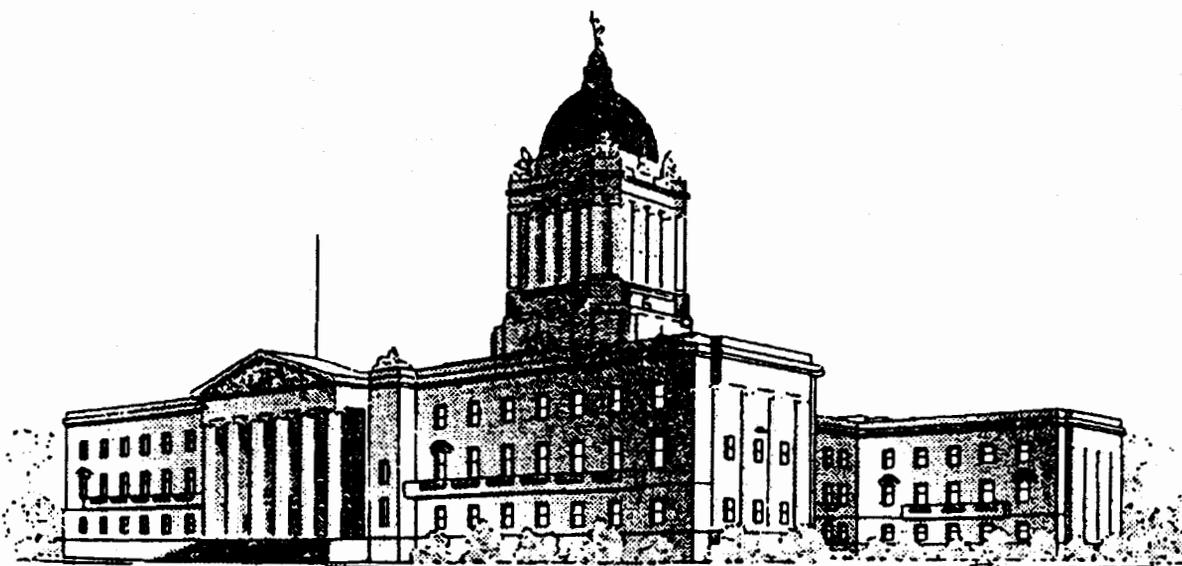




Third Session - Thirty-Sixth Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Public Utilities
and
Natural Resources

Chairperson
Mr. Jack Penner
Constituency of Emerson



MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Sixth Legislature

Member	Constituency	Political Affiliation
ASHTON, Steve	Thompson	N.D.P.
BARRETT, Becky	Wellington	N.D.P.
CERILLI, Marianne	Radisson	N.D.P.
CHOMIAK, Dave	Kildonan	N.D.P.
CUMMINGS, Glen, Hon.	Ste. Rose	P.C.
DACQUAY, Louise, Hon.	Seine River	P.C.
DERKACH, Leonard, Hon.	Roblin-Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DOER, Gary	Concordia	N.D.P.
DOWNEY, James, Hon.	Arthur-Virden	P.C.
DRIEDGER, Albert	Steinbach	P.C.
DYCK, Peter	Pembina	P.C.
ENNS, Harry, Hon.	Lakeside	P.C.
ERNST, Jim	Charleswood	P.C.
EVANS, Clif	Interlake	N.D.P.
EVANS, Leonard S.	Brandon East	N.D.P.
FILMON, Gary, Hon.	Tuxedo	P.C.
FINDLAY, Glen, Hon.	Springfield	P.C.
FRIESEN, Jean	Wolseley	N.D.P.
GAUDRY, Neil	St. Boniface	Lib.
GILLESHAMMER, Harold, Hon.	Minnedosa	P.C.
HELWER, Edward	Gimli	P.C.
HICKES, George	Point Douglas	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
KOWALSKI, Gary	The Maples	Lib.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar	The Pas	N.D.P.
LAURENDEAU, Marcel	St. Norbert	P.C.
MACKINTOSH, Gord	St. Johns	N.D.P.
MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McALPINE, Gerry	Sturgeon Creek	P.C.
McCRAE, James, Hon.	Brandon West	P.C.
McGIFFORD, Diane	Osborne	N.D.P.
McINTOSH, Linda, Hon.	Assiniboia	P.C.
MIHYCHUK, MaryAnn	St. James	N.D.P.
MITCHELSON, Bonnie, Hon.	River East	P.C.
NEWMAN, David, Hon.	Riel	P.C.
PALLISTER, Brian	Portage la Prairie	P.C.
PENNER, Jack	Emerson	P.C.
PITURA, Frank, Hon.	Morris	P.C.
PRAZNIK, Darren, Hon.	Lac du Bonnet	P.C.
RADCLIFFE, Mike, Hon.	River Heights	P.C.
REID, Daryl	Transcona	N.D.P.
REIMER, Jack, Hon.	Niakwa	P.C.
RENDER, Shirley	St. Vital	P.C.
ROBINSON, Eric	Rupertsland	N.D.P.
ROCAN, Denis	Gladstone	P.C.
SALE, Tim	Crescentwood	N.D.P.
SANTOS, Conrad	Broadway	N.D.P.
STEFANSON, Eric, Hon.	Kirkfield Park	P.C.
STRUTHERS, Stan	Dauphin	N.D.P.
SVEINSON, Ben	La Verendrye	P.C.
TOEWS, Vic, Hon.	Rossmere	P.C.
TWEED, Mervin	Turtle Mountain	P.C.
VODREY, Rosemary, Hon.	Fort Garry	P.C.
WOWCHUK, Rosann	Swan River	N.D.P.

LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON PUBLIC UTILITIES AND NATURAL RESOURCES

Thursday, April 10, 1997

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Jack Penner (Emerson)

VICE-CHAIRPERSON – Mr. Mervin Tweed (Turtle Mountain)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Gilleshammer

Messrs. Dyck, Gaudry, Laurendeau, Maloway, McAlpine, Martindale, Penner, Reid, Rocan, Tweed

APPEARING:

Mr. Wally Fox-Decent, Chairperson and Chief Executive Officer, WCB

Mr. George Davis, Chief Appeal Commissioner, WCB

Mr. Alan Scramstad, Senior Board Counsel and Corporate Secretary, WCB

Mr. Don Paul, Senior Director, Claims Services, Adjudication, WCB

Mr. Sid Rogers, Senior Director, Claims Services, Vocational Rehabilitation, WCB

Mr. Kevin Lamoureux, MLA for Inkster

MATTERS UNDER DISCUSSION:

December 31, 1994, December 31, 1995, and December 31, 1996, Annual Reports of the Workers Compensation Board

1995 Five-Year Operating Plan, 1996 Five-Year Operating Plan, and 1997 Five-Year Operating Plan of the Workers Compensation Board

Mr. Chairperson: Good Morning. Will the Standing Committee on Public Utilities and Natural Resources please come to order. Are we in order?

An Honourable Member: We are in order.

Mr. Chairperson: Good. Before the committee can proceed with the business before it, it must proceed to elect a Vice-Chairman. Are there any nominations?

Mr. Peter Dyck (Pembina): Mr. Chairman, I would like to nominate Mr. Tweed.

Mr. Chairperson: Mr. Tweed has been nominated. Are there any other nominations? No? Does the committee agree that Mr. Tweed be the Vice-Chair? [agreed] Thank you.

This morning the committee will be considering the Annual Reports of Workers Compensation Board for the years ending December 31, 1994, 1995, 1996, and the 1995, '96, and '97 Five-Year Operating Plans for the Workers Compensation Board.

Before we ask the minister to make some opening comments, I wonder if we could get consideration to pass some of these reports and then deal with the last two years' reports. Would that be agreed? [agreed]

Mr. Daryl Reid (Transcona): Mr. Chairperson, good morning. Good morning to members of the committee. We have not had the opportunity to debate the particular reports that you are talking about, although I think we did start the '94 report the last time we met which was January 12, 1995, and it had been two years before that that we had an opportunity.

I am a bit concerned that we are going through a process here whereby we have two years in between these committee hearings being convened to give us the opportunity to ask the questions that we have relating to the Workers Compensation Annual Reports and Five-Year Plan. I am not opposed to us passing those

particular reports, because that is information that is now a bit dated considering that the new annual report was just released by the minister this week. I know in my discussions with the former former Minister of Labour who was responsible for the Workers Compensation Board, he indicated to me that this committee was supposed to be meeting on an annual basis.

Now, I know that the last time this meeting was scheduled, there were some extenuating circumstances with the health of a particular member of this committee, so I understand that sometimes that can happen. So with that in mind, I am prepared to have the reports of '94 set aside and perhaps passed at this time and deal more directly with questions relating to the '95 and '96 Annual Reports, if that is okay with the minister and members of the committee. I also have some general questions relating to some specific case files that I have made members of the board aware of ahead of time so that some certain research could be prepared with respect to those cases.

Mr. Chairperson: What we are going to be dealing with this morning then would be the '95-96 reports and the '97 Five-Year Operating Plan for the Workers Compensation Board. Is that agreed? [agreed]

Shall the December 31, 1994, Annual Report for the Workers Compensation Board then pass?

Some Honourable Members: Pass.

Mr. Chairperson: Pass.

Mr. Minister, have you any opening remarks to the committee?

Hon. Harold Gilleshammer (Minister of Labour): Yes, thank you, Mr. Chairman. Good morning to the committee members and the staff that are here.

I am pleased that we have passed the 1994 report and share some of the same concerns the member for Transcona (Mr. Reid) has put on the record. I think it is important that we have timely meetings to deal with these reports. We have a couple of hours this morning to look at the '95 and '96 reports and the operating plan. Having said that, I do have a few opening comments.

To begin, I would like to introduce the Chairman and Chief Executive Officer of the Workers Compensation Board, a man who is no stranger to members, Mr. Wally Fox-Decent. Wally I know will be introducing staff present in a few minutes. I would also like to introduce the Chief Commissioner of the Independent Appeal Commission, Mr. George Davis.

The Workers Compensation Board is one of my new responsibilities. Recently I had the opportunity to visit with the management, staff and some of the board members at Workers Compensation.

I believe there are many reasons we can all be proud of our Workers Compensation Board. Since assuming power in 1988 when the board was mired in debt, we have taken steps to ensure the ongoing viability of the program by helping place them in a stronger financial footing. At the present time, our WCB is a model for other provinces to follow.

This past fall the Workers Compensation Board announced the elimination of its debt. This story in itself is a tremendous success story. This year marks the first of three years where the WCB is reducing rates for over 20,000 Manitoba businesses by 5 percent. These rate reductions will leave some \$40 million in the hands of Manitoba employers while reducing the cost of doing business in Manitoba. That is money back in the hands of those who create jobs for the people of this province.

I might add that at the same time as these reductions are taking place, the corporation is enhancing services to injured workers through a series of new initiatives valued at \$5.4 million during the next three years.

Mr. Chairman, now that the debt has been repaid, a modest reserve fund is being built up. The corporation has wisely recognized the need to plan for the future and for the unforeseen events which may lay ahead. A total of \$35 million is being added to reserves over three years to bring the total to \$50 million by the year 1999. The Workers Compensation Board has balanced its books. It is reducing its rates to employers while at the same time offering enhanced service to injured workers.

Many people can take credit for these successes. Previous ministers who have guided the corporation

from 1988 to the present, the able leadership which has come from the board of directors and, of course, the employees who have performed so well through many challenges which have been faced over the past few years, all of these people have contributed to getting rid of this debt and putting the corporation in a very positive position.

I look forward to the committee's questions and comments this morning. In closing, Mr. Chairman, I would ask Mr. Fox-Decent to make a brief opening statement.

Mr. Wally Fox-Decent (Chairperson and Chief Executive Officer, WCB): Mr. Chair and Mr. Minister, first I would like to introduce a number of the senior management of the corporation who are here with me today. We wanted to bring almost all of the team so we would be able to respond as well as possible to questions that may be asked by honourable members. When I introduce the group, I would ask, since I am at a disadvantage with almost all of them behind me, if they would be kind enough to stand up just to indicate which one is which as I call out their name.

The exception to the one behind me is the one beside me, and that is Kam Sandy, on my left, who is our chief operating officer in the corporation. Then in the back row, Alfred Black, the Executive Director of Finance and Administration; Terry Edgeworth, the Executive Director of Employer Services and Human Resources; Don Paul, who is the Senior Director of Claims, Adjudication; Sid Rogers, the Senior Director of Claims, Rehabilitation, and the Senior Manager in charge of Medical Services; Alan Scramstad, who is our Senior Board Counsel and Corporate Secretary; Jeff Curtis, our director of policy research and planning; Glenn Hildebrand, Director of Communications; Lorne McMillan, Treasurer, the man responsible for our investment portfolio and the management of it.

So, Mr. Chair, I would very briefly say to you since the board of directors has been together over the last five years, a period during which I have had the privilege to have some responsibility for the corporation, we have really had but three goals for the Workers Compensation Board of Manitoba.

* (1010)

The first, and this is in no particular order, was to create a meaningful and continuous dialogue with our stakeholders. We have a variety of stakeholders. Obviously, the principal ones are those who represent injured workers and those who represent the employers. It is our very strong feeling that we need a continuous dialogue with our stakeholders who, in our view, are partners with us in the responsibility of administering the workers compensation system for the benefit of its clients. Of course, it is very clear that its clients are injured workers on the one hand and employers on the other.

Our second goal was to bring about financial stability to the life of the organization. We feel that if we are to deliver the best service possible, we need a sound financial base. We have spent the last five years in part creating what we consider to be a base that will provide a secure future for the organization with regard to its financing.

Finally, and most importantly, the board has had the aim in the last five years to improve the quality of service we deliver to our clients. We need to do better. We need to do, by some quantum measure, better with regard to the way we deliver service to our clients. Service excellence, therefore, has become a common phrase in the life of the corporation.

I would close by saying I think we have had some success with the first two goals, an ongoing, meaningful dialogue with stakeholders and the creation of a viable and stable financial environment for the corporation. I would say with regard to the third, the challenge of providing excellence of service, that would be best described in my view as a work in progress. We are trying harder. We have had some feedback which leads us to believe that we are doing a little better with regard to the quality of service we provide. Having said that, I am quick to acknowledge that we have a way to go in this area, and we continue to be focused on making the improvements to our service delivery which will cause our clients to feel that they are receiving a quality of commitment and service which they deserve.

Thank you very much, Mr. Chair.

Mr. Chairperson: Thank you, Mr. Fox-Decent. Mr. Reid, would you want to make an opening statement?

Mr. Reid: I will be very brief as I was the last time we had the opportunity to meet with members of the Workers Compensation Board.

As I indicated a few moments ago, this committee has had some difficulty in being convened for a number of years now. This committee sat in the spring of 1993, did not sit again until January of 1995, and is now sitting again in April of 1997 to consider annual reports. It puts the opposition members of the Legislative Assembly at a disadvantage—and for any other members other than the critics who may wish to come before this committee and ask questions concerning The Workers Compensation Act or the Appeal Commission or any other of the activities involving those areas—when we meet only on a biannual basis, every two years, to consider annual reports. So we are disadvantaged by those committee hearings not being convened in a timely manner. So I draw that to the minister's attention because Mr. Praznik, the former Minister of Labour responsible for the Comp Board, had indicated that this was supposed to be an annual meeting. So I draw that to the attention of the current Minister of Labour.

We have had a number of problems drawn to our attention with respect to the handling of some of the cases involving the Compensation Board, particularly long-term cases. I note the board's press release that was just put out I believe this week attached to the annual and five-year operating plans for the board. Unfortunately we have only had a day, a day and a half to look at these reports so our questions may not be the in-depth that we would like to have had them, considering the lack of time between the tabling of reports and this particular meeting being held here this morning.

The questions that I have relating to specific cases I have drawn to the attention of members of the board, as I have already indicated, to allow for some preparation and some groundwork to be done to the questions that I might raise with respect to those issues. They are long-term claimants and some concerns with respect to the policy development.

Other questions that I will have will be relating to the way the board handles the investments, with respect to the funds themselves and also dealing with areas involving the impact or the involvement of the medical services of the Workers Compensation Board. I know I have raised that with members of the committee before. It is still a question that I have in my mind. I will not draw it to the attention of this committee. One particular case, which I am grateful that Mr. Fox-Decent has taken the time out of his busy schedule to sit with me and the claimant that is involved, to try and resolve that case, it is a very, very serious matter. But I will deal with the generalities surrounding that case and other cases, some in my own constituency involving similar types of circumstances, and I want to find out more about the policy of the board in dealing with those type of matters.

With those few words, Mr. Chairperson, I am prepared to allow other members of the committee their opportunity to add comments, and I will ask my questions after they have had their opportunity.

Mr. Chairperson: Thank you very much, Mr. Reid. Are there any other comments that need to be made?

Mr. Neil Gaudry (St. Boniface): Yes, Mr. Chairman. Just a few comments here in regard to the Compensation Board. I would like to congratulate the minister in becoming the new Minister in charge of Workers Compensation, and I hope that we will have the same results we have had before with the previous minister. I have been very satisfied with the staff and the minister responding to our requests and concerns with constituents that I have been involved with. There has never been really a problem in getting responses from the offices. I would like to thank members of the staff and Mr. Fox-Decent and everybody that has been involved in responding to our requests on behalf of my constituents especially. Thank you very much, Mr. Fox-Decent and Mr. Minister.

Mr. Chairperson: Thank you, Mr. Gaudry.

Mr. Gilleshammer: I thank the critics for the comments they have made. To the critic for the NDP, I share the concern that we do meet on a timely basis, and I will certainly talk to our House leader and perhaps he can talk to his House leader, and they can

arrange to have these meetings called on a regular basis. I am pleased to hear the positive words that people are saying about the operation of the commission. It is certainly consistent with the feelings I have from meeting with the chair, board members and staff, and what we are hearing from the community. Thank you.

Mr. Chairperson: Thank you very much. What is the will of the committee? Does the committee want to give some consideration for time when we want to adjourn, or do you just want to proceed until we have run out of issues or questions and then deal with the reports at the end of the discussion? Is that the will of the committee?

Mr. Reid: Mr. Chairperson, for the two opportunities that I have had to sit on this committee prior to today, it has been a practice of this committee to continue with the questioning in a general sort of way. I see that there are many members of the Workers Compensation Board here today that can provide advice to the minister and to Mr. Fox-Decent. I know there are perhaps time commitments for Mr. Fox-Decent. I am prepared, if this committee does not conclude its work by perhaps 12:30, that we could reconvene at another date that is convenient to members of the committee to allow for that questioning. If we do perhaps wrap up prior to that time then of course there would be no need for that continuation, so if I may make the suggestion that 12:30 be the time and that we do questioning in a general sort of fashion to allow for free-flowing discussion and debate to take place.

Mr. Chairperson: It has been suggested that we set a time limit of 12:30. Is that agreed? [agreed] We will then proceed with questions.

* (1020)

Mr. Reid: I want to start by looking at the news release that the board, through the minister, I would imagine, because his comments are attached to it, issued on April 8, 1997. I want to ask the minister, because he in this press release that has been issued indicates that there are assessment rate reductions of 5 percent for each of the years 1997, '98 and '99, can he

tell me what the overall dollar impact is with respect to that rate reduction of 15 percent over three years?

Mr. Gilleshammer: I am told that would be \$40 million over three years.

Mr. Reid: Can the minister also tell me, because in the same paragraph it also indicates that there have been service enhancements valued at \$1.8 million, which would be \$5 million, \$5.5 million, in the minister's estimation, is it fair to have a \$40-million rate reduction for the employers, which are the sole payers, I understand, for the operations of the board, and to have the equal stakeholders, who are the clients, the claimants of the board, see service enhancements of only \$5.4 million? How does the minister balance a \$40-million reduction for the employers through the assessment rate reduction and only a \$5.4-million enhancement for those that are injured and require the services of the board?

Mr. Gilleshammer: Well, Mr. Reid is absolutely correct that this is money that is contributed by employers, solely by employers to provide coverage under this particular board. We, in my opening statement, indicated that when we assumed government in 1988, this organization had an accumulated debt of over \$230 million. I recall in 1988, events taking place then, people had indicated that there would be a rate hike of some 20 or 21 percent at that time, again, all of that paid by employers, and this is a cost to doing business in the province of Manitoba.

I think it is incumbent on government to appoint a board to see that the act is carried out appropriately and to provide the leadership that certainly has come forward to reduce and eliminate that debt. If that could be done and it now has been done, certainly there are opportunities to lower the rates, opportunities to enhance service. My honourable friend will know that attracting businesses to a province is a very competitive business.

Other provinces are doing the same thing and, in fact, recently I attended my First Ministers of Labour meeting in eastern Canada, with all provinces with the exception of one being represented, and we did have an opportunity at that time to talk about Workers Compensation. I was horrified to hear that the province

of Ontario had a debt of over \$10 billion in their Workers Compensation fund, and the minister was struggling to come to terms with that. Province of Quebec had a debt of between \$2 billion and \$3 billion, and I emphasize, we are talking about billions of dollars. Getting into that debt happened very, very quickly. Getting out of it is going to take a tremendous effort and time and cost on businesses within those provinces.

So, now that we have eliminated our debt, we have tried to take a balanced approach, we are going to reduce the rates. We are going to enhance services and provide the best possible program for workers and the owners of businesses within this province. I think we can be proud of the achievements of the board and of the organization and allow us to make our rates even more competitive with other jurisdictions in Canada. I think what my honourable friend is saying is that there is an onus on the part of the board to look at all aspects of their operation. I am assured from my meetings that that certainly is taking place, that the mission of the board is to provide the best possible services that they can. With an opportunity to reduce the rates, they have made that decision to go that direction.

Mr. Reid: The minister did a fancy job of skating. He must have new skates on this morning. Perhaps the minister can go back to the original question I asked. In his mind, is it fair to have a \$40-million reduction in over three years in the assessment rate to employers and only see \$5.4 million of service enhancements to the injured workers of the province, when they were suppose to be equal stakeholders in the Workers Compensation system? That was my question. I would like the minister to address that specific question, not to talk about jurisdictions. Yes, the board has done a fine job in eliminating the unfunded liability. I congratulate them for their efforts but, at the same time, I want to know since there is now a surplus, is it fair for supposedly equal stakeholders to see such a discrepancy in the opportunities that are being afforded \$40-million rate reduction for employers, \$5.4-million enhancement for the injured workers? Why the imbalance?

Mr. Gilleshammer: Well, I regret that my honourable friend would see this as skating. I think that it is important to put this in some historical perspective. It

is important to compare what Manitoba is doing and what Manitoba has accomplished to other jurisdictions. If he thought the answer was not clear, I say to them, yes, it is fair. It is fair to employers who have borne this cost over the years, who have borne the cost of that debt over the years, to have some rate reductions. Many of these businesses will be in a position to create more wealth, create more jobs, create more business activity within the province. I hope I do not hear the member saying—although, I believe I have heard other members of his party say that if there is money, we have got to spend it. I think it is important that we have eliminated this debt that we take some of the burden off businesses. I mean, this is so similar to some of the discussions that we have around the payroll tax. I have had so many businesses tell me that payroll tax was simply a tax on jobs. A tax that prevented them from expanding; a tax on preventing them to expand their businesses to hire more people. This is somewhat similar.

The board does provide good coverage. They do have a good program, and I would think that the member would be pleased that businesses within Transcona would have the opportunity to reduce the cost of doing business and to create more business and to create more jobs and I think a very clear linkage with what government does to businesses by imposing these rates. I would ask him maybe to talk to his colleagues in Ontario to get their view now at what these higher rates have done and how they would now try to deal with that \$10-billion or \$11-billion debt, and that is only the Workers Compensation Board in Ontario. I do believe there is other debt there as well but, you know, I think the member is looking for a direct answer and said, is this fair? I said, yes, it is fair.

Mr. Reid: Well, then I take it that the minister does not think that there are equal stakeholders within the Workers Compensation Board by his comments and that there are some that are more equal than others in the process. Then the minister has made that very clear by comments here today that the injured workers are not equal stakeholders in the process and that he sees that the \$40-million reduction for the assessments is fair for the employers' side of the equation and that the employees themselves, the injured workers who had \$4.5 million in service enhancements is fair to them.

* (1030)

So in other words there is one group that gets preferential treatment in this process and they are not equal stakeholders. That is the interpretation that I take, my perception of the minister's comments. And I will accept the minister at his word. If he wants to take that position, that is fine. That is not one that I subscribe to. I always thought that the Workers Compensation system was there, as Mr. Fox-Decent has already stated here this morning, to serve the clients of the board, which are both the injured workers and the employers.

There are two clients. They are equal in their partnership that the board has to serve and there has to be a balance here. I understand that. But what I asked the minister was, is \$40 million for one group and only \$5.4 million for the other group a balance of fairness in the minister's mind. He has left me with the impression that he thinks that that is fair here today.

If that is the case, I will move on from there and go on to my other question. I want to ask some questions with respect to the appeal commission report. I have had the very brief opportunity to look through the document itself. I was going to ask prior to receiving this document about the commissioners, the part-time commissioners and the full-time commissioners on the board, but I see that they are listed here and I thank the board for including this new document which we have not had the opportunity to look at in the past, and it does provide us with some information that we were going to seek.

I want to ask though more specifically about the lengths of time that these individuals have been appointed to these positions. I want to know because it is my understanding that these people are appointed by Order-in-Council signed through the presiding officer of cabinet, quite often at the advice of the Minister of Labour. So I would like to know which periods of time these individuals, be it Mr. Davis, Mr. MacNeil, Mr. Frisken, Mr. Jensen or the part-time commissioners, what periods of time they have been appointed to, what lengths.

Mr. Chairperson: Mr. Reid, before I allow response, it was my understanding that this committee agreed that

we would deal with the '95-96 report and the '97 operating plan for the board. You are now referring to an appeals commission report. Are we dealing with the appeals commission report as well?

Some Honourable Members: Yes

Mr. Chairperson: We are? Okay. Then I will allow the response. It was my understanding that we were dealing with the operating reports only.

Mr. Fox-Decent: Let me just clarify, Sir, the Chief Appeal Commissioner's report was always included in the annual report. Now, this year, for purposes of making the distinction between the appeal process and the other operations of the board, we have two reports, one of the Chief Appeal Commissioner and one of the board. So I think it would be entirely appropriate for us to look at the '96 report of the Appeal Commissioner. I am sure that the Chief Appeal Commissioner, being with us this morning, would be happy to answer Mr. Reid's question.

Mr. Chairperson: I would suggest then that in future, for consideration of this committee, that be attached to the agenda of the committee that the committee is aware that we will be dealing with the Appeal Commission's report as well, understanding, of course, that previously that was the case. So just for clarity.

First, before we proceed with that response, Mr. Minister, do you have a comment that you wanted to make in reference to Mr. Reid's remark?

Mr. Gilleshammer: Well, thank you, I did. I reject his interpretation of what my comments were. We are very proud of the fact that the Workers Compensation Board provides service to the workers of Manitoba. I think we have a philosophical difference of how you deal with debt and how you deal with revenue. We will just leave it at that. I will let Mr. Davis comment on the commissioners.

Mr. George Davis (Chief Appeal Commissioner, WCB): Mr. Reid, the Chief Appeal Commissioner was appointed on July 1, 1990. His current term runs to June 30, 1997. The Presiding Officer Robert MacNeil was appointed January 1, 1993. His current term runs to January 1, 1999. Commissioner Frisken was

appointed July 1, 1990, and his term runs to April 3, 1999. Commissioner Jensen was appointed March 22, 1993, and runs to April 6, 1997.

Mr. Reid: I thank Mr. Davis for that information. For the sake of time here today, perhaps if you have other information pertaining to the part-time commissioners, perhaps you could forward to me just a copy of that information; that would be fine. It is not necessary that it would have to enter directly into the record here today, but I would like, if possible, a copy for my own information on those appointments.

Mr. Chairperson, I want to go and deal with other matters dealing with the Appeal Commission that you may not be familiar with. The Appeal Commission has history over several annual reports and this is the first opportunity we have had, has been indicated here to have a breakdown of the numbers. There are some historical facts in this document that go back to 1994 to give the comparison, so I am referencing the comparisons over those particular years, dealing with the reports of 1995-96 as well that we are talking about here today.

There are a number of requests for consideration that have come forward under Section 60.9 of the act. There has been a significant decline from 1994 in the number of requests and the number that have been granted. There were 61 requests in 1994; it is down to 43 now. In '94, 10 were granted. This year, 1996, there have only been four granted. Can the board tell me why there has been a reduction in the number that have been granted over this period of time?

Mr. Davis: I cannot tell you why there would be a reduction. It is open to appellants, that is, employers and workers to apply for reconsideration if they so decide. It has been my experience that in the majority of the instances where reconsideration has been requested, the appellant, usually the claimant, does not provide new substantial evidence but merely endeavours to argue their case by repeating facts that were already available to the appeal panel and had heard the case.

Mr. Reid: One of the problems that I have had as both the critic and as an advocate acting on behalf of my

constituents is having positive consideration given in the sense of being successful in having consideration given to some of the cases that I have brought to the board's attention. I take very seriously any matter that comes before me with respect to the board and the act itself and my claimants. I do not just jump at the first case that comes along and start writing letters. I review the cases very much in depth with the assistance of my assistant, and then if we feel that it is warranted, that there are some problems here in dealing with the act itself, that is when I would communicate with the board or through the minister's office.

I must admit that I have been more inclined to write to the board itself than deal with the minister because it has been my impression in dealing with successive ministers of Labour, not necessarily this current one, but in writing with the minister—and I say this in all seriousness that previous ministers of Labour have been dead letter offices with respect to workers compensation cases. It is very easy for them to brush off the handling of these cases, and I say that with all seriousness.

* (1040)

That is why that I found that it is better for me as an advocate and as the critic to correspond with the board, and I thank the board for the information that they have sent back. I do not always agree with it, but at least they have responded and given some detail to the questions that we have posed. In other cases where the detail has been insufficient, then we have also communicated that as well and asked for further clarification. One of the problems that has concerned me is the medical review panel, and I want to demonstrate my concerns with the process involving the medical review panel on a particular case that I had written to this current Minister of Labour. He had sent back information to me, and I am not sure who wrote the letter for the minister, but the minister, in fact, took a chronological sequence of events that had been compiled by the claimant's lawyer and attached that as part of his letter, included that as part of his letter, which I found not to be in the best taste considering it was not the department or the minister's office that had done that particular work. I have already raised this matter in Question Period.

I am referring specifically to Mr. Bernard Fehr's case. Mr. Fehr himself is a claimant of the board. He had asked for a medical review panel, was going through the appeal process. He is waiting, from my understanding, spinal fusion, which is a very serious matter for any claimant to the board that is involved in back injuries. The board had cut off his benefits in 1992. He has appealed that and based on support by his orthopedic surgeon, Dr. Birt, who opposed the Compensation Board doctor's opinion. This matter was then referred to a medical review panel.

Now, the medical review panel, from my understanding of the process, the minister has the opportunity through his office to appoint the chairperson of the medical review panel. The claimant has the opportunity to select a doctor from the list provided by the board as does the employer. That medical review panel was convened, listened to the evidence presented, and then came back with the unanimous decision—a unanimous decision in favour of the claimant. That may be rare, I do not know, and perhaps that could be a question a little later in this committee, but it was a unanimous decision in favour of the claimant. That decision, and I know the Appeal Commission is not bound by the decisions that are sent to them, but one would think that if you have a unanimous decision of a medical review panel that involves two of the noted orthopedic specialists in this province and the independent chairperson appointed by the minister, you would think that the Appeal Commission would accept the word and look very seriously upon the acceptance of the word and the decision of that Appeal Commission.

That did not happen in Mr. Fehr's case. What the Appeal Commission elected to do was to refer that matter, that case, back to a radiologist who, in my understanding, a radiologist has the medical powers to interpret tests that are undertaken, whether it be CT scans or MRIs. My understanding is that is the work they perform. They interpret the results of those tests and forward it to other doctors to determine the type of treatment or the direction to take.

I guess my question here through the minister perhaps to the board is why did the board through its Appeal Commission not accept the word of a unanimous medical review panel in Mr. Fehr's case,

and does this happen in other cases where you do not accept the unanimous decision of a medical review panel and choose instead to send this on for further evaluation by what I would think would be to a less skilled individual? Is that a practice of the board?

Mr. Chairperson: Before I will allow response to the question, I am having a great deal of discomfort as the Chairman of this committee in hearing a case in point with names attached and being asked to be dealt with at this committee level, and I am not sure whether it is the responsibility of this committee or for that matter the jurisdiction of this committee to hear appeals on individual cases, and I stand corrected if it is the committee's wishes.

But I find a difficulty in listening to and hearing personal appeals on a given person's case, and, therefore, I ask the committee's wisdom and guidance on this, whether we should allow individual cases to be questioned and represented at this committee. I ask the indulgence of the committee or advice of the committee.

Point of Order

Mr. Chairperson: Mr. Reid, on a point of order

Mr. Reid: Mr. Chairperson, you may not be aware, but I have raised this as an example of the problems that I see existing in dealing with the Appeal Commission and more particularly the medical review panels and how their decisions are dealt with.

Now, I have raised this matter with the minister through written correspondence and again in Question Period, and I do have permission from the individual who is involved, written permission, to use his name and his case as an example. He very much wants this to be raised as an example of what is happening.

I have advised the members of the board through the office. There is a disclosure provision that has been signed by the individual himself, Mr. Fehr. It is on file with the board. I have raised this to allow the board the opportunity to research the matter knowing full well that I was going to be raising it at this committee as an example of problems that I see happening with the medical review panel. I have raised at this committee

before problems dealing with the Medical Services Branch at the board, and we have had some discussions on this back in January of '95.

There is still continuing to be some problems involving the Medical Services board, in my estimation, that I would like to see cleaned up. This demonstrates an example of problems that I see, and that is why I raised it here, and I do have permission from the claimant to do that, and I have advised the board prior to this meeting.

Mr. Marcel Laurendeau (St. Norbert): On the same point of order, Mr. Chairman, there might be being said that there is a disclosure form that has been given to the honourable member, but this committee should at least have the opportunity to review that form and make sure that everything is in order, that the claimant is aware that it is being discussed at this committee.

Mr. Gerry McAlpine (Sturgeon Creek): I can appreciate what the honourable member for Transcona is—and I sympathize with him. I think that there certainly are things that have to be addressed when we are dealing with claimants as such. I had personal experience with a daughter, and there were some things a few years ago that really concerned me and some of the processing that was taking place at that particular time.

But I agree with you, Mr. Chairman, that in spite of my determination to see that this organization and Workers Comp act in a very compassionate way with all claimants, I do not feel that this committee and the members sitting around this table are the ones who should be determining the direction and how an individual—regardless of whether or not there is permission from a claimant or not, we are not to be discussing that aspect on an individual basis.

I sympathize with what the honourable member is attempting to do, and I know that his intentions are very honourable, but this is not the place to be dealing with that, Mr. Chairman, and I support your remarks on that.

Mr. Chairperson: I am going to ask Mr. Fox-Decent to respond if he wishes. I will deal with the point of order, however, before he does.

I would rule that there is no point of order and that we are dealing with a dispute as according to information allowed on the table, and so I would rule that there is no point of order. I will ask Mr. Fox-Decent to address the issue and the question that Mr. Reid, however, has put during the point of order.

* * *

Mr. Fox-Decent: Mr. Chair, we have no problem at all with answering any questions you have, Sir, relative to medical review panels, and I think we can do that without necessarily involving a particular claimant, although we are familiar with the particular issues that you have raised, and you were good enough to give us notice that you would probably be raising at least the issues this morning.

* (1050)

So with regard to medical review panels, I probably would ask the Chief Commissioner in that one of the issues that you have raised. You were good enough to give us notice that you would probably be raising at least the issues this morning, so with regard to medical review panels I probably would ask the chief commissioner, one of the issues that you have raised without again mentioning the claimant's name relates to actions of the Appeal Commission in this matter.

I will ask Mr. Davis to make a comment on the decision of a medical review panel not necessarily being accepted and something else happening beyond that which I think is really the issue here. Then there may be the need for some further comment from within the board, and if so, I would ask our chief operating officer to speak a little further.

We are not trying to inundate you with explanation, but tell us when you are satisfied and we will stop, but we would like you to feel some satisfaction relative to the MRP process. My only opener is that the MRP chair is in fact a term appointment, so it is always the same chair or an alternate chair, both of whom are appointed for a period of up to five years by the minister, so we are talking about either Dr. Murphy or Dr. Fast, who are respectively the permanent chair and the alternate chair of medical review panels.

Then, of course, there is a co-option of other members of those panels according to the particularities of the case that is before them. Mr. Davis, would you like to—

Mr. Davis: Medical review panels, as you indicated, Mr. Reid, are not binding upon the Appeal Commission or upon the Workers Compensation Board. The medical review panel report is only one piece of information that an appeal panel looks at. It looks as well at the other medical or practitioner information on file and also the information that may have come in since the medical review panel was held.

It also, when it considers a case, addresses arguments that are put forward by the other party to the hearings such as the employer. They review all this information and try to come to a conclusion. If they cannot, if they do not feel comfortable in coming to a conclusion with the information that was on the file, albeit there may be a unanimous medical review panel, then they are required go out and seek whatever information they feel is necessary to reach a decision.

Mr. Chairperson: Before I allow the further question, Mr. Reid, I want the committee to note that I have been provided with a copy of a letter by the claimant, and I am satisfied that the claimant has indicated clearly that it is his wish that his name could be mentioned in questioning. However, my caution is still there. I respect the comments that were made by committee members, that this not become a second level of appeal in a given case, and I caution the member in his questioning.

Mr. Reid: I do not have a problem with that. My purpose here in raising this particular case, because this is an example of a problem that I see with the medical review panel—the further follow-up question on a case such as this one that I have raised here today is if the medical review panel in its unanimous decision was not satisfactory to the Appeal Commission itself, and the Appeal Commission sent this particular matter back to a radiologist, who has from my understanding somewhat less training than an orthopedic specialist would have, if the Appeal Commission had some problems with the unanimous decision and they got a further medical opinion from a radiologist, why did they convene a different medical review panel? Why

did they not send the matter back to the original medical review panel to allow those panel of experts the opportunity to review the new decision?

Mr. Davis: I cannot speak for the appeal panel as to why they did what they did. I can speculate.

Mr. Fox-Decent: Was this a panel chaired by your colleague Mr. MacNeil?

Mr. Davis: Yes.

Mr. Chairperson: I will interject, and this is simply for clarification. We have a recording process here.

Mr. Fox-Decent: I should know that.

Mr. Chairperson: And the Chairman has to indicate the speaker, that the record will show who made what comments or what advice was offered. So we do this simply for the record, to make sure that the record was clear in the future.

Mr. Davis: As I said, I can only speculate as to why they did that. There may have been two reasons that I can think of offhand. One is that they may not have felt comfortable sending it back to the initial medical review panel in light of the responses that the initial medical review panel provided and, secondly, is that once a medical review panel has rendered its report, it has no further jurisdiction in the matter, and the panel may have felt it was not able to send it back to the same panel.

Mr. Reid: I am going to be blunt. The process that has been struck here leaves me with the impression that the Appeal Commission is doctor shopping. They are looking for an opinion to support a particular position that they might wish to take. That is the impression that this leaves. The question that I would have: Has a unanimous decision of a medical review panel ever been overruled before or discounted totally by an appeal commission?

Mr. Davis: In the past, since the Appeal Commission has been in place, there have been three occasions where medical review panel opinions were not followed.

Mr. Reid: Have other medical review panels been struck to hear this new information?

Mr. Davis: Not to my knowledge. I believe that in those cases, there was medical information received subsequent to the medical review panel report which had a bearing on the decision.

Mr. Reid: So then in this case it is unique that this matter is then being referred over to a second medical review panel for decision?

Mr. Chairperson: I am sorry. I would ask the recorder to turn the mikes on at the far end of the table so that we can hear the meeting going on at the far end of the table, if there is a meeting going on there. If not, then I would ask if they do need to confer with each other, that they might step outside the room. Thank you. Mr. Davis, to respond.

Mr. Davis: I do not know that I would say it is unique. I cannot recall offhand it happening in the past. Obviously, the appeal panel felt that this was the best route to take to get the information they felt was necessary in order to reach a decision. I can assure you they were not doctor shopping. There would be no point to their in doing that.

Mr. Reid: Since this has not happened before from what you recollect, and I have had the opportunity to talk with another individual who was a long-serving member of the board, involved with the board, and I am talking over three decades, that this has never happened in the history of the board before. It causes me concern to see that the board first is through the Appeal Commission discounting the opinion of a unanimous decision of an MRP and, instead, referring the matter to a lesser medical authority for an opinion which they have received back and then referring that opinion from a lesser skilled, I am told—I do not know for sure, but I am told—a lesser skilled medical individual as the grounds for striking a second, new medical review panel. There is something wrong with this picture here.

The question that I have as a result of this process, since a second new medical review panel has been convened after a unanimous decision of the first one in favour of the claimant, what happens now if the second

medical review panel comes back opposed to the claimant, and we have an MRP in favour of the claimant unanimously and one opposed to the claimant's position? Now we have conflicting medical opinions again of medical experts. Do we go to a third medical review panel to decipher or to determine which one of those two, the first or the second medical review panel, was correct or accurate? Is that the process?

* (1100)

It was my understanding that the MRP was struck to give a skilled or trained opinion on medical questions that cannot be answered by the adjudication or appeal process of the board, and that that was supposed to be the determination of a decision by the Appeal Commission and the board itself.

So the question I have here: What happens now if the second medical review panel comes back opposed to the claimant's claim and you have got one in favour unanimously? Do we strike a third one?

Mr. Davis: Well, again, I cannot speak for the appeal panel that is hearing the case. I would expect that what they would do is review all the information that is on the file and, hopefully, reach a conclusion on that information. This would include both medical review panel reports, including the text of the reports, not just the questions and answers.

Mr. Chairperson: Mr. Fox-Decent, did you wish to respond?

Mr. Fox-Decent: Mr. Chair, I just wanted to add in an attempt to help Mr. Reid on this issue, because I think there is legitimately a sense of frustration on your part relative to this MRP process as it has unfolded in the particular case. I think one of the key issues which we are now considering as a result of your inquiries on behalf of a particular person is what is meant by the original appeal panel no longer having further jurisdiction.

We have interpreted that very legalistically. We have considered that the original panel, once it is finished, is functus, has no further ability to do anything. It may very well be that an available interpretation to us is that an MRP who produces or which produces a result that

is not entirely comprehensible to those who are trying to understand what the result is may be reconvened for the strict purpose of giving further elaboration on their decision. So I can tell you that we are looking very seriously at whether it would not make good sense. We have not come to a conclusion yet.

But we are looking seriously at the question of whether it would not make good sense for an MRP that has produced a result that is not fully comprehensible, for the most common-sense result of that to be that the MRP has reconvened and asked to provide further elaboration on their decision rather than creating another MRP. You of course hypothesized the possibility that that could go on and on and on with another MRP and another MRP and so on.

Mr. Reid: I think Mr. Fox-Decent and Mr. Davis have described clearly my concerns here because, as I have indicated already, the MRP was set out to answer the medical questions that the adjudicator, the adjudication process, the board members, myself as an advocate cannot answer because we are not skilled in those areas, medical procedures, medical requirements for a claimant.

When you have a unanimous decision here, I think the question I have in this particular case and any others that may come along in the future is that in fairness to the claimant, if the Appeal Commission has a problem or a question that was not answered by the medical review panel, as Mr. Fox-Decent has identified, refer that back to the original medical review panel.

If you have questions that come from radiologists, as has happened in this case, let those questions be referred to that particular panel. Let them answer. They may have already taken that into consideration; they may have already thought of those medical problems. I think one of the reasons why I am raising that is in fairness to the claimant, which I know the board wants to be fair to, the claimants. I see that in this case, and I hope there are no others, that this would not continue down the road where other claimants were treated in an unfair fashion, because that is the perception that is out there right now. As I have already indicated, the perception is that the board is doctor shopping through the Appeal Commission.

I do not want to have that perception of our Workers Compensation system out there. I want the perception that it is a fair-minded board and a fair-minded Appeal Commission. That is why I have raised this as a case example here today. If my understanding or my perception of your comments, Mr. Fox-Decent, are accurate, that you are going to be looking at this matter—

Mr. Fox-Decent: That is a commitment.

Mr. Reid: A commitment to referring it back to the original medical review panel?

Mr. Fox-Decent: I cannot make that commitment at this stage, but we are seriously looking at this issue of what on the face of it appears to cause an MRP to end its existence and have no further authority. It is not a reasonable interpretation, yes, that is true, in terms of their finding any further evidence relative to or commenting on any further evidence relative to.

But if they are simply being asked to explain further by a legitimate authority such as the Appeal Commission or such as the board itself why they made a particular decision, would it not be reasonable to simply allow that original panel to reconvene for that purpose? Now, I cannot commit today, sir, because we have not completed our thinking on this and our discussion on this, but I can commit to you today that this issue is receiving serious consideration. I probably should leave it at that. My personal view is probably expressed by what I have said, relative to what would make sense in the process but, I mean, we are in a system obviously where we need to give consideration to all the issues carefully. I can assure you that that is what will happen with regard to this MRP issue. And you can expect, of course, to know the results of our deliberations.

Mr. Reid: I thank you for that undertaking. I have trust and confidence in members of the board and in Mr. Fox-Decent that you will do what is right for the claimant. I am still hopeful of that. Our experiences and our interaction have been very positive to this point in time, so I have a trust factor. I will leave that matter with you to resolve in a fair and equitable manner for the claimant. I have put on the record here what I think I see as being fair and reasonable. Perhaps Mr. Davis

would care to comment on some other aspects of the case that maybe have not been drawn to Mr. Fox-Decent or my attention that may shed some further light on this matter.

Mr. Fox-Decent: If it is relevant to the operation of the board and the appeal process, I would allow that; specifics to the case I would hesitate.

Mr. Davis: I am somewhat reluctant as well to talk about specifics of the case in this venue inasmuch as it is still in the information-gathering format and that no decisions have been made on it, but one thing I would like to say is that the appeal panel, when they look at the medical review panels, look at, as I said, not only the answers and questions, but the body of the report itself. If there seems to be some question as to how the answers were arrived at after looking at the body of the report itself, that may be a factor.

Finally, I would say that I would be happy to meet with you at any time to discuss the case perhaps in a bit more detail at your leisure.

* (1110)

Mr. Reid: I thank Mr. Davis for that offer. I think in fairness to you, sir, to members of the board, I should give you some time on this matter. I am sure you are aware of the details of the case. I have raised in some general way the details of this particular case as it applies to the workings of the medical review panel, as it applies to the Appeal Commission, and my concerns relating to that can be discussed in some broader length at some other opportunity. I will try to make the time and find the time to come over and talk with you. I will leave the more specifics relating to this matter that I have raised here today to allow the board the opportunity and to the Appeal Commission to deal with the matter, and trust that you will correspond or respond to that matter in a fairly timely fashion. I am not committing you to a day or two in this process, but I think in a timely fashion would be appropriate to give them that opportunity.

Mr. Chairperson, with that understanding between us, I would like to move into other questions dealing with the Appeal Commission's work, because it is my understanding through the review office that there is

both the literature review or non-oral review of files that take place. I would like to know more about that particular process, because it is my understanding that when advocates or the Worker Advisor officers would correspond with the board on appeal of a case, then an officer of the board—I do not know if it is Mr. Davis or other officers—would do a literature review of the file and make the decision on that basis without referring it to some other panel of members. Is my understanding accurate?

Mr. Fox-Decent: In fairness, Mr. Chair, I think probably if it is the review office which is our first—

Mr. Davis: No. No, it is not.

Mr. Fox-Decent: It is not? You are talking about Appeal Commission process, Mr. Reid? Sorry.

Mr. Chairperson: Go ahead, Mr. Davis.

Mr. Davis: Yes, thank you. When somebody wishes to appeal a Workers Compensation Board decision, they send an application form by the Appeal Commission. The application form indicates the opportunity for the individual who is applying to have a paper review of the file, a standard hearing of the case or an oral hearing. So that is how it starts out. The applicant indicates if they want a paper review.

Now, when the cases are appealed, they go to the Registrar or the Assistant Registrar, and they look at the file to see whether the information that the person is requesting already has been dealt with by the Workers Compensation Board. They look at the nature of the request, that is, is it a review or a hearing that is being requested, and they might agree that it would be appropriate to have a paper review as requested. On the other hand, somebody might ask for a paper review, and the Registrar would think that perhaps that person should have a hearing, and if that is the case the file could be sent to the panel to hear the case to decide whether they want to have a hearing or a review, but basically, in a nutshell, it is up to the appellant to decide whether they want a hearing or a review. A review being a paper review of the file documentation.

Mr. Reid: There is some perception, if I can use that term again, by claimants that I have dealt with—and

there has been perhaps into the thousands by now that have contacted me over the years since becoming the critic for the Workers Compensation system—some concern that it is the opinion of an individual having determination on whether or not the matter can go to further appeal, whether or not the appeal is going to be allowed. So there is a perception there that, at least, it is only one individual that is passing judgment on a case, and it is only being done on the basis of the information on there with no contact with the claimant themselves on a direct basis.

Now I am not being critical here of the process, as you have explained it here. I am just referencing for you matters that have been drawn to my attention. I know you would be hard-pressed for the number of appeals that would come forward to sit down with every claimant and listen to their concerns, but I am just drawing to your attention that there is a perception that claimants feel it is only one individual that is making a decision on the claim. The board has written back to me so many times on correspondence saying not allowable under Section 60.9 of the act, which I understand is in the legislation that is in place. I do not agree with all the legislation under The Workers Compensation Act that is in place. We were opposed to many of the provisions, not all but many of the provisions of Bill 59 when it came forward, and we have indicated our displeasure with that bill at the time, but I am just drawing to your attention, to members of the board, the perception that is there.

Mr. Davis: Perhaps I misunderstood what you meant initially. I can tell you that whether it is a paper review or an expedited hearing or a regular hearing, all those cases are dealt with by a full panel and not one person. The decision is made by a panel with regard to the issue that is under appeal. I thought that you were asking me who decides whether it is going to be a paper review or a hearing, and I indicated that it is up to the appellant to state what format the appellant wants, but once it reaches our offices, any decision is made by a three-member panel.

Mr. Reid: My initial question was asked to educate myself, and my second comments were meant to indicate to you the concerns that have been passed on to me by claimants as by way of information to you, not to be critical of the process you have, but I am trying to

educate myself at the same time. So I shared those thoughts with you as they have been drawn to my attention.

I want to look at the comparison, Mr. Chairperson, that takes place with the post-hearing activities between December 1994 and December of this past year, '96. They are showing a 100-percent increase in these Appeal Commission hearings that have already decided—and let us see page numbers here, it is in the post-hearing activities—decided but not communicated. So I take it that is not communicated with the claimant. Is there not a process in place where the panels have already decided to have a timely correspondence undertaken to advise the claimants and the employer of decisions that have been rendered by the Appeal Commission? I raise the question because there has been a significant increase in “decided but not communicated.”

Mr. Davis: Are you referring to the decided but not communicated line?

Mr. Reid: Yes.

Mr. Davis: What that means, basically, is that the appeal panels hearing the cases by the end of December 1996 had made decisions but had not yet written the letter of communication to the individuals involved. Under the Appeal Commission rules of procedure, a decision has to be communicated within 60 days of the hearing. I cannot tell you why there would be 23 in 1996 as opposed to only 10 in 1995. It may have been that there were more hearings heard in the latter part of 1996 as opposed to 1995.

Mr. Reid: I just draw that to your attention. I mean, if there is a problem with other staffing, I know administratively you will address that internally to your operations, but I just draw that to you, and I know there is a 60 day, and I thank you for reminding me of that 60-day limit for advising the claimants. The board, I know, through its service delivery has been trying to improve its communication and its activity's interaction with the claimants and the employers, which I think is a step in the right direction because there was a problem there in past in the service-delivery portion. The board has made, I think, some positive steps in that direction, but when I see this not communicated I did

not know the reason why. That is why I am asking the question whether or not the claimants are having to wait that extra period of time for the decision to be communicated to them. As the board already knows, I am sure the minister knows, anybody that is involved with the board has a certain amount of apprehension awaiting a decision, and that is why I raise the matter here today.

* (1120)

I will just draw it to your attention, and if you have other comments you would like to add I will not add more comments to it than that.

Mr. Davis: Just one final thing. I might say that at the end of December 1996, the average day from the time of decision was made to get a decision letter out was just slightly over 21 days.

Mr. Reid: Mr. Chairperson, I have no further questions with the Appeal Commission. I would like to move into other areas of dealing with the board. I thank Mr. Davis for his comments and his clarifications here today. I want to deal with—

An Honourable Member: Can we pass the Appeal Commission?

Mr. Reid: It is part of the whole thing, there is no need to.

Mr. Chairperson: Could we deal then probably with the 1995 Operating Plan and pass that?

Mr. Reid: We have some questions in that regard.

Mr. Chairperson: Okay, we will entertain the questions first then.

Mr. Reid: Mr. Chairperson, I want to, and perhaps if Mr. Fox-Decent has members from the board that are with him here today dealing with special investigations, perhaps you would like to call them to the table.

Mr. Fox-Decent: The corporate counsel was responsible for that area.

Mr. Reid: Mr. Chairperson, I have some questions dealing with the special investigations unit. I have had

claimants in my previous life, prior to coming to office to represent my community. I have had some contact with people in heavy industry and particularly the railway that had been involved or had special investigations undertaken on them as claimants of the board. Not knowing much about the activities of the special investigations unit, perhaps Mr. Scramstad can share with me what activities the board undertakes with respect to special investigations.

Mr. Alan Scramstad (Senior Board Counsel and Corporate Secretary, WCB): We currently employ one special investigator; we are in the process of looking at hiring an additional special investigator. The mandate of the special investigator is to look at allegations of fraud, misconduct by any stakeholder to the WCB and any participant in the program. That can involve a worker who is alleged to be defrauding the board, receiving benefits when they are not entitled to it. It can involve an employer who is coercing a worker not to file a claim for benefits or who has refused to comply with the noted provision of the act. It can involve a health-care practitioner who might be—there might be a concern about double-billing, so the mandate is fairly broad if we look at all of those kinds of issues.

The individual, I believe, last year dealt with—I am sorry, I do not have that statistic in front of me—239 investigations—thank you. I do not know how specific you want me to be about addressing this—okay, we do not conduct our own surveillance. Where there is a concern that someone is doing something on hours while they are receiving compensation and that they should not be doing, such as perhaps someone who is an injured roofer is roofing, our special investigator does not conduct that surveillance; we use the contract services of a licensed special investigator to do that for us. Where we investigate a claim and where the results do not confirm the allegation, we do not place those results on the file. They are held, in accordance with our policy, for a year and then can be destroyed; they do not get placed on the file. So there is no prejudice to the person where the allegation has been made.

Where the allegations do confirm there has been misconduct or do result in the change in the decision of the board, then it could be that it is not so much misconduct, but that the person presents more disabled

when he attends the board than when he is out in the community, and there is a change in the adjudicative decision. Those results are placed on the file because they are relied upon to make a decision. I am glad to get more specific if—

Mr. Reid: What triggers the process that the board would call in the services either of the one person that you have currently on staff, I take it, or the contract people that you would have working for the board? What would trigger their involvement with a case?

Mr. Scramstad: There would be a complaint from an employer. It could be an anonymous tip, although an anonymous tip would require some reasonable back-up information in it. We are not able to chase every anonymous tip, but it would have to have some credible information to it. The investigator would then look at the file and determine whether further investigation was required. It could be a staffperson who looks at the file and is concerned that the—again, the type of injury the worker suffered should not have caused the length and the degree of disability that has been caused, and they may request that the investigator look at the file.

So I would suggest that there are three main sources: internal through staff who look at certain indicators, such as the one I have referenced; employers who through their workforce and through other employers hear of workers who may be working on the side or involved in activity which they do not feel is appropriate if the individual is injured; or, thirdly, through anonymous tips. I would say that the anonymous tips are the smallest source of information.

Mr. Reid: With the relatively new provisions, I think it is under the Criminal Code of Canada, and I am not a lawyer.

An Honourable Member: You can count your blessings.

Mr. Reid: Perhaps I should. I do not mean that in any derogatory way, Mr. Chairperson. I am just referencing that I am not skilled in that area. I want to ask the question, since the board undertakes to do—you have undertaken 239 investigations involving special investigations—how do the stalking provisions under the Criminal Code of Canada apply against those types of

activities? Because I may be incorrect in this, and you can correct me if I am wrong, the board does not notify the claimant that they are undertaking these type of investigations and that they are actually watching an individual's house.

It has been drawn to my attention by at least a couple of claimants concerned about investigators or persons unknown, let me put it this way, persons unknown sitting outside their home in vehicles, perhaps have cameras set up in neighbours yards videotaping the activities. How does this provision apply? What problems do you encounter with respect and what clearances do you have to protect the board against stalking charges that may be levied by a claimant?

* (1130)

Mr. Scramstad: That is a good question that I will have to probably get back to you on in a little more detail later. Our surveillances generally are very short term. I would say that the average length of a surveillance is one day. We do not stalk people. We do not pursue them for lengthy periods of time. The longest surveillance I am aware of is probably three days. They are conducted by licensed investigators who are licensed through the Justice Department. We have never had a complaint from any worker about WCB investigators but, beyond that generality, I cannot answer that question.

Mr. Reid: Perhaps then I should take the opportunity to talk with Mr. Scramstad at another time when he has an opportunity to undertake some research into this matter, because it has been drawn to my attention and I know I have already raised it. I will not reference the actual case, but Mr. Fox-Decent is aware of the case where one particular individual was quite concerned about a vehicle following his family's vehicle leaving the family property, and the daughter of the family was driving the vehicle, it was not the claimant of the board. The daughter thought that she was being stalked; somebody was trailing her, and it created untold fear in the mind of the young woman, who was 19 or 20 years of age.

Considering the problems that we have in society these days, we want to make sure that that type of action does not happen where we create that kind of

fear in young persons or other members of our society, other adults. When I referenced this, and I will not reference the case, I want the board to make sure that, when you are undertaking these activities, you are, through your special investigators under contract or internal to the board, very, very certain who it is that you are trailing and that you are videotaping, because there are privacy provisions as well that come into play here. I have had claimants reference to me in past that they do not like to have videotape cameras aimed at the bedrooms of their home.

That is another concern that they have raised with me, so that you have to be very clear as a board when you undertake these activities that there are certain, I would think, legal limitations to the activities that you are undertaking, and you have to be sensitive to the needs of other members of our society that do not have that direct interaction with the board. It is only the claimant that you are having that activity undertaken for, and that is why I reference it here today.

Perhaps you can indicate for me, and you said you had some more detail, that you had 239 investigations. Can you give me a breakdown of those types of investigations whether it be—you said there were three categories—workers, employers and health care officials—and perhaps there are other areas?

Mr. Scramstad: Those are the three primary areas. I am sorry we did not break that down for you. That can easily be done, and we can provide you with that information. We have it; we just did not bring it with us today.

I should indicate to you that the vast majority of investigations—and when we give you the figures, you will see this—end up with a conclusion that there has been no wrongful activity or fraud or abuse by the parties who were alleged to have been breaking the law. So, although we do conduct a lot of investigations, the vast majority do not result in—they result in clearing the name of the individual as opposed to charges being laid.

Mr. Reid: I guess one would have to ask the question then, if the vast majority are being cleared—and I am happy to hear that because that means that those people that are being investigated are doing things properly;

they are not acting in contravention of the act or any other laws. Do you have a criterion that is in place to take into account the triggering of those types of investigations based on the information that you have supplied here? Because if you are finding that a lot of them do not merit further actions through these investigations, then I guess the question that comes to my mind is then: Why are you undertaking those types of activities?

Mr. Scramstad: I think that when I started I said that there had to be some credibility to the allegation, and there has to be some substance that causes us to believe that it is worth reviewing. We do have a criterion, and again I do not have that kind of detail with me, but the investigator has a criterion he looks at, he assesses it, he looks at the file and determines whether or not the case warrants further investigation. He does find cases of improper conduct and charges have been laid and convictions have been received, so I think that the program is justified on that basis.

I think a good investigations program is good for all the stakeholders because it removes the suspicion that is held by an employer against his worker if the case is investigated and we agree with the worker. It demonstrates to the communities where there is misconduct that the board does act, and I think that it is in everyone's interest that, where there is misconduct, it be found and acted upon. I think that we do have a well thought out system and that we are very cautious about investigations. As I say, I have not had any concerns related to stalking or to the types of investigations we conduct.

I should let you know that employers do conduct their own investigations as well. We are not the only people who do investigations and, often, an employer will go and hire an investigator on their own as well. We prefer to do the investigations ourselves because of our criteria.

Mr. Reid: I have heard that some employers have undertaken investigations, and I know it is not solely the responsibility of the board to ensure that these matters are dealt with properly. I hope the employers, if they are undertaking this, are doing this in a legal way and they would not be doing any activities illegally. I do not know if we have seen any charges

brought to bear against the board or other employers, for example, for invasion of privacy or for stalking. I will leave that with you and perhaps when we have the opportunity to talk at some later point then we can talk in more specific detail about the case.

What I would like to know here, Mr. Chairperson, is: Do you have a breakdown or historical comparison over a number of years of the number of investigations that have been undertaken by the board, internal or through contract?

Mr. Scramstad: I have some details on the number. The total number of investigations over the past three years, I cannot give you a breakdown of the number that involved surveillance. The only time that the investigation would involve an external party is where surveillance is done in terms of obtaining statements and all other investigation. That is done internally by our special investigator. The only time that we would retain an external party is where surveillance is being required.

* (1140)

I cannot tell you how many of these numbers that I am about to give you involved external investigation firms. In 1995 we had 194 investigations; in 1994 we had 144 investigations; and in 1996 we had 239 investigations. As I promised earlier, we can provide you with a breakdown and we can give you a further breakdown of which of those investigations also involved surveillance.

Mr. Reid: I will take that opportunity to speak with you and get a further breakdown on those numbers, because there appears to be a fluctuation in the numbers of a fair amount in your year-over-year comparisons. I have no other questions on the special investigations I do not think that cannot be discussed with Mr. Scramstad at another time. I thank him for his comments.

Mr. Chairperson, I would like to move to an area, and I am not sure, I can be corrected on this, it perhaps may follow more directly under policy or planning of the board, and it is dealing with pre-existing medical conditions. Perhaps the minister or Mr. Fox-Decent

can advise me on whether or not he needs staff to come to the table.

Mr. Fox-Decent: I will ask Sid Rogers, who is the senior director responsible for medical service to come to the table, and we will try among us to answer your questions, Mr. Reid. We did not bring any of our senior medical practitioners with us today, but rest assured that anything that we cannot answer today, we will provide you a written response.

Mr. Reid: Mr. Chairperson, I appreciate that assurance from Mr. Fox-Decent. I guess I should have explained a bit more clearly what I meant by pre-existing condition. There are a number of claims that I have dealt with over the years, some within my constituency and some from other constituencies throughout the province. It involves pre-existing conditions whereby the board will disallow a claim.

Now, do not think there is any one of us in this room that has not had, through the natural aging process of the human body, some conditions that come upon us, the aches and pains of everyday living. Perhaps you are in better condition than others in this room, Mr. Chairperson, but I would expect that on average will find that the human body in general has a way of degenerating over a number of years of living.

What I am finding through my experience is that our claimants of the board—there are some that have come to me, and I have written to the board on these matters—that these people would have been working normal lives, going to work every day, been able to lead normal lives at home and involved in other activities no doubt, and yet I am finding that the board is using this as a pretext or a condition for disallowing claims, that you, Mr. or Ms. or Mrs. Claimant, have a degenerative condition of the spine, and therefore even though you are going to work every day perfectly fine and you had no problems that would prevent you from leading a normal life, as soon as you get that workplace injury and you are off—they disallow the claim in some cases for pre-existing conditions that have had in some cases even no basis of medical intervention or medical treatments by practitioners in the province.

I would like to know why the board uses that as one of the conditions that they use for disallowing claims

when every one of us knows that the human body does degenerate over a period of time.

Mr. Fox-Decent: Mr. Chair, with your permission I would ask you to call on this gentleman who is our senior director of Claims Adjudication, probably the best one to start on the response to this. Don Paul.

Mr. Don Paul (Senior Director, Claims Services, Adjudication, WCB): First of all there are, as we do get older, more and more often we do see medical evidence of individuals on, if you so called it, downslide, in terms of, if you take X-rays, you will note that there are degenerative changes.

Many of our injuries are back related as you are also aware, Mr. Reid. We look at each case individually. First and foremost, we are trying to establish whether or not an injury did in fact happen or an accident. When that occurs there are a great number of individuals who do have pre-existing conditions, but what we try and establish is in fact whether or not the accident happened, whether it arose out of and in the course of the employment and whether or not there is a loss of earning capacity as a result of that.

The pre-existing condition is part and parcel of that, but unless it can be absolutely shown that the injury was so insignificant that it did not have any effect on the pre-existing condition, then we would continue to pay that. In many cases we do pay for extended periods of time and then also take into consideration the effects of the pre-existing condition and in some cases provide cost relief to the employer of record.

Mr. Reid: The problem that I have is with the way some of the cases have been dealt with—and it is claimants' concerns too, it is not just mine. I do not disagree with your part of the comment that said that there may be the workplace injury that has been in general terms somewhat insignificant in what would consider a normal recovery period and that the claimant should have been able to go back to work, and that there may be cases where the pre-existing condition was an overriding factor.

I know it is not an easy decision that the board has to make when they are trying to adjudicate these type of a claims, but my experience has been, in dealing with

these cases, that the board has used this as a means of disallowing claims, the continuation of claims or the acceptance of claims because you have a degenerative condition of your spine. Well, anybody knows that, if you are leading a normal life or relatively normal life, there is going to be a certain amount of wearing on your spine. You can go to work every day and you can maintain normal living activities, but the correspondence that I have seen and the case files that I have seen are starting to show an increase in the number of times that this—maybe I just happen to be lucky and I see a lot of these cases where this is being used—but it seems to be a condition where the board is disallowing or curtailing or cutting back on the allowance of claims, claim time for people whom the board indicates through adjudication has a pre-existing condition.

That is why I raise it here with you that normal living would give each and every one of us pre-existing conditions. We could walk out of this room today and, hopefully, not trip over the doorsill at the end of this room, and you could say I have a pre-existing condition in my back worn down by normal living and therefore my claim is not allowable. That is why I want to know how you adjudicate this type of claim, taking into consideration normal living.

Mr. Paul: In the first instance, we look at the mechanics of the injury. The pre-existing condition does not come into play. At first, we look at whether or not an accident did in fact happen and whether the worker is disabled and there is a loss of earning capacity as a result of that. I may be misreading you, but in terms of the initial compensability of the claim and the initial adjudication, our statistics do not bear that out in terms of an increase of nonacceptance in those types of claims. Where it does come into effect, I think, is more so at the end after we have accepted the claim when we try and make a determination as to whether or not the worker is no longer suffering from the effects of the injury in his back to the pre-existing state. So I might have misread that in terms of—

* (1150)

Mr. Reid: I just want to draw it to the attention of the board, and then I will leave it with you. I will not belabour the point. There appears, at least a perception

in my mind, in the cases that I have seen that this is becoming a predominant factor for disallowing claims by the board. I am seeing more and more of this. I think if I was to give the board any advice and the minister any advice on this, it would be to be very careful on how you use the pre-existing conditions of the human body as a factor for disallowing claims.

There are some cases that I have seen where there have been fairly significant back injuries—and I am talking disc problems in the spine—where the pre-existing condition has been used as a means to disallow the claim saying that, according to—I reference the term “meat chart” guardedly—but the meat chart says that you should have a recovery norm of this number of weeks for this type of an injury and that the board will say, okay, we have reached that point in time, your recovery has plateaued, you are fully recovered, you are able to return to work and it is only the pre-existing condition that is keeping you from returning to your normal life and to your normal work pattern. That is what I am seeing here, and I want to draw to your attention that this is a serious matter that I do not think that you should be using very lightly in terminating the cases for the pre-existing conditions.

Mr. Fox-Decent: Just a couple of comments, Mr. Chair. Mr. Reid, first I would want you to feel that we believe very strongly that we are in the business of paying every legitimate claim and paying it to the full extent of entitlement. That is the business we are in, in my view, and where we arbitrarily cut people off, I think, you are probably talking more about that than denial of initial claims because initial claims there is only 1.7 percent of our initial claims that are denied; 98 percent-plus are accepted. But I think the worker often feels aggrieved that at week X, they suddenly are told that their claim is finished in terms of any further payment.

I want to strongly support your view that it is our job to pay an injured worker everything to which they are entitled based on the test of the balance of probabilities, which is what the act provides as the test and, of course, in the case of occupational disease, we must remember that there is the rather stricter test of dominant cause when you are talking about occupational disease. It is not just balance of probabilities, it is also the dominant cause that has to be

tested, but I take your opinion, sir, with the sincerity it is made as just a reminder to us that we are in the business of providing compensation to injured workers based on what the law allows and that we should not be using any pretext to shorten our obligation relative to the payment to workers.

Mr. Reid: I will leave that with you, because I have noted that there has been an increase, a marked increase, in the number of times that I have seen case files come to my attention using the criterion of pre-existing condition for termination of benefits and claim and disallowance of any further claimant support by the Compensation Board, and if there is a way that you can address the problem, to take into consideration the concerns that I have raised here, I would appreciate that you undertake that activity.

Mr. Fox-Decent: I was going to say, Mr. Reid, that we will endeavour to look at this issue, but it is easy enough to say endeavour, we will look at it, we will look at the statistics, we will provide you what statistics we have, not in any attempt to rebutt what you are saying, because I take what you are saying very seriously. Certainly please feel that we have noted with full measure what you have said on this issue, and we will take a look at it.

Mr. Reid: Mr. Fox-Decent, you anticipated my next question on the statistics, so I appreciate, you have some statistics with regard then in a historical perspective as well. I would appreciate knowing that information.

I want to ask some questions pertaining to a particular case, and I will not reference the individual that is involved with the case, but I am sure that every member in this room would be somewhat familiar, and I know the board members will. It is involving the Power Vac case, where the company was subsequently prosecuted, although in my estimation it was not to the full extent of the law, through no fault of the Minister of Labour. It was a Justice department problem and I have raised that matter in the House prior with the Justice department's handling of the case.

I would like to know, and I have given some advance notice to board members that I would be raising this

matter, know what activities the board is undertaking to help this young man who was very, very severely burned in that very tragic fire. What activities are the board undertaking to help this young man to restore his life to as near normal as possible, because we want—I think we have a very strong obligation to this young man, the way I see it, to make sure that everything humanly possible is done to help him out in his recovery. Can you advise me, members of the committee, what steps you have taken?

Mr. Fox-Decent: We would be very pleased to do that, Mr. Chair. We would like to think in this case that we have truly gone the extra kilometre. It is a terribly tragic accident and a very remarkable person involved in the young man who has done so much to rebuild his own life with his own determination and will, but we are privileged to have been a part of that exercise and I am going to ask Don Paul, with your permission, to give you more detail.

Mr. Paul: Yes, we have followed it, obviously, right from the outset and I would echo Professor Fox-Decent's comments; this is probably the most courageous individual that I have ever seen in the years that I have been at the board. He really has some great courage. We have worked with him and his family right from the outset, while they went through the traumatic times, while he was in the hospital, at the outset and provided services to the family in a number of different ways—support, and we were there for them for nursing and particularly in all the medical aid costs and to reassure him that as he got better, we would be there every step of the way with him, in order to try and get him back to gainful employment if that is where he wanted to go, and he has made remarkable strides. We do have, in fact, appointed a vocational rehab counsellor with him from the outset and they have been actively involved. We are very pleased to say that he has gone back to work part time or graduated return to work and modified work with the accident employer, who, in fairness to them, has been terrific in the sense of trying to bring him back into gainful employment. He does have a very tough road ahead, but we are working with him every step of the way, and much of the credit certainly has to go to him.

Mr. Reid: Mr. Chairperson, very unfortunately, we had another accident yesterday at a Transcona business. I think it was Kodiak was the company name where another man, another person, was burned in a workplace accident. This really concerns me. It is not only the number of accidents, but it is the severity of the accidents for what I see that causes that, in the cases at least as I know them to be are preventable. Is the board undertaking activities with Workplace Safety and Health, you know, advising—maybe this is a question more directly to the minister too, dealing with Workplace Safety and Health, because where I see accidents like the one at Kodiak. Yesterday from my understanding of the very limited details that came out, there should have been some precautionary steps taken to prevent that accident from happening, just in pure logical thinking. And the same thing could apply to the Power Vac case that I have referenced here with you today. What steps is the board taking to educate both employers and the employees working in work sites throughout the province to make sure that if you are not certain about the job that you are doing that you take some precautionary or preventative steps to prevent accidents from happening.

Mr. Fox-Decent: Mr. Reid, the responsibility for prevention in the sense of the public domain, as you know, belongs to Workplace Safety and Health, and we basically pay the bill for the functioning of Workplace Safety and Health, about \$4.3 million in '96. However, I do not mean that to be a sort of pass-off. We are very interested in prevention, for obvious reasons, because by tragic case example, we know what happens when prevention fails. Not that every accident involves a fail of prevention, but certainly many of them do. We work very closely with Workplace Safety and Health. We have an ongoing integrative, co-operative relationship, frequent contact between various levels in our two organizations.

We found in '94, for example, that we had some substantial increase in accidents in certain sectors, and it was clear that we needed to do something, to alert the employer and to find out what was wrong, that certain sectors were finding some increase in accidents. So we formed a joint task force with Workplace Safety and Health. We went out into those workplaces. We spoke to the employer, and we worked with them toward dealing with the creation of safety programs that would

obviously prevent the continuing increase in their statistics. So there is a lot we do together, and we pay their bill.

We, to some extent, provide certainly a lot of encouragement and some money to associations that are interested in safety and in accident prevention, but I do not think it is really enough. We are a little frustrated, on occasion, that we do not directly do more. I think it is fair to say that there is some impediment to us doing a great deal more without the co-operation of Workplace Safety and Health because, of course, the mandate is clearly Workplace Safety and Health with regard to the prevention and the enforcement of the safety and health situations in the workplace.

Mr. Reid: I am happy to hear that you are taking steps. I have known the board to be involved in the process, but where the accidents are preventable, like the one in the Power Vac case, I mean, the Kodiak one—I know that probably the majority of the accidents that are happening in the province are preventable. We would hope, anyway, they are preventable, and steps should be taken. It should be an education process both for the employees and the employers. It is my understanding that the board is involved in some of those activities to try and educate both stakeholders in the process.

Can you tell me, going back to the Power Vac matter with the young man that was involved, is the board covering all of the medical costs and the other associated costs, and are we making sure that every medical opportunity to have—how do I term this—full recovery, medically speaking, both internally and externally, steps are taken to assist the young person? I mean, it has to be a very tragic situation for someone to be in that type of a predicament, and I hope, perhaps, you can explain to me what medical steps you are taking to provide treatment for the young man, and is the board is picking up full cost for the activities?

Mr. Fox-Decent: We are covering everything, including some wage replacement for family members who had to be away from their workplace when this accident occurred and obviously needed to be with their son. Without going into too much detail, we grew a new skin for the young man in the United States; some remarkable technology where some of his skin cells are

taken and flown to a lab in California and they culture and begin to grow and then that skin is applied and it spreads to the whole body eventually. There was \$120,000, I think, involved with that portion of the exercise. We are covering every aspect of this case in terms of his medical costs. We will continue to do so as long as the case remains on our books, as I think it will, for a very long time.

I have just an additional comment, Mr. Reid. I am reluctant to say this because they are not here to speak for themselves, but I understand the family are, in fact, very satisfied with the service that we have been able to provide. I do not think that it is any particular credit to us; we are doing what we should be doing. But we would like to think and I think we have assurance from the family that they are pleased with the support they are getting from us.

Mr. Reid: I am happy to hear, as you have indicated, that the family is pleased with the level of service that the board is providing and, hopefully, I believe will continue to provide service to that family and to that young man, both by way of medical treatments that may be necessary through the course of his lifetime, any other counselling that may be required by the family members and any vocational rehabilitation that may be required for the individual now and in the future because, obviously, there is going to be a fair amount—I would expect, although I am no expert—of psychological repercussions as a result of the tragic accident. So, I will leave that point with you. I thank you for answering my questions with respect to the Power Vac case.

I had raised one other matter, Mr. Chairperson, with the board with respect to Poulin's. But I think it is a matter that Workplace Safety and Health is already dealing with. It may perhaps have gone before the courts. It would not be appropriate, I believe, at this time, to move into that area, so I will leave that matter aside. Perhaps some internal discussions with the board members would be more appropriate instead of having it on the record.

Mr. Fox-Decent: We can say a bit on that. If it would be helpful for Mr. Reid, Don Paul would be pleased to talk for a minute or two on that subject.

Mr. Paul: We did just some preliminary work on it the other day. The individual was injured in the latter part of 1995. It is my understanding he inhaled some methyl bromide while working for Poulin's. He was in the hospital for approximately eight months and subsequently has been returned home. We do have him slated for an examination by one of the board specialists for the end of the month, to determine his present condition, the diagnosis and the prognosis to determine whether or not he is going to be employable at any point in time because of the severity of the injury.

We do actively have a voc rehab counsellor involved in the case. He has been continuously in pay ever since the time of the injury; it was, you know, a very serious accident. But we are on top of it. He has been appointed a voc rehab counsellor. We will know much better in terms of position after we have him examined by our own physicians, so we are on top of it and fully intend to stay on the case.

Mr. Reid: So then, my understanding is that an assessment is being done for the needs of the individual that was involved. That has not been concluded at this time, for a decision to be made whether or not the individual would be on the voc rehab side of the ledger for the board, which would indicate that somewhere in point of time you would expect that person to go back to work versus a permanent disability for the individual, which would indicate that they would not be able to return to active employment.

Mr. Paul: Permanent disability may come after. This is more so to determine whether or not he should continue on with total benefits for a period of time and that he may never be employable. So you are quite right with respect to that. The permanent disability would be considered at a later date in terms of exactly how permanent the damage is.

Mr. Reid: Thank you, Mr. Paul, for those explanations. Mr. Chairperson, I have some questions. I think it deals with policy. It involves loss of hearing, because it is my understanding the board policy will only compensate an individual for hearing loss if there is loss of hearing at a certain level in both ears. I

believe other jurisdictions in Canada have hearing loss in a single ear being allowed as a compensable injury.

* (1210)

Has the board made any progress? Because I had raised this at previous committee hearings. Has the board made any progress in deciding on whether or not there would be a policy change in this regard?

Mr. Fox-Decent: We certainly have not discussed that issue for some time, Mr. Reid. It is on our list of issues, but it does not have a very high priority. Certainly we are open to suggestions that it ought to have a higher priority. I mean, things fight with each other relative to what gets done first, but that is my frank comment to you, that there has not been any discussion of this issue at the level of the board for a couple of years anyway. Now, we have not met for more than two years. Your question obviously is: What has happened since the last time we met? Nothing.

Mr. Reid: Mr. Chairperson, that is a frank answer. I will leave that with you again. I have raised it again this time. As your priorities may dictate internal to the board, only you, as board members, know them better than other members that are external to your process. I leave it with you that other jurisdictions have and do provide the compensation for hearing loss in a single ear versus the current practice here in Manitoba of hearing loss in both ears. So I will just leave that with you as a matter that I have raised again. I would like to ask—

Mr. Fox-Decent: I just want to make sure of the record. That is true, that we do not provide for any compensation for hearing loss in one ear.

Mr. Reid: I had a case raised with me, and I have never encountered one like this before. I am not going to reference the name, but it is something dealing with policy for the board, and it involves a traumatic event. Now, you, as board members, may have been involved in other traumatic events perhaps involving police officers, ambulance attendants or firefighters. This case involved someone that was not in the public service but was working in the private sector. The individual, a woman, was involved in a crash of an aircraft while in the employ of the company.

The aircraft crashed. I will not say the location, although I have the case file here with me today. The individual has contacted me many, many times. She recovered, she tells me, from the physical problems she encountered in the aircraft crash, but the psychological problems continue to manifest themselves; they continue to plague on her. The board has disallowed the claim for the psychological impact of that particular crash. Now, I do not know about the rest of you, but I am one of those white-knuckled fliers, and I can empathize with the individual and the plight of the individual.

The concern that she has and the concern that I have here, and I am representing this matter today with respect to the policy of the board, is that there is no consideration being given to this individual having to go back to the employer who, she tells me, has no alternate employment for her. She told me she has asked on numerous occasions and there is no ability for her to stay on the ground working at the location of the operations here, which is the Northern Stores, here in the city of Winnipeg. The employer says, you go to that job or you do not have a job. It involves flying to every remote part of the Northwest Territories, Manitoba, northwestern Ontario, perhaps even Saskatchewan and Alberta.

So my question here today is: What type of a policy do we have in place to help an individual such as this where they have encountered a traumatic event, the employer has no alternate employment for the individual, to take into consideration the needs of the person who is now, she tells me, deathly afraid of another air crash, and with good reason? Because of the job conditions imposed by the employer and the unwillingness of the board to cover this type of situation, she is forced to get on these small aircraft and to fly into every nook and hamlet on every part of the northern part of our continent here. What type of policy do we have in place to deal with a situation like this?

Mr. Paul: First, I am unaware of this particular case. We do have policy, and there is legislation that talks about stress in any form in terms of reaction to a traumatic event. I do not know that you can get much more traumatic than an airplane crash. All I could say to you is that I would be more than pleased to be able

to look at this separately, take it as notice, and get back to you on it, because it makes sense to me that we should be assessing this, because there are more than the physical effects of the injury involved from the airplane crash, that it would be standard procedure for us to determine any psychological impact as a result of that accident. So I would like to have an opportunity to review the claim to determine if and why we disallowed or discontinued benefits on the basis of the psychological condition, based on what you have provided me.

Mr. Reid: I will undertake to meet with you or communicate with you with respect to the case because I think it was my impression that the board did allow for some consideration for singular traumatic events that were involved in the case. I will draw the case file number to your attention and the person's name. Then we can talk about further activities with respect to the case.

Mr. Fox-Decent: I think that Don Paul, Mr. Reid, has indicated the policy is that we compensate for stress resulting from a traumatic event. We do not compensate generally for stress, but we do relative to a traumatic event. Since Mr. Paul and I are both terrified fliers, you need not say anything further relative to what the impact would be of having been in an air crash. But give us a chance to look at this individual case, if you will, at your convenience, and we will see what is going on with it.

Mr. Reid: I want to ask a question with respect to modified work, because vocational rehabilitation, I think, is involved in this process where an individual is injured in a workplace accident. They tried to seek out within the current employer, the accident employer, some form of alternate employment activities.

It is my understanding that that is not always possible. In some cases, even two of my own constituents have situations where the accident employer said, yes, we have alternate employment available, but the employees themselves, the claimants, tell me that there is a problem with that alternate employment. I would like to know what process the board undertakes through vocational rehabilitation, which I think is the appropriate area, to go out and to see first-hand and to make a determination on whether

or not the alternate employment is indeed within the physical restrictions of the individual that is returning to work.

Mr. Sid Rogers (Senior Director, Claims Services, Vocational Rehabilitation, WCB): The situation you described is one that was brought to our attention a year or so ago. We made a commitment at that time, both Don's program, if they are in case management or voc rehab, if they have been in for a while longer, that if that is raised to our attention, we will go and investigate the worksite to see if in fact the alternate duties are within the restrictions. We do have a problem in the sense that somebody has to tell us. We cannot onsite supervise every one of those. They happen all the time; they are frequently successful. Employers and the workers work together and that just happens. But if a worker says to us that the alternate duties are outside the restrictions and it is not something that they can do, then we will go out, have a look and make that decision for them.

Mr. Reid: My concern here is that, and I am not trying to cast any aspersions here or say that employers are acting in an unfair way, I am just raising this as a matter, that there is a financial interest here for employers to get their employees back to work. If they say that there is alternate work, modified duties available, if someone does not go out and investigate that in the actual worksite to determine that that work is actually falling within the capabilities of the physical restrictions that are imposed by the medical personnel, the individual could be setting themselves up, I should say, for recurrence of the existing injury or a new injury.

* (1220)

That is why I am raising this here with you, because I think it is important that there is a determination made on whether or not those modified duties or alternate work is within the physical limitations or restrictions that have been imposed. I do have some case file history on this not being the case, that there are duties that are being assigned by the employer, because it is in their financial interest to have the employee return to work, and I understand that. But the board has an obligation or responsibility to make sure that those modified duties are within the limitations. That is why

I raise it with you here. I am not sure if you have any comments that you want to add to that.

Mr. Rogers: We are aware certainly of the dynamic that you are explaining. That happens in some workplaces. We are in a position where we cannot go out on every alternate or modified duty situation, but we will go out any time it is flagged for us that there is an issue, that there may be some difference of opinion.

Mr. Reid: Mr. Chairperson, I have several other questions that I would like to ask, but my colleague the member for Inkster (Mr. Lamoureux) I believe has some questions he would like to ask. I will give him the opportunity to ask his questions as well.

Mr. Chairperson: We have five minutes, six minutes left in our deliberations. I think that was the time decided that we would adjourn. I am wondering before we proceed whether there is a will to pass the '95 and '96 reports.

Mr. Kevin Lamoureux (Inkster): I thank the member for Transcona (Mr. Reid) for giving me some time just to, more so, as opposed to ask a question, because just recently, I was provided some information that was going to answer those specific questions, and I do appreciate being provided the answers. Actually, it follows up some questions that I had asked the last time Workers Compensation was before the committee. It is something in which it was actually encouraging to look at the numbers that were being provided.

A major concern that I have had over the years is the type of representation required to go before the board. It seemed at one point to me that I was always reluctant to tell people, well, you do not have to have a lawyer. Then they feel they go through the system and they find out that they have been rejected. Then they start second-guessing, well, maybe I should have had a lawyer. That always has been a concern of mine. Finally, I was provided some information which I think can be explained to constituents in the sense that you do not necessarily have to have a lawyer, and that is important to me, because I know that a vast majority of individuals that are receiving workers compensation are not necessarily in a position in which they can afford to have lawyers and so forth representing them.

Having said that, I did want to acknowledge to a certain degree, back in 1988 I used to get quite a few calls on workers compensation and complaints. The number of complaints have gone down considerably, handsomely actually. I am quite pleased with that. So something obviously is happening over at Workers Compensation. I do not want to claim to know exactly what it is that has happened, but I am pleased to see the number of complaints have gone down.

Having said that, I wanted more so than to propose a question is—because it is the type of thing which I watch for as an MLA and as a political party. We want to be as consumer friendly as we can be in terms of as an organization, to monitor the types of time delays that are there through the appeal mechanisms that are put into place. What we expect to see as politicians is a relatively quick response to complaints.

At one time I had constituents who would take well over a year to go through the complete process of appeals. I always felt that that was most inappropriate. I think that this is something that has to be monitored. I guess the reason why I say it now and today is because I know the individuals that are around the table here have a great deal of influence in terms of what is actually happening with workers compensation. Even though on the surface it appears to be doing well with representations and dealing with the appeals, I think that it has to be continuously monitored. There is still room for improvement, I believe, in dealing with it.

I think quite often what happens is as an adjudicator, sometimes they become a little bit—I do not want to say, dehumanized—desensitized to some of the cases that are before them. Desensitized, always keeping in mind the people that are appealing or trying to get the benefits have other obligations that they have to meet in terms of finances, bills continue to come in.

So in general, as I indicate, I am somewhat satisfied with Workers Compensation. I have seen some significant improvement, but I do caution in the sense that I do think that there are areas which still can be improved. The key numbers for the appeals to look at are the ones that were provided to me earlier. I look forward to, in possibly future years, just being kept informed on those percentages, because that is an easier way for me to be able to tell, in terms of to convey to

my constituents what is actually happening and to monitor in terms of how well Workers Compensation is doing.

Mr. Gilleshammer: I will just defer to Mr. Fox-Decent on this.

Mr. Chairperson: We have half a minute to respond.

Mr. Gilleshammer: I thank the member for his positive comments about the progress that has been made at Workers Compensation. I know that with specific issues this morning, the board is more than happy to provide those details. Just before we wrap up, I think we have spent two and a half hours making some significant progress on all issues. I am pleased to hear the member for Transcona (Mr. Reid) indicate his trust and confidence in the board and the operation of the WCB. I would suggest that maybe we could reflect the progress that we have made by passing the 1995 report and leaving the 1996 one on the table for further discussion. I am wondering if there is agreement to do that.

Mr. Chairperson: Shall the 1995 Five-Year Operating Plan of the Workers Compensation Board pass?

Mr. Reid: With the understanding, Mr. Chairperson, that we will have an opportunity in the near future to come back to talk and discuss the 1996 report, I am prepared to pass the 1995. [agreed]

Mr. Chairperson: Shall the 1995 Operating Plan report pass?

Some Honourable Members: Pass.

Mr. Chairperson: The item is accordingly passed. Shall the December 31, 1995, Annual Report of the Workers Compensation Board pass?

Some Honourable Members: Pass.

Mr. Chairperson: The report is accordingly passed.

It is now 12:30 p.m. This committee is adjourned and stands adjourned until called again. Thank you very much.

COMMITTEE ROSE AT: 12:31 p.m.