to the extent that such collateral benefits, together with the wage loss benefits otherwise payable under this Part, have the effect of compensating the worker in excess of the worker's actual loss of earning capacity."

We condemn this intrusion by the government of Manitoba into the collective bargaining process. This is simply an attempt by the government to give back to employers something they have not been able to achieve through normal two-party negotiations. Given the massive outcry by working people in Manitoba to Bill 70, this provision will only further cause a deterioration of labour relations in this province.

Change 53(2), Subsection 101(l.2), page 51: "Notwithstanding subsection 1 and section 20.1 (medical reports), an employer or the agent of the employer who requests a reconsideration of a decision by the board or appeals to the Appeal Commission may examine and copy such documents in the boards's possession as the board considers relevant to an issue in the reconsideration or appeal and the information shall not be used for any purpose other than a reconsideration or appeal under this Act, except with the approval of the Board."

We object in the strongest terms possible to providing employers with access to the medical information on file. We do so because, firstly, it is our position that the employer has subrogated its rights to the insurer and should not even be involved in the appeal process at all.

Secondly, despite every effort to limit the information provided, the knowledge gained can, and will, be used to discriminate in other aspects of the employer-employee total relationship.

Thirdly, the provision of such material enhances the adversarial approach to workers compensation appeals. The employer is appealing the judgment of the system and is not in a personal battle with the worker.

In our opinion, this change would cause a dramatic increase in employer appeals and a virtual hurricane of third-party medical reports being submitted by employers from physicians who have had no contact or examined the injured worker. This will not streamline the process; it will cause further lengthy delays in the adjudication of claims.

Mr. Acting Chairman, I have heard it stated here under this certain section that the government is looking at the principle of natural justice or the fairness rule. I am going to paraphrase for you from a manual called "Administrative Tribunals" by Andrew J. Roman where he speaks to natural justice. He says: The rules of natural justice are not really rules; they are not particularly natural, and in practice they are not always just. Natural justice is a somewhat vague group of general principles which are little more than a sophisticated judicial attempt to balance the competing consideration of fair procedure. Natural justice may or may not give rise to a duty of fairness depending upon the likely impact on the rights or interests of individuals. I would like you keep that in mind.

Change 59, Section 109.5(1), page 54. "The board may delegate its powers under this Act to an agent or local representative for the purpose of (a) receiving applications for compensation, reports of accidents, physicians' reports and such other proof of claim 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 other matters as the board may determine."

We are absolutely astounded and horrified that such a provision would be proposed by the government of Manitoba. This type of provision is virtually unheard of in any other WCB jurisdiction. If ever the adage—that is like putting the fox in the hen house—applied, this is that situation.

This provision would allow for employers to hire adjudicators to adjudicate their own claims. Speaking to our own circumstances with the City of Winnipeg that tends to challenge a great number of claims, this would create an absolutely unacceptable situation. How would unbiased adjudication be maintained, not to mention the further delays in the adjudication process that this could cause? We urge the removal of this section in its entirety. While we agree that the system today is oftentimes slow and cumbersome, this is absolutely the wrong way to fix it.

In conclusion, Mr. Acting Chairman, as stated in our introduction, we regret the limited time we have had to prepare a response to this mostly regressive bill. We condemn the government for abandoning the consultation process in developing this bill. We urge the government to revisit the report of the Workers Compensation Review Committee dated July 1987, which reflects the most thorough and progressive review ever undertaken on the workers compensation system in Manitoba.

Thank you for the opportunity for Local 500 to express to you its thoughts on proposed Bill 59.

The Acting Chairmen (Mr. Reimer): Thank you very much, Mr. Irvine.

Mr. Ashton: I commend you on the detail and clarity of the presentation, certainly in keeping with CUPE's tradition; it is well known for its presentations and research. I just want to deal with your particular circumstance for the City of Winnipeg because we have already heard in the context of the transit side of the fact that the City of Winnipeg is probably the most aggressive, adversarial employer in the province or certainly one of the most; it routinely appeals compensation claims and contests them. We heard in the context of transit yesterday from the presenter that, in many cases, they do so unsuccessfully. I am wondering if you can give the committee your experience in that regard with the employees you represent as part of CUPE Local 500.

Mr. Irvine: I guess I can give you an idea. I started with CUPE in 1984 as their pension officer dealing with pension plans. Seven years later, 95 percent of my time is dealing with the Workers Compensation Board and the City of Winnipeg. By telling you that I have 400 active files in my cabinet right now should tell you that there are a hell of lot appeals going on between the City of Winnipeg and the Compensation Board.

Mr. Ashton: Has your experience been similar to the situation that was identified in terms of transit where it was indicated that the vast majority of claims by the employer are—I think, the presenter has indicated that about 95 percent of cases the employers' concerns were found not to be valid or justified?

Mr. Irvine: I would not suggest that 95 percent in our jurisdiction due to the numbers that we have in our jurisdiction, but I would say that it would run between 75 percent and 80 percent of the claims which are usually won on appeal—at some various stage of the appeal.

Mr. Ashton: The reason I am asking is that because this legislation will presumably potentially increase the number of appeals we are going to see from employers across the board due to the new provisions in terms of access to medical information and various other provisions in the act. So is it reasonable to assume from your experience with the City of Winnipeg that you will have a significant number of claims contested by employers that may slow down the process, make it far more complicated, but not in the overall analysis really change the final decision?

Mr. Irvine: There is absolutely no doubt in my mind. No doubt.

Mr. Ashton: Indeed, it is an area I grow increasingly concerned about when we go through this bill. There are a couple of other questions I have, though, because, once again, your comment about the limited time is significant given the complexity of the bill. I wanted to just deal with a couple of other points that you have raised. I felt, by the way, you are very, very clear in terms of the basic concerns.

* (1800)

I want to deal with the collateral benefits. You are saying—and I want to use your experience again because if one was to listen to some of the presentations by some of the employers and some of the rationale used by the minister and others to justify the provisions which prevent collateral benefits and here I am including benefits negotiated by collective agreement, you would understand by their comments that the system would collapse because somehow everybody would be abusing workers compensation, that rehabilitation would break down, that great calamities would befall the system, and that Workers Compensation, as we know it, would no longer exist. That may sound like I am exaggerating, but when I hear some of the comments, I do not think that is the case. You are saying, based on your experience with the City of Winnipeg, that in this case you have one of the most innovative and successful rehabilitation programs, despite the fact that City of Winnipeg employees probably have some of the best benefits in the workers compensation system because of top-ups that have been negotiated at the collective bargaining table.

Mr. Irvine: Yes, that is absolutely correct, and just to give you a number, in that three-year period we had returned 605 injured workers back to the workplace in various modified duties or alternate work positions.

Mr. Ashton: I found it very significant again. I appreciate your perspective because you are saying essentially this act will move significantly away from that and, in fact, will take away the ability of people to negotiate through the collective bargaining process what is already being eroded. We have heard it from many presenters by this act. This act moves—there was a suggestion yesterday in that we are almost moving from a 75 percent gross to 75 percent net, depending on how you calculate them; it will result in significant reduction of benefits. You are saying that it has had no impact at all on workers compensation and, in fact, what this is doing now is, it is going to in the case of CUPE 500 result in a significantly lower degree of benefits for people who end up on workers compensation.

Mr. Irvine: I guess we are particularly covered, our membership, for any reductions by the bill. However, if you introduce any more, I guess, adversarial approaches into this system than there already are now, people will not want to participate. It is bad enough today keeping people on track, especially when you deal with rehabilitating people and trying to keep them on a normal process while you go through all the things that you have to do to assist that individual. If you make it harder and make it more adversarial for those individuals, you are going to have more failures.

Mr. Ashton: I just have one further comment. Indeed, I could continue with many other questions I could ask on this, but the previous presenter indicated what he would like to see done with the bill. Since I know some garbage collection has been contracted out but assuming that the City of Winnipeg still has a CUPE Local 500 employees

performing this service, are you of the same opinion that essentially this piece of legislation is so at fault that it essentially should be scrapped and dealt with perhaps by your members in the capacity of dealing with refuse rather than going through the process of bringing in some cosmetic reforms? I think, as a committee, we have to really know whether this bill is salvageable in any way, shape or form on Monday when we deal with it clause by clause or whether it should really be tabled and brought back in a totally different form.

Mr. Irvine: From our perspective the whole bill is too obscure; the intent cannot be easily found of what all these things mean. I would suggest you do not call BFI; you can give me 15 minutes, I will have a yellow garbage truck out in front of that window. We will just dump the whole thing out right there.

Mr. Edwards: Thank you, Mr. Irvine, for your presentation. I must say that at the end of this, if nothing else, all committee members, I think, must have some concern about the City of Winnipeg and how they handle these claims. I remember that expressed last night—I do not know if you were here—by the member for Portage la Prairie (Mr. Connery), so we have certainly heard that loud and clear.

Specific to your presentation, I might say, you formed a question at pages 7 and 8 of your presentation about the new Section 27.1. I spoke very briefly to one of the minister's assistants, whom I will not hold the minister to, but did speak to him because I had some concerns, although I must say 27.1 read to me, cumulatively, that is, you had to satisfy all of those conditions (a) through (e) before the board could limit or deny a claim for medical aid, impairment benefits or wage loss. So I read it cumulatively. I did consult, and I am assured that it is a cumulative section. Given that, does that make that an acceptable provision to you? I am just asking you that based on your question in here, which seems to ask whether or not it is cumulative.

Mr. Irvine: Yes, if it is taken cumulatively and the changes are made to the clause, we could give it some backing, but it would then be one of the very few pieces of this bill we could give backing to.

Mr. Edwards: The other thing I wanted to do, because I look at the proposed Section 27(20), the new one which deals with the enablement of the board to spend money on academic vocational rehabilitative assistance, it has always struck me that that is woefully inadequate in terms of a direction, any kind of assurance on claimants that they are going to have that kind of rehabilitative assistance made available to them. I was therefore intrigued with your description of the early-return-to-work program along with a rehabilitative employment program which you claim has provided an indirect cost saving of $4.7 million to the City of Winnipeg. Can you give us—I am not asking for a detailed sketch but a thumbnail sketch of those programs and how they work.

Mr. Irvine: The programs are attached. They are in an appendix and all of the technical parts, but it is rather lengthy if you get into the technicality of how it works. Really, what the major attempt is, is to be in touch with the injured worker within three days. We have a certain form that has been designed between the employer and us that allows for certain medical information to be supplied by the doctor, and that is information that we do not have any problem with that employee providing and basically determines whether or not he is off work and should not be working at all, or yes, he cannot do his regular position, but he can do something. At that point, we know we can do something with this individual, and we move quickly from there.

We have established, through collective agreement with the employer, a bank of permanent, full-time positions that are used strictly for rehabilitation. They are posted as they become vacant, and only injured workers can apply for them. That is on a permanent basis. We have a number of modified and light-duty-type positions for short-measure-type situations.

Mr. Edwards: Well, I thank you for attaching those at the back. I had not checked the appendixes. They will be reviewed.

I might just comment that, given the recent Supreme Court of Canada decision in the Alberta Dairy Pool case—I do not know if you have had occasion to look at it—I am sure that your plans will be closely monitored by other governmental agencies, including Crown corporations, that have now fallen under the ambit of the Charter of Rights and Freedoms and that there is a decision which very clearly lays at the feet of employers, the obligation to find modified duties, unless they can show undue hardship. So I think you are on the cutting edge, and I congratulate you for those efforts. Thank you for your presentation here.

The Acting Chairman (Mr. Reimer): Thank you very much, Mr. Irvine.

Mr. Praznik: Mr. Irvine, just to echo comments of both opposition parties, the experience of the city since those agreements for rehabilitation have been in place have been just tremendous, and I would say that you are on the leading edge, and I know your own personal involvement in there has been a strong factor. I congratulate you on those efforts.

Just coming back to one issue which you raised, which had to do with the city's appeal, we had the transit workers' union in last night, I think it was Mr. Hykaway who mentioned the same thing. It is obviously a concern to me when these things happen because, in many cases, as you have pointed out, it is a matter of course, it is not a matter of really having reason.

I know there has been some discussion about the penalty for frivolous appeals where the Appeal Commission would find it to be a frivolous appeal. One of reasons that provision was suggested by staff and appears in the bill is for just those circumstances. I know the transit union representative, Mr. Hykaway, last night suggested that that was a means of curtailing that type of frivolous appeal.

Although I know and I appreciate that there is some concern with respect to employees and being a detriment to employees, would you concur that that might have the effect, if there was some sort of penalty where the appeal was found frivolous by the Appeal Commission, at resolving or at least muting that situation that you now confront?

* (1810)

Mr. Irvine: Well, from my experience, I would tell you that you would have to have a most significantly larger fine to apply to the City of Winnipeg before they would ever cease making some of the frivolous appeals that they make.

I want to make a comment, Mr. Acting Chairman, because frivolous appeals is not something that I have dealt with in my brief, but I have been doing this job for seven years, and I have developed relationships with certain individuals at the board. You get to know people after you are on the phone with them all the time. In my experience, I have found that, if you do not show that you are a responsible advocate and if you do not show that you have some integrity, you are not going to be treated very well over there. I would suggest that most advocates in the field of representing workers are responsible. They have integrity, and they just do not bring frivolous appeals to the board.

The board does not see every appeal that my members bring to me. I have the ability to determine, through my expertise with the act, what I think is appropriate and what is not, and I advise them so. They certainly can go elsewhere if they wish to have that appeal followed up, but that does not usually happen. So we treat them with respect, but we tell them what is right and what is wrong, what is frivolous and what is not frivolous.

Mr. Praznik: Yes, Mr. Irvine, I agree. Virtually, I think, everyone involved in the field and understands what is there and what is not, do that, but obviously there is a problem in a few cases and the City of Winnipeg is one where we have almost as a matter of course appeals coming forward. What I am trying to grasp as a minister putting forward a bill is, is there a mechanism that I can have in this act that in those kind of circumstances could be used? I fully appreciate the concern with respect to workers having a detriment, but is that a mechanism that has some potential for being a deterrent in those cases? You did not quite get to that.

Mr. Irvine: It may. As I said, if you want to put a $50,000 charge on it and if you want to eliminate frivolous appeals by workers, I would support it, but because it is so broad, and you are saying that it will also impact on workers, like others who have spoken here today I have had too many workers who have been foreclosed on, who have lost their insurance, who are at the point where they are going to be, possibly, losing their job because they have just lost all sanity and done something screwy in the workplace. It causes a horrendous number of problems.

The Acting Chairman (Mr. Reimer): Thank you very much for your presentation, Mr. Irvine.

I now call on No. 6, Dr. Allen Kraut. Do you have a written presentation?

Dr. Allen Kraut (Private Citizen): Yes, I do.

The Acting Chairman (Mr. Reimer): We will just get the Clerk to distribute it if you would not mind one moment. You may proceed.

Mr. Kraut: I would like to thank the members of the committee for giving me an opportunity to speak today on Bill 59.

I graduated from the University of Manitoba Medical School in 1980 and interned at the Wellesley Hospital in Toronto. Following this, I worked for two years in the Misericordia General

Hospital in Winnipeg. I then entered the internal medicine residency program at the University of Manitoba from 1983 through 1986. I received my fellowship in the Royal College of Physicians and Surgeons of Canada in internal medicine in 1987. I completed a two-year occupational medicine residency at the Mount Sinai Medical Center in New York City in 1988. Following this, I worked at the Irving J. Selikoff Mount Sinai Occupational Medicine Clinic from June 1988 through June 1989. I then returned to Manitoba where I accepted the position of Assistant Professor in the Departments of Medicine and Community Health Sciences at the University of Manitoba.

(Mr. Chairman in the Chair)

I am the Assistant Director of the Department of Occupational and Environmental Medicine at the Health Sciences Centre. I am an attending physician in internal medicine at Health Sciences Centre and a part-time physician at the MFL Occupational Health Centre. In November 1990 I received my second fellowship from the Royal College of Physicians and Surgeons, this being in Occupational Medicine. Only one other individual has this fellowship in the province of Manitoba. I have recently been awarded the First Annual Occupational Medicine Association of Canada Memorial Lectureship which will be given in Edmonton this year.

I am here as a practising occupational medicine physician and would like to explain to you how parts of the proposed bill will affect my future patients.

I am particularly concerned about the qualifiers placed on what types of occupational diseases will be compensated in amendments to subsection 1(1)(j) on page 2. The average person in our society, I think, feels that compensation boards should compensate for diseases and injuries arising out of or caused by employment. As compensation systems were set up to serve this purpose, this should be the definition used in the current bill.

I would like to know how the definition of ordinary diseases of life as used in this subsection Part C. The body has only a limited number of mechanisms to cope with toxic insults or injuries. Thus, the pulmonary response to cigarette smoke is very similar to that caused by chronic exposures to irritant chemicals and dusts. Occupational exposures can lead to diseases in all organ systems and cause conditions which may also be caused by nonoccupational exposures. For example, cancer may be caused by both occupational and nonoccupational exposures. Since over 20 percent of deaths in Manitoba are due to cancer, cancer may meet some definitions of an ordinary disease of life and thus not be subject to compensation. This clearly is not the intent of the bill, I would hope. This point must be clarified.

The proposed bill has an extremely limiting definition of acceptable stress-related conditions. Although one must question why occupational stress has been singled out from all other occupational hazards for special exclusionary language, I will confine my remarks to some of the effects of using such a limiting definition. I have seen a number of Child and Family Services workers who, due to their heavy workload and the stress of having to apprehend children away from their parents, have developed physical and psychological ailments. Although work was clearly the cause of their problem, they are not compensated due to the board's current policy which would be legislated in the proposed bill. Stress-related problems must be better addressed by the Compensation Board as many health problems arise directly out of workplace stress.

I am also quite concerned about the use of the word "dominant" in Section 4(4). According to this section, diseases would only be compensated if occupational exposures were the dominant cause of the condition. The relationship between work and the genesis of disease is quite complex. I tend to define occupational diseases into three major categories. The first category is those diseases where work is by far and away the most likely cause of the problem and where the diagnosis itself strongly suggests occupational causation. Examples of such diseases include asbestosis, silicosis, mesothelioma, and adult lead poisoning. The second type of occupational disease are conditions such as lung cancer, asthma, and carpal tunnel syndrome, which can be directly caused by work, but may also be caused by other factors. In the third type of disease, conditions such as chronic lung and heart disorders, occupational factors may cause or contribute to their genesis.

The use of the word "dominant" in describing the relationship between the causative factor and the disease would only clearly allow the first category of occupational diseases to be compensated. I would find it difficult in many occasions to decide what the dominant cause was in many category 2 and 3

diseases. As an example, one should look at the well publicized association between asbestos exposure and cigarette smoking in the causation of lung cancer as described in asbestos insulation workers. If one assumes that nonasbestos-exposed nonsmokers have a base-line risk of lung cancer of one, then asbestos-exposed nonsmokers have a lung cancer risk of five times this amount. Smoking, nonasbestos-exposed workers have a lung cancer risk of ten. However, smoking asbestos-exposed workers have a lung cancer risk of 55.

* (1820)

Some may argue that as smoking has a stronger independent effect than asbestos exposure, it is the dominant factor. However, others could and do say that as over 80 percent of the cancers in the smoking asbestos-exposed group would not have occurred without occupational exposure to asbestos, that asbestos exposure is the dominant cause. The correct approach, however, is to recognize that it is a combination of the two exposures that caused the cancer. Thus, the issue of deciding which factor dominated could lead to these workers not being compensated for this well accepted association.

Many occupational epidemiologic studies have shown excesses of various diseases in the order of 50 percent. An excess of this degree implies that one-third of the disease in the work force was related to the occupational exposures and two-thirds were related to other factors. If a strict definition of dominant cause is used in these cases, then these workers would not be entitled to compensation as it could be argued that it was more likely that other factors rather than their occupational exposures caused the disease. Thus, these workers who are exposed to known disease-causing agents and worked in jobs known to lead to certain diseases would not receive compensation. When these workers, after being rejected by the Compensation Board, apply for long-term disability benefits it would be quite possible for insurance companies to say that this condition is a well recognized problem in the industry in which you work and therefore you should receive Workers Compensation and not long-term disability. Unfortunately, in many such situations the involved worker will become a ping-pong ball bouncing between the two different bureaucracies.

In summary, as the medical and scientific communities discover more about the extent and importance of occupational diseases as causes of morbidity and mortality in our society, this bill will make it more difficult for Manitoba workers to receive compensation for occupational cancers and other chronic conditions.

Thank you for allowing me to present. I would be happy to answer any questions you may have.

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

Mr. Edwards: Thank you, Dr. Kraut. It is a privilege for us to have someone of your stature in the field before us, and I want to say that I appreciate you taking the time to be here. You have touched on just the areas that you obviously have a lot of expertise in, and I am going to focus on those. It is very interesting to have your comments.

Are you suggesting that by putting in dominant cause, there is not, in fact, a clear understanding or at least agreement in the medical profession as to what that would be, and we may simply be creating a recipe for endless dispute between medical practitioners who may end up before the board defining again and again and again what dominant cause may mean in any particular case?

Mr. Kraut: Yes, I would agree with that. When I was coming up here I was trying to think of an example to try and illustrate this point a little clearer, and I thought of my children's radio. It requires four batteries to work. If you have three batteries you do not have 75 percent of the volume coming out. You do not have anything. It is that fourth battery that causes the device to work. Is that fourth battery the dominant battery? Some would say, well, yes, it is. Others would say, well, it is only 25 percent, it is not dominant. There will be a lot of arguments on this, and it will lead to, I believe, a lot of medical review panels which, although personally may do me well because I might be asked to sit on them, will not serve the workers of the province very well.

Mr. Edwards: Yes, and envisage they may serve the legal profession well as well down the road, whether or not they serve they the workers, of course, is another question. I can think of at least three things that—you have added one, which gives me three things that "dominant cause" may mean.

It may mean that the critical, as opposed to simply an additional cause; that may be one definition. Even though it was perhaps only 5 percent of the cause, if it is the critical factor as in your battery analogy, it could be argued it is dominant. It could

be argued it means 50 percent plus one. That is the definition of "dominant." A third is that it may mean that it is the greatest of various causes. There are a number of causes for it, at 15 percent and one at 40 percent for instance, then it is the dominant cause and the others at 15 percent are not.

Is there any clear delineation in the minds of the practitioners in the field that you know of between those three or others, aside from particular cases, just on what it means in terms of definition in any given case.

Mr. Kraut: I would answer no to that. I think that when I saw "dominant" my first concern was that it meant 51 percent, and in my experience in the United States when cases similar to the ones I have described have gone to trial and arguments, people are arguing based on this 51 percent idea.

Mr. Edwards: That leads me to my second question, the next stage which is what better, what should we be using in a scheme whose premise is that employers should be responsible for injuries, diseases occurring, arising out of the workplace? What should we use to rightly place that burden on employers but in fairness no more.

Mr. Kraut: There are two parts to that question. I think first is the medical decision, and I think that is using a definition such as "more likely" than "have caused" or "contributed" to the disease would be something that I personally would feel comfortable with.

The second part comes in is a political decision that has to be made, what do you do with that. Once that definition is in, does that mean that the worker is entitled to 100 percent of benefits for disease or do you take in those other factors and assume that, well, if there were other factors that are nonoccupational, that the worker should receive less to account for that. That is a political decision and not a medical decision.

Mr. Edwards: Yes, and perhaps we are pushing you beyond what you came here to speak about, but let me follow that up and ask you, in your opinion, given that we can either try and limit it or try and expand it on the backs of employers through the Workers Compensation scheme. Is it better to do one than the other and keeping in mind that if we go larger and restrict it more, we put more on the taxpayer through our social welfare scheme, which albeit we can argue whether or not they are adequate, if we expand the definition, we restrict who we place the burden on to employers. Which is preferable in your view?

Mr. Kraut: I think that occupational diseases should be paid for by employers because they are caused in the workplace. I think that by identifying occupational problems and by leading to compensation for those diseases, that may be a way to drive the system to eliminate those problems. If one tries to use a more limiting definition of occupational disease and have the general society absorb the costs, that may then lead to poor standards in workplaces and more occupational disease.

Mr. Edwards: You used the term contributory cause. That could be 5 percent, could be 10 percent, could be 50 percent.

An Honourable Member: Could be 1 percent.

Mr. Edwards: It could be 1 percent, the minister says. Should we be tagging employers with the full cost based on contributory cost, or—and let me just put this to you—is there any value in putting percentages on this? Should we ask the minister to be clear on what he means by dominant in saying percentages?

Mr. Kraut: First of all, I think when we are talking about these chronic conditions, which basically where this issue comes up—cancer, chronic heart disease, chronic lung disease—in my experience, and I would say I would be more likely to be bringing these types of claims to the board than other physicians, I have to be fairly convinced in my mind that there is a reasonable association between the disease and the exposure. That does not mean 1 percent, 2 percent or 3 percent. Before I would consider bringing a case to the board, it would have to have strong epidemiologic evidence. The way studies are designed, you do not get strong evidence unless there is a fairly strong effect. So the concern this could lead to a 1 percent, people bringing in claims where it might have been 1 percent, really is not valid.

* (1830)

If you asked a second question, I forgot it. I am sorry.

Mr. Edwards: I forgot my second question, but your answer provoked another one, which you have used the words "reasonable association." I agree with you 1 percent is obviously a ridiculous analogy. I mean, I accept what you say on that. Reasonable association—is there any value to thinking about the

Workers Compensation scheme compensating for that percentage of causation? Is that something we should look at?

Mr. Kraut: Again, I mentioned that is a political decision.

Mr. Edwards: You are in front of politicians.

Mr. Kraut: Certainly I could understand the position that if the majority of someone's disease is caused by nonoccupational factors, it would not be reasonable to have the compensation system pay for all of that. I think the points that you made before, the degree of this individual's disability, has to be taken into account. I think one also has to take into account the relative strengths of the parties involved. Workers have very minimal resources in our society and corporations tend to have much more. Being an individual and trained to look after people, that always weighs my decisions.

Mr. Edwards: Of course, you are absolutely right, and that has been a recognized factor in tort law for many decades, which is ability to pay. So I accept that and I thank you again for bringing your knowledge to us. I must say that I share and I am appreciative of a doctor coming and bringing us out of this vacuum of this committee room. We tend to say doctors can isolate these things in percentages and can say absolutely it is 20 percent or 30 percent and we look for those specifics. I hear you saying that, in fact, look, oftentimes it is just not that clear and that the reality is we have a very, very sick person who cannot go to work. Maybe that is what we have to remember first and foremost.

Mr. Ashton: Mr. Chairperson, I, too, appreciate your perspective for two reasons. One is from the medical side and also because of your exposure to people in a doctor-patient relationship. I just want to focus in on that because there tends to be sometimes a misconception of the average person who gets rejected for compensation that somehow they are a lot of malingerers, et cetera, people who are feigning medical conditions, et cetera. I am not saying that it does not happen. I am wondering in your contact whether you find that is the case or whether you tend to find other situations where the real question is not whether someone has a condition but whether it is work-related. I am wondering if you can give us some idea of a typical sort of patient you might run into in that sense.

Mr. Kraut: Often I tend to see a number of people who have been cut off by the Compensation Board. Most often that is because the board can find no objective evidence of their disability or their problem. They have chronic low-back pain, myofacial pain was another condition that was mentioned. In those people, I do not believe they are feigning their symptoms. I think that they have true disability and true problems. It is just that we in the medical community have not been good enough in developing the tests and identifying the ways to properly diagnose and treat those people. There certainly may be some psychological overlay in some of those people, but for the most part, that is usually secondary to their injury. That has basically been my experience. I have not seen anyone who sort of limped into my office and then when I see them outside, when I look through the window, see them running down the street to catch the bus. I do not think that happens very often.

Mr. Ashton: Unlike certain Autopac claimants, but that is another story, Mr. Chairperson. I want to deal with that, in fact, maybe I should deal with it in that context, because we are seeing other cases in other areas, Autopac, where those suspicions have arisen. I just want to have it clear on the record, in your case, you feel the vast majority of people you deal with as patients are not malingerers, are not faking. They honestly believe they have a condition that is disabling them. They honestly believe they have a condition that is work related.

Mr. Kraut: Yes, I would agree with that.

Mr. Ashton: I appreciate that because I deal with many claimants obviously in another role, both as an MLA and as Workers Compensation critic and that tends to be my experience, and without discussing specifics of individual's cases I have a brother who is a doctor and I have had a chance to discuss with him and he certainly shares your perspective. I want to deal with that because you are pointing to some very serious difficulties this bill could impose in terms of recognition of future occupational diseases, work-related conditions in particular.

It may make it more difficult with existing recognized, we have seen that already, and you have raised the concern here about the dominant condition. Also the question of ordinary diseases of life where you asked essentially in a rhetorical sense whether that was the intent of the bill.

Well, I have seen some of the statements made and I would say it probably is the intent of the bill. There seems to be a real feeling, in certain areas,

that workers compensation should not be compensating lung cancer or heart conditions. That has been specifically mentioned. It was mentioned by a previous minister; it was mentioned by employer reps.

I just want to ask you very clearly, what you are saying is that certain types of conditions even if they would be considered ordinary diseases in a generic sense should not be excluded from workers compensation in your view because there could be serious contributing factors from a workplace situation that would make that condition far more serious and therefore compensable in terms of workers compensation.

Mr. Kraut: I still am not sure what an ordinary disease is, but occupational factors, as I mentioned before, can cause diseases in all organs. It can cause failure of all the major organs of the body which can mimic the same symptoms and problems of other nonoccupational factors. I think that, as such, they have to be compensated, and there is no need for saying ordinary diseases of life.

Mr. Ashton: I appreciate your very clear focus, and we have heard other concerns. I just have one final question then, and I am not asking you to address the political issues. I realize that is something that has to be dealt with here by this committee, but I am focusing once again more on your role as doctor in terms of your contact with patients.

You are saying to this committee that unless these sections that you have addressed in your context as medical practitioner are dealt with in the way that you suggested that there will be—individuals that are applying for compensation currently and particularly in the future for newly recognized conditions and occupational diseases, you are saying that many of them will have a great deal more difficulty in establishing their claim for workers compensation than, first of all, they might otherwise under the current act and, second of all, perhaps more importantly, than they should do in the general spirit of what is an occupational disease, illness or condition.

Mr. Kraut: I would agree with that statement.

Mr. Praznik: Dr. Kraut, I want to thank you for your presentation. I have enjoyed it immensely, because I think you hit upon the great difficulties this committee and a minister has in putting in a definition, and if I may ask you, I think you are saying, you are recognizing, correct me if I am wrong, the great difficulty in how you place a definition as to what is an occupational disease that is correct.

Mr. Kraut: My problem is not with what the definition should be, but basically how you deal with it once you have made that definition.

Mr. Praznik: The reason I ask you that is because, correct me if I am wrong, what you have suggested is that there are hosts of diseases depending on the source of that disease that are clearly related to the workplace. Those same illnesses could be caused by other sources outside of the workplace.

* (1840)

Mr. Kraut: Yes, that is correct.

Mr. Praznik: And there can be a host of cases where there is a mix of factors that contribute.

Mr. Kraut: That is correct.

Mr. Praznik: The difficulty, of course, this committee has, and I have as minister, is that who is responsible for compensation, and what I say to you, and I ask for the indulgence of the Chair, I shall only just be a moment by way of comment. It is truly our intention to capture those, of course, that are caused in the workplace, and we have struggled with definition. Your medical information is certainly helpful to us as the legal knowledge that we have from our sources in meanings of words and definitions. I hope that with our meagre ability as committee members we are able to meet that goal that we both share. Thank you.

Mr. Edwards: Let me just ask you one more thing, based on what the minister said. Is it not what you are really telling us is that we are probably never going to get a perfect definition and the real issue is who gets the benefit of the doubt? Is it the worker or is it the employer, because there is generally going to be some doubt?

Mr. Kraut: Again, it is a simple definition. Occupational diseases are diseases that arise out of the workplace. That is the easy part. The hard part is, I think what you have been struggling with, who should pay for these diseases—not who should pay but how does one identify that portion that might not be work related in those chronic diseases and who should assume responsibility for that? That is the difficult point here. That is the one that you as politicians have to address.

Mr. Chairman: Thank you, Dr. Kraut. We will move then to No. 7, Mr. Glenn Michalchuk. Mr.

Michalchuk, have you a presentation to distribute? Do you want to proceed while it is being distributed?

Mr. Glenn Michalchuk (International Association of Machinists and Aerospace Workers, Lodge 122): Mr.Chairman and members of the committee, for your reference, I am appearing on behalf of the International Association of Machinists and Aerospace Workers, Lodge 122, and to clarify that a little bit, Lodge 122 represents machinists employed at CP Rails operations in Winnipeg, so we have experience both with the board, self-insurer, as well as a company which I would have to say on the whole does not recognize the rehabilitation of workers, in case you want to direct any specific questions to that.

My brief is quite short because I think largely the MFL has done as good a critique as is possible on the document. We do have a few remarks we would like to make and they largely just underscore the major objections that we find, but I should say that these are not the only objections we have, and our hope is that if we underscore these objections often enough, then it will take hold that there is obviously a serious problem with some of these proposed changes to the act.

Working people form the majority of Manitoba's population. Bill 59 legislates something which is fundamental to the interests of that majority, protection against loss of livelihood in the event of injury or the contraction of disease, either permanent or temporary that comes as a result of their work. To discuss Bill 59, we need some terms of reference and these should be how Bill 59 affects working people.

The Workers Compensation system serves two purposes: protection of employers against legal actions for deaths, injuries or impairment as a result of workplace accidents, and for workers, protection of their livelihood in case of injury or impairment. While the first objective has been met, the second continues to be a major problem, and in many respects, Bill 59 will exacerbate the problem.

I just want to digress at this point of the presentation to indicate to you how we see the depths of this problem. As you are aware, at the end of May, the MFL Compensation Committee conducted a survey of Workers Compensation claimants. Two hundred people were surveyed on a broad variety of questions. One of the questions asked was had their employment been terminated as a result of being injured. Forty-two out of the 200 answered, yes, to that. That is 21 percent.

It is interesting also that yesterday you heard from a worker who was formerly employed at Burns, and in conjunction with that same question, Burns had the highest number of people of the ones surveyed who were injured. To our way of thinking, as long as you have this serious problem of workers being cut off their employment, fired by their employers because of their injury, you are going to have a substantial inequality in the compensation act and in the compensation system. The employers have addressed many problems here, and the thing that I note is that they address largely the economic issues of compensation. They have also said that they are concerned about the quality of care that injured workers are receiving. I think if that is the case, it would be interesting to know how, in their presentations or in their presentations to your steering committee, they discussed the re-employment of injured workers. That is why I made that comment at the outset about the particular situation in the railway, where there is very little opportunity for re-employment of injured workers, severely injured workers.

Historically, Workers Compensation has not dealt with the rights of workers in the truest and broadest sense. If this were true, the adversarial nature of the present system and structure would be unknown. In many respects, amendments contained in Bill 59 indicate an intention to entrench the position that a worker does not have the right to see his future protected in the event he is injured, impaired or succumbs to disease as a result of his work.

Why is this? In looking at some of the amendments, the message which comes across is that Bill 59 weakens the position of the worker in favour of strengthening the position of the employer to distance themselves from any responsibility for injury, disease or death. The basic flaw in the compensation system, that it is not attuned to protecting workers, will only be ingrained deeper into that system if many of Bill 59's proposals are adopted.

At this point I would now like to proceed to drawing your attention to some of those changes to the act which reflect the concerns and outlook I referred to in my opening remarks. I will note now for you that this is not a complete list of those sections which we feel undermine the principles of fairness or justness.

As time for preparation and research was limited, we decided to highlight those sections of the most obvious and pressing concern.

The first provision of the act I will refer to is Section 4(4). It states: "Where an injury consists of an occupational disease that is, in the opinion of the board, due in part 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 the result of an accident arising out of and in the course of employment only where, in its opinion, the employment is the dominant cause of the occupational disease."

The objection to this section is that it takes the concept of occupational disease and qualifies it with the phrase "dominant cause." It is a regressive change to the act because it restricts the ability of a worker to claim that he is unable to perform his regular job unless he can also substantiate that his employment was the main factor.

Some occupational diseases arise out of what are called pre-existing conditions. The employment may not be the main factor contributing to the condition becoming disabling, but why should this undermine the protection of the worker? As a result of his employment, he will still suffer and lose either a portion or all of his income. Yet, this section contemplates leaving him out in the cold, unable to support himself or his family.

* (1850)

Thus, it is one of those changes which stands out for its attempt to place the worker at a distinct disadvantage. It actually denies what is well known, that there is a cause-effect relationship between conditions of employment and disease and disability and that this is a complex interaction. It does this by creating a new concept, that of dominant cause. We maintain that the inclusion of this section in the legislation will signal that the compensation system is becoming more and more devised to legitimize the injury, impairment and diseases suffered by workers.

The next article I wish to comment on is Section 27.1, and I have been listening to the discussion and I am aware of the way the discussion has proceeded regarding whether the items were to be considered as separate or taken as a whole. Nonetheless, I have to refer back to what the MFL has said in its report today, that even taking Section 27.1 and inserting "ands" between each of the clauses, it still leaves much to be desired.

This section gives to the board broad, sweeping powers that it presently does not possess. As with the previous section, it is one of those clauses in Bill 59 which seriously undermines the position of the injured worker. To understand the implications, let us create a scenario.

A worker of middle age suffers a back injury. The injury aggravates a pre-existing condition, which means the worker will suffer progressive deterioration of his back. As he works in heavy industry and his employer has no interest to consider modified or lighter duties, the only positions available are similar to the one where he sustained injury. Applying Section 27.1, and even granted with your inclusions of the "ands," will result in this middle-aged worker being unemployed. This will result because the rehabilitation programs are inadequate, and here I rely on the brief presented by the MFL. It will result because the board has the right to determine compensability under this section but no right or authority to ensure the employment of an injured worker.

Such statements are of both policy and philosophy. As a policy, it lightens the responsibility of the employer to the injured worker. Given situations as outlined in the example, after a definite period of time all relationship between the injured worker and the board will be severed and with it any liability of the employer. As a philosophy, it means that there is no such thing as protection of an injured or disabled worker's income. Compensation is to be regarded as a short-term benefit with no social commitment to the improvement of the injured worker's life.

Section 41(1) through 41(7) introduce into the compensation system the concept of collateral benefits. In the proposed legislation, these are benefits payable to the injured worker by the employer, that being disability insurance, any nontaxable collateral benefit the worker receives while injured and any other benefit the board may in the future deem as collateral. These sections also interfere with the collective agreements.

The introduction of this concept can only be out of financial consideration to the employers. The WCB is funded entirely out of the contributions of the employers. The provisions of these sections are intended to provide relief to the employers by allowing the board to deduct collateral benefits.

Section 41(3) contemplates even broader terms of reference, as it allows any nontaxable benefit to

be deducted. For example, if a worker has loan insurance to cover periods of disability, is this to be considered a collateral benefit?

The point is this: Why has the legislation gone to this extent to intervene so aggressively on behalf of the employers? If they find their collective agreements unsatisfactory, they have the means to change that, but it cannot be by asking the government to legislate some relief under the compensation act.

The next item I want to deal with is Section 67(4.1), which states: "The board may order a worker to pay costs of not more than $250, and may enforce payment of the costs in the same manner as the payment of an assessment, where (a) the worker requests the board to refer a matter to a panel under subsection (4); (b) the opinion of the panel supports the opinion of the medical officer of the board; and (c) in the opinion of the board the request to refer the matter to a panel was frivolous."

In a matter so serious as the livelihood of a worker, the idea of determining what is or is not a frivolous appeal has no merit. The net effect of such legislation will be to discourage appeals and, in cases of the poorest workers, make it next to impossible, because the threat will always be there that it will be judged as frivolous.

It is not a justification to say that penalties also apply to the employers. The resources of the employers are far more substantial than any worker or union. The aim of this section is at the injured worker and no one else. It possesses no concept of fairness or justice and, I might add, even though I do not deal with that, in listening to the discussion it seems contrary to some of the testimony of the employers here regarding accessibility to medical files, which they indicated was for the purposes of trying to pursue appeals.

Lastly, I would like to comment on those provisions which deal with medical confidentiality, Sections 63 to 65 of the present act, which are repealed under Bill 59. First, it must be noted that the employer, through the compensation system, has forgone the right to determine the compensability of the claim. That authority rests with the board.

Allowing access to medical information can only encourage the filing of appeals by employers, supposedly a situation the board wants to discourage. Who is in charge of the system, the board or the employers? The administration of an injured worker, his benefits, his rehabilitation and so on are in theory to be the concern of the board. What will result is constant pressure and interference by the employers to bring benefits to an end.

Has the government lost confidence in the board, or does it want to provide another lever to the employers? I would submit that this is the implication of this change.

There is just another digression I want to make from my prepared statement, and that is to indicate that, having listened to Dr. Kraut's testimony here, his presentation, I would say that he raised something very significant which, to my way of thinking, it would be interesting to hear what the committee's way of thinking is, and that is, what has the committee meant by dominant cause?

Even if you take a portion of what Dr. Kraut said here today, he said, in a multifactoral situation, how do you determine which factor was significant? I found it interesting that in trying to, in discussion between the minister and Dr. Kraut, there was no presentation of a methodology, a thinking behind this, which I think is one of the weak points of Bill 59.

You are aware that in the MFL presentation, they relied heavily on the King Commission. Well, at least with the King commission you could understand its methodology because they outlined the methodology there. They outlined what they were looking for. They outlined the pros and cons of their thinking, and they had majority and minority reports on it.

That is what is lacking in Bill 59 and what is causing so much concern to having been here for two days and having listened to the various presentations. I can still not understand the government's thinking behind this bill. What does become clear to me is that they are thinking about deficits, and they are responding to the question of deficit, but they are not responding to the question of other serious problems which have been raised here. Largely, those are the problems of injured workers. They are not short-term problems. A worker on compensation for a short term has very few problems. The problems you have are workers who are permanently disabled or permanently partially disabled.

I represent one individual who is permanently partially disabled. Because of that, for the balance of his life, he will suffer reduced earnings, yet even under the present act, there is inadequate

compensation for him. He has suffered permanent reduced earnings; he is going to suffer a reduced pension as a result of that. There is no proper compensation. When we criticize the bill, and in listening to all the labour presentations, it seems to be that is the common thread that the labour organizations have taken up, but there is no proper addressing of the situation as to the chronic serious problems which injured workers face. For a worker to receive a broken arm, be off work six months or whatever, I find very few problems from my dealings with the board. The major problems we have had, and even in the railways, are those workers who become permanently disabled, and that is where I get back to the problem.

The other problem the board has is that you cannot force any employer to re-employ someone, yet this man, because of his injury, has lost his ability to work. I have examples, within my own membership, of people who are now earning $5 an hour. The board has ceased any responsibility for them for various reasons. To me, unless you begin to address those problems, you are going to be under constant criticism. I do not think you are going to get around this question of an adversarial system.

I would like to give you at least one example. From what I have heard of the employers' presentations here, their main concern seems to be their assessments to the board. To me, that is an understandable position for the employers, but that also does not deal with the question of compensation because compensation has to deal with the right of making the injured worker whole, giving him the opportunity to live whatever life he can live.

* (1900)

The employers are very aggressive on the question of compensation. That is why the presentations here have been so sharply divided and I note, even in the questioning, sometimes so sharply divided. It goes to the extent that the employers try to distance themselves greatly from the compensation system. It has even gone to the extent that, here in Winnipeg, CP has put itself at arm's length from the compensation system in one small area. They have a parking lot on their property. It is owned by the railway; it is railway property. The parking lot, however, is administered by the unions. Within the confines of the compensation act, a worker hurt on his way into work on the parking lot can successfully claim compensation.

In the last 10 years, I can think of three cases there. Because the unions administer the parking lot, they have a contractual agreement with the railway. What the railway has done is put itself at arm's length on this question. They have forced the unions there to obtain an insurance policy so that, should any worker be injured on that parking lot, they seek indemnification for any compensation benefits they will have to pay.

Now we consulted with various people, we consulted with the board, Alan Scramstad, we consulted with a lawyer. It seems to be a loophole in the act, but it is interesting that there can be a cog that the railway can be found at fault for compensation and yet also seek indemnification for compensation. I raise that only as an example of the type of aggressiveness the employers have, an aggressiveness in a situation where they have had three injuries that I am aware of, all of a relatively minor nature. They have involved time loss but relatively minor.

With these remarks, Mr. Chairman, I will conclude my brief. The items I have addressed are ones which we think highlight the wrong direction Bill 59 takes. It is a direction which is detrimental to the interests of workers and codifies an outlook that a minimum of responsibility be shown to those injured, disabled, made sick or killed in the course of their working life. We ask that the specific sections we raised as of concern be deleted from Bill 59. They are not conducive to the government's stated concern to modernize the act and provide a fair and equitable compensation package for injured workers.

Your constituency is not the employers of Manitoba. As I have said at the beginning, it is the working people of this province who are the majority, and it is their interest, their well-being and their future you dealing with through legislation such as this. This is why we have argued so strongly that adequacy has to be determined from a particular perspective. If the bill passes in its present form, it will fail that test. As it is, the workers compensation system is inadequate, and if the provisions we criticize today are left intact, that inadequacy will be all the more. It will also have its courses in terms of what course unions must take in the future.

Thank you, Mr. Chairperson and members of the committee.

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

Mr. Edwards: Thank you, Mr. Michalchuk, for bringing your expertise to the committee. You have raised the question which we had earlier discussed with Dr. Kraut. I want to ask you to reflect for us, if you would, on what we should do in answering the question: How much does a disease have to be related to the workplace before we assess the employer for the full cost of that disease? In other words, the answer to the question: Who is best able to pay and who should pay? I point you to your own statement, "that historically, the workers compensation system has not dealt with the rights of workers in the truest and broadest sense. If this were true the adversarial nature of the present system and structure would be unknown."

That would be true, I think, if we paid for all injuries out of the general tax system. That would be more true if we had a general compensatory scheme similar to New Zealand, but we are assessing employers as one part of the tax regime. Can we do that for the full costs when only a small percentage of the disease may have been caused actually in the workplace. Do you have any thoughts on that?

Mr. Michalchuk: Yes, I do. I think, No. 1, that the presentation this afternoon made by the MFL suggested how we would like see that definition of occupational disease. It gets back to the dilemma that Dr. Kraut raised and his analogy with the batteries was very good. I do not think you are ever going to satisfy that question. I think that in the course of employment, if a worker succumbs to occupational disease and it can be shown that it is related to his work, then by all means, of course, the employers have to bear that cost.

As I understand the present policies of the board and under the present definition that the act gives, there is plenty of room for the employers to make their case that this is not so. We have dealt with cases like that where workers are denied their rights for claims whether it is correct or not. So I think that the concern that the employers are raising, and it is perhaps a bit of a scare tactic to suggest that they are being saddled with the entire burden, they are not.

Mr. Edwards: You made one comment I wanted to pick up on. You indicated that nobody can force an employer to take back an employee and you mentioned CP. You are obviously familiar with CP. I do not know if you are also familiar with CN or others. Are you aware of the recent Supreme Court decisions on that very issue with respect to injured workers, which do suggest an obligation to provide modified duties and includes those?

In that case, Crown corporations were found a sufficient link to governmental activity to include them under the provision of Section 15 of the Charter. Are you aware of those provisions? Do you have any thoughts on the impact of those on injured workers?

Mr. Michalchuk: No, I am not aware of the recent decisions you have referred to. I would certainly like to see them. I would certainly indicate to you that it would be interesting to compare these decisions to the type of philosophy of employment that CP Rail has.

CP Rail has a chart which it calls the physical requirements for performing various duties. In it, it lists your required ability to lift something and so on and so on, ability to stand eight hours a day, and it rates it in terms of a performance level. On the basis of that, they say there is no such thing as modified duties. There is certain limited protection within the collective agreement, but that is all. It would be interesting to see how the Supreme Court decision actually, if you say it does, force an employer to consider modified duties.

Mr. Edwards: I can assure you that it has far-reaching implications. I think that has already been recognized by a number of arbitrators. So I encourage you to take a look at that because it very clearly sends from the bench at least with respect to those employers who fall under the purview of the Charter, which is not all private employers, quite an obligation to modified duties. Thank you for your presentation.

Mr. Chairman: Thank you very much, Mr. Michalchuk. We are going to have to stop now and change tapes. Thank you for your presentation.

We will recess for a few minutes.

* * *

The committee took recess at 7:08 p.m.

After Recess

The committee resumed at 7:14 p.m.

Mr. Chairman: Could we call the committee back to order? I would call Mr. Robert Olien. Robert

Olien, would you come forward, please? Have you a written presentation to distribute?

Mr. Robert Olien (Private Citizen): Thankfully, no.

Mr. Chairman: Thank you very much. Would you proceed, please?

Mr. Olien: I thought you would appreciate that. No, I think the federation and the City of Winnipeg have done well enough on that. I have to apologize, I have not been able to spend a lot time on this particular piece of legislation because Bill 70 has been sort of occupying our mind.

Just to let the government know, we served notice to commence collective bargaining last week on the master and component agreement, so let us see if we can get it right this time.

Anyway, dealing with this particular piece of legislation, I am not going to comment in great deal on the bill itself in a lot of sections, and I hope you can hear me. When I go to the bargaining table sometimes, because we get issues that the membership seek to be improved and sometimes we find out through the course of discussions maybe that is not the way to go, we take the honourable approach and get rid of the damn issue. We do not try to waste a lot of time with it.

It is sort of tantamount to jumping on a jet plane and leaving for Hawaii and you discover that you have not got enough fuel to get there. Well, basically common sense would tell you, you do not continue on with the journey, you abort the mission. In other words, you do not amend it, you cancel it. So my advice on that point is necessary. If something is wrong and you do not understand what you are doing, for Christ's sake do not do it. Have the common sense to get out before you do too much collateral damage.

I would like to start off with how serious is the government about really doing something in terms of injuries and compensation, other than putting maybe more roadblocks and aggravations into a system that workers have to deal with. It is tough enough even in its present form.

Fundamentally, I really believe that the real issue here—and it has been said not by me, it is no divine revelation—is accident prevention itself whether at a workplace, in some manufacturing plant or out on the farm where we know that people get killed. Children, farmers, their wives, the farmers themselves lose their arms, lose parts of their bodies through farm accidents. It is no fun when it happens to anybody, whether you are at a plant, some chemical company or on a farm accident. It is tragic and you never forget it, and it is traumatic to all those that are connected with it. So we really have to, I think, put the prime focus on preventing this stuff from happening as much as we humanly can and in a meaningful way.

I think there is something really that seems to get overlooked a lot of time. We spend a lot of time talking about the detail of the legislation, passing regulations, this form to follow, that prescription and that prescribed form and go through these hoops and all that. I think if we could try to knock out accidents as much as possible, we would be going a long way and maybe free up some money to help people.

An example I like to use, if I assault someone. Say I injure someone deliberately, disable that person, cause that individual to not ever be able to work again, what would happen to me? Well, I imagine I would be visited by one or two police officers. I would probably be arrested, probably then charges would be laid. I would go to jail, prosecution, the whole schmear. If found guilty, definitely I would probably go to jail about something that serious, and if it was something that serious, that kind of an injury, I would be no doubt as I said sent to jail, denied my freedom, probably forced to make restitution to the person I have injured and perhaps their family. This would be considered, I would think in normal society, to be probably just and proper to do so.

When an employer, say a large or even a small corporation or company, causes serious injury to one of its employees because the employer knowingly—and I want to stress these words—and wilfully caused an accident to happen, or at least created the environment to allow the environment to exist for an accident to happen or to set up that framework knowingly. I am not talking about somebody who was not aware and has not tried to make—what I am saying, situations as an example, an airline company which falsely records maintenance on its aircraft. The aircraft crashes and the accident was found to be caused by maintenance not done, even though it was recorded in a maintenance log, but if we found that it was not done. We have recent cases like Perimeter—if I am not mistaken and I apologize if it is the wrong company—falsely recording maintenance data in

their logs. This is not new, it is part of the deregulations syndrome in business, I guess, work not being done are recorded as being done.

So anyway, say this has been accepted as company policy, do it. We have got to get the aircraft flying, take a chance. You may be taking a chance on a government aircraft if you fly it, by the way, too. Well, in essence, say the pilot and others on board are injured or some are killed, the pilot, maybe another employee, a co-pilot, being employees of the company, what occurs now? Well, in essence, what we have here basically has been an assault on the employees, but I suggest the police will not visit the company owner. They will not arrest that owner, they will not put that owner in jail, they will not charge that owner with assault or murder, they will not go to criminal court, they will not go to jail, and probably will not even be required to make any restitution.

What happened to the employees? Well, the ones who are injured will, no doubt, I would think may be qualified for Workers Compensation benefits; and those that are killed I think they give them 6,000 man days or person days, whatever it is, and they write it off as a 6,000-day accident, too bad, goodbye.

I wonder what would happen if we are really seriously thinking about doing something, if the company owners or chief executive officers or the principal shareholders were criminally charged, and if convicted were sent to jail for six months, three years, 20 years in the case of a death. Would you not think that an employer's attitude towards safety, accident prevention, its use of chemicals, processes in the manufacture that are dangerous, do you think that there would not be a dramatic change if they knew what may happen? Finding a company, especially a large one with substantial financial wherewithal does not mean a whole lot. It could mean one less Blue Jay game at the Sky Dome, but not much more than that.

* (1920)

Employers who knowingly cause or allow to be caused injuries or deaths should be charged as criminals and quite frankly treated as such. We do that with drunk driving laws, we are trying to put it in that sort of a fashion where you cause injury, do we not? If you injure somebody in the operation of a motor vehicle, you can be charged—why not, because it is serious. Well, what is the difference when it happens at work? What fundamentally is the difference?

There was a case in the United States—I cannot remember the name of the company, because when Ronald Reagan became president, he started dismantling OSHA, Occupational Safety and Health Act, in the United States. He started putting less emphasis on enforcement. I believe there was a state that decided to take the position to prosecute a company for chemically killing, I believe, four of its employees or some of its employees—and I may be wrong in the data, but I distinctly remember that four executives of this company I believe were jailed in one of the states. They said because, if OSHA is not going to do their job, maybe we have to find a way to do it. Because, until that happens it is my experience with safety, at least it leads me to the conclusion, unless the top dog or the company feels the pain, the top guy feels the pain, nothing much will be done for employees who are suffering the pain.

Think about even in government, we talk about industry, we tend to forget that sometimes the government, the largest employer—and as we find out through Bill 70 larger than anyone ever imagined. Now they are actually taking credit for being the government for everybody.

There was a Dutch elm crew around Carman, I remember, the winter before last, a very cold winter we had in January or December. The temperature was running anywhere from 35 to 40 degrees below zero. There was a crew of workers, about five in number, all cutting diseased Dutch elm trees in a yard just outside of Carman. They had no equipment. Their boss did not want them to have any, quite frankly. They were in snow about three feet deep in places. They were cutting diseased trees, no loaders, no Caterpillar-type machines to get the job done better and a lot easier on the employees. They were struggling to do their work because their boss, sitting on his tush in Winnipeg, is expecting so many trees cut per day, but he did not want to give them any equipment.

So we have here a situation—this is a government operation, you would think it would be setting the example, as they like to do when it is convenient—exposing employees to freezing weather conditions, exhaustion, the danger of trees falling on them and no bloody equipment around. One fellow was playing around with a three-quarter ton Ford truck that they bought to clean the Dutch

elm disease yard just outside of Winnipeg, but these guys could not have equipment to do their job. You raise that and nothing seemed to get done. I hate to say that, but it does happen.

So preventing accidents, there will be a lot less injuries, less walking- or not walking-wounded anymore, less crippled people. People are basically healthy, working, contributing to society with their friends and their families, and one could go on a long time about that, because the damage is serious. I did not intend to get onto that vent this evening, but as I was sitting by listening to all this, it reminded me of when I was out in Montreal many years ago and got into this subject and it sort of came back to me on that. That is why I wanted to raise it because I think something should be looked at if you really want to do something about it.

I am not talking about persecuting employers who are trying to do their job, but there are some who—any company that will falsify maintenance records on aircraft that they know people are flying, I would not trust them to adjudicate claims, quite frankly.

There is one issue in here also, I think, is another interference, basically, implied with the collective bargaining process again. We have the same Minister of Labour, I believe it is Darren Praznik, who is bringing forward this bill. Correct me if I am wrong. He is also the same minister responsible for The Labour Relations Act. Now this bill, 46(1)(b) makes references to who? An employer making an application to the board. Notice that? An employer. It does not talk about the parties to a collective agreement anymore. It talks about the employer making the application.

So what I would understand that to be, but if the purpose of The Labour Relations Act, Chapter L10, is to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and unions as the freely designated representatives of employees. That is the purpose of the act.

The Crown is bound by the act, and the act also provides under 6(1) of The Labour Relations Act—so I hope the minister has a look at it or his legal counsel—"Every employer or employers' organization, and every person acting on behalf of an employer or an employers' organization, who participates in, or interferes with, the formation, selection, or administration of a union, or the representation of employees by a union that is the bargaining agent for the employees, or contributes financial or other support to a union, commits an unfair labour practice."

So there may be—I am just throwing that as a suggestion, before it goes too long—you may be in breach of, the same minister is bringing one act, may be breaching another act somewhere down the line.

One thing I find almost, and I am going to end off on this part finally, is this delegation to employers under 109.5(1) where they seem to want to say we can contract this out, and there are a lot of people looking for consultants' fees. I mean, somebody mentioned, I think, with Boeing or something that some firm is in there. Well, you do not have to go to Boeing, you can look at the government of Manitoba, because they entered into a firm with a group of, I believe, two former Workers Compensation Board employees to work for the provincial government doing some "claim management work." So you can see the writing on the wall.

I see in the paper that it is quoted, that the minister says, this is the Winnipeg Free Press of July 19, today, reference to Praznik defended a version that would allow the Workers Compensation Board to let employers adjudicate compensation claims in some cases. He said affected employers, mainly large companies distant from the Workers Compensation Board's Winnipeg head office will only have the authority to approve claims and not to determine the amount of benefits.

Well, I know I am not a lawyer, but if I read the act, it does not say this applies only to companies distant from the Workers Compensation Board's headquarters such as Inco or something or Manfor or Repap or whatever the term is. It does not say that. It just says the board may delegate its powers under this act to an agent or local representative for the purpose of receiving applications for compensation, reports of accidents, physicians' reports and such other proof of claim as the board requires.

Now, I think that it is kind of interesting that the Premier (Mr. Filmon) of the province is quite upset these days. He seems willing to give away confidential, possibly physician reports to employers, when the Premier is taking great exception to even having the qualifications of people who apply for government jobs say, hey, that is

privacy. That is an invasion of the privacy of these individuals. This is the Sun, I know it is the Premier's favourite paper these days.

I find it sort of—the conflict that rages on about this sort of stuff. Here we are willing to put in a bill to pass out medical information to employers, you know, by one minister and then the Premier saying, hey, you cannot even find out who applied for the job and what their qualifications are. Quite frankly, it is sort of—the inconsistency does boggle the imagination.

I am almost finishing. I know you guys want to go home. There is one way to do it, withdraw the bill, we could all go home.

I think, quite frankly, giving employers—is really asking a lot of people. Boy, you talk about letting the fox into the hen house, not only are they going to—they are also like having intercourse with the hens now, but this is almost insane. I mean, did you just get back from Mars or something that you forgot what the world is really like? I mean, there are some good employers, freely granted, but, by God, there are a hell of a lot of crappy ones out there too. You know, you have been expecting a lot of people to give that kind of information to employers. Can you imagine the employee who is maybe afraid of working for a department to say, I have got to go back to this employer and this employee is going to adjudicate my claim?

You know, this is like letting the Quebec Provincial Police determine if the Mohawks were guilty in the Oka crisis. I mean, that is as bad as that. It is like opening the door to intimidation on a scale, I think, that has not been seen for many years. I can see it, the next move to have the human rights code contracted out to maybe companies, that maybe they can do their own adjudication of human rights complaints.

I can see some individual employee who wants to make a complaint against sexual harassment against their employer and found out, oh, the employer has been designated to adjudicate its own claim and they will determine whether there was an assault. I can see mining companies, if they were given that authority to determine their own procedures with their polluting Shoal Lake which there was a lot of concern about that right now. What if the mining company says, hell, no, we are not polluting Shoal Lake. We have investigated the complaint. We have determined we are not polluting. Well, we do not accept that, do we?

Why are we doing it here? If you really have that much trust, why not, you want to let somebody determine whether they are eligible for benefits, for Christ's sake let the people who got hurt, let the employee determine that he is eligible and then we will find out what the employers say about that.

* (1930)

So, in closing I think what I have heard of the presentations from the federation, I think it was very well done. I am not going to be as excited as Brother Cerilli was, mainly because I am too tired. I think maybe the best thing to do with some of these bills, as I said on Bill 70, it belongs in the shredder with the authors and its supporters. I do not think we will have to go as far as putting it in the garbage.

I would like to thank you very much and wish you a pleasant evening. If there are no questions, I am gone.

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

Mr. Ashton: You do not get off that lightly.

Mr. Olien: I thought you would be lucky, too.

Mr. Ashton: No, it is all right. I will not ask extensive questions. I know it has been a long process.

Mr. Olien: It came close, but I am still married.

Mr. Ashton: That is right. I just wanted to thank you for the presentation and basically take—I know your position on the bill, which is to get rid of it—your major concern as expressed to this committee is the fact, as I understand it, that this is going to introduce a whole new series of adversarial relationships between the employers and the employees by involving employers in a lot of areas they have never been involved in before.

Mr. Chairman: Mr. Olien.

Mr. Olien: I was going to say I could save you the trouble and just say Mr. Olien myself and save some time.

Yes, I think so, because basically the more stuff you put into legislation or regulations and stuff sometimes, unless it is so clear you can totally understand it, it is going to cause, I think, more litigation. This is not because I have had a detailed look at it, but I know any time you put more things that are confusing it is going to cause additional costs to, obviously labour organizations. We know that. It is also maybe into employers organizations are going to be an additional cost. We may have disputes between unfair labour practice cases going

before the Labour Board because of this bill. I am not saying it will, but I am suggesting that there is a possibility. We are going to have a lot of fights.

This does not, I think, speed up the process. I find that it is tough enough dealing with the board under what it was before, and I did not have a lot of experience with it. I did have some and I think that if the board for one thing wants to speed up the process, well then, obviously, if it needs more distant offices outside of the city of Winnipeg, you moved the Communities Economic Development Fund up there, perhaps you can open an office in the northern communities or wherever they are not there and employ some people out there so there is contact close at hand. This thing is just a big consulting game that is going on right now on the consultant part.

In answer to the question, yes, I do not see it as helping, not from what I know of it anyway, and that is not as expert or as good an opinion as you have heard from some others, because I have not spent the time on it. Is that it? Thank you very much, gentlemen and ladies.

Mr. Chairman: I call now Mr. Howard Rapper. Is Mr. Rapper here? Would you come forward, please, Mr. Rapper.

An Honourable Member: Raper. I do not think it is M. C. Hammer.

Mr. Chairman: I understand it is not Rapper, it is Raper.

Mr. Howard Raper (Communications and Electrical Workers of Canada): That is right.

Mr. Chairman: Have you a written presentation to distribute?

Mr. Raper: I do not have a written brief to distribute. I only have some notes that I hurriedly made up after I was notified just earlier this week about these hearings.

Mr. Chairman: Will you proceed, please.

Mr. Raper: Yes. My name is Howie Raper, and I am here representing members of the Communications and Electrical Workers of Canada. In Manitoba here, we represent some 2,000 employees at the Manitoba Telephone System. They are basically the clerical and telephone operators group, so they are also over 90 percent female membership.

In reviewing the document that I was provided as a draft to review on this, I kept looking at it and wondering, how does this relate back to the history and the principle of The Workers Compensation Act when it was first formed? Now my understanding might be incorrect, but my understanding of the original principle of workers compensation—someone earlier referred to it as a social contract—was that it was to replace the income of people who are injured or made ill by the workplace.

In the trade-off, labour per se agreed that there would be no lawsuits related to injuries in the workplace. My understanding, too, is thatthere was going to be some remuneration for ongoing impairment which some people reflect might be for pain and suffering and that there would be a system set up that was nonadversarial. That is my understanding, that the system was originally devised to be a nonadversarial system. Another proviso was that the unions made a provision that there would be no strikes related to this act. In other words, people being hurt or injured on the job would not precipitate strike action.

(Mr. Ben Sveinson, Acting Chairman, in the Chair)

I feel, over all, in the preface, that this bill does not go in that direction at all, or does not improve it to more fully fit into that principle or those sets of principles but in fact goes the other way. As mentioned earlier, one of the biggest concerns of many of the presenters today is that it is going to make it a much more adversarial system than it has been, even in the past. The question seems to be being raised by employers—I am not sure, I have not seen enough of their documents, but from what I have heard, it appears that they are saying there are too many people claiming workers compensation who do not merit that compensation, therefore, we have to tighten up the system, and this is how we are going to make the system more financially responsible.

The first question I would ask is: Does the Workers Compensation Board currently cover all valid injuries and illnesses that are caused in the workplace? I would propose that that is absolutely not the truth, both from my own personal experience, the experiences of my members that have been related to me and by studies that I have seen where people have investigated as to whether the workers compensation system is actually paying for work-related illnesses and injuries. Every study I have seen says that it nowhere near meets the

mark of the actual costs of those illnesses and injuries that are caused in the workplace.

A good reason why they are not covering all the illnesses and injuries, besides the ones that I have heard related today on claims being denied, there are quite a number of claims that are never submitted. I know of many in my own experience, I have encouraged to file a workers compensation claim because they were clearly injured in the workplace, and they told me, I am not about to file a workers compensation claim. Why? Well, if I go on sick leave, I continue to get my pay cheque, because I have paid sick leave benefits in my account with this employer, and I can continue to get my pay cheque without any hassle.

Of course, the second reason is the red tape. You have to fill out a report, you have to notify your employer, you have to go through the adjudication process. They are not about to do it. It is much simpler for them simply file for a sickness leave of absence. I have warned them about the danger in case of a reoccurence or serious implication in the future. That does not seem to matter. So workers, on their own volition, are not and in fact are refusing to file claims. Now, I heard from some representatives here who say that employers are intimidating. I have not had any experience with Manitoba Telephone System where I could say that that particular employer has ever used any intimidation tactics to encourage people not to file, but the people themselves are not filing.

* (1940)

So my position is and my point is that the workers compensation claims are far less than what they actually should be, even not counting the ones—the valid claims—that are ruled invalid by the board for whatever reason.

It sounds to me like the employers are now attempting to escape from their obligations under the founding principles, that they will pay, through their assessments to the Workers Compensation Board, for workplace injuries and accidents that happen in the workplace. I really can see, as we move down that road, that we are going to go into a much more adversarial approach.

Brother Cerilli related to you some of the court settlements. I would be very concerned if, because of the exclusions that have been outlined in this bill, that we move into court cases and the Supreme Court eventually rules that yes, these cases are not covered under The Workers Compensation Act, for no valid reason, so therefore you can sue your employer. I would say that the cost of liability on insurance of many of the employers, who have made representations to you, would skyrocket.

I am particularly concerned about—and I might say that I do not intend to go into a lot of detail. You have already put up with that from a lot of presenters. I, myself, have not had the time to research this in depth. What I am merely going to do is comment on the ones that jumped out at me when I read through the document.

The first one that I want to mention is the exclusion of stress as a compensable illness or disorder. Enlightened employers are now recognizing occupational stress. In my own instance, I have been working with the management of the Manitoba Telephone System on a pilot project for the past five years in which we are—they have definitely identified in many documents that part of the problem that we are dealing with is occupational stress. We have a project going in which there are job rotation procedures, there are job enhancement procedures being brought into the workplace. My members are very pleased with the improved working conditions and, to me, we are working in the right direction. We are attempting to eliminate it.

If you put into this bill that occupational stress will not be compensated, you are taking a great incentive away from employers to deal with this issue. They will not be bothered.

The payment of loss benefits in Section 4.2 on Page 4—I would just like to talk about the principle of income. I do not feel that the benefits outlined in the overall package are meeting the principle of compensating for actual loss of income. I recognize when we talk about gross income, that yes, some employees are actually collecting in their pocket more money than if they were at work. I would also suggest to you that unless you are going to replace that with 100 percent net income, that the employees affected are going to get less money in their actual pocket.

There are several reasons for this. There has been some talk about expenses of going to work, that it is an ongoing thing and you no longer have to do that. If you work in an office where you need a shirt and tie, you no longer have to wear a shirt and tie. You can run around in your T-shirt at home. That is true, but on the other hand, in the case of a permanently or even temporarily, totally disabled person, who is going to cut your grass? Who is

going to paint that fence? Who is going to shovel that snow? You may have other expenses that you would not have if you were able-bodied.

There was some discussion earlier, and I listened with great interest to Dr. Kraut in discussion about Section 4(4) on page 5, about dominant cause of disease. I believe that whoever authored this definition of what should be compensable and what should not, they must feel that there is a King Solomon over at the board to determine whether this dominant cause is a cause caused by the workplace or some other factor in a person's life.

My own personal feeling on this subject of dominant cause is that we should be asking the question, was the occupation or the environment at the workplace a contributing factor to the person's condition? If it was, then—now many of my cohorts might say, well we should pay 100 percent, and have the employer pay 100 percent. I would be even willing to say, let us have the contributing factor determined and a percentage settlement based on that contributing factor. But the way the dominant cause language is written, it is an all or nothing situation. I just cannot see the wisdom of that, and I certainly cannot see how any medical person or any other person is going to be able to determine whether this is, or is not, caused dominantly by the workplace.

I will now refer to Section 29 on page 14, and Section 38, page 20. There might be, and in fact, I am sure, elsewhere—reduced benefits to worker and family if the person is over 45. This is for an injured, disabled or killed worker over the age of 45. I do not see this, again, as living up to the original principle of relieving an injured worker and replacing their income with their actual loss. Now, on the one hand the employers apparently argued that a calculation based on gross income cannot be, that that is an overpayment and it is a disincentive to go back to work. To reduce somebody's benefit because they are over age 45 certainly does not meet the principle of any kind of a justice system in which the principle is that you replace the loss, dollar for dollar. I fail to find any reason for this.

* (1950)

The other point that I want to point out on this age factor, is that in the age—especially the age 45 to 65, those are usually the peak of any working person's career. Certainly, on some occasions people do have reduced income in those years, but in the vast majority of working people, from age 45 to 65 you are at certainly the peak of your abilities and skills and knowledge. I do not see how the Workers Compensation Board could put a lesser value on you simply because you are—mind you, I am in that category and I feel that I am worth just as much, in fact, maybe more, than I was at age 44. Why someone is worth less because they are over the age of 45, I just fail to see the reasoning. In fact, I would like to hear someone on the committee explain that to me, if that is possible.

The lump sum payments—there was a lump sum payment mentioned of $45,500, I believe. I do not have the document to actually refer to, but I did take that figure, and this and many other of the dollar amounts that are mentioned in this act will not stand up to the test of time. We have seen it in the minimum wage system. We have to have some indexing to make it realistic; otherwise, this act is going to have to be reviewed and reviewed and reviewed to be updated. Why do we not index that figure, that dollar amount, and other dollar amounts that are in there, to make them continue to be relevant?

I did an indexation. If the cost of living increases over the next ten years at an average of 5 percent, the buying power of that $45,000-whatever becomes under $27,000 ten years from today. So it becomes outdated very quickly, and I would suggest to you that any of these figures need indexing.

Another example of where this bill fails to live up to the principle of compensation for lost income is in the second year reduction. After two years, the reduction is down to 80 percent. I am fully in support of 100 percent net. I am very happy to hear that the Canadian Manufacturers' Association is in support of this. I see no reason why it should be 90 percent net. As I said, any financial gain related to travel to work, or the cost of going to work, could probably also be offset by added expenses of people who are forced to be at home and not able to do the things at home that they would normally be able to do.

Another example of where this bill moves away from the principle of coverage for all industrial accidents and illnesses, is Section 9(7.1), I believe it is. You all know what I am referring to; it is the exception of the motor vehicle accident. Why is the government proposing that the funders of this workers compensation, who are incidentally the employers, be unloading the costs of these accidents and injuries onto the customers of

Autopac? You and I who pay our Autopac premium are going to be paying the cost that would otherwise be paid by the Workers Compensation Board funders, that is, the employers. So this is another example where they are not living up to the principle of funding the cost of industrial accidents. They are going to unload them onto the Autopac customers.

(Mr. Chairman in the Chair)

The other glaring thing that came out at me, and, of course, was reported in the media, is 101 on page 55, employers access to files, including medical files. Again, it is encouraging an adversarial approach, as someone earlier pointed out. It is going to see an increase in these parasites who are going to make all kinds of claims to employers that they are going to save them money. In the meantime, these people are going to be going to every appeal that is possible, and they are going to be bogging down the system and that system is going to slow down. The administration costs are going to dramatically increase, and you are going to find that the overall costs of funding it are going to skyrocket again.

Again, it is moving away from this principle of having an independent body who is supposedly quite neutral, rule fairly on compensation cases, as to whether they are valid or not valid. We are getting into an approach where we are going to have the Workers Compensation Board working like the labour relations board where we have two adversaries with hired lawyers getting in there and giving it their best shot on each side, and the board attempting to make some kind of an independent ruling. Is that really what we want? I do not think—that is certainly not the original principle. It was supposed to be nonadversarial, and here we are going at it like we do arbitration cases. I do not see where that is going to gain anybody anything, injured worker or employer anything.

The medical information has always been held in the highest respect. Most people feel that is something very close to themselves. In fact, many people would not reveal information to their spouse, to their children, to their parents, and yet you are saying that it should be freely accessible to the employer. I think it is really downgrading the respect that society usually has between a doctor-patient relationship, and I again would like to ask a question of the committee and maybe it is not proper to do so, but it is certainly a question in my mind: Where is the College of Physicians and Surgeons on this issue? Have they been consulted on this issue? I have heard them speak time and time again about the sanctity of the doctor-patient relationship.

I know in any dealings that I have had with claimants, I have first had to go to the individual and say, look, to work on this case, I need medical information—are you willing to have it released to me? They have that right of saying to me, no, I am not releasing that information to you. Even though I am acting as their agent, they have a perfect right to say no, that medical information is between me and my doctor. I have to give it to the board because they are making a ruling on it, but I do not have to give it to my agent or advocate. That is up to me to decide whether I want to or not. Now, you are saying to this same person, well, you have the right—and this is my understanding of it, maybe I am incorrect—to deny that information to an agent, an advocate, a worker advisor, a union representative, but you do not have the right to withhold it from your employer. I do not believe that is a fair system at all.

I recently read an article in the Winnipeg Free Press. It was this spring and I have not got a copy of it with me, but it stuck in my mind so, so much that I do remember all the relevant details, and I would just like to relate it to you again. There was a person working in a plant, a recent immigrant from Ethiopia. He was working on some kind of a cutting machine that had no machine guard on it, and within a very short time he unfortunately got his hand caught in that cutting machine and lost the hand, and of course, filed a workers compensation claim.

* (2000)

The Workplace Safety and Health division on hearing of this accident went down to the place of work, found that the employer had no guard on that machine, that they were running a dangerous machine, and fined the employer $1500.

The essence of the statement that the employer made to the reporter was, where does the Safety and Health division get off fining me $1500 for an unguarded machine? Do they not realize that I am a small operation and I simply cannot afford a fine of $1500? That might be okay for Inco to be able to pay that kind of an amount, but certainly not me.

I am afraid that in Manitoba that is the kind of sentiment of many employers. I am happy to say that is not usually the sentiment I hear from the employer I deal with, but in talking to other union

officials, and indeed, just individual working people, including my own son, that is the sentiment of a lot of employers. I think those are the kinds of employers that unfortunately the authors of this bill have been listening to, not the responsible employers, but the irresponsible employers.

I would respond to that: What about this man? He has lost his hand. I will bet you any money he has lost his job, and what you are doing in this bill is taking away his rights to future benefits, to rehabilitation, to a decent living in the future. I urge the members of this committee not to amend this, but to throw it out.

Thank you for your attention, I know it is very late in the day. I hope I was not too long.

Mr. Chairman: Thank you, Mr. Raper. Any questions? Thank you again for your presentation.

I call next Mrs. Jeanette Breman. I understand that she has left a presentation for us. Then I would call next Allen Ludkiewicz, solicitor for Canadian Pacific Limited. Mr. Ludkiewicz, have you a presentation for distribution?

Mr. Allen Ludkiewicz (Regional Council, Canadian Pacific Limited): Yes, Mr. Chairman, I do.

Mr. Chairman: I will ask staff to distribute. Mr. Ludkiewicz, you may proceed.

Mr. Ludkiewicz: May it please this committee, Canadian Pacific Limited—Canadian Pacific or CP—and its subsidiaries wish to express their appreciation for the opportunity to present their views to this committee on Bill 59, the proposed legislation to amend The Workers Compensation Act.

We have wide and varied experience on a daily basis with Workers Compensation Boards in all jurisdictions of Canada and outside Canada as well. Canadian Pacific employs a total of 57,884 people in Canada, 3,551 of whom work in the province of Manitoba. Worldwide, Canadian Pacific employs a total of 72,167.

Canadian Pacific Limited and its subsidiaries have membership in the Winnipeg Chamber of Commerce and representation on the Manitoba Employers' Task Force on Workers Compensation. Canadian Pacific Limited shares the views and strongly endorses the efforts of both the Winnipeg Chamber of Commerce and the Manitoba Employers' Task Force on Workers Compensation in studying, recommending and supporting the proposed legislation as a whole. There are, however, certain areas of the proposed legislation which Canadian Pacific Limited wishes to comment on with a view to recommending further changes which would further improve the Workers Compensation legislation in Manitoba.

While it is not necessary to review in detail the history of Workers Compensation legislation development, CP considers it important to emphasize some of the basic principles upon which Workers Compensation was enacted.

Based on a report by Sir William R. Meredith, Chief Justice of Ontario in 1915, and acting under a Royal Commission, it was recommended that employers should give up their defences and pay all work-related injury claims whether there was liability at common law or not, and, on the other hand, employees should accept less than perfect compensation. To apportion the costs of compensation over industry at large and to avoid crippling any one industry, the mutual insurance principle was proposed and the basis of Workers Compensation as we know it was instituted. This important principle has subsequently been restated by many committees of review or task forces regarding Workers Compensation in various provinces.

Mr. Justice Sloan in his 1942 report, first of all, on the British Columbia Workers Compensation Act stated: Workmen's compensation legislation is not—and I stress the negative aspect—a system of unemployment insurance. It is not health insurance. It is not an old age pension scheme. It is simply a form of insurance against fortuitous injury.

A more recent statement was that of Mr. Justice W. D. Roach as quoted by Mr. Justice McGillivray in his 1967 report (2) to the Government of Ontario 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.

It is Canadian Pacific's submission that, overall, Bill 59 is a fair and reasonable benefit program for both industry and labour. It is legislation which fulfills the compensatory-driven purpose and objective of the workers compensation scheme while further refining the compensation claim process to provide fairness and equity in the application of the act to employers and employees alike. We acknowledge the positive action of this government in commencing the process of review of the workers compensation legislation with the establishment of the review committee.

CP attended the public hearings held in 1986 and made submissions on matters CP recognized were interfering with the accepted objectives of the workers compensation legislation. CP was concerned with the board's financial accountability, its structure, the definition of "accident," the method of calculation of compensation benefits and the current permanent disability pension system. We further acknowledge with our appreciation and thanks the dedicated efforts of the government, the minister, the Legislative Review Committee, the Compensation Board and this committee, its members and the public who now participate in this final stage of the process of transforming recommendations into a new and improved compensation program for workers.

There are, however, in Canadian Pacific's submission further matters which we urge this committee to consider before making the appropriate amendments accordingly before this bill becomes law. With these general comments Canadian Pacific would like to state for the record the specific amendments supported and point out certain sections which require further changes.

* (2010)

Amendments supported: The specific sections of Bill 59 which Canadian Pacific supports are as follows:

(1) Section 1(1), Defining "occupational disease" as excluding ordinary disease of life and stress, other than acute reaction to a traumatic event.

(2) Section 1(1.1), Restricting the definition of "accident."

(3) Section 4(4), Requiring the occupational disease to be due to employment as the dominant cause.

These items limit the compensation to a clearly definable work related accident which adheres to the stated principle and objective of Workers Compensation.

(4) Section 27.1, Limit or denial of a further claim where the board has requested the worker not to engage in the same work due to the likelihood of re-injury.

(5) Sections 38 and 39, Institution of an awards scheme for compensable injuries which recognizes both loss of wages and, in addition, an impairment lump sum award where there is permanent impairment to some degree. This two-tiered award system will be more equitable to injured workers in compensation for injuries actually suffered, but also, it will encourage rehabilitation and return to the work force. An objective that must be the goal of every worker injured on the job and it also must, in a competitive and productive society, be the goal of the legislation.

(6) Section 40, Loss of earning capacity which will be automatically indexed annually using the indexing factor determined under Section 47.

(7) Section 41, The integration/offsets of other benefit programs which will prevent the "stacking" of benefits. In addition, CP supports the sections which provide for increased maximum insured earnings and revised Fatality Benefits.

(8) Section 101(1.2), Employer's access to all relevant information which will now include medical information when the employer is requesting reconsideration of a decision by the board or appeals to the appeal commissioner.

Now, I will deal with the amendments and changes required or requested by Canadian Pacific.

There are existing or proposed sections of the act which Canadian Pacific maintains should be reviewed at this stage and changes made in order to allow for fair and equitable administration of the compensation program for the employer as well as the employee. Canadian Pacific maintains that these changes are reasonable and do not adversely affect the statutory right to compensation of workers injured or incurring an occupational disease. These sections are as follows:

(1) Section 67, Medical Review Panel: Currently, the employer has no right to request a medical review panel and, therefore, is denied a basic right where it feels there is a conflict in medical evidence. The right is granted to a worker under Section 67(4) of the current act.

It is a must that employers be granted an equal right in being able to request a medical review panel.

(2) A new section required, Medical Examination: One other area of concern to employers is the medical examination of an injured worker. Currently there is nothing in place for the employer for valid reason to request that an injured worker be examined. It is suggested that a section be added to Bill 59, 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.

(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."

This would eliminate some cases of "doctor shopping" and render a second opinion to the board as well as to the employer. In personal injury actions, civil rules of procedure permit the party opposite to request independent medical examination. This right is given to protect against the "sympathy medical report" or the situation where the condition of the injured worker has been misdiagnosed. Such a provision benefits both the injured worker and the board. It protects against those claims where the medical report clearly, for one reason or another, is wrong.

It has the potential also to assist the injured worker who may be treated and diagnosed by a member of the medical profession who is not qualified to handle the type of injury suffered by him or her. This procedure permits, at the employer's expense, a medical examination by a doctor held out to be an expert in the particular medical field involved.

A third point, Section 68(1)—Regulations of the board of directors:

Canadian Pacific submits that paragraphs (b), (c), (i), (j), (k), (l), (q) and (s) affect the interests of either labour or the employer or both, and accordingly, prior to their enactment as regulations, a forum for public consultation should be mandated in order to receive the input and comments of the two groups affected. Therefore, Canadian Pacific suggests the addition to subsection (1), the following:

Provided that, except in circumstances considered by the board of directors to be of emergency nature, in the development of regulations under this act, the board of directors shall provide an opportunity for public consultation and seek advice and recommendations regarding the proposed regulations."

A provision of this nature would give both labour and industry an opportunity to point out their needs and provide their views to the board while at the same time permitting the board of directors the opportunity of receiving those views, studying them, analyzing them and drafting their regulations accordingly, having in mind the representations of the interested parties and the practical application of those regulations.

Fourth recommendation, Section 81(1)—annual assessment for accident fund: Canadian Pacific will continue to deposit funds with the board as a self-insured or deposit account for compensation for specific accidents and payment of administrative charges. CP, therefore, now pays the total cost of compensation for each one of its injured workers. We note, however, that Section 81(1) proposes to create and maintain an accident fund through annual assessment of employers from each class to provide a stabilization fund to meet costs arising from an extraordinary event which would unfairly burden employers in a class, subclass group or subgroup in the year of event. That is Section 81(b).

CP repeats, it is a deposit account and pays the total cost of compensation, including administrative costs relating to an injured worker. It opposes such a provision as applied against it or any other deposit account since the effect of this subsection will be a penalty not a surcharge on its assessment. It pays the whole bill up front.

In addition, Section 81(c) proposes to establish a fund to meet the part of the cost of claim of workers that, in the opinion of the board, results from 1) pre-existing or underlying conditions; 2) an occupational disease, where the exposure to the probable cause of the injury occurs outside Manitoba; 3) a loss of earnings from an employment other than that of a worker's employer at the time of the accident; 4) an increase in benefits under subsection 45(3), 45(4) or (5) such other circumstances as the board determines would unfairly burden a particular class, subclass, group or subgroup.

* (2020)

Canadian Pacific submits this proposed legislation will in effect provide benefits for injuries or conditions not related to the workplace, and not related to the employer or class of employers actually providing the benefit. It is Canadian Pacific's further submission, a fund established for the purposes outlines in subparagraphs 1, 2 and possibly 5, depending on the circumstances determined by the board, will place an unjustified and inequitable expense on the compensation scheme and its stakeholders, the employers.

The present section concerning pre-existing conditions is Section 42. That section requires some nexus between the injury and the pre-existing condition. The same sort of wording must be present in Section 81(c)(i). With regard to subparagraph 2 of Section 81(1)(c), it is the position of CP that employers should not be responsible to pay for any condition caused to a worker outside of Manitoba. Such condition if suffered in the course of employment should be the responsibility of the Workers Compensation Board in the locale in which the injury arose. Once again it must be stated that workers compensation legislation is not a social benefits package plan; it is a compensatory scheme.

5. Amendment 21—This deletes current Sections 28 to 49. With the deletion of Sections 28 to 49, Sections 42(1) and 42(2) of the current act will be deleted. These sections deal with compensation for pre-existing or underlying conditions. As urged in Item 4—that was back on the preceding page—referring to Section 81(c), these sections must be retained.

Now I will go to my conclusion. Changes to be made to The Workers Compensation Act are to ensure a more proper balancing of service improvements and affordability. The workers compensation program must be accountable for the expenditures it makes of employers' funds as it is for programs it provides for the workers.

It is the opinion of Canadian Pacific and its subsidiaries that more rigid interpretation of current and proposed Workers Compensation Act, institution of formalized guidelines for claims acceptance, implementation of greater accountability with legislative amendments and a close scrutiny of fraudulent claims would eliminate the major problems associated with abuse of the compensation system.

The Workers Compensation Act is very specialized legislation which both labour and management have played a constructive role in developing and improving. The proposed legislation is an example. Canadian Pacific encourages, urges that consultation and mechanism for continued consultation must remain in place to ensure proper management and accountability of the compensation scheme in the future. Thank you, Mr. Chairman. Those are the comments I have.

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

Mr. Praznik: Yes, I just want to thank the presenter and the organization he represents. I know they have been active in the employers' task force and pleased that they could be part of the presentations today. Thank you.

Mr. Ludkiewicz: Thank you, Mr. Minister. I will relay that to all the participants in the process during these last few years.

Mr. Chairman: Thank you again. We will move then to No. 13, Mr. Patrick Martin, United Brotherhood of Carpenters and Joiners of America. -(interjection)- Pat is not here. No. 14, Mr. Ted Dempster.

Mr. Dempster, would you come forward, please. Have you a written presentation?

Mr. Ted Dempster (Private Citizen): No, I do not.

Mr. Chairman: Would you proceed, please.

Mr. Dempster: Thank you. I am here today, not standing here representing any other party but myself as a claimant of the Workers Compensation Board. I have been involved with Workers Compensation Board since 1985. At that time I was unfortunate enough to hurt myself in an accident at

work. Since that time, my file has been tossed around to about a dozen or so people from rehab counsellors all the way up to the chairperson. I have had to fight for my rights, which are written in the act. Nothing was handed to me; nothing was given to me. You will have to excuse me for a second—my scribble.

Mr. Chairman: I know how you feel, and do not be nervous. Just proceed as if we are not here.

Mr. Dempster: I can go on for hours in regard to some of the injustices that have happened to me within the board.

Just to state a few: At one time I was denied rehabilitation at my own expense; another time I had to return to the city for psychological testing, which was at a great expense to the board and myself, which resulted in no outcome.

I am not here though to dwell on the past, I am here to speak about Bill 59, specifically wage loss benefits. Presently I am employed by another Crown corporation and receive partial disability benefits through the Workers Compensation Board. One thing that I cannot understand within the bill that is proposed is Section 39, Wage Loss Benefits.

I have been, as I stated before, on compensation since 1985. Since this time I have endured increases through wages through my employer. Consequently they were taken away by the Wage Loss Benefits, meaning my wage loss was reduced. Technically I have not had a raise in pay since 1985.

The proposal here for 90 percent and 80 percent would indicate to me that rather than going forward in these times, we are going to be going backwards. Subsequently, in my situation as it stands right now, I will be losing more money in the long run than I am right now. One thing I am happy about is in regard to indexing. I understand the minister's responsibility that indexing cannot be retroactive.

The one thing that I would like to maybe make a proposal or an amendment to is in the wage loss benefits, rather than having your entire salary, your base salary minus the cost-of-living wages that one incurs through his employment. In the long run, this would not cost the Compensation Board any extra funds, because the present employer would be providing that increase.

To make things short and sweet, knowing that you have been here for quite a while, I would just like to ask any of the members on the committee how they would survive in these times with no increase for the last six years. The government seems to be willing to increase all of the other utilities, the City of Winnipeg is raising my taxes, my mortgage rates are going up. I have a family of five to feed. I am not here for a sympathy vote, but I would like to know if any member on this committee would be able to survive under these circumstances? Thank you.

Mr. Chairman: Thank you very much, Mr. Dempster. I think you have probably asked that last question of some sympathetic people around this table. There are a number of people that make their living in agriculture around this table and, as you know, agriculture has received nothing but decreases over the last six or seven years, and they might sympathize with you. I think you might get some answers.

Mr. Praznik: I just wanted, Mr. Dempster, to point out for his information because obviously he has some concern about the effect of this bill on his current status and what he is receiving. I should just tell you, the change from a payment based on gross to net is for persons coming onto the system when the bill becomes effective. It does not change anyone's existing pension scheme.

The only change in terms of how your pension will be affected by this bill is actually, I would hope you would use a positive one in that you will now have automatic annual indexation with this bill so, after listening to your presentation, I just wanted to give you those comments to clarify how your specific pension would be affected. Thank you for coming in. It is appreciated.

* (2030)

Mr. Doug Martindale (Burrows): Mr. Chairperson, as a new MLA, I find legislation like this quite complex and difficult to understand and do not really realize the implications and the significance of all of it, which is quite lengthy.

However, I have had quite a few constituents come to me about their problems with the Workers Compensation Board. I think some of them are in situations quite similar to yours. Their files are quite thick, they have been in negotiations for a number of years, and they feel that they have been dealt with unjustly, and I think frustration was probably one of the key words that you used, and I think that is very true of the people who have contacted my office for help.

Do you think that this bill is going to help people like you and others in similar circumstances, or is it going to make matters worse?

Mr. Dempster: I do not think it is going to help specifically myself. It might help people in the long run starting on compensation at the present time. Because the indexing is not going to be retroactive, it is not specifically going to help me. You see, I have worked it out that since I have been on compensation I have lost approximately 21 percent in wage increases because my wage has been frozen for six years. I have no control over that. I have contacted the Compensation Board over and over again, and they cannot do anything because of the present act as it is. I do not see any specific change in the bill to benefit myself.

Mr. Martindale: But you do agree with the minister that benefits being indexed in the future is an improvement for other people.

Mr. Dempster: I believe so, yes, most certainly.

Mr. Chairman: Thank you very much, Mr. Dempster, for your presentation. I would like to call then on Mr. Ken Guilford. Is Ken Guilford here? He is not here. I would like to call then on Councillor Glen Murray. He is not here. I would like to call then on No. 17, Mr. Kenneth Emberley, private citizen.

Mr. Emberley, have you a presentation that you would like to distribute?

Mr. Kenneth Emberley (Private Citizen): No, I am going to try and read it if I may.

Mr. Chairman: Okay. Would you proceed then, Mr. Emberley. -(interjection)-

Mr. Emberley: Mr. Chairman and members, that kind word Shoal Lake brings fond memories to me. I was in the Pearce water inquiry when Dr. Pearce asked a Mr. William Norrie it was, what have you done in the last 40 years to protect Winnipeg's water supply? Over three minutes, he repeated the very difficult question three times to the mayor before the mayor was able to figure out, I do not know anything. I think it was the best answer I have ever heard from him. It is the most accurate and precise answer I had ever heard from him.

It is the same thing. I was appointed by the St. James resident advisory group and served for 10 years by the community committee in St. James who served as a representative for the 70,000 citizens of St. James on the airport advisory committee and consultative committee while we were doing long-range plans for the airport. I never once saw the City of Winnipeg Council or the Province of Manitoba do anything to protect the billion-dollar airport in zoning regulations. Then we had a Councillor Ernst that sold out—

Mr. Chairman: Mr. Emberley—

Mr. Emberley: I will get to the brief.

Mr. Chairman: —would you please direct your comments to the bill.

Mr. Emberley: Yes, Mr. Chairman.

Mr. Chairman: I would appreciate that.

Mr. Emberley: I will try and be just about 15 minutes. It could also be 20 minutes. Thank you for the opportunity to speak. I have a little bit of experience on this matter, not as a medical doctor or as an MLA, but as a worker and as a person concerned with health and safety. For 11 years, I ran a small company connected with workplace, health and safety. I have three personal experiences I wish to relate.

I worked on a safety committee at the Boeing airplane company for 15 years, and we fought and fought and fought with the company. It was a most frustrating and disappointing experience, one of the most frustrating in my life. It was only a few years ago, we got stricter workplace, health and safety regulations under the previous government, and they were forced to do a number of things that made a real improvement. They never once did a serious job of doing a first-class operation of controlling the incredible amount of fibre glass dust in the factory or the noise.

Just before I retired, for two years I had difficulties with my hands. I had pains and cramps in both hands from the repetitive work I was doing in the repair department at Boeing. It never once ever crossed my mind that I would enter a Workers Compensation Board claim. I have watched and listened for 10 years to people fighting with the Compensation Board. It is as if a person committed a criminal offence when they became a patient, a client of the Workers Compensation Board. They were harassed and intimidated, suspected, suspicioned, administrated. I cannot think of the words to describe it.

So many times it was a disappointing experience. Some people got well treated. Some people got fairly settled up promptly. Many people did not. It never entered my mind that I would get a fair treatment. I never bothered. I knew my company

supervisor would not back me up. I had no faith at all that the Boeing company would back me up, and I had no faith at all in the Compensation Board.

I went on to retirees' conference three years ago at Bob White's Canadian Auto Workers Education Centre. The Canadian Auto Workers have been the leader in the union field in North America in the education of their workers and workplace, health and safety. I roomed in the beautiful recreation centre which is built on property they bought 30 years ago and saved and worked hard for 25 years to pay for it. The fellow that I roomed with, a retiree—there were 200 of us there—had been working for five years studying medical costs. He had 45 people who reported to him every single month all their medical costs of their pills and their treatments. The year the Mulroney government sold us out to the United States drug interests, he had just completed one year of monitoring price increases, sometimes twice, sometimes three times in one year, price increases of 5 percent, 10 percent and 15 percent. Some people were taking as many as three drugs. Some people have experience with a system that is supposed to work for them and it does not. There seems to be no way to correct it, unless there is new bill comes before the House.

Two years ago I took out three books from the library and studied the records and the problem of workers compensation and health care, records starting back in 1910, to understand, not knowing that this was coming up. I became personally involved with some people who were studying the effects of the Bhopal experiment in India and the disaster where the company has negotiated with the Indian government acting as their agent and is paying less than 10 cents on the dollar for the people who were killed by deliberately designing a faulty facility and deliberately withholding from the public the fact that an accident had occurred.

* (2040)

Watching the story and the record of the asbestos industry and how the John Mansville Company in the United States has gone under the horrendously dishonest bankruptcy bill to protect themselves from the litigation that people legitimately have a right to try and collect for being killed.

You see, I have a slightly different perspective than you have. Having been a worker in a military factory and a peacetime factory, having visited hundreds of factories over a period of many years, I understand that many companies make a very handsome profit on killing their workers and injuring them. They make a very handsome profit on it, and they bitterly begrudge the compensation costs to look after the people they injure, cause disease, they cripple and they kill.

I have seen the people who were deliberately killed and talked to the people who were killed down at the famous Niagara poisoning of the school. I cannot think of the name right now. It slipped my memory. -(interjection)- Yes. Many people do not know that it was the Niagara Falls school board that confiscated the old dump site to put a school on for their school children, and they knew the legal document they signed said it was a sealed toxic dump site, and the Niagara Falls school board built their school on that toxic dump. I talked to the TV photographer who took pictures of little five-year and six-year and seven- and eight-year-old children playing on the school steps and talking about their friends who were dying of cancer, and one of the little boys knew he was dying of cancer and his dog had died of cancer last year.

Those are the kinds of people who come in here and tell you, you know it is costing us an arm and a leg to pay this compensation to these workers who do not deserve it because they are cheating and they are lying and they are trying to weasel us out of our profits.

I know a little bit about this. The story is pretty disgusting. It fills you with deep, deep shame. I studied the Alex Carey manuscript, managing public opinion and the public opinion program and the advertising and the propaganda and the news media that has been carried on for a large number of years.

The problem of the number of claims is a fundamental point in causing you to have to deal with this new legislation. I talked to one of the people outside, and he has mentioned it here. I have known it before. Many people do not file a claim. It is not worth the hassle. You are treated as if you are a guilty person. You are not treated almost as if you were a decent human being. Many workers do not like being injured. Many workers do not like being sick. People have been poisoned for 10, 20, 30 and 40 years in pesticide factories and factories making PCBs and asbestos factories.

I know a man, and I was talking to his mother just two weeks ago, and when he was 21 years of age, working in university, he worked in a warehouse for three weeks, unloading sealed cardboard boxes of

asbestos. When he graduated with his architecture degree, he died within one year of cancer caused by the asbestos. Do you think it was easy for them to lodge a complaint and prove it to get a just settlement? No, it was a disaster for them.

I have a couple of papers here that I want to read to you to give a little bit of background to the philosophy of different people involved in these things. We often hear about the business leaders in our country and the political leaders in our country and how hard they are trying to do the right thing. I want to read about a great man. I think his name was William Lyon Mackenzie King. He was a rebel worshiper, but he was not quite a rebel himself. After a term as Minister of Labour in the Laurier cabinet and a conciliator in hundreds of strikes, he joined the establishment of John D. Rockefeller Jr., a man of whom his grandfather would never have approved, and Mr. Rockefeller Jr. hired him to repair his shattered image after one of the bloodiest and most appalling strikes in U.S. history. King's solution was to impose company unions on the Colorado miners. In the words of the chairman of the congressional committee appointed to investigate the matter, specious substitutes for trade unions will not deceive, mollify or soothe public opinion when both work in the employer's arbitrary control.

Though he tended to cry poor, Mackenzie King was a very rich man with an income equivalent in 1990 dollars to a quarter of a million dollars. These are the kinds of people who come in and tell you that the workers are bleeding their companies. To get a balance on how well we are taking care of these problems, less than one half of Canadian pulp mills must comply with the current federal pollution regulations in pulp mills. Each pulp mill produces the equivalent of a city of 120,000 people in the waste. Of 155 pulp and paper mills in Canada, 122 are direct dischargers, bypassing local sewage treatment plants. Of these, 86 do not treat the biological waste to remove the effluent, 46 continue to use chlorine bleach which puts dioxin in the pulp mills.

Now, how is your Workers Compensation Board going to cover dioxin poisoning to the people who work up at Repap under the new terms of your legislation? What is it going to do? How is it going to look after them? We have a problem trying to determine a fair income for the worker, a fair compensation. In the United States, the median income rose between 1973 and 1987 by $33—one-tenth of 1 percent, the median income, $30,000 rose by $33. During that time, there was a greater unevenness of distribution of income in the United States than had ever happened in their history. More money went to the rich.

In Canada, I am thinking of the wonderful brief of the gentleman from the CPR and its relevance to this hearing. I worked in Brooklands and in Weston, the worst slum area in the city of Winnipeg—

Mr. Chairman: Mr. Emberley, I am going to draw you back to the attention of Bill 59 that we are debating. I have been listening very closely and it appears to me that you are being rather critical of the presenters who have presented here instead of giving us a critique or support of the bill, either one. I would suggest, Mr. Emberley, that you direct your comments to the bill.

Mr. Emberley: Thank you, Mr. Chairman.

The problem of deciding on a dominant—that is a word that is put into the act—the doctors and the professional people from the unions addressed that matter for you very carefully. Had you thought that the duty of the business coalition and the Chamber of Commerce was to discuss with you the overall pollution that has been put in the land, air and water in the last 40 years by companies that would not and were not asked by negligent governments to design a safe workplace and a safe living place? What are the additional charges the Chamber of Commerce is recommending that should be a supply to the Workers Compensation Board so that all of these diseases and sicknesses which were caused by industry deliberately polluting with government co-operation, as the Clean Environment Commission does now, what is the suggestion instead of trying to figure a way—what is the technical word for the legislation to allow corporations to weasel out of paying for people who transfer from one to another workplace and then in the third workplace they come down with an illness that is partly caused in the two previous workplaces and partly by maybe tobacco smoking? As a man said, the huge increase in effect that asbestos can have on a tobacco smoker.

* (2050)

What is the innovative approach that you have prepared as an alternative to the Chamber of Commerce's brief to cover these people in a constructive way so they get fair compensation

without harassment, the people who are victims of the system? I have whole books at home by the Natural Resources Defence Fund in the United States, examining the circle of poison and the toxic wastes that are produced and are dumped in the rivers and like we have dumped them in Manitoba for a long period of time with the authority and permission of the Clean Environment Commission. Is it not the duty of government if they care for the working class, the lower classes in society that make the country work, who provide the profits for the larger corporations? Do you have any duty to them as well as to the corporations to cut the costs of the Workers Compensation Board? Have you ever thought that you have a duty to increase the coverage of the Workers Compensation Board? What part of your proposed legislation covers enhanced coverage for the workers?

I wore my free trade shirt here yesterday when I came in last night. We know what this legislation is. The right-wing agenda is to help the corporations cut all their costs. I included in here a paper which explains the corporations in Canada for the last three years have had increasing profits, corporations in Canada for the last three years in Canada federally and provincially have had decreasing taxes, because there is a custom in the nation that is very fashionable. It is called blind unlimited greed. There is no limit to the amount of profit that is necessary, not a desirable or a needed profit or a reasonable profit. Unlimited profit under the free trade is the demand of the multinational corporations.

I have been sitting in public hearings with the Chamber of Commerce and other organizations for the last 20 years, and I have listened to them, listened to them very well. You have possibly some voters in each of your wards who are not wealthy, powerful and influential businessmen, maybe you have some who are working people in factories. What are you doing to consider their interests as well as the interests of the Chamber of Commerce and the business corporations who come in and ask you to—what is it?—amend the workers compensation law or kill it or butcher it or disfigure it, weaken it? Those are terms that come to mind.

The ordinary diseases of life, and stress—the stress in the workplace, there have been such cute articles in the papers lately, and corporate executives are talking about the stress they are under. Oh, it is just something terrible. Working people are under stress too, but you are thinking of eliminating stress as a condition that should be covered. Do you think of the stress we are through coming to four public hearings in a month and watching all the institutions in my country being weakened so that they are like the ones in the United States?

I studied a magazine article just four months ago, a brilliant magazine article on a butchering place, a slaughter house down in South Dakota and the working conditions there. A woman had a huge cut that ripped open her belly and the supervisor laughed at her. She had to stand for 15 minutes holding on to her belly to hold the flesh together where the intestines were coming out while she waited for a taxi to take her to a hospital. They did not give a damn. That is the kind of thing that our corporate executives want for Canada. We have to cut our things down. It is not a joke.

Mr. Chairman: Mr. Emberley, I would ask you again to keep your comments relevant to Bill 59.

Mr. Emberley: I understand, Mr. Chairman, I thank you for your patience. I am trying the best I can.

Put the burden on the taxpayer of this if some of these claims that have to be dealt with, that the businessmen think they should not have to deal with, that there is a previous existing condition that may have been caused in a previous factor, not the worker's condition. Many things, a person will work in a place and a factor of one will cause them a very minor condition. They can can run it in another workplace and two factors can add and multiply the original condition to three or four times its intensity and then they can go into third place and the stress alone is enough to double the effect of what is happening there. The pollution from the factory down the street may affect them. What is a worker supposed to do? The Compensation Board should be compensating him.

A comparable situation is the women that get a court settlement for an ex-husband to support them for their children. What does the government do? Go chase your husband if he does not pay it. There is no institution set up in the province where they pay the woman the money that is just due to her awarded by the court, and then if it is needed, they go after the husband and get it. The institution that awarded their decision should be looking after the administrator. She should not have to go back fighting with her husband.

I have seen the people who had to go back 10 years in a row fighting for that. That is what is happening to the workers in the Workers Compensation. The amendments that you are planning in several different sections are going to cut the benefits and make the benefits more difficult to obtain. There is going to be more legislation, more litigation, confrontation and conflict. There is nothing fair or decent about it. It was intended to settle it up—what are the words?—justice delayed is justice denied. Do you ever talk to the Indian people about that that have had their flood lands damaged 40 years ago and the crooked Hydro corporation and the government will not pay them their claims? They spend more money on lawyers than they spend on settling up their claims.

So I ask you, there should be some duty and responsibility on the government, the people who produce this legislation, and the Chamber of Commerce that recommended this legislation not only to recommend one way, but to recommend how to improve it. Look at the factories we have now. Look at the offices, the palatial air-conditioned offices for the executive of the factories. Look at the wonderful conditions here and there and the wealth and the prosperity of these people. Many of the people are still being killed and crippled in factories, and this litigation is going to raise the costs.

Why does somebody not tell these stupid businessmen that cannot figure out nothing from nothing that the second they make their factories safer, the second they cut down the disease that they are causing in their factories, the second they cut down pollution discharges, the long-term costs of Workers Compensation go down? Could you not figure that out on a blackboard sometime, really and truly? The reason compensation costs are rising is because the factories are unsafe, and they are deliberately unsafe because the legislation and the initiative is not there in the people's hearts. They do not give a damn. They will close their factory here and go to Mexico. I have worked in the different factories and seen the conditions under which people work. So I beg you to take heed of what people—they put much more skillful briefs than I did here before you.

I have just one more thing. The doctor that presented, about third last, he said there is no fair decent assessment, no majority report, no minority report. It is a very defective presentation of legislation. I might humbly suggest respectfully that, if you are supposed to be including the people of Manitoba in this discussion of this important legislation, why was this not broadcast on channel 13 so the people of Manitoba could hear these wise briefs and these discussions? In a democracy that should happen.

You should have heard the brief Mr. Shapiro presented in the other room, a passionate 30-page brief for democracy, believing that is one of the things we want. I just feel sick sometime at the inadequacy. So thank you very much, Mr. Chairman. I beg of you to just let this legislation die on the order paper, and for heaven's sake, do not proceed with it in its present form, because we know what it is. All the countries around the world have the same kind of legislation coming up.

I was down at the Fate of the Earth Conference in Ottawa in 1986 with 1,000 people from 60 countries—environmentalists, peace activists, trade union people, workplace, health and safety, social justice people, people concerned with health and well being. I was down in Nicaragua in 1989 before George Bush put in the Somoza dictatorship again, and we had 1,200 people there from 62 countries who are having the same problems they were having three years ago.

* (2100)

I was down in Toronto at the Global Futures Conference in 1980. We had 2,200 people from 22 countries, the same problems. This legislation is complementary and supplementary to the stepping backward of legislation that happens in El Salvador, it happens in Mexico, it happens in the Philippines, happens in the United Kingdom, happens in the U.S.A. Do not think that people are not making long-detailed records of these things. You are going to be asked sometime in five or 10 years to explain what and why you did. I humbly beseech you to look in your hearts and do the best you can to make this legislation better. Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Emberley.

I would call next on Mr. Robert Ross to come forward, please. Robert, have you a written presentation? I want to thank you for having the diligence to stay with us till this hour. Would you proceed, please, Mr. Ross.

Mr. Robert Ross (Private Citizen): I do not have anything written for you today. As far as I can see and from what I have listened to today from

everyone speaking—oh, it is finally nice to see you, Mr. Praznik. I have been trying to get a hold of you for a couple of months. It is terrible that I could not, but it is nice to see you now.

I have been involved in a situation with the Workers Compensation Board after about 17 years of being in the work force, working two, sometimes three jobs at a time. I have never in my life been treated in such a manner by anyone or any form of institution where it was to help or give someone betterment. I have dealt with the public in servicing them most of my life or in a job where it is working with people to help them. I do not have the background for Bill 59 except for what I have listened to today. It seems to me that if things dealing with Bill 59 have anything to do with what the legislation is now for workers compensation, if it is any better, that is fine. Then it should be passed, but from what I have heard today, I do not think it is going to be any better with the dealings that I have had with Workers Compensation Board.

If I had a copy of it, I guess I could go further into detail with you about—I do not know if I should go into detail about my situation; I think I should leave that with myself and my union representative, but taking into consideration everybody who has spoken today, and it has been a lengthy two days, I was notified yesterday that I was coming in to speak.

Some of the situations that have come up—and I am sure that some of the people who have been speaking and have had poor dealing with the Workers Compensation Board in the past, who do not have any dealings with the new bill, they do not seem to be happy with what has been going on. Myself, never having had to deal with Workers Compensation and having to deal with them now, I have never been so appalled by someone in my life, or dealt with or talked to or treated in such a manner by a company. I am calling it a company, I do not know what they call it. It seems to be very difficult to get hold of someone in that office who has any authority.

Floor Comment: It is the workman's compensation board.

Mr. Ross: Yes, is it run by the Manitoba government? I do not know, I have never had to deal with it before. I have no idea.

Anyway, just to put it in short, I am not happy with the Workers Compensation Board as it stands now, and from what I hear from the new bill that is coming out, I do not think it is going to be any better. I think that the changes are just going to make it worse for a lot more people, and having to go through all the red tape and having to pay $250 to appeal your case, I think that is ludicrous. You are taking something from someone who has had their claim cancelled and asking them to pay, that is just crazy. I do not get it; I do not know where it comes from.

What I would like to say, just to end this so everybody can go home, just so I can get my piece in, I do not think that it should be passed. I really would like all of you members to take a long look at it again. I mean, if it takes another month, another year, go over it and say, okay, are we dealing fairly and effectively with both the employer and the employee, or are we just taking the employer and saying, okay this is what you want, so we are going to do it, no matter what the cost.

It does not matter if you take one employee who pays $100,000 in taxes and take 100 employees who pay $10,000 in taxes, you are still getting taxes no matter what, you are still getting the money whether the employee pays it or not. He could work for one year or 10 years; you put your time in. If you are hurt, you should be paid or compensated in some manner, but that should be decided not only by the Workers Compensation Board but by your doctor, by yourself and, I would say, a board of people from outside the Workers Compensation Board.

I would like to thank you for listening to me, and that is all I have, so everybody can go home now.

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

Mr. Ashton: Just a brief comment, I appreciate the perspective of someone who is dealing with the Workers Compensation Board system, and I can indicate, in terms of our caucus, the NDP caucus, we are certainly in agreement with you. I commend you for staying as long as you have because it is not often we get the perspective of someone who is a Workers Compensation claimant here. I do, in terms of contact with people, and I appreciate it.

Mr. Ross: From my understanding, I do not know if anyone on the board here is from the Workers Compensation Board itself. I do not know if they are here to listen to what is being said by other people in regard to Bill 59.

Mr. Ashton: Well, there are people from the board here, although it is obviously members of the Legislature. In the final analysis, it is going to be the members of the Legislature who set the policies,

and this bill is going to affect Workers Compensation for years to come.

Mr. Ross: Yes, I understand that. Are there going to be any changes made as far as taking the bill and re-evaluating it, or after this meeting is held, they will be listening to, I guess, the tapes that they are making, taking the ideas from there and maybe changing the bill itself, or taking something that they feel would be necessary to make the bill maybe better for both employer and employee, the government, so everything could seem like it is on an equal keel so that one does not feel like they are getting cheated out of anything.

Mr. Ashton: Just by way of explanation, on Monday, we actually will be having votes on whether to accept this bill as is or make amendments to it, so Monday will be the day when all the decisions are made, and it will be by vote. There will be obviously some disagreement in a lot of these areas.

Mr. Ross: Okay. Thank you.

Mr. Martindale: Mr. Chairperson, Mr. Ross, perhaps you heard the previous presenter say that his knowledge of individuals who were involved with the Workers Compensation Board felt that they were victims, they were harassed, they were suspected and intimidated. Without getting into details of your particular claim, do you think that you were dealt with fairly or not?

Mr. Ross: Actually, to tell you the truth, no. I really felt like I was treated very unfairly by, not so much the people I had to deal with initially, but I felt—I will not mention any names—that from the supervisor level up to the management, director level, it took me a long time just to get to speak to the director or the assistant director. It was like no one would let me speak to them, and I was very, very upset that I could not even get to speak to them. I mean, the situation that I had, I felt I was not getting solved at the level where I was working with the workers, but it just never went from there to anywhere else, and by the time that I did finally get to speak to one, it was probably three weeks later.

Mr. Martindale: Mr. Ross, can you tell us, from your experience, do you know of other workers who have had similar problems with the Workers Compensation Board?

Mr. Ross: Yes, I do.

Mr. Martindale: Can you suggest any specific changes that you would make or any recommendations that you have that would make it easier for employees in their dealings with the Workers Compensation Board?

Mr. Ross: Myself right now, not really reading through Bill 59 or not really knowing or understanding the workings of the Compensation Board now, I do not think I would be able to give you any real changes that I could make, except for maybe when it comes to dealing with human beings or in a situation where actually they are ill. I realize that right at this point in time I understand the Workers Compensation Board is probably backlogged up to their ears, but take time and deal with people as they are people not as they are a number or a dollar.

* (2110)

Mr. Praznik: Mr. Ross, I certainly appreciate your concern on service delivery and that is something we have a long road to go on. I appreciate that comment. We get quite a few inquiries through my office and if I remember yours correctly, and please correct me if I am wrong, I just want to ask, that the fair practices advocate had an opportunity to review your case. Is that correct?

Mr. Ross: Not that I have heard of yet. I have not received anything yet from them.

Mr. Praznik: No, I do not know if you would but I do not know if you had a chance to meet with the fair practices advocate, but I seem to recall on your file, and I am just wanting to confirm that the fair practices advocate, Pat Orloff—

Mr. Ross: I have spoken to her, yes.

Mr. Praznik: Then it was reviewed.

Mr. Ross: I do not know if it has been reviewed. I have not heard from her lately.

Mr. Praznik: All right. I just wanted to point out just to make sure I was on track with your case that Pat Orloff had or was in the process of reviewing your case. For the members of the opposition, Pat Orloff, I believe, was Mr. Doer's former assistant, so certainly we would view as a fair judge of the case.

Thank you, Mr. Ross.

Mr. Chairman: Thank you, Mr. Ross.

We have one more presenter. His name is Wayne Bell. Wayne Bell would you come forward, please. Again, thank you, Wayne, for persisting and bearing with us. We appreciate very much you making the effort to come at this hour, at this time.

Mr. Wayne Bell (Private Citizen): I want to thank you very much for that. It is my first time to do something like this, and so I hope you have patience at this time. I know everybody wants to get home.

On Bill 59, I was hoping that they could place on that I have been a burn victim. I find a lot of things with this Bill 59 and hope that they could put in something in place for something to do with burn victims, what they should be paid out of the compensation. In my case, for example, they have no disfigurements to be paid on compensation once you received out of this bill out of the old system. In the new system, I am hoping that they could take something into consideration of that. I think it is very important to do something like that.

Getting on to other things in this bill, I do agree to a lot of things in here, but I feel that this committee should take into consideration that the workers should have some kind of rights to some of the things that are placed in here. If they do have a disagreement on different things, that they should make an appeal toward that. The workers should have rights or the employers should have some rights to that, too, instead of just basing it only on medical grounds or on something like that. I think it is very important that this committee realize what they are really dealing with. I think they do have a general overview of what is happening with this Compensation Board over the past year.

That is about all I can say right at this moment, plus my father-in-law has been dealing with the Compensation Board. He has cancer now. He has been a painter a long time. There are certain guidelines and certain things that the board does not cover on this thing, and I am very concerned about this because I find that, what is the board there for if they are not there to cover workers or if they are not in place to cover different diseases or to develop in the work force when it is not the worker's fault at all?

The board said to me in one case where you have to meet new medical stuff to verify your case. I am saying, well, how can that be when it is not really the worker's fault? No doctor in his or her right mind is going to verify if your injury came from that accident or if that disease came from that area or not. So here is the worker left out again with no money and poor again for fighting for on the welfare system when he should not be on welfare, should not have to qualify for that because the board penalized him or cut him off his benefits.

I really do think it is a very serious thing. Before this bill to get passed in the House, they should look at the old compensation first and find out where they went wrong there, before they even pass this bill here. I am sorry, I cannot really explain more clearly on it, but just to give an overhaul of some things, and I hope they really do take in consideration about the burn victims, too. They should have something in the bill of that when they pass this new bill, too.

That is all I can say at the moment. Sorry about this.

Mr. Chairman: Thank you very much, Mr. Bell. You did very well.

Mr. Ashton: I would just like to thank the presenter. We have had many discussions in the past, and I would note that we have made discussion on workers compensation. I appreciate your comments. In fact, I wish more people would take the time to keep us in the Legislature informed in the way you have, as I know from our conversations and the many letters and the many issues we have discussed. You really have taken the initiative and I really congratulate you on that.

Mr. Bell: I have not got no real wisdom. Thank you.

Mr. Praznik: I just wanted to thank Mr. Bell as well for coming in tonight.

Mr. Chairman: I would remind committee members that is the last of the presenters. We will proceed on Monday at 10 a.m. to start clause-by-clause considerations of the bill, and unless there are any other comments, I would declare the committee—

Mr. Praznik: Yes, Mr. Chair, before we begin on Monday, I just asked my representatives of the two opposition parties that we had some discussion about tabling amendments to give staff an opportunity to review them prior to Monday, because it is a rather complex bill. I was wondering if they had amendments that they were prepared to table. I know we have provided copies of proposed amendments on this side, and I just ask that as a query.

Mr. Chairman: Thank you, Mr. Praznik. I see no response. I would declare then the committee adjourn till Monday at 10 a.m. for clause-by-clause consideration.

Committee rise.

COMMITTEE ROSE AT: 9:17 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Introduction: Chairman and members of the Standing Committee and Mr. Minister, the Workers' Compensation Subcommittee of the Federally Regulated Transportation and Communications Organization (FETCO) wishes to present to you our comments on Bill 59, The Workers' Compensation Amendment and Consequential Amendment Act. FETCO is a national employer advocate organization representing 19 major transportation and communications companies with operations across Canada and in Manitoba. Among the major FETCO employers in this province are Canada Post Corporation, Canadian National Railways, Canadian Pacific Railways, Air Canada, Canadian Airlines International and Canadian Broadcasting Corporation.

FETCO has established a specialized standing subcommittee to monitor WCB legislative developments in Manitoba and across the country and to offer constructive comments on proposed changes. FETCO is concerned that workplace accidents and illness affect the well-being of Manitoban and Canadian society and FETCO wants to ensure that employees of our member companies receive proper compensation and rehabilitation in a timely and cost-efficent manner.

FETCO Supports Consultative Process on WCB Matters: As the employer community in Manitoba seemed well served by the 1990 joint effort of the Manitoba Employer Task Force on Workers' Compensation, the FETCO WCB subcommittee did not participate in the legislative review of Bill 56, which is an actto restructure the traditional Workers' Compensation Board of Commissioners and separate the appeal function from the policymaking function. This year, individual companies and associations have decided to make separate representations. The FETCO WCB subcommittee does not seek to comment on all the issues contained in Bill 59, but it commends you to review the more extensive submissions of the Canadian Federation of Independent Business, the Chamber of Commerce and the Manufacturers' Association, as well as comments by Canadian National and Canadian Pacific in separate but related briefs. The FETCO WCB subcommittee supports the development of a broad consultation process in Manitoba on a regular basis at both the legislative and WCB levels to see that proposed legislation and administrative guidelines are properly assessed before it is implemented, and we view our participation here today as a contribution to this process.

Occupational Illness and Changes in Definition of Accident: The FETCO WCB subcommittee approves of the changes in Bill 59 in the definition of accident; particularly those changes dealing with occupational illness, presently called industrial disease under the act. The change in terminology from industrial disease to occupational illness reflects current professional usage. Occupational illness is defined in Bill 59 as one arising out of and in the course of employment due to causes peculiar to the trade or occupation. Employment must be the dominant cause of the disease for compensation to be given, and occupational disease does not include ordinary diseases of life and does not include stress, other than acute reaction to a traumatic event in the workplace. The definition of accident is clarified in Bill 59 to state that it does not include any change in respect of the employment of a worker, including promotion, transfer, demotion, layoff or termination. The FETCO WCB subcommittee supports such restriction, particularly with respect to stress claims. FETCO believes the new definition of accident and the new term occupational disease will offer stakeholders greater certainty as to what is compensable and what is not in an era where many complaints are due to lifestyle effects and non-workplace exposures. (See subsection 1(1) and 1(1.1) of WCA, C.C.S.M, c.W200 am. as amended by Section 2(1) and 2(2) in Bill 59: WCA and CAA.)

Enhanced Academic, Vocational and Rehabilitative Assistance: New provisions in proposed Bill 59 enhance rehabilitation as a key process under the Workers' Compensation Act. FETCO member companies believe strongly in modern, progressive return to work procedures to rehabilitate the injured worker as soon as possible, and we see more explicit provisions in the act defining when the WCB should become active as a step in this direction. However, Bill 59 does not go far enough in establishing the principle that the employer is an equal partner with the injured worker and the WCB in designing and implementing a rehabilitation plan. Explicit legislative recognition of this partnership is desired. (See Section 27(20), WCA, C.C.S.M., c. W200 am as amended by Section 19(6) of Bill 59: WCA and CAA.)

Dual Award System of Wage Loss Benefits and Impairment - Lump Sum Replaces Outdated Lifetime Pension Scheme: FETCO WCB subcommittee approves of the introduction of a dual award system in Manitoba. A dual award system of 90% of net income for wage loss, plus lump sum for impairment (up to $91,000) is a fairer system of compensation in that it compensates those who need compensation, rather than giving expensive lifetime pensions to workers who, although injured, have not experienced any real income loss. (See Sections 28 to 49, WCA, C.C.S.M., c.W200 am., as amended by Section 21, Bill 59: WCA and CAA.)

Costs in Frivolous Appeal: FETCO WCB subcommittee notes with approval the introduction of a penalty up to $250 for launching a frivolous appeal and concludes this provision will encourage greater responsibility by both employers and workers in making appeals where they are not necessary. Fairness is an important goal of workers' compensation, but appeal procedures are very expensive and time consuming to operate. (See Section 60.8(7), WCA, C.C.S.M., c.W200 am., as amended by Section 27, Bill 59: WCA and CAA.)

Greater Financial Accountability and Forward Planning by WCB: Presently the annual report of the WCB has to be laid before the Legislature, and this has allowed some scrutiny. Bill 59 will require it to be considered by a legislative standing committee along with the five-year plan of the WCB respecting future operations. FETCO approves these new requirements as they will encourage greater scrutiny of past accomplishments as well as testing of planned developments. WCB managerial performance can only be enhanced to the benefit of both worker and employer communities. (see Sections 71.1 to 71.3, WCA, C.C.S.M., c.W200 am., as amended by section 32, Bill 59: WCA and CAA.)

Self-Insured Employers Require Status Entrenched in Act: Many FETCO companies presently enjoy the status of self-insured employers under the Manitoba Workers' Compensation Act in that they pay all their WCB costs themselves rather than participate in the accident fund as assessed employers who pay an annual fee based on the experience of their rate group. Self-insured status encourages an employer to be attentive in preventing and reducing accidents as well as to be energetic in getting injured workers back to work on modified duty and rehabilitation. This self-insured status is preserved in Bill 59, but FETCO would like to see the status entrenched as a fundamental principle of workers' compensation in Manitoba rather than given its proposed tentative status at the discretion of the WCB. (See Section 73, WCA, C.C.S.M., c.W200 am., as amended by Section 33, Bill 59: WCA and CAA).

Addition of Employer's Right of Access to WCB Information in Worker's Claim File Ensures Fairness and Equal Treatment: For the first time, the proposed amendment would give an employer or its agent a right of access to WCB documents, including medical reports. This new right will assist the employer in evaluating the merit of a claim and its capability, if it so desires, to adequately challenge the claim. Abuse of this right is protected by proposed provisions allowing the WCB and Appeal Commission to deny access if not relevant to the issue and allowing fines if information is used for other than valid workers' compensation purposes. Addition of this right gives employers in Manitoba the same status employers already possess in Saskatchewan, Alberta, British Columbia and Ontario.

Employers should also be extended the same right as workers to refer a medical issue in dispute to an independent medical review panel, but Bill 59 does not accord this. (See Section 101(1.2), WCA, C.C.S.M., c.W200 a.m, as amended by Section 53(2), Bill 59: WCA and CAA. See also present s.67(4) reference to medical panel on request of worker.)

Adjudication of Claims by Third Parties by Contract: FETCO is impressed with the innovative idea in Bill 59 of the WCB delegating its powers under the Workers' Compensation Act to an agent or local representative to determine entitlement and pay compensation to injured workers. This could allow an employer to take over certain aspects of claims administration in uncontested cases and thereby save the costs and time of administering them through the WCB. FETCO welcomes discussion and research on this provision once it is implemented in pilot situations. (See Section 109.5(1), WCA, C.C.S.M., c. W200 am., as amended by Section 59, Bill 59: WCA and CAA.)

Conclusion: The FETCO WCB subcommittee thanks the standing committee and the minister for the opportunity to comment on the proposed amendments in Bill 59 and applauds the development of a consultative process in Manitoba involving stakeholders and the WCB to fully discuss

proposed changes prior to implementation. Together we can fashion a revitalized workers' compensation system that will be fair, effective and service-driven at a reasonable cost.

Roger R. Rickwood, Ph.D., LI.B., LL.M.
Co-Chairman, FETCO WCB Subcommittee and Director, Health, Safety and Environmental Affairs, Canada Post Corporation
July, 1991.

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As I had turned 65 years of age, on November 1, 1990, WCB stated that a settlement had to be made on my claim for my present disability resulting from my accident of August 20, 1986, and I accepted a cash settlement.

I was also expecting an adjustment to be made to my CPP by WCB, while on W.C. benefits, but WCB stated to me that they do not pay my CPP while on W.C. benefits.

I had been a top contributor for the last 14 working years, 1972 to 1985, but as nobody contributed to my CPP while I was not able to work and I was receiving W.C. benefits, I have lost the full benefits: approximately $28.90 a month. Why am I now, at retirement, being penalized?

Then again, I had paid into our UIC most of my labouring years—nearly 50. I could not claim either as I was not fit for work.

So I am a loser twice.

(With thanks)

A true labouring Canadian,
Jeanette Breman