Second Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

INDUSTRIAL RELATIONS

40 Elizabeth II

Chairman
Mr. Jack Penner
Constituency of Emerson

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Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Thursday, July 18, 1991

TIME — 10 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Jack Penner (Emerson)

ATTENDANCE - 7 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Downey, Praznik

Messrs. Ashton, Connery, Penner, Sveinson

Substitutions:

Mr. Evans (Brandon East) for Mr. Santos

Mr. Hickes for Ms. Barrett

APPEARING

Sharon Carstairs, MLA for River Heights

WITNESSES

Buffie Burrell, Manitoba Government Employees Association

W. Yvon Dumont, Manitoba Metis Federation

William Laird, Manitoba Professional Firefighters Association

Harvey Levin, United Steelworkers of America, Local 5442

Written Presentations Submitted:

Susan Spratt, Canadian Association of Industrial, Mechanical and Allied Workers

W. E. (Newton) Thomson, Private Citizen

MATTERS UNDER DISCUSSION:

Bill 59—The Workers Compensation Amendment and Consequential Amendments Act.

* * *

Mr. Chairman: Committee, come to order, please. This morning, the committee will be considering Bill 59, The Workers Compensation Amendment and Consequential Amendments Act.

I would also like to announce that late yesterday, an additional meeting of this committee was called for this evening at seven o'clock to continue dealing with Bill 59. With the permission and consideration of the presenters here, we will ask those whom we are not able to deal with this morning to come back at seven o'clock or later on this evening.

It is our custom to hear briefs before consideration of the bill, and I would ask at this time what the will of the committee is, whether you want to continue that custom.

An Honourable Member: Agreed.

Mr. Chairman: Agreed.

I have a list of persons wishing to appear before the committee which I will read. However, before I will read this committee list, I understand, Mr. Hickes, you have changes to propose to the committee. Is there leave to make changes to the committee?

Some Honourable Members: Leave.

Committee Substitutions

Mr. Steve Ashton (Thompson): Yes, I would move that the composition of the Committee on Industrial Relations be amended as follows: Mr. Hickes (Point Douglas) for Ms. Barrett (Wellington); and Mr. Leonard Evans (Brandon East) for Mr. Santos (Broadway). This will also be moved in the House.

Mr. Chairman: Agreed? Agreed.

* * *

Hon. Darren Praznik (Minister responsible for and charged with the administration of The Workers Compensation Act): Yes, Mr. Chair, if I may before we hear presenters, I have prepared for each member of this committee a binder outlining the current act as well as the proposed amendments, and I am sure members would find it useful in following through the presenters. If I could have my staff come forward and provide that to members of the committee, I am sure it will make it much easier to follow the presenters on this rather complex piece of legislation.

I also would like to table to the two opposition critics—I have had an opportunity to speak to both

of them in the course of the last few days in preparation for this committee, and there were a number of amendments that have been suggested by my staff, technical amendments primarily where there were some oversights in the original drafting of the bill. I have a copy of that, and I want to provide that to each of the opposition parties. I should just put the caveat that I have not, as minister, committed myself to all of these yet, and I wanted to provide them for their perusal and comment before we get to the clause by clause.

Mr. Chairman: Thank you, Mr. Minister. The material is being distributed. While staff is distributing the material, I am going to read to the record the list of names that we have, and if anyone else is in the audience who would like to make a presentation, would you please advise the committee clerks of your intention so that we can put you on the list as well?

* (1010)

At this time I would indicate that Mr. William Thomson, private citizen, wants to present; Mr. Robert Watchman, Manitoba Chamber of Commerce; Mr. Craig Cormack, The City of Winnipeg; Mr. Gervin Greasley, Winnipeg Construction Association; Mr. Ray Winston, Manitoba Fashion Institute Inc.; Mr. John Huta, private citizen; Mr. W. K. (Winton) Newman, Mining Association of Manitoba; Mr. Dale Neal or Ms. Buffie Burrell or Mr. Lorne Morrisseau, Manitoba Government Employees Association; Mr. Harry Mesman, Manitoba Federation of Labour; Mr. Bob Sample and Gord Fisher, Canadian Union of Postal Workers; Mr. Garth Whyte, Canadian Federation of Independent Business; Mrs. Laverne Dahlin, Canadian National Railway - General Claims; Mr. Robert Ross, Private Citizen; Mr. Bruno Zimmer, United Food and Commercial Workers, Local 832; Mr. Wayne Desiatnyk or Ms. Debra Ram or Ms. Helen Woloshyn who will be representing the Injured Workers Association; Mr. Al Harris, Manitoba Trucking Association, Mr. Yvon Dumont, Manitoba Metis Federation; Ms. Judy Cook, MFL Occupational Health; Mr. Richard Kerylko, Private Citizen; Mr. William Laird, Manitoba Professional Firefighters Association; Ms. Sandra Oakley, Canadian Union of Public Employees, Local 1063; Mr. Lend Wheeler, International Association of Machinists and Aerospace Workers, Lodge 484; Mr. Bob Hykaway, Amalgamated Transit Union, Local 1505; Mr. Albert Cerilli, Canadian Brotherhood of Railway Transport and General Workers; Mr. Kelvin Dow, Canadian Auto Workers; Mr. Cliff Anderson, Private Citizen; Mr. John Irvine, CUPE, Local 500; Dr. Allen Kraut, Private Citizen; Spokesperson to be named for the Winnipeg Chamber of Commerce; Mr. Glenn Michalchuk, International Association of Machinists and Aerospace Workers, Lodge 122; Mr. Harvey Levin, United Steelworkers of America, Local 5442; Mr. Robert Olien, Private Citizen; Mr. Howard Raper, Communications and Electrical Workers of Canada; Mrs. Jeanette Breman, Private Citizen; Mr. George Provost, Canadian Manufacturers' Association; Mr. Robyn Singleton, City of Brandon; Mr. Laurie Croisetiere, Canadian Pacific Limited; Dr. Roger Rickwood, Canada Post Corporation - FETCO (Federal Employees Transportation and Communications Organization).

Okay, that is the list that is before you. There are a number of presenters who, I understand, are from outside the city, and it is normal practice that those who are from outside the city will be heard first. What is the will of the committee in that respect?

Some Honourable Members: Agreed.

Mr. Chairman: Agreed that we hear those first.

Mr. Praznik: Mr. Chair, I understand that the representative of the Firefighters Association is also here and has a shift tonight and will not be able to attend this evening. I would ask that he be allowed to speak this morning at some point.

Mr. Chairman: We will note that and with the agreement of the committee, we will ask him to come forward this morning then.

An Honourable Member: Agreed.

Mr. Chairman: Does the committee wish to impose time limits on the presentations? What is the will of the committee? We have had a number of committee presentations that have been very, very lengthy.

Mr. Ashton: It is a very detailed bill, Mr. Chairperson, and I do not think we should establish any arbitrary time limits. The only thing I would ask is that we do not sit until four in the morning.

Mr. Chairman: If it is the will of the committee, then, not to impose time limits, I would ask presenters at this time to try and restrain themselves and make their presentations as brief as possible, and similarly the questions, to the committee, we try to do this in as orderly a fashion and also as quickly as possible because there will be a number of

presenters here, and I am sure they all want to be heard.

I would like to now call upon Mr. William Thomson who is from out of town, who is a private citizen. Okay, I understand that he is not here. He has sent a written brief which we will distribute. The next out-of-town person representing the Manitoba Government Employees Association is Ms. Buffie Burrell. Is she here? Ms. Burrell, would you come forward, please? Do you have a written presentation for distribution?

* (1015)

Ms. Buffie Burrell (Manitoba Government Employees Association): Yes, I do.

Mr. Chairman: I will ask the staff to distribute it. I would ask you to proceed while the distribution is going on.

Ms. Burrell: Thank you. My name is Buffie Burrell, and I am presenting this brief on behalf of the Manitoba Government Employees Association. I just want to point out before I get into the brief that I have not written this brief. I am presenting it on behalf of the writer who is away on vacation at this time, and I am not as familiar with the areas in it, although I will try to answer whatever questions I can after the presentation.

The Manitoba Government Employees Association represents approximately 25,000 working Manitobans. Our members are employed in a number of widely diverse occupations, and work is undertaken under many varied conditions from the forests and fields to laboratory and office settings. Just under half of our members live and work in the city of Winnipeg, with approximately 54 percent living and working in rural Manitoba and northern Manitoba.

We as a union have as one of our primary responsibilities to the workers we represent to ensure that they work under safe and healthy conditions. The responsibility extends beyond this to ensure that appropriate social safety nets are in place, should a member be unable to work as a result of some injury, impairment or disease incurred as a result of the activities in the workplace.

Workers do not ask for much. We expect a fair day's wage for a fair day's work. We expect safe and healthy workplaces free of physical and emotional peril, and we expect a fair and reasonable system of compensation should we be unable to work as a result of an injury, disease or impairment, physical or emotional, incurred as a result of our activities in the workplace. We expect meaningful rehabilitation with meaningful post-injury jobs.

It is often said one has to take the good with the bad. In this list of proposals, there is very little good amongst so much bad. Admittedly, there are some progressive changes in the proposals found in Bill 59. I refer to: 1) the automatic indexation of benefits; 2) maximum insurable earnings which increases to $45,500, which will more adequately reflect the salary levels of our members; 3) Section 27, payment for wage losses where a worker suffers damage to prosthetic devices, eye glasses, dentures, hearing aids and so on; 4) Section 28, increase of funeral allowance to $5,000 without deducting CPP death benefits.

These highlight the major positive proposals in Bill 59. I will now move on to the major negative proposals of Bill 59.

Section 1(1.1): The board will no longer accept responsibility for mental or emotional disability or stress arising out of a personal action such as a transfer, promotion, demotion, termination or layoff, other than an acute reaction to a traumatic event. In most situations, stress is a result of cumulative stressors in the workplace or chronic exposure to many stressors. This proposal could damage any previous successes we have had with stress cases before the Workers Compensation Board, and we worry that this destroys hopes of future successful cases around stress issues.

Section 27.1: The board could limit or deny subsequent claims to workers who persist in working in occupations for which they are medically unfit and where the board has provided or undertaken to provide the worker with rehabilitative assistance to become employable in another form of employment.

* (1020)

This proposal could only work in an ideal situation where Workers Compensation Board and employers have provided meaningful rehabilitation to assist the worker in employment in another job. Too many times the Workers Compensation Board allows the employer to re-employ the injured worker in a less than satisfactory light duty position. In other instances, the Workers Compensation Board has insisted on a worker undertaking a job search without regard to current economic conditions. Once the search is completed, the Workers Compensation Board will discontinue benefits, and

this proposal would ensure that no worker could take on any job that might reinjure them. If the possibilities for jobs remains few, you cannot blame workers for going back to work that will earn them a living. No provision is made to ensure the employer would not harass a worker to perform their preinjury job. This does happen frequently as employers choose to disbelieve someone is injured or has limitations. This section will surely save the board money, and it is wrong to only single out workers.

Section 18: Employers to provide notification of an accident within five days, increased from three days. Extreme time delays are often encountered due to employers failing to report within the prescribed time frame of three days. The longer time frame does nothing to improve this. I would point out that 18(5) provides relief from penalty with a good excuse.

Section 101: Will provide employers with access to medical reports and information on injured workers. This is a question of medical privacy. This could result in employers discriminating against workers.

Section 109: The board may delegate to an agent. In looking at sections under Section 109.5(1) this looks suspiciously like the board giving permission to certain agents and potentially employers to adjudicate claims. This would then allow for self-insurers, i.e., City of Winnipeg, railways, Inco, Province of Manitoba to adjudicate injured workers' claims. Employers would use this program as a means of suppressing claims through intimidation to improve their experience rating. Even if workers had an opportunity to ask that the Workers Compensation Board adjudicate their claim, it is possible they would be intimidated to allow the employer to proceed with adjudication. I would point out that employers that regularly appeal compensation would love to have this power.

Section 67: Board to charge workers for so-called frivolous appeals or requests for medical review panels. This could result in injured workers not proceeding with appeals or medical review panels for fear of financial reprisals. The maximum would be $250. Workers should not have to pay for something that is due to them—the right to appeal.

Section 101: Fees for copies of documents. This could again be a financial burden to workers, particularly if they are without earnings.

Section 41, Collateral Benefits: Deduction of any collateral benefits from the amount paid by the Workers Compensation Board to 90 per cent of the worker's actual loss of earning capacity. Traditionally, legislation provides for minimum coverage with regard to labour legislation, compensation and many other considerations. Organized labour seeks enhancements to this from their employers through collective bargaining and collective agreements. It is not the business of the Workers Compensation Board to reduce its liabilities if gains in the area of workers compensation have been negotiated with employers. There is no real cost to the Workers Compensation Board in this area.

On the whole issue of experience rating, this rebates good employers and penalizes bad employers. There are employers who are committed to maintaining safe and healthy workplaces, but there are those that are interested in reducing the number of claims through whatever means to reduce their assessments. The past has shown that employers will try many schemes to reduce the number of claims, i.e., intimidation of injured workers, pay workers to come to work injured and not report accidents, encourage workers to use sick leave instead of workers compensation. The only way to ensure safe and healthy workplaces is with strong workplace safety and health legislation with realistic penalties for violators and adequately staffed inspection and regulatory authorities.

Dual awards instead of a permanent disability pension, formerly PPDs: Instead of receiving a pension dealing with disability and wage loss for life as the present system provides for, the proposal provides for a lump sum for your impairment and pays you a wage loss based on 90 percent of your net up to two years of wage loss and 80 percent after this. In assessing the impairment, we suggest the American Medical Association guide and would recommend a wage loss pension instead of regular wage loss payments. A pension permits and encourages workers to get back into the workplace and not fear for the loss of the award if they improve their earnings.

Although this is by no means a complete list of the negative proposals in Bill 59, it does highlight some of our major concerns. It is our sincere belief that changes have been motivated by cost and not by a desire for fair benefits to the injured workers.

I thank you for your time.

Mr. Chairman: Thank you very much, Ms. Burrell, for your time. Are there any questions at this time from the committee?

* (1025)

Mr. Ashton: I thank the presenter for an excellent brief. I note she has been rather busy the last few days here. She is a former constituent of mine, so I know her quite well—a constituent member for Portage. There are a couple of questions—I appreciate the general concerns, incidentally—about the bill. In fact, in debate yesterday, before we passed it through, we expressed the concern that this was motivated by the bottom line rather than the best interests of injured workers. You have identified quite well, I think, some of the difficulties that we have seen in the bill.

I just wanted to deal, for example, with the concern about Section 67, the frivolous appeal section, and ask, if really the government was to be looking in terms of frivolous appeals, it should perhaps be looking at employer appeals and not putting any disincentive on employees, because one of the problems I see is, what is frivolous? Frivolous is in the mind of the beholder. I would appreciate it if you could elaborate on your concerns in that section.

Ms. Burrell: Well, it is our belief that anybody who is making an appeal is not doing it for frivolous reasons. It is time-consuming when you are making an appeal. In all likelihood the person is using either their union or the worker advisor's office and neither the union nor the worker advisor's office is going to be spending a great deal of time on something that is frivolous. When you have lost all of your earnings and you cannot go back to work, it is our belief that anybody who is trying to regain something through an appeal process is doing it for meaningful reasons, not for frivolous.

However, a lot of times the employers will appeal cases and it is, in our opinion, for frivolous reasons. Sometimes, perhaps, it is not. I am not all that aware of all the reasons why employers appeal, but I know in some cases they are appealing it to hold it up or because somebody has reinjured themselves and they want their stats down, or for whatever. So yes, in our opinion, I would say that I do not think anybody should be penalized for appealing. It is a due process.

If somebody is doing it for a frivolous reason, I am sure the board would tell them that and would make it so that in their written presentation back people would feel they should not be doing that and would not do it again. But to penalize somebody for that—making a frivolous appeal—whose eyes are we going to judge whether it is frivolous? Through the board's eyes, through my eyes, or exactly whose eyes? So I would say that our belief is that should not be in the act at all.

Mr. Ashton: I appreciate it and, indeed, we share the concern. We see this section as essentially a user fee for Workers Compensation. Just as user fees in terms of medicare are our concern, so is this, because it should be the right of injured workers to appeal.

Just one other question, and it is in regard to the question of medical privacy. That is a concern that is increasingly being expressed by people who have looked at this bill, and particularly the access to files for employers. There is a great deal of concern about that information being used in other contexts and also really giving much more of an adversarial nature to the relationship between employers and injured workers, that, in combination with experience rating. I just wonder if you would elaborate to the committee what the major concerns of the MGEA are in terms of why that information should not be made public.

Ms. Burrell: There are several areas of concerns. Number one is the whole area of medical confidentiality and discrimination against an injured person or a person who is not all that healthy. As a person who has been working on several compensation cases over the last two years, I have got many medical records where I write and ask specifically for what is involved in the injury, and I get back years worth of medical history from this person which the employer has no right to know about.

Number one, if they have it, they could use it against the employee. Number two, the Workers Compensation Board has been working well over the last years in that area. Employers have not had access to that information, and I do not believe they need it in their case for appeal. The Workers Compensation Board has the medical information. If they want to say that the employee is not injured because of that medical information, then they can do so. The employer does not need that information to then reharass the employee back to the

workplace. Our main concern is that they are going to get information that they will use against the employee that would oust the employee from their job and maybe perhaps future employment.

* (1030)

Mrs. Sharon Carstairs (Leader of the Second Opposition): I have two areas that I want to ask—to just continue on the line, however, that you were addressing. I find it a little strange that patients often have difficulty getting medical information from their doctors, and yet we now seem to be accessing employers to the medical information that often patients do not have access to. Obviously, you share that concern.

Ms. Burrell: We sometimes have a great deal of difficulty getting information. The members themselves cannot get that information. I spend many hours writing letters to doctors and asking pertinent questions, where if the patient could just go in, pick up the information and bring it back to our office, it would save a lot of time, but that is not the way it works.

I sometimes have doctors who phone back and say they will not release the information unless I guarantee them that the information will not be shared with the client. Now, it is the client's right to know what is in that document, and on a couple of occasions I have had to get written consent from the client that they would not ask to see that information because it was very pertinent to appealing their case, but that is the only way we could get it, so why an employer should suddenly have access to it, I have no idea. They do not need it in my opinion.

Mrs. Carstairs: The other question I have is on Section 18 and the notification extension from three days to five days. Do you not think that this sometimes could be to the employees' benefit? For example, people who suffer whiplash sometimes do not know that they have, in fact, had a whiplash for three or four days until the body reacts in certain ways.

Are there not some circumstances in which a delay in reporting might be an asset to the employee, not necessarily not an asset?

Ms. Burrell: There is provision in the act for that already by a waiver of the penalty if they have a good reason, and if they can prove that they were doing it for a valid reason, then that is waived.

By extending it another two days, you are extending a time period where an employee who—for example, if it is a nonunionized worker or a worker who has just started into the work force and has no sick leave, who has absolutely no income coming in—for example, I have been working with a client who phoned me who had been off for almost three months and had still not received pay, and Workers Compensation was saying it was because of the fact that the medical examiner or the doctor had not sent the reports in.

Now, if we extend those time limits for a longer period, these workers who have no income coming in are going to be longer and longer without monies coming in, and I do not think that is what the process is all about. The process is there to help the worker, not the doctor or the employer. It is there for the worker's benefit who is injured, and if you give them that extra two days, then in all likelihood they will use that extra two days.

Mrs. Carstairs: Thank you.

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

Mr. Praznik: Yes, Ms. Burrell, again, thank you for your presentation. It was a very interesting one and very well presented. I appreciate that you are representing the writer of it here today, but I have a few questions for you and some clarification.

Mrs. Carstairs hit upon the move from three to five days, and you mention the on-line computer system. You are right in your assessment; it certainly sped up the access. The three-to-five-day provision was discussed administratively because not all employers, of course, are on that computer access, and if you could take back to your organization, the intention was to have a reasonable time period that was very enforceable because it was reasonable as opposed to three days where we tended to find a lot of people just were not complying, particularly in outlying areas, et cetera, but your concern is appreciated. As we move to computers and on-line access, it should get down to almost instant recording.

The areas where I had a couple of questions with respect to employer access—I was wondering if you were familiar with the history of access to medical information in the WCB area and what is happening in other parts of the country.

* (1035)

Ms. Burrell: I am not familiar with what is happening in other parts of the country, and the only area that I am very familiar with is the fight that we

as representatives of injured workers have had to get that access and we now have it. As acting on behalf of the employee, it is beneficial to them. That is the only area that I am aware of, of the access. I am not familiar with other jurisdictions.

Mr. Praznik: Yes, I want to comment to you today that the concerns that you raise are certainly valid ones and concerns that I shared in dealing with this issue, and you have hit upon a bit of the history of it when you indicated that prior to, I think it was '83—I know the member for Thompson (Mr. Ashton) was involved in those amendments—there was no access to medical information for anyone.

In '83, it was opened up to employee access to their own records for appeal. The difficulty that I have as minister today is that jurisprudence is developing across the country that is saying if you are having an appeal procedure, that you have to have equal access to both parties in it. That is the dilemma in which I am walking, and I believe we are only one of two jurisdictions left in the country that does not provide an equal set of access to both employees and employers, us and Nova Scotia.

In looking at that dilemma of courts saying you have to provide equal access and looking at the dilemma of saying, do we close it down for everyone, or do we have a system that is fair and protects those rights that you have recognized—I know there was a story in the Free Press this morning that was not very descriptive.

I ask you this, if you have had a chance to look at the bill. The kind of mechanism we are trying to put in place is similar to that of Ontario, except somewhat stronger in that an application would be made for medical information. The board would only provide information relevant to the appeal, not all information. They would notify the employee affected and say, this is what we would like to provide to the employer. The employee, if they concur, that is fine; if they object, it would go to the Chief Appeal Commissioner, not a bureaucrat, in essence, who would then adjudicate on that decision and could provide it with or without conditions or deny it all. Those are probably the strongest safeguards in the country.

I guess my question to you out of that is: Given my dilemma of adjudications and jurisprudence developing across the country, would it be better to have—if I have to provide equal access, is it better to provide no access to anyone or access to both with those very stringent safeguards on employer access so that employees are protected as much as possible? That is my dilemma and I ask your opinion.

Ms. Burrell: I would hope that you would take a strong stand and provide access to the workers and not the employers. If we always followed what was coming down in the Legislature and in law and not fought some of those things as a government or as workers, then we would probably still be in the Dark Ages. I think the system that we have now is fair, and that we should just continue fighting being forced into providing other things that we do not think are fair.

Mr. Praznik: I often wish as a legislator that we did not always have to follow court rulings, but one of the realities of life—and I appreciate your position as a representative of employees to push that position. We are in little different chairs, but I certainly appreciate that.

The last question I have for you is one with respect to your own benefit package. I think you identified rightly that there are a host of social safety nets of which WCB is one, and I just wanted to ask if it is not the case that your members are protected in terms of 24-hour coverage including for psychiatric disturbances, et cetera, by a long-term disability benefit plan as part of your package of benefits.

* (1040)

Ms. Burrell: That is only provided to the Civil Service and some of the other Crown corporations. We have many other employees or members that are not covered by a long-term disability plan.

Our long-term disability plan is very stringent in its criteria, and I have yet to find a lot of people that have been able to get onto it successfully. We are fighting with that agency all the time as well. There are a number of people whom we feel should be on the long-term disability who are not covered by it. Yes, they do have that benefit, but the criteria is such that it does not always allow them to get onto it.

Mr. Praznik: You have certainly hit upon one of the dilemmas of making sure our social safety net, whether it be WCB or LTD, et cetera, is well-linked for coverage and having some clear boundaries, of course, so we know where to match them. I appreciate your concern. Thank you.

Ms. Burrell: I just want to point out that on the LTD plan, that is a benefit that the workers took as a cost-benefit measure, that they took for not being injured on the job. If they have been injured on the

job, whether it be stresses or a physical injury, then they should be covered by workers compensation, not necessarily the long-term disability plan.

Mr. Chairman: Thank you, Ms. Burrell, for your presentation.

At this time, I would like to indicate to you that there is a written brief that we have received from the Canadian Association of Industrial, Mechanical and Allied Workers, and I would like to distribute this brief at this time.

While the brief is being distributed, I am going to ask that Yvon Dumont come forward. Is Yvon in the room? Mr. Dumont, would you please come forward? Mr. Dumont is from the Manitoba Metis Federation. Have you a written presentation to distribute?

Mr. W. Yvon Dumont (Manitoba Metis Federation): Yes, I do.

Mr. Chairman: I ask the staff to distribute the presentation. Mr. Dumont, would you proceed, please.

Mr. Dumont: Thank you very much, Mr. Chairman. I am glad that the committee decided not to put a time limit on these presentations, because we have quite a few concerns there regarding this bill. I intend to address as many of them as possible here before four o'clock in the morning.

We have concluded an initial review of the proposed amendments to The Workers Compensation Act, initiated by the steering committee and revised and introduced by the minister and, quite frankly, we consider these to be the most regressive compensation proposals ever put forward.

However, we start on a positive note. In our experience in the last few years that we have been dealing with the staff at the Workers Compensation Board, we wish to commend them for their cordial, informative and helpful attitude toward us.

As well, your proposals to automatically index pensions is a long overdue initiative which we welcome as this has been left to government discretion in the past. As you know, in 1979, pensioners did not receive an increase in the second year as had been the case since 1972.

However, the vast majority of the suggested amendments are, in our opinion, Draconian. These include: giving workers' confidential medical reports to the employer; fining workers up to $250 if the board considers his or her appeal frivolous; denying workers the right to request a medical review panel at the final level of adjudication; fining workers up $250 if the board considers his or her request for a medical review panel frivolous; off-loading costs of Workers Compensation from employers to the general driving public; denying full compensation to workers who have what the board considers to be pre-existing conditions. This obviously will encompass any older worker with a back injury; reducing compensation for workers over age 45, but not increasing compensation for those workers under the age of 45; terminating wage-loss compensation at the age of 65; freezing wage-loss compensation; excluding certain diseases as being compensable; and, allowing agents of the employer to adjudicate claims.

Furthermore, some of your proposals appear to pave the way in allowing some, as yet unidentified, employers to be classed as self-insurers, thereby having any deficit guaranteed by the taxpayer rather than the employer.

In any event, lest we be mistaken in our assumptions, could you please advise us of the following: What studies and/or cost estimates have been performed prior to introducing this package? How do these studies compare to the costs of: (a) the current system, (b) the proposals of the Legislative Review Committee? Would you be prepared to share these estimates, including any actuarial assumptions?

We do not wish to appear totally negative regarding these legislative changes, but at the same time, we must be certain as to what impact they will have on our members as well as the compensation system as a whole.

I will now address a number of specific items that are of concern to us. The first one is item 3, and the proposal is to provide that medical reports submitted after the legislative change be identified as being "for the use and purpose of the board only," so that professionals submitting the reports are protected by qualified privilege against civil action for honestly held opinions.

We have no problem with the board wishing to protect the medical profession against civil litigation for "honestly held opinions." However, this should not include indemnification from malpractice action initiated either by the claimant or by the Workers Compensation Board as a subrogated action.

Item 4, giving medical reports to the employer: We can understand how the current provision to

provide medical information to the claimant and not to the employer might be viewed as a denial of natural justice. However, this acted as a protective mechanism against employers using the reports against workers in a punitive manner.

We do not believe your current proposal provides workers with sufficient protection against misuse by an employer. We can easily envision an employer, upon learning that a worker may have a drug, alcohol or emotional problem, would simply dismiss the worker, particularly if the worker is nonunion. The employer may well not give the information derived from the medical report as a reason for the firing and essentially there would be no way of proving or disproving the rationale.

As well, we can well foresee an employer refusing to re-employ a worker if the employer was aware of an unrelated disease, such as cancer, diabetes, pregnancy, et cetera.

In cases where the dismissed worker believed medical reports were a factor, what mechanisms would the steering committee propose to ensure that matter was fully and fairly investigated?

Notwithstanding, if the steering committee still opts for this approach, we believe the fine should be increased from $5,000 to $50,000 to dissuade employers from breaching the act. We note, as well, that in the legislation the fine of $5,000 does not appear in the bill. It used to be in the bill; this amendment takes it out. At least that is the way I understand it.

Item 5, the Workers Compensation Board to charge for a second file copy: In some instances, the worker advisor would receive a file copy, but in turn, cannot give a copy of the file to the worker.

Is it the government's intention to declare the copy the worker advisor receives as "one" copy, and then charge the worker if he or she wants a copy of his or her file? If so, we must take issue with this proposal given that the worker would be requesting one information for an appeal, so presumably may be without funds for an indefinite period. The worker could ill afford the expense at a financially tragic point in his or her life.

* (1050)

Item 6, the proposal is to establish a rate stabilization fund and a relief of costs fund. The Rate Stabilization Fund would replace the Disaster Fund established by policy in 1989 and the Relief of Costs Fund would replace the Second Injury Fund to provide for relief of costs in certain specified circumstances as set out in legislation and board policy.

On the Rate Stabilization Fund to replace the Disaster Fund, the Disaster or Equalization Fund was established many years ago to meet costs arising from one accident resulting in multiple deaths or injuries such as an airplane crash, cave ins, et cetera.

The Legislative Review Committee, including business and labour, recommended that this fund be maintained and built to between $5 million and $10 million.

By changing the name of the fund from "Disaster" to "Rate Stabilization Fund," would you please clarify what would be accomplished as well as the exact purposes of this proposed fund.

On the Relief of Costs Fund to replace the Second Injury Fund, the Second Injury Fund was established by all boards across Canada to cover costs arising from accidents where workers aggravated, enhanced or accelerated pre-existing pathologies.

Again, the Legislative Review Committee, with the support of industry and labour, recommended maintaining this fund noting that it should not be allowed to deplete as it had in previous years.

Would you please clarify the rationale for the name change?

Item 10, the proposal is to expand the board's exclusive jurisdiction to include the establishment annuities as well as the commutation of pensions. The range of choice in an annuity would include lifetime, joint annuity, fixed term of 5, 10 or 20 years or an annuity that is greater of lifetime or fixed term.

We assume this ties in with the dual disability award system outlined in Recommendation 122 of the Legislative Committees Report. We note that the committee recommended an additional 10 percent of compensation be awarded for permanent disabilities be set aside to provide for a retirement annuity. The proposal suggests that the board pay 5 percent and the worker pay 5 percent at his or her option.

This will be unlikely in many cases as the worker's benefit will have already been slashed by 10 percent from 90 percent to 80 percent.

Item 11, proposal, to provide the authority to commute small pensions to lump sums or to establish annuities: The board, by virtue of the act,

has always had the authority to commute pensions into lump sum settlements. We are concerned that the board would have the sole prerogative of determining what it considers to be small.

If, as you suggest, some lump sums are converted to tax-free annuities, what control does the claimant have in this regard?

Item 12, proposal to provide that where an annuity is unclaimed for more than six years, the fund shall revert to the accident fund and the liability will cease.

We have no concern regarding the principle, simply a question regarding how this would be orchestrated for self-assurers and deposit employers.

Would the self-assurer put the money up front, quarterly, semi-annually, etc., to purchase the annuity, and would these annuities be administered in the same manner as those of a Class G worker?

Item 13, fining workers for appealing: The proposal that the board's power to award costs on appeals be replaced by a provision that enables the Appeal Commission to award reasonable costs to the board where, in the opinion of the Appeal Commission, not to exceed $250, the appeal was frivolous.

We perceive this as a deliberate intent to discourage injured workers from appealing their claims. You have placed the entire onus on the Appeal Commission to determine what is and what is not frivolous. In essence, you are suggesting that the Appeal Commission be empowered not only to reject an appeal but to punish a worker for simply requesting a higher authority to review his or her case. Does this mean then that when a worker is awarded his or her appeal that the board is obligated to pay costs for a previous frivolous denial? Obviously employers will be able to afford these costs while workers will not.

The board being a quasi-judicial body leaves no legal recourse to injured workers and you are now stripping away what little recourse is left. If this is an attempt to discourage workers of their right to appeal, then let us say that we intend to oppose this initiative with all vigour.

Item 15, to establish Class A as a schedule of provincially funded industries: Any industry previously included in this schedule could be withdrawn and transferred to any other class or formed into a separate class in which case the board would be required to adjust the reserves in order that other classes not be adversely affected. It is also proposed that the board have the authority to dispense with reserves from provincially funded industries, but that their future costs would be guaranteed by the government of Manitoba.

We have noted that in the previous proposals that you suggest changing current Class A and B to new Class A and B, although there is no explanation for the rationale.

We are wondering why you want to withdraw CPR or transfer CPR to another class or a new class with the provision that the board would be required to adjust reserves. In dispensing with the reserves of provincially funded industries, would you not be reducing the unfunded liability by putting the taxpayers at risk?

What is the rationale for the board to be given the authority to dispense with reserves from provincially funded industries? In what way would the board dispense of these funds? Government, as a tax body, would indeed guarantee funds, but this places the taxpayer at risk, when in fact the onus of Workers Compensation Board should be on the employer.

Item 16, proposal, to establish Class B as a schedule of self-insured employers: We have the same concern as in the previous item. Moreover, placing an employee as a self-assurer would have the effect of putting the taxpayer, not the employer, at risk in the case the employer was not able to fulfill its financial obligation. Moreover, if classes were changed or if a current Class G employer was determined to be a self-assurer, how would this impact on the current unfunded liability?

Item 20, the proposal to require a cash deposit from self-insured employers from which the board would dispense funds as benefits are paid. Historically, self-insured employers have always been deposit employers, whether quarterly, semi-annually, et cetera, which simply included an administration add on. On the surface, this appears merely to be a duplication of the existing format. Could you please explain the rationale?

Item 21, proposal to specifically provide for adjustments required as a result of future legislative increases. We wholeheartedly support this initiative. It will eliminate the uncertainty of depending on government.

Item 23, to permit the board to include the self-insureds in the Rate Stabilization and Relief of Costs funds: The reason for disqualifying some

self-insureds from the Relief of Costs Funds in the past was quite simple, they did not pay into the fund. If it is your intention to afford cost relief to self-insureds, would you please confirm that they will be required to pay their fair share into the fund? If so, under what legislation?

Limiting funds to Workplace, Safety and Health. Limiting the amount of funds the Workers Compensation Board pays to the Workplace, Safety and Health appears to be another backward step. Removing need for monthly report to Auditor to provide the board with greater flexibility in financial matters, the board must still establish and maintain an accounting system satisfactory to the Minister of Finance and permit the minister to inspect the records at any time. However, its flexibility in financial matters has been increased through removal of the following requirements—I will not go through that.

* (1100)

We can understand the rationale for all proposals except for (d). Would you please elaborate on why you would want to remove the need for a monthly report to the Provincial Auditor?

Deny claims for mental conditions. The board currently has the legislative power to recognize claims for mental or emotional disability under the definition of accident, which includes, an event arising out of and in the course of employment; thing that is done and the doing of which arises out of, and in the course of employment, et cetera, and as a result of which a worker is disabled.

Section 42(2) also allows the board to recognize neurosis and psychoneurosis even if the conditions pre-existed the accident. We make note that the previous sections regarding neurosis panels have been deleted from the act, but this in itself does not negate acceptance of claims for mental or emotional disability.

One of the first heart attack claims accepted by the board occurred over 20 years ago for a worker who suffered a heart attack shortly following a severe reprimand and demotion. As we interpret the penultimate and the final sentences of your proposal, this claim would now be rejected under board policy unless it was a proven claim. This places a reverse onus on the worker totally contrary to all compensation law.

To permit the establishment of a three-week deductible period during which time lost benefit would not be payable for injuries involving serious and willful misconduct: Previously, the board has interpreted this section in a fairly liberal manner, considering an accident which disabled a worker for a week or more to be serious. If we recall correctly, the current deductible period is three days. Would you please elaborate why you are increasing the deductible from three days to three weeks?

Reject claims under worker returns to pre-accident work: We certainly do not wish an injured worker to return to work which is harmful to his or her health, however, your caveat is unreasonable in our opinion. You could well use this proposed legislation to deny compensation to a worker who had no other recourse than to try returning to his or her former employment. It has been our experience that the rehabilitation department not only suggested one of our members with a broken back return to heavy labour, but in fact coerced him to do so. However, to end on a positive note, this worker is now being assisted by board staff, and we are pleased with the assistance these individuals are providing our member.

In another case we are handling, our member was denied preventative rehabilitation even though he met some of the criteria. What about the 60- to 62-year-old truck driver who the Workers Compensation Board may determine is too old to rehabilitate. Notwithstanding this, your proposal is totally unacceptable unless the worker was guaranteed fair and equitable treatment, particularly in light of today's economy, where many workers simply have no choice but to return to their lifetime vocation.

To clarify that medical review panels must be requested prior to a final adjudication by the Appeal Commission: We disagree with this proposal and will provide you with a hypothetical case outlining our rationale, although we can and will, if you wish, provide actual example cases. Let us assume a claim is rejected primarily because the worker delayed reporting the accident. The focus of the appeal would be on showing the accident did indeed occur at work.

Assuming somewhere up the appeal ladder this aspect of the claim were resolving in the worker's favour, the board may well then opt for the position that even though it concedes the accident occurred at work, the medical condition is not considered to be related to the employment. In other words, the

worker may not have any reason for requesting a medical panel prior to final adjudication.

To permit the board, subject to appeal, to charge the worker a reasonable cost not to exceed $250 for the medical review panel, where the medical review panel is requested by the worker and the panel supports the decision of the board's physician and where the request, in the opinion of the board, was frivolous: This, along with many other proposals, could well be viewed as a step back into the 19th Century. We see this as another obvious attempt to discourage workers from appealing their claims. This is a contradiction of many government-commissioned reports over the past five years.

Existing legislation only allows for a panel where the claimant's physician supports his or her claim, so in effect you would be taking the position that the claimant's doctor made a frivolous request. It behooves us as to how lay people could determine a certified physician to be "frivolous" in a medical matter.

To provide workers with an election when they are injured in a motor vehicle accident as a result of the negligence of a worker of another employer or an employer other than the worker's own employer. This would permit workers to elect Workers Compensation Board benefits and the Workers Compensation Board to pursue the third party recovery with excess awards payable to the worker, and the recovered compensation payments taken back into the Accident Fund.

In our opinion this is a blatant attempt to offload costs of Workers Compensation to Autopac. To set out the process by which the board can make regulations, a consultative process could be struck by policy for new regulations. Policies respecting appeal procedures should be enacted as regulations. We would hope to be able to comment on this process once it is in place. We trust this will not include a gag order on board members similar to Bylaw No. 2.

To permit the transfer of costs of a recurrence to the original accident employer, industry or class where such transfer would provide equity: Many of these claims may involve employers who are now out of business as opposed to the current employer who requested the transfer. Under this circumstance, where would the costs be allocated?

Unfunded liability—to specify that, except for retirement of the current unfunded liability, the board must assess sufficient funds each year to cover all costs, both current and future, of its claims, and to provide that it can address any shortfall over a maximum period of three years: We agree that the board, ideally, should be fully funded. A major reason that the deficit grew so quickly several years ago was that the board simply was not allocating future costs for existing claims. In this regard, would you please advise if the board is currently allocating future costs for special additional compensation awarded under Section 42(2) of the current act? If not, is this in compliance with the Provincial Auditor?

Under the current act, compensation benefits are calculated upon 75 percent of the worker's gross earnings. Compensation for permanent disability is related to the percentage of disability suffered by the worker times 75 percent of the worker's gross average earnings. This can result in undercompensation or overcompensation, depending upon the worker's personal situation. The proposed new benefit provisions are intended to replace Section 37, Section 40, Section 42 dealing with pre-existing conditions, Section 43 and Section 44.

We see this as being a devious attempt to remove one of the most imperative sections of The Workers Compensation Act ever written, Section 42. Up until legislation was introduced in 1972, injured workers would have their benefits arbitrarily terminated because the board considered the ongoing problems due to pre-existing conditions.

A typical case would involve a middle-aged worker sustaining a back injury. Obviously, X-rays would show the degenerative changes expected in a middle-aged person. However, these findings would be used as a basis for terminating compensation after five to six weeks, using the rationale that the effects of the accidents had dissipated and the ongoing disability was totally due to the pre-existing pathology. This was one of the reasons Manitoba's compensation rates were less than half those in other provinces.

* (1110)

In 1972, the pre-existing sections, currently numbered Sections 42(1), 42(2), and 42(3) of the act were introduced specifically to put a stop to this unfair and illegitimate practice. To propose removing this section of the act is to propose taking the compensation system back two decades. We understand your desire to cut costs, but surely this cannot be achieved at the expense of the

handicapped and disabled, the most vulnerable persons in our society.

Impairment awards: We note that the minister, in his remarks on second reading of the bill, suggested that $91,000 in the proposed legislation was much more generous than the $50,000 proposed by the Legislative Review Committee. This is only true in a technical sense. The Legislative Review Committee was not recommending TTD benefits be terminated at age 65 or the date the board determines the worker would have retired. By terminating TTD at age 65, you are potentially saving some $427,000 which might otherwise be payable, basing the figures on the current maximum and life expectancy to age 80, although this will vary from case to case.

Reduce compensation for workers over 45—to reduce the impairment award for workers over 45 years of age by 2 percent of the award amount, for each year of age over 45 at the time the permanent impairment is sustained: We are aware of the principles under tort. However, what provision is being proposed for individuals with impairment awards who are much younger than 45? Are you proposing to increase those awards by 2 percent for workers in descending order below age 45? For example, would a worker age 25 have the value of the award increased by 40 percent? In other words, if you recognize the tort principle to decrease, will you also recognize the same principle to increase?

To provide that wage loss benefits be payable after the date of the accident in an amount equal to an absolute percentage of the loss of earning capacity until the earlier of: The cessation of loss of earning capacity; the age of 65; the worker's anticipated retirement date as determined by the board; 24 months of wage loss benefits.

We assume the first part of this proposal is taken from the report of the Legislative Review Committee, recommendations 109 and 110 which was not a unanimous recommendation.

Section (b) of your proposal, to terminate wage loss at age 65, is discriminatory and inconsistent with human rights legislation.

Section (c) of your proposal, to enshrine the board with the right to determine when a worker would retire is unconstitutional. We intend to oppose this proposal.

Section (d) of your proposal will indeed cut costs; again, totally at the expense of the injured worker.

We find it hard to understand how the steering committee could put forward these unfair proposals.

Wage loss benefits: To provide the ability to offset wage loss benefits by the amount of all collateral benefits to which the worker is entitled as a result of the injury.

First, would you please state what you mean when you say "nontaxable benefits would be treated as a full offset?" Would you please advise if these nontaxable benefits would or would not be deducted from workers' benefits? Second, would you please advise if it is your intention to consider early retirement pension benefits as earnings?

To permit 24 months of wage loss benefits to workers over age 63: We can only reiterate what we have stated earlier. This is discriminatory and inconsistent with human rights legislation.

To define the loss of earning capacity of the worker to be the difference between the worker's net average earnings before the injury and the net average amount that the board determines the worker is capable of earning after the injury: This proposal cannot be dealt with in isolation of the board's decision relating to "application of Board policy on maximum insured earnings for the purpose of determining wage loss benefits," and policy titled, "Benefits Administration," dated July 1, 1990, both of which were adopted shortly after Brian King was dismissed as chairperson.

To provide some background, Section 36(1) and 36(2), now numbered 44(1) and 44(2), were introduced into the act in the 1950s and were intended to provide short-term compensation for individuals with short-term disabilities and short-term wage loss. These sections were amended in 1972 to complement Section 32(3), now numbered Section 40(2), which was enacted by the government in 1970. This was introduced to provide long-term compensation for individuals with permanent disabilities and long-term wage loss.

The difference between the two sections can best be illustrated by applying the two respective sections to a hypothetical example case.

I have it there. The worker would be a long-distance truck driver and earned $60,000 per year, and his disability would be a back injury, and he returned to work as a short-distance city driver with earnings at $40,000 a year. The Workers Compensation Board maximum is, say, $30,000 per year.

To review the worker's net average earnings as initially established on the board's anniversary date of the accident and yearly thereafter on the anniversary date and index the earnings accordingly: Section 24(1) has historically been utilized to increase workers' payments when the employer confirms the worker would have received a salary increase, whether this be after three months, six months, et cetera. Therefore, what at first blush may appear to be a positive step may, in reality, result in less compensation for workers.

To allow for increased benefits in the case of a recurrence where the worker has returned to work at a higher earning capacity where a real and substantial attachment to the labour force is demonstrated: To present this proposal as a "mechanism to allow for increased benefits in the case of recurrence, etc.," is misleading.

The act has provided for increased benefits since Section 39(1) was introduced in 1972.

In reality, what you intend is to decrease benefits when the board believes the claimant has not worked at his or her most recent job long enough.

To establish automatic indexing on January 1 each year, based upon July-to-July adjustments in the industrial average wage for Manitoba in respect to all lump sums under the act and the statutory maximum—and also items 71, 72 and 73: We commend you for this long overdue initiative. We are wondering how these proposals will impact on self-assurers such as the City of Winnipeg.

Reject ordinary diseases of life: Why would an occupational disease not include ordinary diseases of life such as cardiovascular conditions, communicable diseases contracted through work exposure and the like? The act thus far has never required the employment to be the dominant cause, simply "conditions in a place where an industrial process, trade or occupation is carried on, that occasion a disease," including "any disease that is peculiar to the trade or occupation." To opt for your definition, you would be disregarding Section 4(4) of the act covering proportional awards for diseases originally introduced into the act in the 1950s. By ignoring this, you would be taking compensation back four decades.

Furthermore, the report of the Legislative Review Committee supported by industry unanimously recommended: A panel should be established to develop standards in the form of a schedule of occupational diseases to be implemented as a regulation under the act. The panel should include representatives of the scientific and medical communities and of industry and labour.

The standards developed by the panel should not limit the board's authority to accept, on the balance of evidence, individual cases which are covered by the schedule. The panel should also be responsible for extending and revising the schedule on an ongoing basis with reference to recent scientific and medical information.

* (1120)

Moreover, the board may well rule that certain diseases such as types of cancer, dermatitis, hearing loss, carpal tunnel syndrome, white hand syndrome and the like are "ordinary diseases of life." In reality, certain types of cancer such as mesothelioma are directly related to the inhalation of asbestos. Many cases of hearing loss are related to exposure to industrial noise, carpal tunnel syndrome to repetitive hand-wrist movement, dermatitis to work irritants and white hand syndrome, or Raynaud's phenomenon, to vibratory tools. These would now be ruled out simply because the board may consider them ordinary diseases of life.

We would ask, therefore, that the steering committee reconsider these regressive proposals and instead implement the unanimous proposals of the Legislative Review Committee.

Proposal: To require that notice of an occupational disease be given to the employer who last employed the worker in employment to which the injury is attributed.

We would want your assurances that the worker would still be entitled to full benefits in the event that, due to the inception period or other unusual factors, notice was not given within the same period prescribed for traumatic injuries, and the last employer had not gone out of business.

To provide the flexibility to allocate the cost attributable to the occupational disease among employers who employed the worker in the occupation to which the occupational disease is attributed: We would like to know how this proposal fits in with the respective interprovincial agreements in the event that some of the claimant's employers were out of province.

Under these circumstances, would the Manitoba board provide full benefits and subsequently recover costs from the other respective boards, or

would the worker have to file separate claims with each board?

Agents to adjudicate claims: The basic question here is why, if the board does not have sufficient staff to adjudicate claims, would you simply not hire additional staff, rather than employ outside agencies to administer the claims?

This is an abrogation of the board's prime responsibility. You also mention that the worker could also have the right to request that his or her claim be referred directly to the Workers Compensation Board for adjudication. The rather inconclusive wording in your statement gives us no assurance that the worker would have the absolute right to demand his or her claim be adjudicated by the Workers Compensation Board.

Of equal importance, what if verbal instructions were given to staff not to overturn appeals? This has happened in the past, and we have no doubt it may well be occurring now or will in the future. Under these circumstances the worker would be "stuck" with the initial adjudicator's decision. Furthermore, who would provide the training and research facilities for these outside agencies? That concludes my remarks.

Mr. Chairman: Thank you, Mr. Dumont.

Mr. Leonard Evans (Brandon East): One general question. I have been impressed with the detailed listing of criticisms of this bill. Would you suggest that it is so bad in your point of view that it should be withdrawn and government should start over again at another time?

Mr. Dumont: Pardon?

Mr. Leonard Evans: Are you suggesting that there are so many deficiencies with the bill that it would be better to withdraw the bill period?

Mr. Dumont: That would be my preference, but certainly there are some areas that we are more concerned about than others, and we tried to itemize those ones in the overview that is at the beginning of the book.

Mr. Leonard Evans: That is fine.

Mr. Edward Connery (Portage la Prairie): Yes, Mr. Dumont, in your very last paragraph, you state: "what if verbal instructions were given to staff not to overturn appeals?" Then you say, this has happened in the past and we have no doubt it well may be occurring now. Do you have any proof of this happening?

Mr. Dumont: I am not prepared to table the proof, but we are positive that this has happened, and I suppose we could table the proof if we could get it.

Mr. Connery: Would you tell me in what year, or years that took place?

Mr. Dumont: Well, it happened recently according to our information.

Mr. Connery: I would like Dumont to at some point turn that proof over because this concerns me greatly. I was the Minister of Workers Compensation, and no instructions were given to not to overturn appeals, and this is a very, very serious allegation. If this has happened, and I think then when the statement is made in a positive vein, then you have to be prepared to prove that allegation.

Mr. Dumont: Well, like I said, I made the allegation, and I am convinced that it has happened. Perhaps if we were to table the proof of that, there might be some people who might lose their jobs.

Mr. Connery: Mr. Dumont, if it had come from a minister, then that should definitely be on the record, but if it came from other staff, then that should also be done, because there were never any instructions while I was the Minister of Workers Comp that appeals not be overturned, and if there were staff that did it, we should know. This Legislature should know and actions should be taken immediately to correct that because that is not excusable in any way. There has to be, and if that is a positive statement and you say you have the proof, then I think we need to have that proof presented to this committee.

Mr. Dumont: I will take that into consideration.

Mr. Praznik: Yes, thank you, Mr. Chair. I would, Mr. Dumont, just reiterate Mr. Connery's comments. You have made a very serious accusation on the record at this committee, and I would hope that you would provide, perhaps to the Chair of the board, your proof to have that investigated because it is a very, very serious charge and it reflects upon a lot of people both on the board, both on staff and both in the Legislature. If one is going to make it, then I think it should be pursued.

Mr. Dumont, in listening to your presentation, and I know you and I have had a brief opportunity to speak about the bill before. I would probably have as many clarifications, corrections, and questions as you had text, and I would like to go through just a few of them if I may with you.

You were here, I noted when the first presenter spoke and raised the issue of employer access, and I put to that presenter the scenario that I face as minister of growing adjudication across the country, with respect to equal access or some form of equal access to records. You probably heard me mention that there was no access for anyone prior to '83. It was opened up to employees in '83, and that the majority of provinces, I believe eight out of ten currently provide in various forms for equal access. Only us and Nova Scotia do not. Given judicial opinion growing across this country, I was faced with choices of either, because as you mentioned, I believe you used the word natural justice, and as a lawyer natural justice allows both parties in an appeal access to the same information on which to deal with the appeal.

* (1130)

So, I have a dilemma in pursuing the natural justice that you ask for of either having no access for anyone, or access to both, and in providing access to both which is the provision, have put in place—and I share the concern about misuse of that information. Probably one of the strongest structures including the boards providing only relevant information, notifying the claimant, giving the claimant the opportunity to say, no, I do not think that is relevant, and if that happens—not going to a bureaucrat to decide but the Chief Appeal Commissioner who then will not be allowed to sit on that appeal. They would rule on whether or not it is relevant or would cause the claimant undue difficulty if it were released. The strongest, even stronger than what is in place in Ontario—so, I ask your opinion given both of our agreement to search for natural justice, which in all courts across this country have been interpreted to equal access to information in an appeal, which method I should use? The one being proposed, or access to no one.

Mr. Dumont: I agree with you to a certain extent on the natural justice, but we do see some very strong possibilities of abuse on the part of the employer, and as I said in my recommendation, that if you decide to opt for this approach, then why not increase the fine for employers who misuse it to $50,000 instead of $5,000 and put it in the bill? The fine of $5,000 previously was in the bill, from what I understand. Now it is taken out. So if an employer is not guilty, they should not have to worry about a fine of $50,000 anyway. So increase the fine.

Mr. Praznik: Yes, Mr. Chair, I have two questions arising from that. Mr. Dumont, first of all, have you had the opportunity to read the bill, the current bill with the proposed amendments and the explanatory notes, personally?

Mr. Dumont: I have the bill here and I refer on my paper there to Section 101(1.1), 101(1.2) on page 51.

Mr. Praznik: Yes, I would refer you, Mr. Dumont, to Section 101 subsection 7 which provides a criminal offence with fines up to $5,000 for breach of Section 101(1.2). I would refer that to you because the $5,000 penalty is in the bill, Mr. Dumont.

Secondly, your comments that it should be raised are certainly fair ball and I would accept that and that is for consideration of the committee.

Point of Order

Mr. Leonard Evans: I know it is difficult and tempting for any member, including the minister, of the committee to ask for elaboration, but then in doing so sort of get into a debate, and it seems that we are edging our way into debates. My understanding is that the committee's role is to simply ask questions for clarification and debate can ensue later on during the deliberations by committee members, clause by clause.

Mr. Chairman: Thank you, Mr. Evans; you have no point of order. However, we will take the recommendation you make into consideration.

* * *

Mr. Praznik: I appreciate Mr. Evans' (Brandon East) comments. As I said to Mr. Dumont, he has made many, many statements about this bill in a very lengthy and detailed presentation. Having gone through it with him, I have some clarifications because I am somewhat curious on the basis of which some of the statements he has made are based.

Mr. Dumont, if I may just go through your presentation, and there are a few points I would raise, and I am not going to get onto all of them. I noticed on your item 11, you made comment about the conversion from pension to lump sum. My question to you is, are you aware that provision is initiated by the recipient of the lump sum pension who would request its conversion, pardon me, recipient of the pension, who would request its

conversion to a lump sum? It is not initiated by the board. Are you aware of that trigger?

Mr. Dumont: No, I was not aware of that.

Mr. Praznik: Yes, Mr. Dumont, further on in Item 15 of your presentation, you made reference several times with respect to various self-insured classes, and I think twice in your commentary, you make reference to the effect of putting the taxpayer at risk, and that the taxpayer, again at risk, twice you mention that. Are you aware of who funds and pays for the costs of The Workers Compensation Plan?

Mr. Dumont: My understanding is that Workers Compensation is paid for by the employer.

Mr. Praznik: That is correct. So I am a little bit concerned considering the deficit liability is that of the employers, why in your presentation you would make reference to the taxpayers?

Mr. Dumont: From what I understand from the proposal, the future costs of provincially funded industries would be guaranteed by the government of Manitoba.

Mr. Praznik: Mr. Chair, just to understand that, I know there is provision. Of course, we have responsibility for our own employees who are covered by the plan and ultimately the taxpayer is responsible for that. I am just trying to understand if Mr. Dumont is suggesting that his interpretation of the bill is that the taxpayer assumes the risk for nongovernment employees under this legislation, because that is not the intention of the bill.

Mr. Dumont: My understanding is that these reserves would be guaranteed by the government of Manitoba, so if it is guaranteed by the government of Manitoba, then it is not guaranteed by the employer.

Mr. Praznik: I appreciate Mr. Dumont's comment. I would just point out to him that the reference to the government guarantee is with respect to its own employers who are covered by the scheme but not to the general guarantee of other employers in the province, so, perhaps, a difference of opinion on reading the bill. We are responsible for our 18,000-plus employees in the province.

Mr. Dumont, skipping through, again, Item 32, you make reference to increasing the deductible period where there is found to be willful misconduct, increasing the deductible period from three days to three weeks. Are you aware that the current practice is for a three-week deductible? I am not sure where the three days comes from.

Mr. Dumont: Well, my understanding is that the present deductible is three days, not three weeks.

Mr. Praznik: I think there is a misunderstanding there, because the current practice is three weeks. We are not sure where the three days comes from, Mr. Dumont.

Mr. Dumont: Well, if you are not increasing it, then—

Mr. Praznik: —why is it there?

Mr. Dumont: Yes.

Mr. Praznik: Mr. Chair, it is there because it is being done by board policy now as opposed to a matter of the act, but a fair misunderstanding, I admit. I just wanted to clarify that.

I refer to Item 41, Mr. Dumont. I must admit I am quite astounded by the comments in your brief with respect to opposing this particular section with vigour. This is the section that allows applicants for workers compensation, where in the course of their employment they have been involved in an automobile accident, to make an election to pursue their claim either under WCB or under Manitoba Public Insurance Corporation.

Not only do you say you oppose this with vigour, you do it on the basis of an offload. The reason I am so astounded is because this is one benefit I would have thought that anyone representing employees here would be very happy and pleased with, because it allows an employee to opt for their best source of compensation.

As you may be aware, Mr. Dumont, WCB does not cover pain and suffering and a variety of losses that MPIC would in fact cover. So I am somewhat concerned about why you would fight this with vigour when this is one provision that I think provides greater opportunity for benefit to an injured worker. I am not sure of your rationale, Mr. Dumont.

Mr. Dumont: Whether the employee is driving a motor vehicle, car or truck, or backhoe or handling a shovel, I think that the cost of injuries should be covered by Workers Comp, not by Autopac.

Mr. Praznik: Mr. Dumont, you are saying even if the cause of the injury was a motorist who ran over the worker in the course of their duties, that should be covered by WCB and not Autopac for which that motorist has paid an insurance premium.

Mr. Dumont: It is an injury that occurred in employment and that is what Workers Compensation is set up for. It does not matter whether he is handling a car, a truck or a shovel.

Mr. Praznik: My last question on that, because you are saying that, if I gather you correctly, that the motorist, who is insured by MPIC and if had hit a non-WCB covered individual, would be paying it, that should come from WCB and the employers, in essence, as opposed to the insurance scheme.

My question is: Are you suggesting we should not put this in and provide the option for the increased benefits to that injured worker where they may be able to receive funding or dollars or compensation for pain and suffering and other things that WCB would not pay out? In other words, they may get a better benefit out of Autopac, and you are saying we should not provide that, if I read you correctly.

* (1140)

Mr. Dumont: Or it may cause confusion to the worker or confusion to the worker that is trying to appeal their case, and they might become a football. They might be thrown from Autopac to compensation, and they might end up getting nothing. We have that experience many times when there is a dispute as to whose jurisdiction we come under. Is the federal government responsible or is the provincial government responsible? We are used as a political football. It can never be determined, so we get nothing.

Mr. Praznik: I appreciate your comment in that area.

Mr. Dumont, you made a reference in your comment to the average age of Canadians of being 80, and I just wondered if you were aware of the—I think it was in reference to termination of benefits at age 65.

Mr. Dumont: Yes.

Mr. Praznik: Not benefits, but wage loss benefits representing loss of income, and I guess—two questions to you. Are you aware of the Statistics Canada information recently released that places the average age of the Canadian male at 73 and a female at 79. You indicate 80, and I am just wondering the basis of that particular statement.

Mr. Dumont: Cut it to 73 and adjust the 427,000, but also are you aware of the jurisprudence or how the courts might decide on this part of the act?

Mr. Praznik: Yes, I was going to—that was my next question to Mr. Dumont, if you were aware—I mean, you make reference to human rights legislation and, I know, in fairness to everyone, there has been an ongoing debate in this country whether eliminating or restricting benefits to age 65 was in fact a violation of human rights legislation.

I just wondered if Mr. Dumont was aware of the most recent Supreme Court of Canada decision in Stoffman versus Vancouver General Hospital that ruled that age 65 could be deemed, I believe, to be an age of retirement.

Mr. Dumont: So you are suggesting that because that case allowed—forcing somebody to retire at 65, that you would ask a person who would ordinarily be healthy at the age of 65 and might be well able to work until the age of 70, that because he is injured you would automatically think that you are not—you would decide that person would not be allowed to work beyond 65.

Mr. Praznik: That is a fair comment. Obviously, one has to make a decision with respect to an age limit, or how does one prove to what age one would live? That is a difficult question, I recognize that—obviously, an area of debate.

I have another question for Mr. Dumont. He makes reference to the board not having sufficient staff to adjudicate claims. I just wondered if he was aware that we have increased staff by about 20 percent at the board since 1988.

Mr. Dumont: I am assuming that—I suppose, and maybe I should not assume, but I assuming that the reason you are subcontracting to an outside agency must be because the staff that you have is not sufficient. So, if the staff is not sufficient, it does not matter whether you have doubled the staff in the last two years, it is still not sufficient.

Mr. Praznik: Mr. Chair, for Mr. Dumont's information, the purpose—and certainly that does not always appear in the documentation—but the purpose of that provision is in fact, in large industries, for example, Inco at Thompson, that if the company accepted the injury, for example, a worker broke his leg on site, and they accepted it—and they would only have that power if the board so deemed them under certain conditions—they could accept that particular injury and the claim would begin from there and they, of course, would not have the right to appeal it.

If they did not accept it as work related, it would go to the board for first adjudication. With that understanding, does that change your perspective on that particular clause?

Mr. Dumont: I suppose our basic concern with this is that you would turn over the adjudication of claims to an employer rather than doing it internally.

Mr. Praznik: I appreciate that concern. It is shared by many. I would just reiterate to Mr. Dumont that its intention would only be where certain employers allowed by the board under very strict supervision would be able to make that adjudication if it was a positive adjudication.

My last question to Mr. Dumont is in the area of occupational disease, and I appreciate his comments. I appreciate there is a debate with respect to extension or status quo, but I just indicate to him when this section was designed by our draftspeople, it was designed to encompass the current adjudications on occupational disease and basically provide a clear boundary around them, so that people could make other determinations as to their own insurance schemes that they take on.

I just wanted to point that out to Mr. Dumont, the reason for it, it was not to deny. I know he referred to some examples. They would not be denied if they in fact were related to the workplace, et cetera. It enshrines the current status quo.

Thank you for your very informative presentation, Mr. Dumont.

Mr. Dumont: Thank you for the opportunity for making it.

I want to comment, though, on the ordinary diseases of life. I am concerned that if you throw too much confusion in there—it is very difficult as it is for a claimant to make their way to the appeal board. I have represented people who have been appealing their case for eight years, and one case for 18 years. The more of this stuff that you throw in there and the more you put the onus on the worker, the more difficult it becomes for the worker to appeal his or her case.

I sometimes, quite frankly, am absolutely discouraged with the act the way it is, to see people unable to take advantage of Workers Compensation benefits because the system is too complicated. Their ability to represent themselves, their ability to hire proper representation is not there, and the more confusion you throw in there and the more guesswork you put into the act, the more difficult it will be.

Mr. Praznik: Mr. Dumont, I will be very, very brief. You and I have had that conversation. I agree with you. It is a very confusing, complex process. You and I had some discussions. We still have a long way to go in making it more accessible and easier for injured workers to go through that system. I appreciate your comments. It is a job we all have a lot of work to do on yet. Thank you.

Mr. Ashton: It is also a confusing bill, Mr. Chairperson, and I know my colleague previously asked the presenter if he did not feel that a better approach on this bill would not be to try and deal with it expeditiously but recognize the complexity and the many very legitimate points you have raised, by the way.

I must apologize for missing part of the presentation, but I was reading through it, and it is a very excellent brief. I am wondering if after this exchange back and forth with the minister whether you still feel that apart from perhaps a couple of the sections which are positive, which we have acknowledged as well, that the minister might be better off delaying the implementation of this bill until some of the serious implications of some of the sections that you have pointed to have been dealt with.

I have sat here for the last period of time, and quite frankly, every time a question is raised and every time the minister tries to clarify it, my concerns grow. I am just wondering how you feel after having sat—you have been here for about an hour and a half, I think, on the stand here. Do you think perhaps that this bill should be tabled, or at least the part from the two positive sections, and dealt with in a manner that allows for the kind of input you are giving to this committee?

* (1150)

Mr. Dumont: Certainly I have a problem with the bill because I think it is going to cause some major problems to the worker, and it comes from experience.

For example, if you look at the pre-existing condition, removing that from the act. I represented a worker who had been crushed by a 20-ton backhoe, who previous to his injury was fit as a fiddle, was a star athlete in school. He was a rough and tough character who could work hard for 16 hours a day. He was crushed by a backhoe and

was put on compensation for 14 weeks and was told to return to work, that he was healed. He tried returning to work, and his doctor has told him now that he is disabled. Then Workers Compensation says, yes, you are disabled but it is because of pre-existing injuries.

I have a severe problem with that section being repealed. I think that if that section had not been there, it would have been a lot harder to win that case even though the case was legitimate.

The fine of $250 for frivolous appeals, the fine of $250 for the medical review panel—I have represented workers at the board who had no money at all. I will give you one example. A person was cut off from workers comp because they told him that he was healed, that he could return to work and the only reason he was not returning to work was because he was lazy, that he was grossly overweight. You look at the guy, I mean, if he was overweight, I am an elephant, but anyway, that he was grossly overweight, that he was lazy, that he would not go to work. So he had no alternative—this man had been lowered to go to welfare and apply for welfare. Welfare wrote him a letter back saying, you do not qualify because you are not co-operating with Workers Compensation.

Workers Compensation, not only did they cut him off of workers comp, but they made sure that he did not get welfare. That person did not have any money. He appealed his case and he won. If he had had the risk of being fined $250, he might not have taken the chance. That is the problem I have with the $250 fine. That is the problem I have with repealing the pre-existing clause of the act as it is.

Let us face it, we are not dealing here with MGEA. We are not dealing with freezing of wages here where people are not allowed to get raises. We are dealing with the most vulnerable people in our society, and those are our injured workers, many of them who do not have the ability to be able to represent themselves to proceed through the appeal process quickly. That is the problem I have with this bill.

As I was going through it, I wrote down every concern that I had, and maybe some of them I would be prepared to live with, but the pre-existing condition is something that would be absolutely unacceptable to the majority of workers. The fine for frivolous appeals is not acceptable.

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

Mr. Paul Edwards (St. James): Mr. Dumont, you have presented a very thorough brief here today, and I had the opportunity to peruse it with you as you read it.

I think you and your organization should be congratulated for putting such obvious effort into this, which is a very complicated bill and which is frankly one that even we, as the member for Thompson (Mr. Ashton) said, as members of the Legislature familiar with the process, have had to take some considerable time to understand the implications of it.

You have helped us in that pursuit, and I simply want to indicate in closing that I certainly do agree with your casting of the $250 disincentive as it applies to the medical review panel, the appeal process. I think that this works as a bar for particularly vulnerable people.

Point of Order

Mr. Leonard Evans: I enjoy the remarks of the member for St. James, but the committee's purpose at this point is to ask questions, not to comment and debate and pass observations, even though they are interesting observations. That is the role of the committee right now, strictly to ask questions.

Mr. Chairman: Thank you, Mr. Evans, you have no point of order. Mr. Edwards, proceed.

* * *

Mr. Edwards: Thank you, Mr. Chairperson. For the member for Brandon East, the member for Thompson (Mr. Ashton) expressed identical sentiments just 10 or 15 minutes ago.

In any event, my question for Mr. Dumont is specific to the issue of the $250 requirement. Does it strike you as inconsistent to have that in place, and, as well, at the same time in the same amendments require that someone go through the medical review panel as a precondition to getting an appeal directly to the board itself?

Mr. Dumont: I did not interpret it that way, but if that is the way it is, then I have a problem with that, but certainly the $250 fine and repealing Section 42 are my major concerns.

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

May we move on to the next presenter? With your permission, I will ask Mr. William Laird, who is not able to be here beyond this morning to come

forward, please. Mr. Laird is the Manitoba Professional Firefighters Association's representative. Mr. Laird, have you a prepared presentation?

Mr. William Laird (Manitoba Professional Firefighters Association): I do, Mr. Chairman.

Mr. Chairman: I will ask staff to distribute it. I will ask you to proceed with your remarks and your presentation, even while the briefs are being distributed. Will you proceed, please?

Mr. Laird: Thank you, Mr. Chairman. I will try and stay with the confines of what we use at fireground operations. We will get in quickly, we will hit it hard, do as little damage as possible and get out fast. I could use other language, but I will not.

I appear here today on behalf of the professional firefighters of Manitoba whom I represent. I am a firefighter for 36 years. I hold the rank of district chief in the City of Winnipeg Fire Department. I am president of the Manitoba Professional Firefighters Association.

The reason I appear before you here today is not what is in the act but what should be, in fact. As a result of a legal technicality, a heart and lung regulation that had previously existed for firefighters was set aside by the courts. It did indicate that if such provision was going to be made, it should be made by the Legislative Assembly of the Manitoba government and not necessarily the board through regulation.

* (1200)

(Mr. Edward Connery, Acting Chairman, in the Chair)

The dialogue that I have been having over the last couple of years with Mr. Connery—you will see in my brief a letter of February 13—we were both working toward trying to resolve this problem and come forward with some type of coverage for the firefighters that would be acceptable. To date, that has not occurred.

We worked under the assumption that when we did first get the regulation in 1966-1967, it was consistent with what a royal commission had provided for, the Tergeon Commission in 1958. Because they took away the scheduling at that time and allowed a different type of provision suggesting that if there was a frequency or an inordinate experience in a trade, occupation or process, that the board could look at that and possibly pass a regulation and make recognition of that particular problem.

I think we were on the threshold of going forward and giving a progressive view to industrial diseases. Unfortunately, that has not occurred, but the significance of this regulation in 1966-1967—the chairman of that board, Elliot Wilson, was a lawyer. He did not advise us that we could have run into a technicality, or that the regulation would have been questioned.

In June of 1974, it was republished and was never challenged. The chairman of the board was a Mr. Johnston who had come out of the Attorney General's department. The actual regulation that was in existence, 24/77, which came into being in 1977, was what we were working from, but the firefighters still did not get the true impact of what that legislation was to provide. It was only in about 1983 that we went before the board and started arguing the issue, the margin of doubt. The onus was on the board to disprove the case, and we started to then be successful in winning our cases.

It is with concern that we do not have some type of provision for recognizing industrial diseases consistent with what the royal commission had indicated, but if we are not coming forward with some recognition for the firefighters or a broader understanding within the act, I suggest we go back to square one and reinstitute a schedule similar to what other acts have across Canada.

I know when the employers were objecting to the regulation, they had suggested it was a unique, special provision for firefighters. I agree because there was no other way we could get that kind of recognition. If we had a schedule in that act similar to other acts across Canada, then obviously we would have had firefighter heart and firefighter lung covered in the scheduling.

I would like to draw your attention to an article that was published in January-February 1981. The column on the right-hand side, in the middle, it suggests that a firefighter in good shape had died and he willed his organs to be used in transplants. Ironically, those specialists refused to accept his lungs and other parts of the body that were questionable because they felt that the potential exposure to smoke and other airborne toxins as a firefighter was unacceptably high and it would jeopardize the transplant recipient.

If you look at a conclusion of a report from Selina Bendix, who worked for the Harvard School of

Medicine some years ago and did a survey for firefighters, she says in her conclusion, "In view of the evidence that fire fighters are subject to the cumulative effects of most of the known carcinogens in our environment, this exposure occurring under conditions which may prevent the normal operation of bodily protective systems, it is probable that some part of the cancer incidence in all fire fighters is due to their one-the-job exposures and that this probability increases with the number of years that an individual is engaged in fire fighting.

"As it is not possible to determine which cancers would have occurred anyway, it is only fair to consider all cancer in fire fighters to be job related until such time as the state of the art permits distinctions as to the origin of individual cancers."

(Mr. Chairman in the Chair)

What I think she is alluding to there is the margin of doubt, however small, should be weighted in favour of the worker and in this case, particularly, the firefighter.

In 1983, when we were making issue with the board to exercise that rule of presumption, a resource person did a survey for the chairman of the board, a Miss Arrojado at the time, and she indicates and she made reference to some information from a Doctor Hartwell, the Occupational Health Service Department in B.C., dated back in February 18, 1983, states: that after attending all six of the international association of firefighter seminars which attracts eminent cardiologists and internists from all parts of the States, the overwhelming medical consensus was that there is a very definite and marked increase in heart disease, particularly coronary artery involvement, in firefighters as opposed to any other profession. In conclusion, it is important overall to recognize that there exists a synergetic effect of carbon monoxide, other toxicants, heat, physical and emotional stress, which appear, in all probability, to explain the existence of higher mortality rates due to cardiac disease in firefighters.

This resource person, after reviewing all that information, made her conclusion and said: My conclusion is that there clearly exists enough evidence in this report to be suspicious of the occupation of firefighting as a casual factor in cardiac disease that would therefore conclude on the basis of this evidence that the firefighter be given the benefit of the doubt with respect to claims under Section 24/77 of The Workers Compensation Act. She is referring to the heart and lung regulation.

One of the most significant documents that we received from the American Journal of Epidemiology is birth defects among offspring of firefighters. In the report it suggests that firefighters in Canada are 3 percent higher than the national average in experience to cancer, that birth defects and Down's syndrome are very recognizable in the offspring of firefighters. It suggests that the genetic heritage of firefighters can be altered as a result of going into these hostile environments.

I would like to suggest to you that we do have documents that were submitted—and I believe Mr. Connery had them and then referred them to the board. The American Journal of Industrial Medicine in 1991: The Epidemiological Study of Cancer and Other Causes of Mortality in San Francisco Firefighters; The Cohort Mortality Study in Seattle Firefighters, 1945-1983; The Respiratory Mortality Among Firefighters, and this was done by the British Journal of Industrial Medicine in 1990; Cancer Incidence Among Massachusetts Firefighters, 1982-1986, which was published in the American Journal of Industrial Medicine in 1990. I suggest there is sufficient evidence to allude that firefighters should be given the margin of doubt in terms of heart and lung problems.

I have heard that people do not want to give a regulation because it throws the door open to other groups. I did reply to the minister at the last Law Amendments Committee that firefighters are not throwing the door open; we do think that we are a special and, as much, we are going into places that everyone wants to get the hell out of. That is what makes us different. To simply say that we are going to throw the door open or broaden the scope of the problem of the firefighter is erroneous. We have had this regulation for 22 years and to the best of my knowledge no other group has come forward and asked for it.

I would like to point out, and I commend the minister and this present government for the extending of the code of practice for firefighters concerning protective clothing and respiratory protective equipment. This goes a long way in protecting us, but the misconception many people have, there was a chemical spill just outside of the city of Winnipeg and the journalists said, there is the firefighter with his full protective equipment. That is not true. The clothing he is wearing is for structural

firefighting; the breathing apparatus that he has is only supplying air on demand; it could leak. There is no 100 percent protection for firefighters at fireground operations unless you come with a complete proximity suit: he is then isolated from the environment.

I would appeal to the members of the Legislative Assembly that we have had this for quite some time, some 22 years, and it is in recognition of the fact that these men are laying their lives on the line. I have seen young men come and I have seen them go and I think there is nothing more tragic than when they leave a widow and orphans behind. I think some provision should be made for them and I appeal to you to seriously look at this issue. I am open for any questions.

Mr. Chairman: Thank you, Mr. Laird.

* (1210)

Mr. Edwards: I think certainly myself and I know Mr. Ashton and Mr. Connery and the present minister all know well of your diligence on this issue. It is inspiring to see the efforts you have made.

Is there any other jurisdiction in Canada that has a similar provision to the one you are asking us to put in The Workers Compensation Act of Manitoba?

Mr. Laird: Yes, Mr. Chairman, if you go to British Columbia, for example, they do have a schedule and they do have firefighter lung and firefighter heart in it.

Mr. Edwards: Is that the only other jurisdiction to your knowledge or have you studied the other jurisdictions and can you conclusively state if there are others?

Mr. Laird: There is another jurisdiction, but it is a provision that is at a municipal level, I understand within a collective agreement, and it is parallel to the heart and lung regulation that we have.

Mr. Ashton: Indeed, I do credit the presenter with persistence on this as he is aware, and members of the committee may not be aware, we have introduced a bill—a private members bill, which unfortunately, does not have the sponsorship and support of the government which would do exactly what you are saying: Recognize it in the legislation.

I want to go beyond that to say I have talked to many people in that situation, including a widow, her husband died at the age of 42, I know you are aware of the circumstance. I am wondering what you would say to this committee in terms of why we now have a comprehensive review of The Workers Compensation Act and it does not include that, particularly after statements were made when we had attempted and we are close to having an amendment to the act just a couple of years ago and you were there. I saw the proceedings. At that time, it was suggested that it would be inappropriate until the major benefits package came in. How do you react when you see this major overhaul of the legislation and many benefits issues dealt with and what you have been seeking which was accepted for 20 years in Manitoba is not part of it?

Mr. Laird: The solution that I could offer, there is a provision in the act now, the rule of presumption 4(5), where it did previously say where it was shown to be work related, we asked for that to be changed to the word "proven." Now some people will argue "shown" and "proven" are synonymous, but we were bearing in mind that Justice Lyon had suggested that the Legislative Assembly would be the ones to amend the act and reflect the intent of what they wish to provide into the act. I am suggesting that the mechanics are there if this Legislative Assembly would say that industrial diseases shall be considered under 4(5) and the onus will be on the board to disprove the claim.

There is no one in this room or in this building that can tell anyone conclusively what I have walked into in 36 years. It is humanly impossible. I would have to have a hygienist and a doctor following me around taking constant blood samples. It is totally impractical. We are appealing to you to give us that benefit of doubt, however small.

Mr. Ashton: I appreciate that. I am just wondering if the presenter could indicate, since he was responsible and the firefighters were responsible for organizing one of the largest petitions I have seen just recently urging the government—which was signed by many Manitobans—and I was wondering if he could indicate what kind of response he received on this particular point from the many people who signed the petition, and how many people had signed?

Mr. Laird: We had 18,000 signatures approximately, but we had letters of support from different groups that cannot participate in soliciting from their membership, such as the Manitoba Teachers association which has a membership of some 5,000.

Mr. Ashton: I can indicate, Mr. Chairperson, that we will certainly be pursuing that issue in the context

of this bill and in the context of the other bill. I really commend you for continuing the fight.

Mr. Laird: I will be around for a while yet.

Point of Order

Mr. Connery: Just on a point of order, Mr. Chairman, the member for Brandon East (Mr. Leonard Evans) made a very valid point earlier on the Liberal member.

I know he would like to do it in relationship to his own member, but it would be embarrassing. I wonder if he is right, if we keep some of the serial commentation and restrict to questions.

Mr. Chairman: I have been very lenient, and I had thought I might be lenient, but I am going to draw in the reins in the not too distant future on comments and also on questions.

* * *

Mr. Praznik: Mr. Chair, perhaps Mr. Ashton and myself may have some disagreement with two of our colleagues.

Mr. Laird, first of all, thank you for your presentation. I had a chance to read a similar presentation you made in the last bill, and I want to say to you today—I have a couple of questions, but I would like to preface them because I think this is a very serious and important issue.

You have dedicated a great deal of your time and effort to pursuing proper coverage for firefighters over your 25-plus-year career as a firefighter. I have to say to you today that I agree wholeheartedly in having all-purpose coverage for firefighters because you are right, it is very difficult to determine the cause of those ailments.

The problem I have—and I just want to narrow with a few questions down the issue just so I understand it correctly. By and large, if you have a case that is clearly provable as a result of a workplace injury, that is covered under Workers Compensation, under the scheme. The problem comes in—and please confirm this if I am correct in my reasoning—the problem comes in, Mr. Laird, in the cases where you are not sure. Is it something, you have someone who is a smoker, is that an effect, et cetera, and it is really doubtful as to which way. Is that correct? That is what we are really talking about, of those cases in that area.

Mr. Laird: Yes, that is correct, Mr. Minister.

Mr. Praznik: In narrowing that down, I agree wholeheartedly with your statement that firefighters go into places no one else will go, and that we as members of the public owe firefighters a tremendous debt for that service. The problem I have as minister, and I am sure you will appreciate, is the vehicle by which that coverage is provided.

Workers Compensation is a scheme that is paid for not by all of the people of Manitoba, it is paid for by the employer. In many cases, that employer pool is—if you are in Class E, for example, you are in a non-self-insuring class. You are covered by just the general class of employers across the province, not the citizenry of the province. Consequently, it is a vehicle that is, as I said, not the general taxpayer who owes that debt to firefighters for coverage.

The reason I raise that is because the kind of 24-hour all-cause coverage that I think firefighters should have—I said very clearly—is probably best dealt with by the people who owe that duty to them who are the citizens, through the jurisdiction that hires them and through long-term disability schemes and insurance coverage. I think where we may have a disagreement is the vehicle to provide that coverage.

I would just like you to confirm with me, and I have to congratulate you and others in the Professional Firefighters Association who very diligently in your collective agreements have negotiated a number of things. I just wanted to confirm that in the case of the City of Winnipeg, you have a very substantial, currently, long-term disability coverage plan which does not relate to any reason, and that other cities who have professional firefighters in the province also have similar types of long-term disability which cover, no matter what the cause. Would that be a fair assessment?

Mr. Laird: Yes, that is correct.

Mr. Praznik: I just want to thank you again for your presentation, and although we fully agree with the purpose and what you want to accomplish, my problem as minister is the vehicle.

The vehicle is the one that I think I would suggest has been pursued by professional firefighters in their collective agreement. We may have some more work to do in tightening that up, but it is a responsibility I would suggest to you of the general taxpayer as opposed to just employers of the province. I appreciate your concern very much and agree with the kind of coverage you are fighting for.

* (1220)

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

We have about 10 minutes before we hit 12:30. What is the will of the committee? Do we proceed to hear the next presenter who I understand also has some fairly significant time restraints? If it is the wish of the committee to continue—

An Honourable Member: Continue.

Mr. Chairman: —until 12:30, okay, and if he goes a few minutes over, that will be all right.

Mr. Levin, would you come forward then, please? Mr. Harvey Levin? Have you a presentation to distribute?

Mr. Harvey Levin (United Steelworkers of America, Local 5442): Yes, I do.

Mr. Chairman: Thank you. I would ask you to start your presentation in view of the time restraints that we are under.

Mr. Levin: Yes, it is very, very brief. On behalf of all steelworkers and all workers in Manitoba, I would like to take this opportunity to state that Bill 59 in its present form, for a lack of a better word, is a direct assault on the working person.

This is a bill written by employers according to their visions of what a compensation system should be like. I would question the committee if they had read the 1987 King Commission Report of the Workers Compensation Review Committee. We in steel, after reading that report, had hoped that the WCB would be well on its way to meeting our needs.

A main concern is the proposed definition of occupational disease. Steelworkers traditionally work in heavy industries—mining, smelting, steel mills, foundries and steel fabrication, to name a few. We are under constant exposure to the most hostile of work environments. Combining the new definition of occupational disease with making employment the dominant cause of occupational disease, then revising the definition of an accident, I do not see how any illness or injury would ever have to be accepted by the WCB.

The experience rating, 90 percent of net, 80 percent of net, putting a fault in a no-fault system, average earnings, deeming, the giving of medical information, lack of information and on and on. It is incomprehensible to me how all these so-called progressive changes are going to help injured workers.

Bill 59, except for a couple of glimmers of hope, must be rethought. It is the workers who make the employers rich. It only stands to reason that we should be given every and all reasonable considerations.

I have been a worker advisor for my local for only a couple of years. It is simply incredible the instances of lost files, runarounds, excuses and the six to eight weeks it takes for adjudication after a first cheque is sent out that are happening now. If Bill 59 becomes law, the WCB would have no reason to exist, and we will need a couple of thousand lawyers as we must revert back to a tort system to recover just compensation, and I speak as an ordinary worker.

Mr. Ashton: Mr. Chairperson, I appreciate your perspective as a steelworker. I know first-hand the kind of situations you are talking about from my own experience with Inco which is not as extensive, I am sure, as yours.

I want to deal with your point about the King Commission which resulted in a whole series of recommendations, most of which were unanimous. I, by the way, have read it through in detail, and this bill is not the King Commission. You are quite correct. Now given the fact that the King Commission was the subject of extensive public consultation and that this bill is going through the more defined legislative process where there are open hearings but, for example, we are not having hearings outside of the city of Winnipeg, I am just wondering what you would recommend to this committee.

Would you recommend that this bill be dropped, given the major problems you have identified with it, or at the very least be put over perhaps to another session of the Legislature and give the government the chance to correct those major deficiencies you pointed to?

Mr. Levin: Yes, I agree.

Mr. Ashton: I have just one final question on that. This bill was tabled a couple of months ago, but I am getting calls, for example, from people who are only just seeing the serious implications of it.

Given your comments that it should be dealt with in a better manner, would you be recommending essentially to this committee that when this matter comes up in terms of the discussion on this bill, apart from maybe a couple of sections where there is consensus on, for example, the maximum earnings,

that they essentially make sure they do not pass through the other sections, those negative sections, at this session of the Legislature and try to get it straightened out?

Mr. Levin: Yes, I agree with that wholeheartedly.

Mr. Ashton: Thank you, Mr. Chairperson.

Mr. Edwards: You make one comment here, sir, and thank you for presentation. You make one comment here that it is simply incredible the instances of lost files, runarounds, excuses and the six to eight weeks it takes for adjudication after a first cheque is sent out that are happening now, and you say that you have been a worker advisor for your local for only a couple of years.

I have been a member of this Legislature only for three years and was in the first year absolutely inundated with complaints from constituents about Workers Compensation, so much so that I thought I probably did not have a constituent who had anything to do with Workers Compensation who I had not heard from.

That problem of the system just being user-unfriendly, if you will, was acknowledged by the minister of the day and efforts were made.

Do you say in your two years that this has gotten any better? Is it getting better or worse? I am not talking specifically about the benefits and the structure. I am talking about those things that you mention here which are runarounds, bounced from person to person to person, not having your phone calls returned, those things which just aggravate people who are already in a very stressful and difficult situation. Is that getting better or worse in your view, in your experience?

Mr. Levin: Yes, in my short time, it is getting worse. I have a case this morning of this exact instance of he got his first cheque and still six weeks later no more payments or anything.

Mr. Praznik: Mr. Levin, I have just one very brief question. I know the member for Thompson (Mr. Ashton) made reference to the King Commission. I just wondered if you were aware that the King Commission had recommended a net system of payment as opposed to gross, and the majority had recommended 90 percent of net, and if you were aware that they had also recommended a dual award system with wage loss and lump sum impairments award. They had also recommended that the board be fully funded on a firm financial basis with planning. Were you aware of those recommendations?

Mr. Levin: I cannot say I was 100 percent aware, no.

Mr. Praznik: Okay, thank you.

Mr. Chairman: Thank you, Mr. Levin.

The hour being 12:30 p.m., I would indicate that I had initially said that there were two more presenters from out of town. I understand that Robyn Singleton of the City of Brandon is sending a written presentation and is not here at the present time. I also understand that Dr. Roger Rickwood of Canada Post Corporation is not here, and we are not sure whether he is coming and might in fact also send a presentation.

Mr. Ashton: Just on a matter of procedure, I have identified, in talking to people here, there were a number of people who had indicated to the Clerk's Office that they are only available for a limited time.

I am wondering if we might have agreement tonight to try and accommodate at least one individual I know, a doctor who is on call and could attend if he was able to have some general idea as to when he might make a presentation. So I am wondering if there might be a willingness of the committee to deal with that tonight?

Mr. Chairman: We should give that consideration when the committee reconvenes.

The committee will reconvene at seven o'clock tonight in this room to hear further presentations on Bill 59. The committee now stands adjourned until tonight at 7 p.m.

COMMITTEE ROSE AT: 12:29 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

INTRODUCTION

CAIMAW welcomes this opportunity to convey to this committee our deep concerns with respect to amendments to The Workers Compensation Act contained in Bill 59. We represent some 2,500 members in Manitoba, all of whom will be adversely affected if Bill 59 becomes law.

Our union has repeatedly called for the establishment of a universal disability system in place of the present workers compensation system. Since this government has not been so bold, we will clearly delineate our grave concerns on Bill 50 for

the people who will ultimately bear the changes to this act, the injured workers in Manitoba.

Bill 50, touted as a major reform by this government, if passed, will leave current injured workers worse off and will put future injured workers in an even worse position

The steering committee's own documents (Update—Compensation News for Manitoba Employers, June 1991) state "these and other proposals were made with the intention of providing a fair and reasonable benefit package for injured workers at an affordable cost to employers within the environment of a full-funded program." The basic purpose of Bill 59 is to "reform" the system by reducing its cost. The chief method of cutting costs is to reduce or eliminate payments to injured workers. We believe the government has done this in response to employer pressure. Injured workers will receive little or no benefits from Bill 59. In addition, in spite of the complaints as delineated in the King Commission Report with respect to the administrative practices of the Workers Compensation Board in dealing with injured workers, this government has chosen to give it even more discretionary power to interpret and administer the new law as it sees fit. This can only lead to more hardship and frustration for injured workers.

We find Bill 59 completely unacceptable as a solution to the problems of injured workers in this province. Indeed, with the array of amendments, injured workers will have no protection for pre-existing conditions; the workers will have more difficulty receiving payment for injury of the same nature and clearly reduce workers' income. Once again this government is intervening the rights of unions to negotiate freely. If passed, Bill 59 will disallow parties to negotiate a top up for benefits.

BENEFIT LEVELS

A) Net Versus Gross

Workers' compensation systems have traditionally been calculated as a percentage of gross income with 75 percent of gross earnings being the norm across the country in the past several decades.

For most workers who earn the maximum benefit level or less, this figure has approximated 100 percent of net earning. Some workers, of course, have been undercompensated and some have been overcompensated.

We do not support the net income system but feel that, if it is to be introduced, it should be set at 100 percent of net income. To do anything less is to coldly and systematically undercompensate all disabled workers.

We would prefer to see a system of 100 percent of gross income and make benefits income taxable. We see no reason not to make benefits taxable. The only reason not to tax benefits seems to be to save employers money.

B) Maximum Earnings

We see no justification whatsoever for a ceiling on benefits. The purpose of the ceiling is simply to save employers money. By having a ceiling on benefits, employers have been able to buy insurance cheaper than they would have if they had been forced to purchase insurance to fully compensate all workers. Nearly all unionized construction workers and many of our members, such as the maintenance personnel at the University of Manitoba, earn annual incomes substantially in excess of the present maximum.

It should be emphasized that workers compensation systems do not presently compensate for pain and suffering so that benefit levels are lower than they are under other insurance systems such as automobile insurance systems.

We therefore submit that the present ceiling on earnings should be deleted for the act.

C) Indexing

All benefits including all pensions of any sort should be indexed to changes in the Consumer Price Index. Such calculations should be made twice a year on January 1 and July 1 (see S25 of the B.C. Act).

D) Pain and Suffering

Benefits are payable in nonwork-related civil negligence actions for "pain and suffering." The current Canadian ceiling in such damage suits is $100,000. We believe that workers compensation should include benefits for pain and suffering.

INDUSTRIAL DISEASE

We are extremely appalled in this government's definitions of occupational disease. Legally this new section is extremely restrictive. Injured workers are now dealing with an act which places the onus on them (and not where it should correctly be—between Workplace Safety and Health and qualified medical analysis and prevention of

occurrence of the disease in the worker). The approach by government takes this workers compensation system backwards in relationship to other jurisdictions in Canada. The government removes pre-existing sections of the act, introduces a restrictive definition of occupational disease, excluding stress, and then limits further claims all in one full swoop. Who will qualify for workers compensation in Manitoba?

A number of statutes in Canada provide for schedules to assist in the adjudication of industrial disease. We think Paul Weiler's second report in Ontario, together with Terence Ison's various papers on industrial disease (see especially the 1978 CMA articles) should be sufficient to convince you that schedules and other changes to the act will do very little to improve industrial disease adjudication. We believe that industrial disease adjudication by its very nature is next to impossible and is one of the main reasons why a universal disability system is a better solution to meeting workers' needs in this area.

Should you want to consider the matter of schedules of industrial diseases further, however, we refer you to our 1980 submission on proposed changes to Schedule "B" which is part of the B.C. Act. The document may be of some assistance to you.

PENSIONS

We are alarmed at some sections pertaining to pensions. We are attaching our section to the King Commission on same along with excerpts from Terence G. Ison on same for your consideration.

5. PENSIONS

In our estimation, the most difficult problem facing any system of disability income insurance, whether workers compensation or a universal disability plan, is the determination of fair and just pensions for persons with total or partial permanent disabilities.

The 1986 background paper of the King Commission offers three options for compensating partial disabilities:

1. medically rated pension
2. wage loss and lump sum
3. wage loss pension

Options 2 and 3 refer to actual wage loss pensions. There are many, many arguments against actual wage loss pensions.

Probably the best set of arguments against the actual wage loss method are set out in the Winter 1984 Osgoode Hall Law Journal article by Professor Terence Ison, which is included in this submission as Appendix A. It is crucial that your committee study these arguments before coming to any determination on the right answer to the pension conundrum.

It is tempting to produce a summary of Professor Ison's arguments, but it would, we feel, detract from their impact. Suffice it to say that the actual wage loss method produces numerous adjudicative and calculation problems, violations of civil liberties, and is a very large disincentive to rehabilitation all of which result in our organization's complete opposition to the actual wage loss method of pension calculations.

We support in its place two methods, which could be either alternative or cumulative depending on the choices made about the figures for the first method. The two methods are the physical impairment method and the projected loss of earnings method.

A) Physical Impairment Method

A revised physical impairment or medically rated pension schedule should be devised to take into account both:

1. nonmonetary losses, such as pain, suffering, limitations on social activities, et cetera, and
2. presumed loss of earnings capacity—the prospect that there may be some loss of earning capacity notwithstanding the absence of any immediate measurable loss.

B) Projected Loss of Earnings Method

The following is paraphrased from the 1973 Decision No. 8 of the B.C. Workers' Compensation Reporter series, which further developed a concept raised in the 1942 Sloan B.C. Royal Commission Report.

Instead of attempting to keep track of the actual earnings of a claimant indefinitely into the future, a forward projection should be made of the impact of the disability on future earnings, and by reference to that projection a conclusion reached about the impairment of earning capacity. Where a disability appears to have stabilized, then, absent any evidence on which to make a different projection, it should be assumed that the claimant would continue to earn indefinitely into the future at a level equivalent to what he or she is able to earn at the time of the evaluation.

Of course this will always be different from actual earnings. Shifts in the condition of the labour market, improvements in the skills on the part of the worker, subsequent sickness for other reasons and a whole range of other variables may result in actual future earnings being different from the projection.

This loss of accuracy should be considered a price worth paying to avoid the intrusion into the private lives of workers that would be required in measuring actual earnings or earning capacity on a continuing basis, to keep administrative costs to an acceptable level, and perhaps most important of all, to avoid creating a disincentive to vocational rehabilitation.

If this method is used, the calculation would be made as follows:

(a) Average earnings prior to the injury would be determined in the same manner as at present.

(b) Having regard to the evidence, including the medical evidence, of the limitations imposed by the disability and the fitness of the worker for different types of work, and having regard to the evidence of the rehabilitation consultant about the suitability of the claimant for available jobs, the disability awards officer would arrive at a conclusion about suitable occupations that the worker could be expected to undertake.

(c) Earnings in those occupations would then be determined as at the time of the injury.

(d) It should then be considered whether any evidence has been produced or is available in the particular case on which to predict the future earning capacity is likely to be different from what it is at the date of the award for reasons other than a change in the medical condition of the claimant. If so, an adjustment should be made having regard to that evidence.

A pension established under the projected loss of earnings method would be permanent to the same extent as at present. That is, it would not be reviewable by reference to changes in economic conditions. It would only be reviewable by reference to any change in the medical condition of the workers.

C) Canada Pension Plan

Your question of whether to offset or pyramid Canada Pension Plan totally disability benefits shows the dilemma of our present overlapping disability systems in Canada and once again points out the need for their replacement by a universal disability system.

The theoretical arguments for pyramiding are that CPP contributions have been made by workers and their employers and are, by their nature, meant to be stacked. The practical arguments however for such stacking of benefits are that workers compensation pensions often offer hopelessly inadequate income replacement and thus additional CPP disability benefits are necessary to provide an often still inadequate income level.

We would support the offsetting of CPP disability benefits only if either the present workers compensation pension system were drastically revised (see our section on pensions) or it was replaced by a universal disability system.

Apart from the question of offsetting CPP benefits we feel most strongly that CPP contributions should be made by the board for all workers who are disabled more than one month so that their retirement incomes are not impaired.

CONCLUSION

The Canadian Association of Industrial, Mechanical and Allied Workers is fundamentally opposed to the majority of measures contained within Bill 59. The changes proposed, with no consultation from labour, places further burdens and denies the fundamental rights of injured workers of Manitoba. Bill 59 does not constitute a reform of workers compensation. We ask the committee to refer this bill back to the drawing board and ensure that Manitoba has a workers compensation bill it can be proud of and not one that places it back to the Dark Ages.

Respectfully submitted,
Susan Spratt, National Staff Representative
Canadian Association of Industrial, Mechanical and Allied Workers

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On Friday the 26th of April, the House recognized workers who had been killed on the job in Manitoba. On Sunday, April 28, various interest groups recognized these same workers, men and women who lost their lives in pursuit of a decent living for themselves and their families and fulfillment of their dreams.

Labour is the bottom rung on the social ladder but without labour there would be no gross national product. I may be wrong, but I do notthink we could expect an ever-improving standard of living in Manitoba without GNP provided by labour and the farm community.

At 9:30 a.m. on the 28th of May, 1969, at drawpoint 92 on the 1,500 foot level of the Birchtree mine at Thompson, my partner Bill Lucas was killed in a cave-in. The same accident left me a paraplegic, and I was ultimately put on a 100 percent disability pension based on the maximum rate from the Workers Compensation Board of Manitoba.

It is impossible for me to tell you how devastating something like this is. I know everyone says they understand and possibly even think that they do, but there is no way to understand without having to live it.

I was fortunate in that I was able to supplement my pension with bookkeeping jobs until 1985 when pain and other complications rendered me unable to work any longer. Scar tissue around the nerves in my spine make my prognosis one of continued loss of what little use I have of my lower body. Please think about that for a moment. It is one thing to be injured but how do you think it feels to look forward to an ever-worsening condition.

This preamble is my way of qualifying myself to address this committee. I have no political power or connection of any kind and I do not understand the process very well. It is my hope that I can make this committee understand my plight.

For some time now, I have been concerned that my pension benefit has not been kept equal to the benefits given at the present time. In other words, my pension today is $1,429 but someone hurt today in the exact same circumstances would receive $2,100 a month. When I accepted the pension I did not anticipate that I would be expected to subsist on a pension of ever-decreasing relative value. Does that seem fair or just? I do not think so.

Since time began, people have sought to be treated with equality by their government. I would appreciate it if this committee would recommend to the lawmakers of Manitoba that they rectify the legislation that would see two people with exactly the same disability, in exactly the same circumstances receive different pension amounts because the accidents happened in different years. My house, car, food, et cetera, costs the same as it does the fellow hurt today.

We all enjoy freedom today because of men who went to war in 1914 and 1939. The Department of Veterans Affairs pays the same pension to a vet from the first war as it does to a vet from the second war. We all enjoy an improved standard of living because of people who are willing to go to work. Paying various pensions because of the year a worker is injured is not right, just, fair or equal treatment. We are a wealthy, successful and vibrant province and we cannot afford the stigma associated with not treating all people equally.

Our savings are gone now and I am sure that it is as obvious to you as it is to me that if things continue as they have and if I live for another 20 years, I will be destitute on my WCB pension. I do not want to die a pauper. I want to leave my family something and while I am here I would like to provide them with a decent living.

My pension is my only income and being disabled, I have expenses other people do not have. This disability does not go away at five o'clock either, it is a 24-hour a day thing.

The next time you are enjoying sex, going for a walk with your kids or grandchildren or shingling the roof or painting the house or washing the car, for goodness sake, remember me—none of these things for me.

Maybe I should not talk about "might have beens," but I was working towards my airline transport rating. Heavy aircraft pilots today earn in the six figures. Even if I had stayed in the mine, many good miners make nearly $100,000 per year. All this is lost to me, and I lost it doing something that contributed to the improved circumstances of everyone in Manitoba.

This is my lot and I have to build on it. No one can do that for me. All I ask is that my pension be the same as those allotted today.

The 28th of May, 1991 marked the 22nd anniversary of Bill's death and my disability. You or I cannot do anything for or about Bill but the committee has the opportunity, indeed, the privilege of recommending to the government of the day that they correct this legislation. Please, please do not let this injustice continue.

Thank you for your attention.

Mr. W. E. (Newton) Thomson