Fourth Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE
on
PUBLIC UTILITIES
and
NATURAL RESOURCES

42 Elizabeth II

Chairman
Mr. Jack Reimer
Constituency of Niakwa

VOL. XLII No. 4 - 10 a.m., MONDAY, APRIL 26, 1993

MG-8048

ISSN 0713-9454

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON

PUBLIC UTILITIES AND NATURAL RESOURCES

Monday, April 26, 1993

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Reimer (Niakwa)

ATTENDANCE - 7 – QUORUM - 6

Members of the Committee present:

Hon. Mrs. McIntosh, Hon. Mr. Praznik

Messrs. Gaudry, Laurendeau, Reid, Reimer, Sveinson

APPEARING:

Becky Barrett, MLA for Wellington

Wally Fox-Decent, Chairperson, Workers Compensation Board

Tom Farrell, Acting Chief Executive Officer, Workers Compensation Board

Alfred Black, Executive Director of Benefits, Workers Compensation Board

Lorne McMillan, Executive Director of Finance and Administration, Workers Compensation Board

MATTERS UNDER DISCUSSION:

Annual Report of the Workers Compensation Board of Manitoba for 1991 and the Five Year Operating Plan, 1992.

Annual Report of the Workers Compensation Board of Manitoba for 1992 and the Five Year Operating Plan, 1993.

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Mr. Chairperson: As we now have a quorum, will the Committee on Public Utilities and Natural Resources please come to order.

We have before us the following reports to be considered, the 1991 Annual Report for the Workers Compensation Board and the Five Year Operating Plan, 1992, and the 1992 Annual Report for the Workers Compensation Board and the Five Year Operating Plan, 1993. Copies of the reports are available to the committee on the table behind me.

I would invite the honourable minister responsible to make his opening statement and to introduce the staff present this morning.

Hon. Darren Praznik (Minister responsible for and charged with the administration of The Workers Compensation Act): Thank you very much, Mr. Chairperson.

I would like to introduce to you today the new chair of the Workers Compensation Board, Mr. Wally Fox-Decent, and Mr. Tom Farrell, who is the acting chief executive officer of the board.

We are now moving into the third year in which I have had the honour of serving as minister responsible for the Workers Compensation Board, and we can all look back I think with some sense of pride at the accomplishments of the board during the past five years.

In reaching these accomplishments our government has always been guided by three principles: First, the framework of compensation should be based on the broadest possible consensus. Second, the benefits provided to injured workers should be fairly and compassionately administered. Third, the accident fund should be managed in a businesslike way which recognizes the responsibility of the board to our province's employers who pay for Workers Compensation.

In the last five years we have made great strides in meeting each of these goals, and I will, of course, take this opportunity to review some of the progress that has been made. I also though consider it appropriate that we take this opportunity to recognize that this year marks an important turning point for the board which is best exemplified in the 1993 Five Year Plan. The work that led up to the passage of Bill 59 in 1991 and its implementation in 1992 has given this board a stable and secure financial base. With this task well underway and the appointment of the new chair comes a new set of priorities and a new set of commitments. The

officials of the board are most pleased to be here at this important juncture.

Let us turn to the first principle. Workers Compensation did not develop in a vacuum. First, in Ontario, with Chief Justice Meredith in 1915 and then in our province, and province after province compensation systems arose and then changed as a result of public review and public consultation. Legislatures of all political stripes have recognized from the beginning the unique characteristics of compensation. Workers and employers have a mutual stake in the existence of compensation, a mutual interest in ensuring that it survives and within those bounds strong differences of opinion about the specifics of the program. Only through their own interaction, their own debate and negotiation can a system which is supported by both of these two groups develop.

Compensation as a social issue is essentially the triumph of a consensus over conflict, and consensus cannot be achieved without debate and discussion. That is why this government introduced legislation which would broaden the base of support for the board and allow for a free flow of information and debate. The number of board members was increased from three to 10 while the board maintained its tripartite nature with three members from each of the employees, employers and the general public all presided over by a neutral chairperson.

This commitment to consultation continued with the public issuance of a series of planning documents of which the 1993 Five Year Plan is the latest: The public availability of the board's policy manual, and extensive consultation prior to establishing vocational rehabilitation, and public hearings with the introduction of Bill 59 in the spring of 1991.

I was personally involved in that process and with those hearings can attest to the importance attached to them and the great effort put into their representation into the fact that some parts of the legislation were changed as a result of what we heard.

In the past year, under the capable direction of Professor Wally Fox-Decent, public consultation has become the top priority of the board of directors. This began in the fall, when a series of meetings were held with any interested groups from either the employer or the worker communities. The board established a commitment to forward important policies for consultation prior to a board decision.

I know, with several members of the opposition, this was a point that had been raised with me on a number of occasions, the need to ensure that the board of directors, the members of the board of directors, were able to consult with their various stakeholder groups prior to the implementation of a policy. I am pleased to report to this committee today that that is essentially what is now happening, subject to some very, I think, common sense rules of confidentiality.

The board then prepared a summary of their concerns and presented these to the board for their consideration. These concerns became the basis of discussion at a two-day planning session held by the board in January. Finally, in this year's plan, we have a list of important questions which developed out of this consultation process to be reviewed by both employers and employees. The principle is that the framework of compensation should be based on consultation, is in the safest possible hands, I believe.

The second principle is that benefits provided to injured workers should be fairly and compassionately administered. No one wants an accident, and last year accidents fell again to a total of 42,000. Once they occur, however, the victim should expect the board to respond quickly, treat them fairly and provide them with the benefits they are entitled to receive.

The board's attempts to change this was started with the passage of the bill that established a broad board of directors. That bill also introduced the notion of a separate and independent appeal commission. The separation of the adjudicative and the legislative functions of the board is a necessary precondition, I believe, to fair adjudication.

This move to provide independent appeals was followed by the establishment of a fair practices office. The establishment of an advance payment system so workers would not suffer financially if a claim decision is going to require time to finally adjudicate has also been put in place. Of course, increased resources for adjudication and rehabilitation have also occurred.

We noted last year the service gains which have come from the increased resources. The time to first payment, which was 35 days not so long ago,

in fact, I believe when this government came into power, or a year or so after we came into power–it was worse prior to 1988–has fallen steadily to 16 days in 1992.

Unadjudicated claims, which were once over 3,500, are being maintained at a level of 1,200 to 1,300 within that particular range. Last year also saw the increased resources applied to rehabilitation beginning to bear fruit. Over 3,400 claimants received rehab services in 1992. That was 82 percent more than in 1991 and considerably more, I believe, than the period prior to 1988.

The rehab branch not only saw more claimants, but they also saw them earlier. The number of claimants receiving rehab services within six months of the injury doubled, and the extra effort worked. The number of the claimants who received rehab services and went back to work without an income loss increased by 74 percent.

The time on claim for claimants whose claims were settled in 1992 and had recent accidents, that year and the previous year, declined. As we turn to the future and to the board's plans for moving toward the achievement of the second principle, the issues which arise are fair policy development and, of course, communication.

Included in the five-year plan is a series of questions related to program administration which is designed to address these concerns. In fact, on the issue of overpayments, the board has already forwarded a draft policy to interested parties for discussion.

I may point out to opposition members at the table that from my experience many of the issues that they bring to my department, in fact all MLAs bring to my office and to the board on a regular basis, often tend to involve communication issues.

When information is not provided, where people are not getting from the board a sense of what entitlements are or where adjudications are at and, of course, the frustration that comes with not knowing what is in fact happening lead to the inquiries that they make, that are made to MLAs and of course to ministers' offices.

So the area of communication and ensuring that common sense is applied in the adjudication of claims and that claims are dealt with fairly is something that is very important to this minister and certainly to the board of directors and the administration of the board. I think we are making great progress in improving in these particular areas.

* (1010)

That brings us, of course, to the third principle. The accident fund should be managed in a businesslike way which recognizes the responsibility of the board to our province's employers, who fund entirely the Workers Compensation system.

In 1992, for the fourth year in a row, the average assessment rate fell. The 1993 budget, I am told, is established with assessments rates at the same level as 1991, the same average assessment rate as 1991. There has been no increase for five years in a row.

The board had an operating surplus of $11 million in 1992. This further reduced the unfunded liability of the board to $93 million. I would like to point out that the Province of Ontario, their Workers' Compensation Board has an estimated unfunded liability of over $10 billion.

Several important steps taken by the board have been made in the last while. First, the board has moved towards an experience-rated system of rate setting. Second, it adopted a series of accounting principles to assure that the true liabilities were known. Third, it improved the collection procedure for assessments so that all employers were treated equally. Then it adopted an investment policy and established as a principle the steady increase in equity and longer-term investments.

In 1992, for example, the board's holdings of equities increased from $4 million to $39 million; bonds and debentures increased from $154 million to $223 million; while cash and cash equivalence decreased from $117 million to $40 million.

In addition, financial forecasting and financial planning became an integral part of the budget process. This was instituted for legislative and policy changes as well as for the board's annual budget cycle. Appendix B of the five-year plan shows the boards projection of their finances over the next five years. The 1992 projection was for an operating surplus of less than $1 million, while the actual amount was $11 million.

For 1993, the projection is another small increase. Revenue is anticipated to be relatively flat as modest increases in assessments are counterbalanced by falling interests rates.

Expenditure is expected to decline slightly from the combination of lower accident rates, the impact of Bill 59 and continued rehab success. Future cost provisions are projected to increase by over 20 percent so that the net change is a modest surplus. If present trends continue, it is the board's hope that the unfunded liability will be eliminated by the end of the decade.

For the future, the board intends to continue to rebuild the accident fund while recognizing the importance of stable rates. In addition, they have raised several questions about funding the program which they intend to consult about over the next few months. These relate to the fairest method of establishing rates, the fairest method of collecting assessments and the types of objectives to be included in establishing an investment policy.

In closing, I would like to recognize the officials of the board who are here today to support the chair and the CEO in answering your questions. I am sure that all would agree that the progress of the board over the last number of years has been very significant.

I say to members of the committee, if they were able to watch, I believe it was, a W5 report on Workers Compensation across Canada this past winter, they would see that our board in Manitoba certainly had been moving in the right direction compared to many across the country, represented by governments of all political stripes, that are moving in the opposite direction and whose financial viability will no doubt be questioned in the next few years.

I would point out as well that in the United States in some of the work that I have done and some of the contacts that we have made in the U.S., that their workers compensation system is also in very, very deep trouble financially throughout most of the U.S. So I am very pleased to be presiding over a board that is very well administered by its board of directors, and that is moving in the right direction to a financially sound and fair system that I think gives us, as Manitobans, good reason to be proud.

We still have a ways to go in service improvement, as I have admitted to members in the House on several occasions, but from where we started, we have certainly come a long way and will continue to work diligently to achieve–in fact, we shall never stop working to ensure that we provide fair service and we have a financially sound operation.

Thank you very much, Mr. Chairperson.

Mr. Chairperson: Does the critic for the official opposition, Mr. Reid, have any opening statements?

Mr. Daryl Reid (Transcona): Mr. Chairperson, I will be very brief in my opening comments here today. Looking back on the Hansard of the last meeting of this committee a year ago, it was somewhat longer than what I had intended to be, so I will be very brief.

My comments will be directed along the lines of the concerns that have been brought to my attention over the course of the last year since the committee last met with respect to some of the stakeholders in the compensation system, as well as those that are claimants of the compensation system, and the concerns that they have brought to my attention.

I may leave you with the appearance, members of the committee, that I tend to be wandering sometimes in the questions that I ask. I ask you to bear with me on that. It is because the concerns that I raise come from many different areas, and I will be raising those concerns with members of the committee.

With that I will conclude my opening remarks.

Mr. Chairperson: Thank you, Mr. Reid. Does the critic for the second opposition, Mr. Gaudry, have any opening statements?

Mr. Neil Gaudry (St. Boniface): Mr. Chairperson, I would just like to say a few words. I will be brief. I would like to congratulate your choice in chairperson in the person of Mr. Wally Fox-Decent. I welcome him to the board.

I would also like to say thank you to you, Mr. Minister, for the help you have given me in the past couple of years in regards to cases that have come to my attention. Your staff have been very co-operative, and sometimes we forget to say thank you to the employees.

Why I say that is, just last week, I had dealt with a concern in St. Boniface through the City of Winnipeg, and after co-operation from the employees and what they had done for me in St. Boniface, I sent a letter of thanks to the members that had done the work. They called back to say how they had appreciated the letter, to say that sometimes it is not only a pay cheque that means a

lot but a letter of appreciation for what they do for you.

So I think–this is why I say thank you this morning to your staff for their co-operation and the help they have been giving me, because there are lots of concerns. There are cases that are not resolved because of certain reasons, and we appreciate that also. Like I say, it is not my portfolio as a critic in the second opposition. My colleague was not able to be here this morning, but like I say, I would like to pass on these few comments. I say thank you to the board members and to your staff.

Mr. Chairperson: Thank you, Mr. Gaudry. I would appreciate some guidance from the committee. Shall we consider each annual report and its respective operating plan separately, or shall the committee pursue general discussion on all reports?

Mr. Praznik: Mr. Chairperson, I look to the critics. I think if there is a consensus, we deal with it generally. I know many of the issues that both individuals have raised with me on occasions deal with policy issues and certainly the chair of the board is here to deal with those policies today and, very appropriately, to discuss those issues, so I would suggest we deal with things very generally, if that is the consensus.

Mr. Chairperson: Agreed.

Mr. Reid: Mr. Chairperson, I was remiss in my opening remarks to congratulate the members of the Workers Compensation Board for their appointments to that agency. I look forward to a good working relationship with them. I know they are well-respected individuals from our community, and I am sure they will do justice to the jobs and to the offices which they now hold.

A lot of my comments will deal with the Five Year Operating Plan, 1993, a copy of which was given to us earlier in the Chamber. My comments will deal with a lot of the comments that have been raised in there, because they seem to fairly well lay out for us the concerns that are in the community amongst the stakeholders. I think, of course, some of the questions that are in the minds of the people of the community revolve around these specific issues and some others which I will raise as well.

I guess, in that sense, I will start off at the beginning of the document, in the Appendix A, where we talk about the industries that have been excluded from coverage under the Workers Compensation Board for those employees that may be employed in those types of industries.

* (1020)

It indicates that there is a 25 percent exclusion, which seems to me to be a fairly high percentage. Now, I do not have a great deal of experience or background in matters such as that. I have been the critic for Workers Compensation for just slightly over a year, and I did not know that it was that high as an exclusion number.

I wonder if the minister can give me some kind of an indication on the types of industries that have been excluded. Is there a list that has been prepared, or some information that we might be able to view on that?

Mr. Praznik: Mr. Chairperson, the member for Transcona (Mr. Reid) raises a very important area for exploration by the board. If the member is agreeable, I would suggest that the questions may be directed, on this court, to the chairperson of the board, as the board is currently dealing with this particular issue and is involved in it quite deeply.

I think we both share the goal of ensuring that those industries that should be covered by WCB are included. If the member is willing, I would ask that the chairperson respond to this, as he is the administrator involved directly in this process now to review what industries are not covered.

Mr. Wally Fox-Decent (Chairperson, Workers Compensation Board): Mr. Reid, I think your observation is an interesting one, sir. It reflects, of course, the fact that the Manitoba act proceeds to name specifically who is covered by workers compensation, and those that are not covered are not listed as such in the groups that are covered.

The other two models that exist in the country are as follows: A number of provinces employ the assumption that there is to be only listed those that are excluded, as opposed to those that are covered. In other words, they come at it from almost exactly the opposite perspective.

The third model, which you will find applies in Saskatchewan, is that essentially everyone is covered, that all workers are covered regardless of what the level of risk may be. In Saskatchewan, they often joke that even the lawyers are covered, and in fact, they are.

The result, of course, is if you take a look at the assessment rate, you will find that Saskatchewan

has by far the lowest average assessment rate in the country because every employer is bearing the burden in Saskatchewan, even though it may be at a nominal rate. Where the risk is considered to be very low, the rate is in fact nominal but, nevertheless, everybody pays something.

At a recent planning seminar of the board we looked at this question with some interest. We are working our way through some research on the finer points of these three models. It may be that the board, in the context of some point not very far in the future, will be ready to make some recommendations to the government of the day concerning change to the way we cover workers in Manitoba.

I think there is a growing feeling that it ought to be the responsibility of employers more generally to fund a system and give access to their workers, of course, on the basis of that funding. Our program is, as I say, one where we simply name, and if you are not named as covered, you are not covered. The tendency in that system tends to be to have a relatively smaller list than in a system where you are assumed to be covered unless you are excluded or in a system where virtually everyone is covered.

So there is certainly some active thinking and some research going on in our research and planning division toward the issue of whether we should, in this province, be making some change. I think it would have to be by law that would change the mechanism whereby we decide who is covered and who is not covered in terms of Workers Compensation.

Mr. Reid: Have any studies been undertaken to determine whether or not those companies and their employees that are now excluded from coverage under Workers Compensation–I take it then that they must have or at least I presume that they have some type of insurance coverage for their employees in the event of workplace accidents–has Workers Compensation undertaken any studies or had any communications with these companies to determine whether the private insurance coverage that these companies may have would be comparable to, be greater in cost than or lower in cost than the coverage that could be provided by Workers Compensation?

Mr. Fox-Decent: That issue is part of this research that we have asked to be done on the issue of how best to use our Workers Compensation system in Manitoba vis-à-vis the coverage of workers.

If I may, sir, slightly alter your thought that the 25 percent not covered by Workers Compensation are probably covered by a private insurance scheme, I think you will find that a number of that 25 percent are not covered at all, either by a private insurance scheme or by Workers Compensation.

Of course, they would be at the most risk, although we must remember that many of them will be in very low-risk occupations, not no-risk occupations, but low-risk occupations. So I would be in a better position to give you an answer to that a little further down the line, and I could take your question as notice and undertake to provide you that information when it is available, on the 25 percent.

Mr. Reid: I appreciate when that information becomes available that I do receive copies of that.

I am surprised to hear that a lot of those industries and their employees that are not under the Workers Compensation system may not have some insurance protection for their employees. I think then, on that basis, it is important for us to move forward with serious consideration for inclusion of those firms under a consultation basis, of course, as has been mentioned in the document. I think that is probably the best way to move forward on that.

Mr. Fox-Decent: Mr. Chairperson, through you, could I just add a footnote? That is, a number of those not required to be covered by law do in fact voluntarily sign up with Workers Compensation. Take, for example, the agricultural sector, one could debate whether they should or should not be covered by law. The fact is that they are not covered, but a number of the members of the agricultural community in the context of farm or agri-related activities sign up voluntarily, so the situation is slightly better than it might be if there were no voluntary sign-up capacity.

We find in some industries that in fact quite a substantial number sign up because they simply do not want to be caught in a situation where their worker is injured and there is no coverage for them.

Mr. Reid: I think the minister wanted to add something before he loses the train of thought on that.

Mr. Praznik: Yes, I just wanted to add that what becomes so very critical to the attractiveness of WCB are two things: to ensure that we are able to deliver good quality service and also that we are

financially sound. If we are not able to do those two things, what we find is, even whether it be employees or employers, looking at bringing them into the system. If our service is poor and we are financially in trouble, there is a greater reluctance to even want to be in the system.

So I think, as we strive to improve service, as our financial situation improves, we become much more attractive to both employers and employees in those noncovered areas, even in particularly the low-risk areas where they have the least interest in being involved, a law firm, for example.

So we have a ways to go, but certainly I am glad as minister that the board is certainly following what I would consider to be the correct path. I am encouraging them in this area to continue to put together and examine this question for expanding our coverage into areas where we have a role to play.

Mr. Reid: I think that is the right direction, the right approach to take.

In the process of the information that you have indicated that you are willing to bring back or provide at some future date, could you also indicate for my purposes at least, for my education purposes, the number or the percentage of that 25 percent that is presently excluded? How many of those are voluntary participants in the compensation system, so I have an idea of whether or not the majority of that 25 percent voluntarily apply or are opting out?

* (1030)

It is indicated here that the board has gone away for a planning retreat to look at all of the different questions. I suppose the stakeholders have brought to the attention the concerns that have been raised by the critics and others that are brought to the minister of the department's attention over a period of time. Are all of the questions by the planning retreat or was there other information that was considered by the retreat participants covered in the document here?

Mr. Fox-Decent: I think, sir, that you will find pretty well everything that was dealt with in the retreat is part of this five-year plan, either in the narrative at the beginning or else in the appendices which follow. There is a more specific document related to the results of the retreat. It was kind of a summary of what we discussed there. I would be happy to provide you with a copy of the retreat summary.

Actually we called it a planning symposium. I am not terribly fond of the word "retreat," so we did not use that word. It may be more appropriate in other contexts, but I do not think it is in ours.

I would be happy to provide you a copy of the summary of what we did at that two-day session.

Mr. Reid: Thank you. I appreciate the opportunity to view the work that was accomplished by the planning committee. Moving on in Appendix A, and I note that there were some gray areas that were referred to when the question was put for determining whether an injury was work or nonwork related.

I must admit even in the course of dealing with Workers Compensation cases that have been brought to my attention either by constituents or by other Manitobans, I have had to view that as well and in some cases there is no easy answer for some of the concerns that are brought forward. I know the comments that were noted in this document refer to the types of cases where there may be dual causes for an injury. That does create some problems, I suppose, for the primary adjudication, maybe even through the appeal process as well.

What type of criteria then would you use to determine–because there are some cases as well that the board has rejected either in primary adjudication or on appeal saying that there were other factors that were brought into consideration where it was more nonwork-related than work-related type of injury? What are the criteria that are used to determine whether or not these cases are accepted or rejected?

Mr. Fox-Decent: I am going to ask our acting CEO, Mr. Chairperson, to answer that one if I may because it is really a matter of administrative practice we are talking about here. We also have our director of benefits with us, Alfred Black, who is, of course, directly involved in this issue day by day. So I am sure between Tom and Alfred they can give you the appropriate answer, sir.

Mr. Chairperson: Mr. Farrell, if I could ask you to bring your mike closer to you.

Mr. Tom Farrell (Acting Chief Executive Officer, Workers Compensation Board): The issues that you raise are interesting ones because they are subject to ongoing policy revision. The nature of the information, particularly as it relates to industrial disease, these are the issues that are probably the principal issues facing compensation boards, not

just in Manitoba but across Canada over the next few years.

We have very good adjudicative processes right now in the bulk of the areas related to injury. It is the illness side that we are having to spend a good deal of time with. The criteria, for instance, if you noted in our consultative document, we talked about a uranium miner who smoked. If you smoke today in a uranium mine you would probably have difficulty getting compensation. If you were a uranium miner who smoked a few years ago you should be entitled to compensation. No one knew the relationship. It has to do with that aspect. It also has to do with our ability to now determine causation. There is a great deal of work ongoing throughout the world right now in the area of causation.

If we can find a dominant factor, if in fact exposure to–a classic example currently of great concern is isocyanide exposure which is the product in automotive paints and in an awful lot of industrial applications which has the ability to sensitize one in 10 workers very quickly. Unprotected exposure to isocyanides can literally trash someone's lungs in a very short time. That was not known a few years ago. Today whenever we determine isocyanide exposure then that becomes a dominant effect if we are dealing with an industrial-related lung condition.

So those are the sorts of things. It is very difficult to frame a solid answer around it because our policies, in fact, are changing fairly regularly to accommodate new information that becomes available.

Mr. Praznik: Mr. Chair, just to point out in case members of the committee are not aware but, in another life, Mr. Farrell was the Assistant Deputy Minister of Labour responsible for Workplace Safety and Health, so he brings to this job an expertise that is rare and we are certainly glad to have it.

Mr. Reid: One of the reasons why I raise this concern about criteria, and I know the minister has, I use the term "scolded" me in the past, because I have raised personal cases in the Legislature with respect to workplace injuries and the claimants, there is a constituent of mine, Mr. Bill Quinn. I am sure many of you may be familiar with Mr. Quinn, who has suffered a debilitating lung illness as a result of what has been claimed to be his workplace environment.

Now, Mr. Quinn is a candidate for a double-lung transplant, and you may not be familiar with it, but I will be raising it with you. I am in the process of reviewing the very extensive file on it right now, and I raise it just as a matter of course of information for you to inform you that I will be bringing it to your attention.

The individual had claimed that his lungs were deteriorated as a result of his workplace environment, has gone through biopsy operations to determine that, yes, the environment of the workplace did affect the lungs' condition. He is currently on oxygen for his entire day, is unable to leave his home except to attend the medical treatments that are necessary and is currently on the waiting list for the double-lung transplant in London, Ontario.

His case was rejected and he appealed it to the final level, and he has now come to my office and asked for my assistance. I know Mr. Quinn personally. I worked with him in that work environment. I will tell you even on the record here, and I have no fear of stating on the record here, that I was responsible for some 55 employees working in that environment and when that environment of that worksite created a problem, as it often did in the days that I worked there, I instructed my employees to leave that work area. Mr. Quinn, who has been impacted by that same worksite because he did not leave that area and was not under my responsibility at the time, has had his case rejected by Workers Compensation.

So that is one of the reasons why I am going to be raising it, first for Mr. Quinn's security and the security of his family, but also because there may be other employees in the future that may be seriously impacted by that type of workplace environment.

To deal with the criteria, one of the issues–there are a couple of issues I suppose in the sense of carpal tunnel syndrome. I will be getting to some questions on that in a few minutes, but epicondylitis has become, I guess, growing in concern for the workplace employees that are affected by that. Have any studies–do you have any statistics on the number of epicondylitis cases that may have been brought to the attention of the board and, if so, what was the disposition of those type of cases?

* (1040)

Mr. Farrell: May we bring our Directorate of Benefits to the table?

Mr. Chairperson: Mr. Black, you may proceed.

Mr. Alfred Black (Executive Director of Benefits, Workers Compensation Board): I do not have the information on that matter with me, but that is something we would be prepared to provide to members of the committee through the minister in a few days.

Mr. Reid: One of the reasons why I raised this, it seems I guess because of the changing workplace environment where we have now repetitive types of duties in the workplace as we move into more an assembly line structure for a lot of work environments, we see repetitive actions or duties by employees, and, of course, we are going to see repetitive-type strains or injuries affecting these employees. Of course, I think tennis elbow is the common name that is used for this type of injury. I think it is going to become more predominant, as is carpal tunnel.

There have been cases that have been rejected–epicondylitis cases that have been rejected–because the term that was used was confounding factors. I think that was Mr. De Bakker [phonetic] that had used that term, saying that it was difficult to prove that these cases were actually as a result of the workplace environment.

Now, I am not exactly sure what confounding factors can be. I mean, if a person is doing that type of work day in and day out, and they have no other home-life activity that would cause them to put that same area of their body at risk, I am not sure what other confounding factors could be taken into consideration.

Have there been any studies? I know I asked for numbers here, but have there been any studies undertaken to determine the number of cases, the number of people that may be affected by this, and the type of work areas, as well?

Mr. Farrell: Yes, thank you, Mr. Chairperson. We are in the process of funding a study right now by University of Manitoba and Health Sciences Centre–Dr. Anna Lee Yassi actually is looking after the study for us–in this whole area of repetitive strain injuries.

It is one that the board is quick to admit, it does not have all the information it needs to adjudicate clearly these new strains, and they are issues that have arisen–some of the strains, the more common ones that were referred to earlier by a very technical name, have been around for some time, but the concerns with carpal tunnel and with some of the other repetitive strain injuries are still quite new, and there is not a broad base of knowledge in causation.

We are hoping from Dr. Yassi's study to have a better idea on how we should formulate our policies to deal with these issues so that we can remove the confounding portions of those and clearly adjudicate. There will continue to be issues related to causation which may deny a claim, but I believe that when we have that information at our fingertips, we will be doing it with a far better idea of what the medical understanding today is of this matter.

Mr. Reid: One of the reasons why I raise these concerns is that cases, real-life cases, have been brought to my attention, either carpal tunnel or the tennis elbow-type cases. People who have indicated and have sworn statements indicating that they have been employed at a certain type of job for an extensive period of time, a great number of years, they had no other hobbies or activities outside of their home, so they state, that would put that area of their body at risk, and yet their cases have been rejected.

I cannot take credit for this because someone else has indicated to me that this might be one of the proper approaches to take, and I throw this out as a suggestion: would it be possible to have industries where there are repetitive type of duties involved, or areas of employment that have repetitive duties, where we could use some type of a schedule indicating that people can be more likely to be accepted for their claims, whether it be the carpal tunnel or epicondylitis, if they were employed in those areas of employment in those type of duties?

So in other words instead of us seeing a high rejection factor like we may be seeing now, these people would be more likely to have their claims accepted. Is that a possibility, to have that type of schedule drawn up?

Mr. Fox-Decent: Mr. Chairperson, I think Alfred would be the best one to answer. I would only say to you, sir, that there has been quite a bit of stakeholder concern over this issue, that we should not have to, every time we come to a situation involving repetitive action, adjudicate it as if it were something completely new, because we should now be developing bodies of knowledge that would enable us to establish that when certain criteria are met it is X and X means that there is an entitlement to compensation.

Alfred, would you care to elaborate on that? You, I think, know this issue very well and of course it relates in part to our medical services division and that sort of thing.

Mr. Black: Mr. Chairperson, I think there are a couple of things that should be pointed out. One is in the case of, for example, carpal tunnel syndrome, and I think it would also apply to other repetitive strain injuries, we generally accept 50, 60, 70 percent of these claims, but each claim is analyzed on its merits.

If we established a schedule then we would have to be careful to ensure that each claim was examined on its merits because there are some confounding factors. Tom alluded to some of them earlier. For example, with respect to carpal tunnel syndrome, being a diabetic, and actually I am one, does cause carpal tunnel syndrome as does, believe it or not, if a woman is pregnant then she is more likely to experience soreness in the wrist. Each of these causes, and there are many others that are understood medically, would have to be looked into with respect to individual claims.

One of the things that the minister alluded to in his introductory remarks is that we have been in a fortunate position of providing payments to people on an advance basis and we are beginning to do that more and more in the area of repetitive strain injuries. We are making cheques available to people early in their claim and then continuing to investigate the scientific basis for that particular claim and the medical basis for that particular claim. In some cases we have to recover overpayments that we have made but in many cases we are able to make decisions early. I think this is a way of providing better service to individuals.

Mr. Reid: I suppose there is no black-and-white program or policy you can follow because there are obviously many gray areas in dealing with these issues, including these two that I raised here.

I refer back to one particular case–

Mr. Praznik: Mr. Chairperson, we have Alfred Black; I am prepared to hire somebody White so we can have the black and white.

Mr. Chairperson: Mr. Reid, to continue with questioning.

Mr. Reid: There was no intent on my part, Mr. Chairperson, towards Mr. Black. I am referring only to the policy itself and the issues that we are dealing with.

Because it makes it difficult, I am sure, in adjudicating some of these to make decisions that will be in the interests of those claimants who are bringing forward very serious concerns–I know I have dealt with Ms. Lavinia Pittman, and I raised this matter, she has been in the news media of late, dealing with carpal tunnel issues. She indicates that she was employed in the food preparation services industry for a number of years, had no outside home activities and yet suffered carpal tunnel, was accepted in the Northwest Territories for a claim on one of her wrists and surgery was subsequently performed and, yet, when she moved to Manitoba and was still employed in that industry and put in a claim because she suffered an injury on her other wrist, her claim was rejected. It leaves me wondering why one jurisdiction would accept and then another jurisdiction would reject claims for that type of employment and that type of injury.

* (1050)

So I think there needs to be some work done with respect to the people who are working in those types of industries. That is why I think it is important that we have some kind of schedule drawn up indicating that, yes, if you are employed in the food services or preparation and other industries where you use your hands on a very, very frequent basis, that we would look at accepting, very seriously accepting your claims for that type of injury because those claims would be predominant to industries like that.

Other concerns that were brought to my attention–and this goes back, and I do not like to use this term because it has to me very negative connotations and very bad feelings from within my own community and the people who draw their cases to my attention, and that is the term "deeming." That strikes, I am sure in my conversations with most people who have been deemed, financial fear into the minds of these people who have been dealt with in this manner, and it causes them no end of stress and frustration in dealing with the board when their cases have been deemed.

Now I believe there was a change in the policy of deeming, and it is under review at the current time. It was my understanding, and I was not a member of the Legislature at the time, but when deeming was brought into being it was to be used sparingly, only for those individuals who were able to return to the workforce and refused to willingly return to the

workforce. I believe that was the intent, yet it seems to have gone way beyond that mandate.

The claimants of the Workers Compensation Board that have been deemed to be capable of earning X number of dollars, returning to some type of employment still creates a problem. I think, and I will put my personal opinions on the record here, that if an individual is capable of working and has been working and has, through no fault of their own, sustained a workplace injury and has gone through the recovery period, and that recovery has concluded or plateaued at the maximum level that could be expected for the individual; if the individual claimant is not accepted back to their preaccident employer, why is it the responsibility of the claimant to seek out that new work, and why are they penalized in that process? Why is it not that the claimant then, if that job still exists in the workforce, why are they not given the opportunity?

Why are some pressures not brought or put upon the employers themselves? Why are the employers not made more responsible for either accepting those claimants back to their preaccident employment instead of having their incomes deemed and having them try and seek out those invisible jobs that are out there in the economy that we are facing today? Why are these individuals penalized?

Mr. Fox-Decent: Mr. Chairperson, through you to Mr. Reid, I would agree with you, sir, that this issue is probably the most vexatious issue that the workers who are concerned with issues related to workers compensation bring forward to us. In the stakeholder consultations which we have had in the last six months, again and again the issue of deeming has arisen. It probably is accompanied by the issue of clawback of overpayments as being the two issues that are most strongly felt by the worker community.

We have the deeming policy under active review at the moment as a result of quite an extensive discussion we had on this at the planning symposium which I was talking about earlier. You are right, at least subject to correction by those who administer the policy. My understanding of deeming is that it is only to be used in situations where there is some kind of a failure of what the system is supposed to provide or individuals are supposed to do, some failure in terms of that happening.

I am looking at our policy manual. It says: Typical situations that may give rise to deeming include the following: the worker fails to co-operate in a rehabilitation plan; the worker has been offered suitable employment and refuses the offer without a reason considered to be valid; the worker discontinues suitable employment without a reason considered valid; the worker voluntarily withdraws from the labour force and fails to actively seek employment. So it goes. That is simply an excerpt from the policy manual. You probably have it buried away somewhere.

Aside from that, because my answer is really defensive, and I do not mean to sound defensive. I think we have to consider the well-being of the system constantly. We have to respond to stakeholder concern on a continuing basis. There is no question at all that deeming is a very controversial issue for the worker.

You are proposing that we look at something else, that we place the emphasis on getting that worker back to work and placing an obligation on the previous employer to take that worker back into the workplace.

I think that is all part of the larger issue of examining how voc rehab or Vocational Rehab deals–because basically Vocational Rehab makes these kinds of judgments regarding deeming–how they deal with the situation of workers who are at various stages of readiness to return to the workplace. So I do not want to sound defensive because I really do not feel defensive about this, and I appreciate your comments.

Mr. Praznik: If I just may make one small comment to the member for Transcona. He made the comment that an individual who sustained an accident through no fault of their own. I just want to re-emphasize that in essence what we have is a no-fault system, and that probably only about 10 percent of the cases that the Workers Compensation Board would receive in a tort system would ever find compensation.

You know, one can argue what trade-offs one makes, but I would just like to appreciate that when you have a no-fault system, there are many cases where the accident is sustained because of the fault of the individual. I am not saying all, but there are some–inadvertence, not deliberately. Inadvertence, particularly lifting, problems when people do not lift the proper way and cause a back

strain. Because it is no fault, because it covers them no matter what the circumstances of the accident, that there have to be some trade-offs, of course, in order to sustain that kind of system.

So I appreciate the difficulty, as minister, with the deeming policy, and I know that the member recognizes that there are two sides to this. It is trying to strike an appropriate balance, and the board continually looks at its policies with respect to deeming. It is a difficult issue, but again it is one of the trade-offs that are there because of a truly no-fault system.

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

Mr. Reid: One of the reasons why I raise this–and this is, again, my personal opinion on this–I have often thought that because accidents quite often happen through no fault of the employees themselves, maybe other causes where there is other employees that are involved or equipment that has deteriorated or become faulty, if the preaccident employment was still available, why we cannot use or assume, I suppose, maybe rightly or wrongly, that there would be every likelihood that had the workplace accident not occurred that the claimant would probably have continued uninterrupted in that employment.

Yet with the deeming process that is in place, we are putting the onus upon the employee because the employer has not taken them back, in many cases, to the preaccident employment.

* (1100)

We are forcing that employee to find or seek out some alternate employment when the job that they left as a result of the workplace injury may still be there. That is why I think it is important that we put some pressure back onto those employers, that they either be financially responsible for those employees that are now forced to do a job search or to accept those employees back into their workforce, either in some modified duties or some duties that they may have within the operations of their organization itself.

I know I have had in my own community–there is, of course, several employers, but one I will not name here. But they have a history–and I know because I have dealt with these cases in my own constituency office. These claimants have drawn to my attention that the moment they go on Workers Compensation benefits, then they recover from their workplace injury, when they attempt to return back to their employer, their employer terminates their employment.

Now, personally, I would not want to be in those shoes. I do not think that that is fair for these employees, but it is happening out there. I know, I have documented the cases. That is why I think the employers have to be responsible for what is happening.

You do not just terminate an employee. In some cases there are long-term employees involved here. These are non-union operations, of course, so they do not have their union representatives to support and defend the interests of the claimant. These employees are left without any means outside of the Workers Compensation Board, who then, in some cases, will deem them or cast them aside and say, okay, you have sufficient training, go out and find another job. You were making minimum wage at this plant. Go out and find another minimum wage job. I think we have a responsibility to these people that do not have that protection. I just draw that to your attention for further consideration.

One of the concerns I have here is–and maybe you have some studies or some statistics on this–the board I believe has, from what I am told at least, a list of employers that are willing to take back employees that have sustained workplace injuries and have plateaued in their recovery. The board, I believe, subsidizes some of these employers as far as wages are concerned.

(Mr. Chairperson in the Chair)

Do we have a list of the employers or can you tell me the number of employers that are involved in that type of program?

Mr. Black: I have to answer this question in the same way as the last one. I do not have that number with me, but I can say that we make training, on-the-job arrangements, many, many hundreds of them each year, with a wide range of employers in Manitoba.

I do not believe we actually have a list of those that we use. It would depend on where the accident occurred and what kind of employers we would look to. It is my understanding that employers are generally very co-operative in establishing these kinds of arrangements. I would expect that almost all the employers of Manitoba would welcome an approach from us in that regard.

Mr. Reid: Would it be possible then to obtain through your agency information relating to the type of subsidy program or the criteria used for subsidy of employers that would be involved in this program?

Mr. Farrell: It runs a full gamut, Mr. Chairperson. What we encounter is anything from assistance in the workplace to provide a tool, a crane, something that would permit someone with some degree of disability to continue to do a job, up to and including some subsidization of wages on a regular basis over a period of time.

One of the keys to this goes back to making employers, and particularly smaller employers but not always smaller employers, aware of the fact that they have a responsibility, as we have discussed already, that they will over the long term be paying this cost, the pool they belong to within the WCB or their costs will reflect.

It is not the case of the employee who is injured becoming an employee of the Workers Compensation Board. They will continue to be shown as an employee of that organization and, as we move into better abilities to direct costs where they belong, these costs are going to show up on the balance sheets of those employers who fail to re-employ injured workers.

Mr. Reid: I have had cases drawn to my attention where the employers, and there have not been a great number of them so far drawn to my attention, but there have been some, have become eligible for a subsidy of the wage for the claimant that has been taken into their workforce, and then when that subsidy period ends, the employer terminates the employment of the individual.

Now, I take it from that you can only draw a couple of conclusions as to why the employers would undertake to involve themselves in that type of program. I am sure we all know what those conclusions would be because we are all shaking our heads in agreement here.

What programs, what policies do we have in place to deal with, or are we attempting to deal with that issue with respect to the employers that avail themselves of the subsidy program for claimants returning to the workforce and then terminate when that subsidy ends?

Mr. Farrell: Primarily this is one we do keep track of very closely so that it does not happen over and over again, but the reality is that we would go to a preinjury employer with a program to bring a person back, because so very often what is necessary with an injured worker is to get them back into a working environment. Any one of us who has ever suffered a serious injury will recognize that there is a significant amount of fear tied to going back to work, the fear of reinjury. Most of these programs are targeted at getting that person over that hurdle so that they can get back into the workforce. They may not be as productive as other workers.

Where we encounter situations where in fact it is merely used as an opportunity to use a wage subsidization and then release the person, we ensure that if that happens once, it does not happen again and that in fact that employer will be made aware of what those costs are and how they will reflect on his cost statements. Those cost statements, although funds are coming from a pool, those cost statements still reflect the experience of that firm and, as we move into experience rating, those costs are going to be borne by that employer, not totally, but to some degree based on his utilization of the system.

Mr. Fox-Decent: I was just going to add, Mr. Chair, to Mr. Reid that you have asked for some information regarding procedures and policy related to this issue, and we will put something together for you very quickly and get it to you in the next few days, so you can actually see on paper what we do in the context of this situation of people and their former employers and the issue of getting them back to work for their former employer. So we will send you some.

Mr. Reid: There may be former employers involved, but there may be also new employers that are involved in that process–

Mr. Fox-Decent: We will broaden the issue, too.

Mr. Reid: If you would please, I would appreciate that.

Is it possible, too–I am not sure, but I will ask the question nevertheless–for a list of the employers that maybe have, I use the term guardedly, taken advantage of the subsidy that may be available. Is it possible to have a list of the employers in that program, not that I would put it out for public consumption, but to be aware of the numbers and the type of firms that are involved?

Mr. Fox-Decent: We might need to just apprise ourselves as a board of the legal question that may or may not be involved here. Certainly there is a

willingness to provide you that information unless we are for some reason barred from doing so by virtue of what our legal counsel says to us. So we will endeavour to provide it to you. The least we could do is say, company A, company B, company C, and not necessarily label, but if we can we will provide you the full disclosure you are asking for.

Mr. Reid: I would appreciate that information.

Mr. Fox-Decent: I see my corporate secretary has got everything down. Everything you ask for, I promise you will get. As long as Karn is copying down the request, we will be okay.

Mr. Reid: For employers that have availed themselves of the subsidy of Workers Compensation to accept claimants returning to the workforce, do we do any kind of a follow-up check or a monitor six months or one year down the road to determine the impact of, first, the claimant returning to the workforce and how they are coping, and secondly, whether or not they are working within the restrictions of their return to the workforce?

* (1110)

Mr. Black: Yes, Mr. Reid, we follow up at six months, and then, as part of our general post-placement process we follow up annually with the claimants if they are in receipt of continuing wage-loss benefits, and some of them will be.

Mr. Reid: What has your experience or your findings shown when you do that follow-up monitoring?

Mr. Black: I could not characterize it in its entirety, but I am told that we are very satisfied with the quality of the placements and their continuity, so the placements do continue after the initial placement in almost all cases.

Mr. Reid: I suppose, to get back to my earlier statements about employees losing their employment after they have returned to the workforce and the employers, when the subsidies run out, see fit not to retain the employee in the employ of that company, then there is also the concern about employees who would have returned to the workforce at that new rate of pay. After a period of time, their incomes may be deemed as well. Do we have a policy dealing with those employees who would then find themselves capable maybe of earning more than the minimum wage and when they go back to the workforce, and then the employer terminates that employment shortly after the subsidy runs out, the income is then deemed at that higher level? Of course that means once it is deemed, if they do not have a job, they are receiving less income from WCB in that sense to offset the loss.

So they are suffering a double penalty. They have lost the job first, and then secondly, because they went back to that workforce at a wage that is slightly higher than what they had been receiving, then they get deemed and they get penalized on the new salary level. So it creates a problem for them there as well. Maybe that is something the board can take into consideration, the impact upon these employees.

Is it possible for some type of incentive program to be structured or set up with the preaccident employer to encourage them to accept their employees back into the workforce outside of the merit program that is there where you have an experience rating that goes against their claim costs? Is there any kind of a program that can be established? Are there any studies or any discussion taken place with respect to that type of encouragement or incentive?

Mr. Fox-Decent: We have not got that issue currently before us at the board, but I think it is a very good suggestion. We will take it as such and have a look at the issue.

Mr. Reid: Can you give me an indication on the number of employer appeals that the board might receive, say in the course of the last year? Would that information be available?

Mr. Fox-Decent: Yes. Mr. Chair, in response to Mr. Reid: employer appeals, 27 in number in 1991, 37 in number in 1992; percentage accepted by the Appeal Commission, 19 percent in 1991 and 27 percent in 1992. That is on claims.

On assessments there was a total of 37 appeals in 1991 and 22 in 1992. As for the acceptance ratio on appeals related to assessment, the percentage accepted was 8 percent in 1991 and 9 percent in 1992.

Mr. Reid: Is the board finding that the employer appeals are increasing in numbers for those claimants–we use the term long-term claimant? Are we finding that we are seeing an increased number of appeals with respect to long-term claimants?

Mr. Fox-Decent: Mr. Chair, in response to Mr. Reid, we will again, sir, try to get that information for you.

As you know, the Appeal Commission functions independently from the board, although we clearly have a connection in several ways. We pay the bill of the Appeal Commission. Secondly, we have, as you know, a right under the act–Clause 60.9 of the act, under certain very narrow and circumscribed circumstances, to demand that a new appeal hearing be held where the Appeal Commission, in our opinion, has exceeded its jurisdiction or failed to properly interpret and apply the policies of the Workers Compensation system.

But in that they function away from us, separate building, separate people, and are, by and large, left to their own devices once they have been appointed by Order-in-Council, some information we do not have, but we can certainly get–I will try to get for you as soon as we can–information related to whether there is an increasing incident of appeal by employers on long-term claims.

Mr. Reid: The reason why I raise that is that if employers are appealing–some employers may appeal, I should not say all of them–may appeal the long-term claims or the claims in general, it is my understanding that the costs of these appeals are not borne by those that are appealing. Of course, the costs are then borne by the overall system itself, of those employers in that class or that group would be responsible for the costs related to the operations for that class, whether it be the general employers' pool or whatever.

In that sense, then, all of the employers would be responsible for paying for the increased appeal costs, even though they may not be participating excessively in appeals itself. At the same time, it can create delays in the appeal panel operations or process which creates frustration for those that are waiting for the appeals, because in many cases, their benefits may have been terminated and they are waiting for the appeal panel hearings to give them the chance to have their so-called day in court where they can raise these issues. That is one of the reasons why I ask those questions and raise those concerns.

Mr. Praznik: Yes, if I just may for a moment, I know I meet several times a year with the Chief Appeal Commissioner just to discuss, since the appeal commissioners are appointed by Order-in-Council. Just a little information to provide to the member for Transcona, first of all, the costs of appeal are charged back to the class of employers. So if one is in the self-insuring class, for example, like the City of Winnipeg, those costs are borne again by that one employer.

The reason I raise that is I know at the time of Bill 59 there was quite a debate between the member and myself about the whole charge or the ability of the Appeal Commission to levy a charge for a frivolous appeal–about how that, in fact, would be used. I believe it has been used twice to date, and I believe it has been to the same employer–no, once, yes–it has been twice to date–I believe by one employee claimant, and one employer, but the employer, I think that was the first charge that was laid, was the City of Winnipeg who received that particular charge for a frivolous appeal.

* (1120)

I know, well, I am not sure what amount was levied, but I say this to the member for Transcona (Mr. Reid), that there were circumstances, and I know that at that particular time we debated about the ability, would that be abused, et cetera. I think experience is bearing out that it is used very sparingly, but his larger question about filling up the appeal process with appeals that should not go forward–I understand that the number of appeals has declined somewhat over the last while, that they are down a bit, I believe. We will get that verified for the member, but I asked the Chief Appeal Commissioner about the time for appeal, because that is always a concern to those of us who have people come in–the period that it takes from the application to actually receiving the appeal. I asked the Chief Appeal Commissioner to look at ways of speeding that process up.

The observation was made to me that it is interesting that, once an appeal is filed and people get into dealing with it, there is a period of time under which they cannot get the appeal to be heard because often the person making the appeal or the person responding to it wants that time to prepare their case.

Although the Appeal Commission is struggling to reduce that period, they find that just the parties to the appeal want to ensure they have sufficient time. They seem to be hitting that floor, I guess you can say, and cannot get it under it because of the parties themselves wanting time. My understanding, of course, if there is a case where someone is receiving benefits and an employer perhaps is appealing, the benefits continue; there is not disruption. If the appeal is in fact not appropriate or

not right, there is no interruption, but I appreciate the anxiety that does cause to a claimant, particularly if the appeal is not justified. That is something, of course, that one has to come to grips with.

Mr. Reid: Just on that note, on the minister's comments then, the minister may or may not be aware of this, but I will draw it to his attention. I have had several calls over the last six months from claimants who are moving through the appeal process and have become very frustrated by the fact that their worker advisors were changed on them or were in some way no longer responsible for that case file. The claimants were not informed of it, and when they phoned the Worker Advisor Office just prior to the date of the hearing for the appeal panel, they were notified that that was happening. They were quite frustrated because they did not sense that the new worker advisor that was assigned to the case would have a full and complete understanding of the case history of that file.

There is a great deal of concern for those claimants that are involved in that. I think that, if there is some way that the minister's department can get a handle on cases that are turned over to new worker advisors to act as an advocate on behalf of these people, the people would have a sense of security that the advisor is given sufficient time to review the case prior to the appeal taking place and not just a 24-hour period because some cases are very extensive.

Mr. Praznik: Yes. The member for Transcona gets into a certainly very important area, and that is the Worker Advisor Office. I have to tell him that we have had some changes there–more changes than I as minister would have liked–take place in the last year. The director of that branch, who was just an excellent administrator, left the Worker Advisor Office to take over as the Director of the Apprenticeship and Training branch of the Department of Labour, which is now in the Department of Education, where he is doing an equally fine job of getting that branch up and going and moving on its mandate. Very regrettably, we lost Mr. Harvey Miller at the Worker Advisor Office.

One of our leading worker advisors took over in an acting capacity, and we are very fortunate to have that individual do so, a very hard-working individual, certainly a very good worker advisor. We had some other people, I believe, leave over the last year to go on to other things, and we have been replacing off the re-employment list and bringing in people and getting them up to speed. Also, too, when you have a change of administrators and the acting administrator was not interested in being the full-time administrator, was doing it on really a temporary fill-in basis, because we had asked her to take over in that role, so consequently there has been a little bit of a void, a considerable void I think, with staff leaving, et cetera, in that particular branch, having the individuals and having the capacity to do the work that we would like to see them do.

That is starting to settle down as our new worker advisors training is being brought up to snuff and they are able to handle the cases. We are making some other changes in administration flow within the Department of Labour to ensure that the management of that branch is as efficient as it has to be in order to handle cases. We are also struggling with how we can increase our capacity there in an innovative way.

So the member for Transcona (Mr. Reid) raises an area that is certainly very valid. I know he has seen some service problems with the Worker Advisor Office. We are certainly well aware of them, and we hope within a very short time that that particular unit will be operating the way I think we expect it to and to carry on. It has had a rather difficult year because of a lot of staff changes, and I appreciate his concern. We are trying to get a handle on that and back on stride.

Mr. Reid: Just to continue on for a few moments on that. Would it be possible for the board or the Worker Advisor Office through the Department of Labour to consider training advocates that can assist claimants with their case appeals and any of the normal process that would take place where claimants would not be expected to have a full or complete understanding of the policies or the legislation itself? Is there any type of a program or has any consideration been given to training advocates either through the Worker Advisor Office or through the board itself, because it gives the worker advisor some much needed assistance because I sense that they are overloaded. At the same time, it gives others in the community the opportunity to achieve a skill level to allow them to act as an advocate on behalf, and an advisor to claimants. Has any consideration been given to that?

Mr. Praznik: I have to say to the member for Transcona that the whole area of the worker advisor I think is one of the wonderful innovations, and I give

full credit to his party when it was in power in the '80s. It was something that they brought in. I am very, very supportive of this office because I think what it has by and large done is it has kept the legal profession out of the Workers Compensation field which in other jurisdictions has added considerably to the cost with no real effect. So it has provided claimants with a free service to help them, and of course if the system does not work then we are not providing the service, so we have to make sure it works. It is a wonderful part of our system because it provides that service free of charge, and often a very good service to claimants without them having to incur their own legal costs with counsel.

Just in the overall picture I should tell him that when one examines the appeals, there seems to be no difference in success rate between having a worker advisor or some other form of counsel. That is not of course an argument to do away with the worker advisor. I just think it indicates they are doing good work, but there are other people doing good work as well out there, and people presenting their own cases, where they feel comfort level, are equally successful. What the worker advisor does do is give those who have difficulty presenting their cases access to a service to do it, and we want to continue to see the Worker Advisor Office function.

Now, the member has raised the question of training people outside of the office of the worker advisor. That is an excellent idea, something that we have been attempting to pursue. I am going to ask if members of the committee will allow Mr. Farrell to comment on this, because when he was in his role as assistant deputy minister in the Department of Labour he had responsibility for this branch. I know we have been making efforts particularly with the labour movement to ensure that union reps, for example, who pursue these things have that knowledge base of procedures, policies and issues and the ability, because they are often the first front person who has to take the claim. There are also some other advocacy groups out there and individuals.

I know John Haynes, whom many of us are familiar with, does this on a regular basis. I know Mr. Haynes has met with me. I wanted to make sure that he is aware of the issues because he does pursue these, and he should have the facts on which to pursue them.

So an excellent idea, and I would ask Mr. Farrell if he may just comment on some of the work that was underway while he was responsible for this branch within the Department of Labour.

Mr. Farrell: We provided, through the Department of Labour, a training program under the auspices of the MFL. It was actually for union reps who were going to be taking a lead responsibility and training them in some of the key roles of an advocate in this area.

* (1130)

That training program was presented last year. I do not believe it has been duplicated this year, but it does provide, particularly for the large locals, an opportunity for the local to have a person or persons brought up to speed, so to speak, in the area of advocacy, particularly as it relates to the WCB issues.

The board did participate in that program. It is one that, by way of this conversation, I will take note of and determine if in fact there has been any follow-up and what might take place in that area.

Mr. Fox-Decent: Just to add to what Tom has said, Mr. Reid, I think it is fair to say that there is ongoing activity in this area. I just discussed a week ago with our legal counsel who should provide the MFL a seminar on natural justice. They are interested in pursuing that as an issue because it so often emerges in the context of the appeal process. We have agreed to assist with the cost of the lawyer who will in fact make the presentation to the MFL on that subject and who is, as we see it, the leading expert in the city on the question of natural justice as it applies to workers compensation, but we may need to think more globally now about ongoing advocate training.

I think you have raised the issue in such a way that I would like to take it back to the board. We have done a lot of ad hoc assistance so far, particularly to the Manitoba Federation of Labour. We should now perhaps be considering whether we run a program twice a year or whether we run a program every nine months, or whatever, and I take it as a very helpful suggestion. Partly done, but perhaps we should formalize it and put it more strongly into place as a recurring event, and we will certainly look at that.

Ms. Becky Barrett (Wellington): Mr. Chairperson, I have a question of a quite general nature because I am not an expert in the Workers Compensation Board or many of the issues, although I have a couple of constituents who have. It flows actually

from something that Mr. Farrell said earlier which was, and I believe I copied it down, that we do not have–we being the system–a broad base of knowledge in causation, particularly in regard to the new environmental, if I can use that word, issues and illnesses and the technological illnesses. I think we are changing daily in the kind of workplace that we are all participating in and the causes and effects of those major changes in our workplace.

I wondered if–just now we are talking in terms of updating and having as potentially an ongoing updating and upgrading of the advocacy function for the labour component of WCB.

One of the other players, it seems to me, major players or group of players in the whole concept of Workers Compensation are the doctors and the physicians. My understanding is there are some doctors who are connected in some way, I am not sure if it is a contract or what the connection is with WCB.

My question would be, if we understand and we agree that the landscape is changing almost daily, what, if any, provisions are being made to upgrade and update the physicians who are connected with Workers Compensation on these new issues and these new health concerns?

Mr. Farrell: Mr. Chairperson, first, the physicians who are connected with the WCB are now contract physicians who are, for all intents and purposes, part time with the board. So they are in fact maintaining private practice or their function in the community. So they are not out of touch with the practice of medicine in the community.

The board is currently providing updated information as it comes available to these doctors. As a matter of fact, there are two of them attending an issue on soft tissue injury, particularly as it relates to the spinal injuries, within the next month. That is taking place actually outside of the country. It is taking place in Buffalo, New York–just outside, mind you, but in Buffalo. It is to ensure that we are up to speed, and those physicians who are providing medical guidance to the board are up to speed in these areas.

The board has to be, particularly in relation to medicine, in the position of being, for lack of a better term, the "broker" in this area, because you end up with the two principal stakeholder groups preparing to argue, and the board has to often be current on the information that is available and able to make those decisions based on the best scientific information available.

Ms. Barrett: I am glad to see that some training is being done, because I think that we need to upgrade as quickly as possible.

Can you tell me how many doctors are currently on contract with WCB and what criteria is used to ask or get these doctors working for WCB?

Mr. Fox-Decent: Ms. Barrett, we have 24 physicians on part-time contract. It varies from as little as five or six hours a week to 30 hours a week. I am pleased to tell you that, demographically, the group is rather dramatically different from what the WCB medical group used to be. We have a number of women, a number of quite young doctors in the community, and we believe quite enthusiastically that the fact that these are community-based doctors who deal in and of the community day by day and then come to us part time makes them much better as WCB practitioners, because they constantly go back and test what is happening in the real world.

The other thing, if I may, to add to what the CEO has said, we now have a physician's handbook. It is a new innovation. Every physician practising in Manitoba has a copy of the Workers Compensation physician's handbook. That handbook is now going to be constantly updated with new information relative to Workers Compensation so that every medical practitioner in Manitoba will be able to avail themselves of information that will be useful in assessing Workers Compensation situations.

Our chief medical officer, Brian Onoferson, is very, very keen that this physician's handbook should become a critical device in the medical community, not for our 24 part-timers, but for the hundreds of physicians that are out there working full time in the community. In fact, if I may say, there has been some very complimentary comments made about this handbook within the medical community, and we think it to be an interesting innovation.

Ms. Barrett: You said originally that the doctors who are on the contract positions are practising in the community. Again, my knowledge base is very limited, but my understanding was that there were–and maybe that has changed–several doctors who were quite active in WCB who have not only retired from general practice or from their practice, but have retired quite some time ago.

* (1140)

I guess I am circling back to the original question which is the updating and the training–and to take nothing away from these physicians, and I certainly am not going to make comments that I hope would be construed as ageist, not at my time of life.

What I am saying is that given the fact that we are dealing with technology in the workplace and major changes in the definition of what constitutes health and illness and what are the causal factors and huge questions that we do not know the answers to, that it is vital, it seems to me, that the physicians who play that pivotal role in dealing with these issues have an up-to-date understanding not only of the specific issues, but of the medical community as a whole. In some cases, if doctors are not currently practising in the province and they have retired, there is a potential for there to be a gap in their knowledge base.

Mr. Fox-Decent: We, Ms. Barrett, might have one or two or three medical practitioners who have essentially retired from private practice out of the 24, but the vast majority are still practising in the community. Some of them are not so young. There are quite senior physicians in the community, but they are still practising very actively in a clinic or in the hospital setting or whatever.

The other thing, if I may, is that we have added some skills to our medical team roster that we never had before. We now have neurology. We have psychiatry. We have a very competent orthopedic team. We have some very interesting reflections of specialization as a result of employing people part time.

It is very difficult to get someone who is a specialist to come and work full time for the Workers Compensation Board. They do not want to give up their community practice, but if you make an arrangement with them whereby they spend so many hours a week with you and then the rest of the time they are in the community, it seems to work very well. Of course, the cross-fertilization of the community with the board by virtue of them doing both, I think is really quite invaluable.

I think that the image of Workers Compensation medical services is a little outdated, if I may say. I really believe we have made in the last two years, and it is only in the last two years, more like the last 18 months–some giant strides in what I would describe as modernization in terms of our medical services.

Ms. Barrett: I have just one further question in this area. To begin with, I am delighted to see those changes having been recognized and been worked on. Frankly, I think that area was a potential or, in some cases, an actual problem.

One final question: You talked earlier about the physician's handbook that is being put into all doctors' hands in the province of Manitoba, which, I think, is an excellent idea, too. We need to get the information out because there is no question that a range of physicians is acting on behalf of, I am sure, employers, but certainly employees, and you have no way of knowing which doctors will be asked to participate in that process.

Can you give me a general outline of what is in that physician's handbook, what kinds of things get put into it as it is updated, and how regularly that is done?

Mr. Fox-Decent: I will go one step further. I will get one for you. I will have one sent to you as soon as possible, and you could see for yourself. I will ask the senior medical officer, Brian Onoferson, to put a note or two suggesting how often it is updated and how they decide what criteria they use to decide what goes in it and so on.

So within a few days expect one to arrive in the caucus room.

Mr. Reid: To pick up a bit on the issue of doctors and medical files, there was access that was given to claimants' files for employers to assist them in their dealings with cases that they have with their employees who have claimed workplace injuries.

Is there a reason why access is not permitted to representatives, whether they be union representatives or advocates acting on behalf of individuals where approval or clearance is given, why these people, too, would not have the opportunity to have access to this medical information that the employers now find themselves having access to?

Mr. Praznik: Mr. Chairperson, just to clarify, and I know this was an issue which Mr. Reid and I had discussions on, and Mr. Ashton, at the time Bill 59 was brought in, and that was the employers' access to medical information.

I would just to clarify that it is relevant information. It is not all medical information. It is information that

is relevant to the issue at appeal, and we also put into the act a provision of notice and appeal as to relevancy to provide some protection.

With respect to access to files, I am going to ask Mr. Farrell perhaps to get into the detail, but my understanding is, of course, that everyone has access to their own file, and their right to share it with their advocates is certainly there.

Mr. Farrell: That access on release is shared–well, the individual has access to his file, and he may choose to share it. An advocate can get a release and have access to that file. The difficulty arises within the terminology as the minister described in the legislation which may well have to be reviewed.

But, as it stands right now, that is shared to the worker, and he can then share it. In the employer's case, again on request, it is an area that is of some concern, but that is one where natural justice have created some issues arising from it.

Mr. Reid: I think what this creates, though, where the advocate is acting on behalf of the claimant, is a delay in that process where the information is able to be forwarded to the advocate. If the claimant has to move and issue a clearance form, then it has to be sent to the board, then it has to be processed through the files and you enter it on your computer records, and then the advocate can go and act on behalf of the claimant. There is a delay factor that is in there. Of course, it is a question of timing. Claimants have enough on their minds without having any further delays. That is one of the reasons why I raise it.

I think if it is fair for the employer to have access to that–and I know the claimant does have access, but there is that delay that comes into the process as well. I think the advocate should have the opportunity to have equal access as does the employer.

Mr. Praznik: Mr. Chairperson, I just have to say to the member for Transcona, one of the difficulties we always have, even in my office, offices of MLAs, certainly people at the board, is what authority advocates have. I know we have sent around to MLAs, for example, an authorization form. Even as minister, if there are inquiries that come through our office, the Worker Advisor Office, we do not have a right to see people's files and their personal information without their permission.

The question of working out delays in authorization is certainly legitimate. Perhaps there are ways to handle that by way of fax or walking things over, courier or what have you. Still, the fundamental right to privacy of one's file has to be respected.

I just say this to the member for Transcona, one of the reasons why we provided a standardized authorization form to MLAs was just in case the day comes when someone approaches an MLA with respect to a WCB case. If we did not have authorization, provided information on the file, and that individual then turns around and says how did you know that, that is personal about me, I never gave you authority to access the file, then we have all, in essence, violated that individual's right.

So there has to be an authorization process, but the point you raise, that should not become an onerous delay in accessing and getting information, and that is certainly valid.

Mr. Reid: I hope the advocate will be given the opportunity. I know there were some concerns that were drawn to my attention within the last year, where claimants' files, medical information was taken to the courts, something that may or may not come up again in discussion before this committee or in the Legislature. I think the minister is aware of it. I will not dwell on it at this time. I think it was improper that medical information did appear before the courts.

Floor Comment: That is an ethical issue.

Mr. Reid: Yes, very much an ethical issue.

One of the key areas of course is Vocational Rehabilitation and how we are able to integrate injured workers back into the workforce. Voc Rehab has a significant role to play in that process. Of course, I have had some concerns. It is my understanding that Vocational Rehabilitation of claimants is totally discretionary on the part of the board whether or not they allow the opportunity for retraining for claimants.

I have often thought that the onus of that should be reversed so the discretionary part is removed so the board would have to show that there would be no benefit accrued to the individual wishing to return to the workforce where they cannot return to their preaccident employer.

Has any consideration been given to reversal of that onus so that the opportunity to retrain would be given to a claimant?

* (1150)

Mr. Farrell: The issues that arise in this area have more to do with the nature of the training or what is required by an individual in the view of that person and vocational rehab professionals.

You get caught in the issue, and I go back, a long time back, 30 years ago. Many of the injured workers that I was familiar with decided that they wanted to be airline pilots who had bad backs, probably not a bad choice. The problem was that not all of us could make the cut. The issues arising today have to do with whether or not a person with, say, a year's training in a business college is re-employable at their preaccident level, and that person may in fact feel that they would be better qualified with a Bachelor of Commerce. That is where some of these issues arise.

I think the key to it is to get this early intervention by Voc Rehab in claims so that they can work with that person at the beginning of their impairment and work towards goals that will become the goals of both parties. Part of the difficulty right now is that Voc Rehab enters the picture at 16, 18, 20 months into a claim when there have been many, many factors that have come in which have created either a real fear on the part of the claimant or an expectation level that probably cannot be met.

So part of it will be our expediting our ability to get into Voc Rehab sooner rather than later. But dealing with the issues around that, decisions in this area are ones that are often difficult, where there has been an expectation level at the board, and through its Voc Rehab, people have difficulty meeting based on what level of training will in fact provide that person with the ability to re-enter the workforce.

But Voc Rehab is an option that is there if the person is willing. Now, I would say that with the only limitation being that it would be difficult to, based on skill levels–and I am thinking of my own background in mining. That is an area that provides great difficulty because trying to find something that you can qualify someone to go to the top end of the earning scale with is often difficult, you know, based on skill and interest by the individual.

Mr. Reid: I raise this because, when an individual is injured–and we can take a hypothetical situation. If an employee is working in a minimum wage job, where Voc Rehab is discretionary, the individual then, after their recovery has plateaued or they have fully recovered and they have to return to the workforce, if the job is no longer there, the employer does not wish to take them back, of course, then they have to go out and find another minimum wage job.

But if they have an injury that prohibits them or prevents them from returning to their preaccident employer because they have permanent restrictions, and they were at minimum wage–I mean, there are a lot of minimum wage jobs out there but may not meet the restrictions that are required there and allow some sense of flexibility into the person integrating back into the workforce again.

That is why I raised the possibility of Voc Rehab being reversed in its onus so that the individual can–not at great expense to the board, because that is not what I am attempting to do here, but to provide the people with a skill level that will allow them to go back into the workforce at a job that will meet their restrictive needs, improve their quality of life at the same time, because they have obviously suffered, from my experience anyway, some degradation in their quality of life while they were off on workers compensation, either emotionally or financially.

Mr. Farrell: It is an area, and I think you are very correct, that is probably of greatest concern to the board right now, addressing that particular area. I would add to it the other one which is the disappearance of some of the high-end manufacturing jobs and our ability to bring people back to a training level that will attract an income that is representative of their preinjury earnings through voc rehab.

The interesting one within those who are injured having minimum or somewhat slightly above minimum wage area is that we have been providing some degree of voc rehab in that area, but it is discretionary, where there is thought to be a payback. The one that is confounding us even more is the one I just referred to. So it is, I suppose, the Achilles' heel of this board right now, and it is one where a significant amount of work is being done to examine how we can best meet that and still deal with the issue of our own financial solvency.

Mr. Reid: One other area under Voc Rehab, and I have a real-life case that I was and am dealing with. The individual was a nurse who was unable to go back to the preaccident employment, and, of course, had to retrain for alternate employment. The agreements were all worked out and were

signed. The individual went back to the training program and was halfway through the training program and then received a letter from the board indicating that the recovery had plateaued according to those meat charts that the board keeps, that have been referred to in past committees, and the benefits were terminated. The individual calls me and says, well, now, what do I do? I am stuck halfway through my retraining program. I cannot integrate back into the workforce again. I do not have the financial wherewithal to allow me to do that, and I cannot go out to my preaccident employer.

So I draw this to your attention that cases like this are happening, and that I hope that there is some plan or some policy in place to deal with situations like that so that where the board has struck an agreement with a claimant to allow for that retraining period, it is allowed to come to its natural conclusion. If there are extenuating circumstances, the board can then take those into consideration, but do not terminate that retraining program halfway through its normal course of progress.

Mr. Praznik: Yes, I would say to Mr. Reid, he has raised another area that there has been a case or two over the last year similar to that where a person has been into an educational course and had their benefits terminated before the completion of the course. I think that in one case raised with my office it was just a few weeks before they had to write their exams. I have asked the new chair of the board for the board to review this particular policy as a result of these kinds of cases that were brought to my attention and to yours and to others, and I am going to ask Mr. Fox-Decent if he would like to make a comment or two on this matter.

Mr. Fox-Decent: Mr. Chairperson and Mr. Minister, I think that, again, you have made a couple of very helpful comments on what is a rather vexatious issue, and that is the delivery of vocational rehab services in a satisfactory way. We are up 91 percent year over year in how much voc rehab we are offering. That is to say we have 91 percent more people that underwent voc rehab in 1992 than did in 1991. So we seem to be getting a larger number of our claimants into a vocational rehab setting but, obviously, it makes no sense on the face of it at least, unless there are some mitigating circumstances that I may not be aware of, to terminate someone's vocational rehab program when they are in the midst of something which is meant to obviously be complete before you see the fruits of the endeavour.

I take that case as being a bureaucratic –[interjection] Well, I could use vernacular words, but I will not use them, Mr. Chair–problem that we ought to be able to handle. We ought to be able to easily stop that kind of situation happening. The issue of onus, I would only ask, sir, that you would let us have a very close look at that one. I am very sympathetic to what you are saying, that the claimant ought to have a big say in the issue of whether they undertake vocational rehab and toward what end. We do not want to be arbitrary on that issue, it seems to me, unless arbitrariness for some reason has to be imposed in the interests of the greater good of the system.

* (1200)

I would have thought claimant participation in decisions–yes, I want vocational rehabilitation, and this is what I would like to do and toward what end–I mean, that all makes sense.

Again, we have this issue of vocational rehabilitation under review. It was again a very lively issue at our planning symposium, and now we will take your comments today and simply add them to the discussion as it goes forward.

Mr. Reid: I thank the board, Mr. Fox-Decent, Mr. Farrell, for your comments on that. It is important to the claimants that they do have the opportunity to retrain to allow them to integrate back into the workforce.

I will move on in the area that has occurred for one of my constituents. I know there has been some consideration. I read the document here indicating the part about overpayments. It is an area, of course, that creates some problems. From time to time, I am sure there may be cases where you have to take one party's word over another party. It has been my experience that a lot of people that have their interaction with the board, whether they be the adjudicators or appeal or whatever, do so by phone. Of course, from my understanding, it is not recorded.

I have a constituent who was in an overpayment situation when she first received her cheques. I have written to the board on this. I know that an answer will be forthcoming, so I have been told, and I appreciate that. The problem here is the case where the individual indicates that they have contacted the board by phone and said, hey, there

is something wrong with my cheque here, we have to do something, we have to take some action to correct that, and then left it in the hands of the board.

It is a question of the word of the employee of the board versus the claimant saying, yes, I was notified, the other party saying, no, I was not notified. Now an overpayment situation occurs, and there is a large amount of money that is involved relative to the income of the claimant. It puts them in an awkward financial position here.

Is there some way that we can address that type of situation and the overpayment problems that are there to prevent this from happening again to others in the future?

Mr. Praznik: I am going to turn things over to Mr. Fox-Decent to talk about a policy, but this may be a remarkable day, because Mr. Reid and I are agreeing on a lot of things. He has identified an area that–[interjection] You do not believe it. I am sure that he does not believe it.

The area that he raises of overpayment, we have had cases come to the attention of my office, some from my own constituency, where the application of the overpayment policy just did not make sense in the circumstances. A very common area that I share with him is one where someone has an issue, an appeal, likely to win the appeal. There is an overpayment issue involved because they have received some benefit, and we were taking them to court to collect the money while they were in the appeal process.

So out of those issues that he has raised, other MLAs have raised from all parties, cases that have come to my attention, one of the issues that I raised with the new chair was overpayments. I understand the board has addressed or is addressing that policy, and he is going to share some of the thoughts of the board of directors with him.

But I appreciate his bringing this matter again to the attention of the committee, because it is one that should have some common sense in the application of these policies, and I would agree wholeheartedly with him.

Mr. Fox-Decent: Again, I would obviously share your concern, Mr. Reid, and the concern that has been joined to yours by the minister. In fact, the minister has discussed this with me some time ago, very close to the time when I started on this great exercise about six months ago.

The first thing that you probably know is that the administration in the person of the CEO has placed a temporary moratorium on collecting overpayments from those who are already assessed as having to pay back in the system. That is because the board, if I may say, together with the CEO and the senior administration, has felt that our policy has been sometimes brutal, too often inconsiderate and insensitive. For example, sending someone a letter and saying: You have been in an overpayment situation for 16 years. Kindly repay $29,555. It is a letter that is almost fill-in-the-blanks. The number of years is indicated, and the sum of money is indicated, and somebody's signature has been stamped on the letter.

At our planning symposium–and forgive me for mentioning this again and again, but it was rather a fruitful two days–we said that the least that should happen is if someone clearly owes us a sum of money and there is no way that sum can be forgiven, they ought to be called in at their convenience and sat down with someone and the situation explained to them face-to-face and then some discussion take place about how, or how not, the repayment may occur depending on the individual circumstances of the person at hand. That is just the least of the administration of a policy in a humane way.

The other thing I want to say to you is that the overpayment policy is now under reconsideration. It has not come to the board yet. It has gone out to the stakeholders, by the way, for their comment; and, after we get stakeholder comment, meaning the MFL, the employers' advisory group, and so on, all of those groups, then we will have a policy brought back to the board.

This is the essence of the policy that has gone out for consideration. First, we should have a policy that allows some discretion about whether to collect an overpayment when the worker obviously was not responsible. Secondly, we should allow leeway in establishing the collection repayment terms. Thirdly, we should recognize undue hardship in establishing the repayment terms; and, fourthly, we should recognize the need for some kind of statute of limitations, that we do not go back beyond a certain period of time and even try to collect something, whatever a suitable period of time may be.

So those are some of the guidelines that have prompted the creation of this policy; by the way, I would be happy to provide it to you, sir. It has gone

out to the stakeholders for their comment, and when we get comment back, then the board will consider the issue somewhat later this year.

Mr. Reid: I thank Mr. Fox-Decent for that. I look forward to receiving a copy of that.

Occasionally, cases come up, and it has been my impression over the course of the last year and a half, since I became critic for WCB, that there appears to be a general direction or approach that is being taken by the board. Now, I do not know if it is at the policy urgings of the minister or this is a separate board policy, but the board appears to be moving in the direction of reviewing all of the long-term claimant cases that they have on file of those who are currently receiving benefits.

Is there a purpose or a goal in mind that the board has by reviewing all of those cases, because it has been my experience, and one that I raised in the House last week with the minister, where the individual–and I have had discussions with the doctor for the claimant–is, I am told, and I have seen the documentation on it, permanently disabled, unable to do any kind of work, is currently on CPP benefits. The doctor says, unable to return to work. There are two canes and a walker being used, goes from the bed to the kitchen table to the chesterfield, and that is the extend of the day, yet I attended meetings last fall where the individual was being encouraged to go through a vocational rehabilitation program to encourage and enable that individual to return to the workforce, totally against the wishes of the doctor.

* (1210)

So that is the reason why I ask why the board is pursuing the long-term claimants. How many of these cases do we find here that will not be able to return to work? Why are we attempting to pursue them to encourage them to return to work or force them back to work?

Mr. Fox-Decent: I am going to pass this quickly to the administration, but before I do, I would just like to say, in response to your suggestion that there might be a policy of the board, Mr. Reid, there is none. We have no policy in place to review long-term claims. There may be at the administrative level such a policy, but it certainly is nothing that has come from the board by way of policy since I have been there, and I am not aware of any recent board decisions prior to my coming that would suggest that we take a look at the long-term claim situation. Maybe I had better read my crib note here.

Now, I will rest on that and pass to the administration for any further comment, Tom or Alfred.

Mr. Black: I think, Mr. Reid, the intent of reviewing these claims is revealed in your history of the particular claimant. That is, we are looking at some people who may be confined to simply a very small orbit of their lives around the house, and we believe that over the last number of years, rehabilitation technology, medical rehabilitation as well as vocational rehabilitation and changes that have occurred in society at large offer these people some hope of expanding their lives from that very small compass that you have described.

So our intent in going back through our claims–and I think we have gone back by defining long-term claims as those over one year. We have reviewed almost 2,000 claims, and following that review, a number have received intensified and accelerated rehabilitation services and some medical services. Several hundred of them have returned to work or certainly to higher levels of functioning than they would have had we done nothing.

I think the intent of the approach, which began three years ago or so, was to try and identify people in the situation that you describe and, rather than simply writing off their lives, to try and provide them with something that will give them some further hope.

Mr. Reid: Can you identify or do you have any numbers to indicate the long-term cases that you are dealing with and the numbers that have been returned to the workforce or to a higher level of function, as you put it, that would give me a better understanding of the number of cases that are there so I can judge for myself the people who have had the opportunity and whether or not the cases that I am getting calls on are reflective of the activities of the board in this regard?

Mr. Black: I can certainly provide you with that, Mr. Reid, in several days. I do not have detailed information with me, aside from my general comment that I believe 2,000 cases have been reviewed over the last three years. In fact, this is a process that has gone on longer than that with an eye toward providing additional rehabilitation

services to them. I can provide additional information on this program to you.

Mr. Reid: Could you also provide a breakdown of the number of cases where the individual claimant may not be in a position to return to work? Do we keep such statistics on that?

Mr. Black: Yes we do, and I will provide that information to you as well.

Mr. Reid: I have received some calls dealing with those who are employed in the trucking industry. Now I do not know if this is another one of the gray areas that the board has to deal with or encounter during the course of their day. There is some concern that those that are working as independent truckers under the employ of a company, from what they have described to me, they are independents in the sense that they take their services to the company. They work under the company's operating authorities. The company will provide the plates in some cases and the insurance for that, even though they may in return charge back to the operator-owner.

What is the policy of the board in dealing with people that are employed in the trucking industry as owner-operators where they are employed through other larger firms? Are they considered to be employees of the company for the purposes of Workers Compensation coverage, or are they responsible themselves for the premium costs in dealing with coverage for Workers Compensation?

Mr. Farrell: The whole area of definition of an independent contractor or self-employment is one that has been under review. In this particular case, in the trucking industry, it is my understanding that a number of these people are viewed to be employees from the point of view of the way the board assesses them because they, in fact, are operating for a single employer. That has been the decision in that area. I am prepared to stand corrected.

Mr. Chairperson: Mr. McMillan, if you could come to the mike there.

Mr. Lorne McMillan (Executive Director of Finance and Administration, Workers Compensation Board): Through the Chair and Mr. Reid, we do have certainly instances in the for-hire trucking industry where operators do have ownership of a vehicle and run for a particular public carrier, or several public carriers, if they are seen as having a contractual relationship and render billings to that carrier and whatnot and, as far as we are concerned, independent, then they are considered to be on their own in terms of an independent contractor relationship and available to be registered with the board. If there is not the existence of a contract, then the supplier of the freight and whatnot is considered to be the employer, and a premium is assessed to them.

Mr. Reid: It has been drawn to my attention by those that are employed as owner-operators or have their own semi truck systems–and I have encountered a couple of cases where the individual ran into difficulties with the board because there was no clear policy in dealing with who is responsible for what.

It has also been drawn to my attention that some employers, although I have been unable to verify this–and you may have some information one way or the other on this, where companies are charging their owner-operator employees premium costs related to Workers Compensation benefits. Have there been any studies undertaken or has any review taken place to determine the actions of employers that may be turning back the cost for the WCB premiums back to the owner-operators?

Mr. McMillan: We have not done a study per se of that kind of relationship. The fairly rare instances that come to our attention by way of complaint from either a driver or a potential claimant are investigated in terms of assessing whether the law has been broken in terms of The Workers Compensation Act, preventing an employer from withholding premiums from a person's pay cheque. We turn those cases over to our investigator in the board, and they have had, I think, at least one or two instances where a criminal action has been assessed and considered. We have not done a study per se of that kind of relationship and deal with it as it surfaces in terms of complaints.

Mr. Reid: Again, the reason why I raise that is I have hard copy evidence downstairs in this building showing that employers do that to their owner-operators. I have seen the statements where it spells right on it WCB premiums, where it is charged back to the owner-operator employee.

I have raised this question with the Minister of Highways and Transportation (Mr. Driedger), where I think it is proper to have an itemized statement for those that are working for carriers as

owner-operators so that they are aware of what their charges are.

So at the same time, if these situations are happening and it is prevalent to the industry, that everyone will know that they are being charged with that, then the appropriate actions can be taken by the board or by the individuals. That is the reason why I raise it, and maybe the minister would like to comment on that.

Mr. Praznik: Yes, I say to the member for Transcona, I do not think any of us like to see where laws are in place and are broken. There are always difficulties with that, and I would invite him where he is able–because I fully appreciate sometimes information that finds its way into his hands and to mine and others, if it is turned over for an investigation, can pose difficulties to the individual who has provided that, and I fully appreciate that but, where he is able in specific cases to make board officials aware for an investigation, if that is appropriate, given where the information has come from.

* (1220)

It is an issue that I know the board is going to have to struggle with in the whole trucking industry and how one does this, because, of course, easily those premiums can be worked out of what you are paying as opposed to showing up on the statement. I think we all recognize that. It is a difficult issue to struggle with. I do not think there is an easy answer. It is just going to require some effort and some diligence.

He raises a very fair question, one that has been of concern to me as minister and certainly the board. How we tackle that is a difficult question, as I know he appreciates, but certainly we have to continue to pursue that.

Mr. Reid: Okay, I will leave that with the minister and with the board then. I am sure you will continue to work on that. If I have the opportunity at the next sitting of this committee, then I will raise it again to see what progress has been made at that time.

I had indicated some time ago that I would be interested in some discussion on collateral benefits. I know time is running short for this committee before the sitting today, and I have several issues that I would still like to talk about.

Collateral benefits, and the way that they are taken into consideration for the purposes of calculation of benefits, have created a problem amongst some of the stakeholders in the sense that–and I must admit I intend to agree with that position. If an individual is paying into an insurance plan, whether it be unemployment insurance by way of premium contributions or other plans, why do we deduct those collateral benefits from the 90 percent net through the minister's Bill 59 that he had brought in?

Do we have a legal opinion indicating that the board, through its operations, is entitled to deduct those collateral benefits? What legal opinion do we have to support the position and the decisions that have been made?

Mr. Farrell: As far as a legal opinion, we do not have an opinion per se in relation to that other than that which is in the act. It is arising from Bill 59 and the revisions to The Workers Compensation Act.

Mr. Reid: It is my understanding that even before Bill 59 it was a policy of the board to deduct collateral benefits from the benefit entitlement for claimants. If Bill 59 was the power that allowed collateral benefits to be deducted, why was that policy ongoing, and why were the benefits having deductions made from them for collateral policies?

Mr. Black: Prior to Bill 59, there were two situations that arose. One dealt with temporary total disability benefits, and in that case, operating under the provisions of the law, no collateral benefits were taken into account.

The second case arose with respect to rehabilitation payments, and, as you indicated earlier, Mr. Reid, those were discretionary. It was the policy of the board, long-standing, to deduct Canada Pension Plan disability payments that related to the same injury–not those related to another injury or not CPP retirement benefits–from benefits that were paid to the claimant. But that was the only collateral benefit that was dealt with in that way.

Mr. Reid: I thought there might have been, at least I was hoping to hear that there might have been, some opinion that was formed legally to say that the board was within its power to deduct those CPP disability benefits from workers compensation entitlement. I do not sense that there was that opinion that the board was entitled legally to deduct it. I do not know of anyone that has challenged it legally. I know that it has been drawn to my attention by members of my own community that are currently on long-term disability as a result of workplace injuries.

I suppose then, in that sense, they are free of their own choosing to challenge that through the courts, if necessary. My understanding here has been there is no legal position or opinion developed by the board with respect to that.

Mr. Praznik: I would just point out to the member for Transcona that the board operates with respect to the legislation as provided in The Workers Compensation Act as he has correctly pointed out.

If the public or a claimant feels that that act is not being properly carried forward or that the Legislative Assembly of this province did not have the authority to make those provisions, they certainly have a right which I fully respect and support to challenge that issue. To date we have not been challenged on it.

I think there is a fundamental policy issue, of course, whenever one is dealing with various forms of compensation. He has hit upon it certainly. People pay for the Canada Pension disability as part of their payment. That covers a certain part of benefits.

I know some of the injuries that we have discussed here today, although they may not be work related and compensable from this board, their CPP disability provides another appropriate method of compensation for nonwork-related injuries.

I do not think–I have yet to hear an argument be made where we should allow collateral benefits such that an individual is being compensated more than they were receiving when they were working, when we are talking with wage loss. I do not gather that that is what the member is suggesting, but that would be certainly a very significant difficulty, I think, if we were allowing people to, in essence, collect twice from whatever system for the same injury and receive more benefits being on compensation than when they were working.

I can tell him before Bill 59, we had a number of cases, because of the collateral benefit issue, where claimants were collecting more, considerably more take-home on compensation than they were working. That poses a number of difficulties, as the member can appreciate. I do not hear him suggesting we should do that, but that is always the issue, of course, with collateral benefits.

Mr. Reid: I know the minister and I will agree to disagree on that one because I have seen the charts to and the area of income of those that are affected pre-Bill 59 versus those post-Bill 59. We will agree to disagree on the numbers that the minister had put forward versus the one that we have seen.

Because time is running short and I have only got a few minutes, I will leave with you two areas for the members of the board, if you will, that I would be interested in knowing about. It is important I think to the people of this province, if we intend on moving in that direction through whatever government of the day in conjunction with the board's operations as well.

The progress that is taking place, if any, with respect to the 24-hour comprehensive coverage–do we have any planning that is ongoing at the current time? Are we moving in that direction? Do we anticipate that we will have the opportunity of moving forward that plan through a legislative process somewhere down the road in the near future?

Also, I have had concerns raised with respect to the hearing-loss coverage in this province where there appears to be a policy whereby claimants must sustain hearing loss in both ears at, I think it is, a 35-decibel level before compensation coverage is provided, yet other jurisdictions across the country say that you can sustain a hearing loss of 30 decibels in one ear and still achieve some level of coverage. I leave that with you, because I think there are those that are, I know, employed in the railway industry and other heavy industry or industry that has a high level of noise factor where individuals can sustain hearing loss, why we would not have a policy that would reflect hearing loss in at least one ear versus a total hearing loss for both ears to the decibel level that the current policy states.

Mr. Praznik: Mr. Chair, very briefly, in response to the first question, the priority at this time, of course, is to ensure that our board is financially sound and we address these areas where we are currently not into Workers Compensation before we get into a 24-hour system. With respect to the second, the member for Transcona raises an issue that I know, in my office, has been a concern based on several claims that have come in, and we have asked the board and its administration to be re-examining our policy in that area, because I think he is dead on. We are inconsistent with other provinces, and that review is currently underway.

Mr. Reid: It is my understanding, Mr. Chair, that the committee will conclude at 12:30.

I would like to take the opportunity to thank Mr. Fox-Decent and Mr. Farrell and members of the Workers Compensation Board for coming out today. I believe that the opportunity to ask questions of the Workers Compensation Board is important, not only for the purpose of education for people such as myself, representatives of the communities, but to ask the questions that people have drawn to our attention as well with respect to specific cases.

The overall good feeling that I sense here today, I hope will continue in the future. I did not sense that that was the case at the last sitting of this committee for various reasons, and I hope that we will have the opportunity to meet and to discuss the questions that are on our minds in the future. I hope that we have the opportunity, possibly in the future, to attend the offices and meet some of the people in Workers Compensation Board in the future.

Mr. Chairperson: Shall the 1991 Annual Report of the Workers Compensation Board and the Five Year Operating Plan 1992 pass–pass.

Shall the 1992 Annual Report of the Workers Compensation Board and the Five Year Operating Plan 1993 pass–pass.

The time being 12:30, committee rise.

COMMITTEE ROSE AT: 12:30 p.m.