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on
Public Accounts

Chairperson
Mr. Leonard Derkach
Constituency of Russell

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Ninth Legislature

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**LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON PUBLIC ACCOUNTS**

Wednesday, May 5, 2010

TIME – 5 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Leonard Derkach (Russell)

VICE-CHAIRPERSON – Mr. Gregory Dewar (Selkirk)

ATTENDANCE – 11 QUORUM – 6

Members of the Committee present:

Hon. Ms. Wowchuk

Mr. Borotsik, Meses. Braun, Brick, Messrs. Derkach, Dewar, Mrs. Driedger, Messrs. Lamoureux, Martindale, Pedersen, Wiebe

APPEARING:

Ms. Carol Bellringer, Auditor General

Mr. Jeff Parr, Deputy Minister of Labour and Immigration

MATTERS UNDER CONSIDERATION:

Auditor General's Report–Audit of Workplace Safety and Health, dated February 2007

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Mr. Chairperson: Good evening, ladies and gentlemen. Would the Standing Committee on Public Accounts please come to order.

The meeting has been called to consider the Auditor General's Report–Audit of Workplace Safety and Health, dated February 2007.

Before we get started, are there any suggestions from this committee as to how long we should sit this evening? Seeing none, is it agreeable that we sit until 7 o'clock and no later? *[Agreed]* Thank you.

Does the Auditor General wish to make an opening statement?

Ms. Carol Bellringer (Auditor General): Yes, thank you, Mr. Chairperson. I'd first like to introduce my staff who are in attendance this evening. Melissa Emslie, the audit principal who worked on the Workplace, Safety and Health audit is seated behind me, and Sandra Cohen, the director of

Value-for-Money Auditing is also here tonight. They're over in the viewing gallery.

I'm hosting two Master's of Public Administration Co-op students who are working with us for the next four months, Tiffany Beyer and Maria Nyarku, and, in fact, I believe I mentioned to you they may be available to assist with some Public Accounts Committee work if we need any research done.

Mr. Chairperson, this audit report was reviewed by the Public Accounts Committee on September 9th, 2009. So I won't repeat the opening statement that I made at that time. The members had the opportunity to ask the deputy minister about the audit then and also about the status of implementing the recommendations which we made in the audit report.

There was some discussion at the September Public Accounts Committee meeting about how the committee would obtain the department's status report on the implementation of the recommendations. This was not resolved at the September meeting, but subsequently the department distributed the status update to each of the committee members.

The department's report provided the status as at August 31st, 2009. Our office has not yet reviewed the status update though. We'll be doing so as at June 2010—so almost a year later than the update you've got—using updated information, and that will be available on our next follow-up report.

The committee did not pass the report at that September meeting pending further discussion of the status report and wanting the opportunity to look at the recommendations again after that.

* (17:10)

Mr. Chairperson: Thank you, Madam Auditor.

I welcome the minister and her staff to this meeting, welcome the minister especially, since she was the former vice-chair of this committee. And it's good to have you here. Perhaps—I think we have been together before—this is to the deputy minister—so I don't believe we need any introductions, but if there

are staff that you would like to introduce or have some other staff join you at the table, that is certainly welcome and that is up to you.

Mr. Deputy Minister, do you have an opening statement?

Mr. Jeff Parr (Deputy Minister of Labour and Immigration): Yes, I do.

Mr. Chairperson: Thank you. Proceed.

Mr. Parr: Yes, I'll recap a little bit of what we touched on last time.

The Auditor General's report came out in February 2007 following the review of the Safety and Health division. It came—it contained 51 recommendations that focussed on four primary areas: measuring and reporting of program effectiveness, identifying and 'priorizing' workplaces for inspections, inspection and monitoring processes, and focussing education initiatives.

We—the bulk of the report, we found, made a number of very constructive recommendations, which, combined with the increased resources that we've received, have helped us fine tune the operation of the Workplace Safety and Health and make some significant improvements. On receipt of the report, we established an implementation team and immediately began working our way through the report and developing actions to advance the recommendations.

We've been able to act on virtually all of the recommendations. I would just note that there was five that we found that we had difficulty with, and I think I touched on those before. They were the issue of expanding the data base to include all firms; I talked a bit about that last time. The—related to that, the recommendation to establish an inspection schedule for every single employer in the province. It relates to just the practicality of how we could get at that. There were a couple of other ones where we went back to our Crown prosecutor to discuss what would be appropriate and so, as a result, we found that we—it wouldn't make sense for us to proceed with the recommendations. And those were obtaining signatures on all formal communications between the Workplace Safety and Health and employers. Frankly, there'll be some times when employers refuse to sign.

The issuing improvement orders in all cases of non-compliance, there'll be instances where the

issues are fairly small and the officers will direct correction on the spot without issuing an order.

Responding to all instance and fatalities in person, there's a triage system that we have in place, which I'd be prepared to talk a bit about.

The areas in which the improvements—we've made some significant improvements with respect to strategic planning. We introduced a new quality assurance process as recommended in the—by the Auditor General. We found that to be very helpful in ensuring our officers operate according to our policy and procedures manuals, so we've got a much more disciplined approach to inspections and enforcement. So that was very helpful to us. We've got much better documentations of activities and improved performance measurements and tracking.

And I think I mentioned last time we were here one of the recommendations that was most helpful to us related to the issuance of administrative penalties. We had a process before, which was—required too much documentation from the officers and, consequently, we weren't getting into position where administrative penalties were being recommended. That's been sorted out. We've got a more streamlined approach. We're still confident that it includes all the things that we're required to do and we are in a position where we are, in fact, issuing administrative penalties.

I just want to touch on a couple things to highlight the progress we've made since the audit came out. We've seen the injury rate drop by more than 30 percent since 2000. The number of inspections has increased dramatically from 2004 to today. In 2004, we did 5,200 inspections; we're now doing over 10,000. We completed and updated the act and regulations and the audit makes reference to that, so we've made it—changes to our policy and procedure manual accordingly. We also have established a new SAFE Manitoba Web site, in conjunction with the WCB, which has all of the safety and health information on it. It's, I'm told, one of the best in Canada now, and it's information on how to comply with the act and how to do good health and safety. That's available to employers and workers, and a number of other things.

So there's the opening comments and, at that, I would just turn it over to the committee for questions.

Mr. Chairperson: Thank you very much, Mr. Parr. Now we are ready to open the floor up for questions.

I open it up to the committee members for questioning.

Mr. Doug Martindale (Burrows): Mr. Chairperson, I think we may only have one question, and that's for the deputy minister. And I'd like to ask him if he could describe some of the educational and prevention—or preventative initiatives that Workplace Health and Safety have been involved in, and the various roles of partners, such as business and the SAFE Workers of Tomorrow.

Mr. Parr: The—you're quite right to mention that there's a number of partners involved in the prevention business. The Workplace Safety and Health division has a very specific role and is one of the key partners. But one of our important partners there is the Workers Compensation Board. And so a number of the initiatives we undertake there are joint with them, and I'll touch on those a little bit.

But you're also right to point out that, in addition to that, we have industry safety associations that do a great deal of work with their members to help them put in place good safety and health practice to prevent injuries, and they've been very successful. I think in—since 2000, we've seen a significant change in what goes on in workplaces. Employers, I believe, now, are much more focussed on prevention as a general rule. They're taking much better action to make sure they're in compliance with health and safety and, frankly, to go beyond that to prevent injuries. And I think that's part of the reason that we're seeing some of the results.

With respect to some of the prevention activities that are under way, I mean, I would characterize all the enforcement activities as a prevention activity. And it's also sort of bracket all those—and we talked about how we had increased the number of inspections.

There's also been, in conjunction with the Workers Compensation Board—frankly, led by the Workers Compensation Board—a very successful public awareness campaign under the banner of Safe Manitoba, SAFE Work. The—I believe we're seeing the sort of—when they measure the effectiveness of these things, more than 80 percent of Manitobans are aware of it, can sort of spell out what SAFE means, how it, you know, what the acronym stands for. And so that's been—that has complemented quite nicely a number of the enforcement activities that our folks are engaged in.

We've seen significant increases in training at the Workplace Safety and Health division. The—just briefly on training, the Workplace Safety and Health division focussed its training down after the review in 2002. The recommendation we had at that point was, rather than trying to do all the training on all the matters related to safety and health, keep the focus on those things related to legislative compliance, so duties of, you know, the—so we did committee training, duties of supervisors, we'll provide training related to ergonomics.

But where there's industry-specific training—I'll use the example of construction—the Construction Safety Association is in a much better place to do that training than we ever would be, and so we leave it to the industry associations to drive that sort of thing.

The partnership with the WCB has evolved and is a very—it's a very good and healthy partnership that we have. As I mentioned, the roles are different. The WCB has a SAFE Work team that they send out, who go into workplaces to do reviews of safety and health practices. The reviews they do are consistent with our legal requirements for safety and health programs, so there's certainly consistency there. They will also help employers with their return-to-work programs as well, which is another important part of the equation. We do a number of bulletins and publications, and you've seen the advertising that we do as well. So that's a bit of a summary, but those are the things that are engaged in, and it takes all of those things working well to get the results for injury prevention. You can't just pull one out and say, that's the one that works.

Mr. Chairperson: Thank you, Mr. Parr.

Other questions?

Mr. Kevin Lamoureux (Inkster): I just have one in regards to the administrative fines. A few years ago, there was the concern, and there's reference even in your opening remarks, Mr. Parr, in regards to those administrative fines that are being issued. Can you just kind of give a sense as to how that's actually evolved over the last three years, let's say.

* (17:20)

Mr. Parr: Yes, I can. I think it's important to keep in mind that the regulation that brought about administrative penalties was passed in 2003, and so the period of the audit, I think, started in 2004?—2004-2005. It was a new instrument for our folks, and I think—oh, in an abundance of caution,

we had built some extraordinary documentation requirements for an officer to use these things.

The other thing I just want to touch on before I get into some of the improvements we made is, it's important to keep in mind that the purpose of the administrative penalties is not to generate revenue for government or to be a penalty to employers. It's to be used in those instances where an officer writes an improvement order and the employer refuses to comply. And we wanted to make sure that we didn't have something where there essentially a hair trigger on that, where, you know, if the officer writes the improvement order and the date for compliance comes and goes, then there's duty on the officer to go back and check. Well, okay, did you comply? Did you forget to send us the documentation? Are you going to comply? So we built in a duty for the officers to do that, and so, subsequent to that, if they don't comply, then a letter goes out warning them, saying, all right, if—you know, we've been in touch with you. Here's the letter that says if you don't comply, we will receive an administrative penalty. And if we receive nothing, then the officer goes back, does a reinspection at that point, and, at that point, issues the administrative penalty.

So we've—that we're finding that that's working. It's rare now that we have to use those things, which is a good thing. We don't want a situation where people are, you know, flaunting these orders. We've issued a total of 16 of these administrative penalties at this point. By and large, I would say, you know, the vast majority of situations, by the time we get to the point where we're issuing the letter saying, look, if you don't act on these orders there will be an administrative penalty, people move—they move on and then they comply with them. So I'm—the division sort of tracks us very carefully and, you know, we are issuing them.

Mr. Lamoureux: Before—and I'm glad to hear that. Before, actually, a fine would be applied, is there an appeal mechanism for the employer, or is it just the one individual—like, is there someone else that the employer could actually go to and say, look, what you're asking me to do is unreasonable, as an example? What sort of a appeal mechanism is there?

Mr. Parr: There's an appeal mechanism built into the safety and health act for all—for orders, whether they're stop-work orders or improvement orders, and it also applies in the case of an administrative penalty. So when that would get triggered—you know, there's a number of, you know, so the

employer can appeal the initial order if they think it's unreasonable. And we have it written right on to the bottom of the order that, if you find this objectionable or disagree with it in any way, this is how you do your appeal. And, frankly, if people think the order is wrong, it's better to appeal it than ignore it. So there's an opportunity to appeal there. If they—we get to the point where there's an administrative penalty issued, they can also appeal to the administrative penalty, and that appeal goes directly to the Labour Board.

And there have been appeals of the administrative penalties. People have, you know, so. So there is an appeal mechanism built into it. And, I think, you know, it's built right into how the Safety and Health division operates. I mean, we very much want to make sure that, you know, when they issue orders, they make sure people understand what the orders are. They tell them what the appeals mechanisms are and, when people launch an appeal, you know, they're looked at very carefully to make sure, well, was there—was the officer correct in the issuance of the order? Were, you know, were the, you know, was this really non-compliance with the act, that kind of thing? And so the short answer is yes, there is—there are appeals mechanisms.

Mr. Rick Borotsik (Brandon West): Thank you, Mr. Parr. You had indicated that there's been an increase in inspections from 5,000, I believe it was, to 10,000. So you've doubled your inspections. You also said that it was impossible to comply to the Auditor General's suggestion that every employer be inspected at some point in time. Of the 10,000 on an annual basis, what percentage of employers would that be?

Mr. Parr: Well, just to put it in perspective, 80 percent of employers have no injuries at all. And so, really, our population, if you want, that we're focussing on are those people who are having the injuries. And, I believe, the number is the top 1 percent of firms—or account for more than half of the injuries. And so what we've done is we give each of the orders—or officers—each of the officers has a list of—has an area they're responsible for, and there's a list of priority firms identified there.

So I understand that, on average, we do about 2,000 workplaces a year. So there's obviously some follow-up inspections in those places. High-risk places, we spend more time going back to. The kinds of places that, you know, we would probably not get to unless there was a complaint would be things like

lawyers' offices, accountants' offices, just low-hazard workplaces where—

Floor Comment: You want to stay away from those, anyway.

Mr. Parr: I suppose. So low-hazard workplaces where there's no reasonable expectation that there would be a reason for concern, no. If someone calls on us and says we've got a concern, we, of course, would go in and deal with that.

Mr. Borotsik: If I can recall correctly, you did hire some additional inspectors, is that correct? And, if so, how many did you hire over the last year?

Mr. Parr: Since 2007, 15 new positions have been filled. So I mean, we have turnover so we're always hiring staff, but there's 15 additional bodies and, with the—we expect to be hiring another five additional bodies this year.

Mr. Borotsik: You had said there were 16 non-compliance, or 16 of your orders were non-complied with. I believe the number was 16. Was that for this past year that you would have 16 orders non-complied with?

Mr. Parr: No, that would be the cumulative total since about 2008, since 2008. To be honest, I mean, we're not having—I mean, you know, it's—you know, it's an issue if we—you know, it is an issue that we want to get on top of, but, you know, when we issue orders, people are complying with them. And as we sort of move down the track and we start issuing letters saying that the administrative penalty's going to come, they come around. It really is someone who's sorting of digging right in, sort of, you know, they're really not happy about seeing us and they're just not going to move. It's an unusual occurrence.

Mr. Borotsik: And that's shocking, actually, that there's only 16 non-compliance orders since 2008. It's a good shock, don't—yeah, don't get me wrong. I—that's quite good.

How many orders would your department issue on an annual basis?

Mr. Parr: I'm sorry. I believe the number for 2009-'10 would be around 8,000. No, sorry—9,000.

Mr. Borotsik: Nine thousand orders?

Mr. Parr: Nine thousand orders a year, yes.

Mr. Borotsik: And those 9,000 will be worked through, obviously, if you've only got 16

non-compliant. So, of the 8,900-and-some-odd—the employers, obviously, are co-operative at that point.

Mr. Parr: Most employers are co-operative, we find. I mean, you know, I'm not going to try and tell you they're happy to see a safety health officer come through the door. But, I mean, I think we've got—we're certainly at a point where there's an understanding. You know, these folks are here. There's a job to be done, and so, you know, an order gets written and, you know, you're right. I mean, the great majority of instances people comply with those orders. They may, you know, I mean, I don't think we even get that many appeals on orders. I mean, we do; there's a number of appeals we have.

Mrs. Myrna Driedger (Charleswood): Mr. Parr, a question related to duration of claims. I notice that from 2002 to 2007 it stayed pretty steady, and then in 2008 there was quite a large jump in the average days paid for all wage-loss claims.

Was there anything particular that happened in 2008?

Mr. Parr: I'm at a bit of a—I don't know—I'm not sure what I can attribute that to. I mean, I think there's a number of factors that, you know, we would point to for longer WCB claims. Frankly, we're all getting a bit older; we don't heal up as quickly, and so as the labour force ages, you tend to see longer duration. Those—a lot of those would probably be soft tissue, musculoskeletal injuries, back injuries, those types of things, and so those tend to be a little bit longer.

It may also reflect—I couldn't explain the spike, but I think, you know, those—the duration could certainly be brought down with effective return-to-work programs. Now, there's a balance that needs to be achieved there where you—you know, the right way of doing it is to sort of engage the employees in the workplace and the development of work-share in the workplace so that, you know, it's not seen as punitive. But it can work very well to sort of bring those down.

The WCB folks would be in a much better position to explain exactly what they think happened there. But that's would be—that's part of it, I think, in any event.

Mrs. Driedger: When you see a spike like that, is there some kind of a format or is there a process that you follow through with them to ask what was particularly going on? It just seemed, you know, like, when I look at a graph, and it just jumps out so

dramatically, what kind of follow-up is there from the department, or is there any?

Mr. Parr: It would be—there's a couple things that would happen in those instances. The—one of the things that happens with—as a result of the relation with the WCB—is we receive injury data and statistics from them which we wouldn't be able to get otherwise. And so one of the things that happens is on an ongoing basis, the Workplace, Safety and Health Division, the WCB will analyze that and say, okay, what will we be seeing here? What does this tell us about the trends? Does this suggest we should be changing enforcement activities? Should we be doing some public awareness campaigns and these things? So we've seen, for example, some of the SAFE Work advertising campaigns have focussed on things like back injuries and those sorts of things. So that would be one of the types of things that comes out of that.

* (17:30)

So I think the sort of short answer is, you know, yes, but we would look at a number of different instruments. So, you know, what does it mean in terms of our inspection activity? Is there certain firms or certain industries that suggest we need to be spending more attention there? Some of them might go to the WCB, they might take it and say, well, what can we do in terms of the return-to-work stuff? What can we do around public awareness? So—

Mrs. Driedger: Have the statistics changed at all for 2009, or are—those statistics aren't in yet?

Mr. Parr: I haven't seen those statistics yet.

Mrs. Driedger: And, I just want to add that I'm really happy to see that fatality claims have dropped. It's always disturbing to know that there are fatalities in the work force, and, you know, some of them tend to be very young people and, you know, I just want to say that it's heartening to see that those numbers are coming down, even a little bit, and, hopefully, again we'll get better in the, you know, upcoming years.

Mr. Parr: Thank you for that. We—I mean, from our perspective, you know, any fatality is one too many, and so we continue to work our way through that.

One thing, just a note of caution, sort of looking at those and sort of looking for trends, because it's such a small number, it can move around quite dramatically. So we want to see that on a sustained basis, moving down.

Mr. Blaine Pedersen (Carman): Interesting statistics you throw out here; 80 percent of injuries have no or very few injuries. Is that—yeah, I think if I read that correctly.

Mr. Parr: Sorry, 80 percent of the workplaces that we have in our data base have no injuries, time-loss injuries, actually. That's more correct. No time-loss injuries.

Mr. Pedersen: Okay. So, just to throw that around, then, then 20 percent of workplaces are facing the majority of workplace injuries or claims. Is there a concentrated effort, then, made to—for safety programs or to reduce those, because obviously you're SAFE program that you've worked through with the WCB, it hits, you know, it's a mass advertising campaign, and we all see that but—so is there a concentrated effort made to—on safety training in those sort of, if I can call them, the more high-risk injuries, or high-risk workplaces?

Mr. Parr: Short answer to that is yes. We do a risk rating process to decide where the priority for inspection activity is going to be so, you know, they would get more attention for inspections than places that, you know, have fewer injuries. So we look at things like the injury rate, the size of the work force because, you know, even with low injury rate, you got a large work force, it's still a lot of people being injured so what can we do to bring that down? The nature of the industry. Construction and manufacturing are just inherently hazardous. Mining, even though it has a very low injury rate, is just inherently hazardous, requires lots of inspection activity so we would take that into account. So the short answer is yes, we would do that.

Since 2002, there has been a legal requirement for safety and health programs in all workplaces with more than 20 workers and so as we work through that, clearly, the places we start are the higher hazard workplaces and work down. So, for example, rather than start focussing on a school, we would be focussing on manufacturing or those types of things.

Mr. Pedersen: I was thinking more in terms of safety training. Obviously, you need the inspections and your inspection rate's gone up on the high, if I can call them, the high-hazard industries or something like that, but obviously, more safety training will result in less injuries, should result in less injuries. So is the emphasis on—I know that the—you're telling me the emphasis is on investigations compliance, but is there also an emphasis on safety training on those industries?

Mr. Parr: As I said, the division provides training for—related to the duties of supervisors and committees, how your committee works and that sort of thing. I'm told that that's sort of, you know, those are always oversubscribed in any event, so we just put the call out and people apply—or not apply, but, you know, they register.

It would not be unusual, though, for an officer, if they go into a workplace that has a great number of injuries and, you know, they see there's instances here where there's inadequate supervision as a possible cause, to write an order saying, you will take supervision training, and that's offered by our division. So some of that gets worked into it, but I couldn't say that we sort of go through and say, well, these are the ones we need to get in for committee training or supervision training based on the injury rates.

What we would do is take the information in terms of, you know, injury rates and say, well, can we, you know, would—there might be a lot of it in construction, for example, so we would have a conversation with the folks in the Construction Safety Association. And I think that's where some of that training you're talking about really applies, and so they would really encourage folks to participate in their training. So there would be that sort of a training initiative. We would also do some of our public awareness efforts related to that. So you know, we might focus on construction or manufacturing, but, in that instance, we end up doing it more on a sector basis rather than a firm basis.

Mr. Borotsik: Just one other question. I'm going through the report. I believe, Mr. Parr, you had indicated that the Auditor General, in the original recommendations, was to inspect all employers within the province, but, in going through here, I see that, for the most part, the recommendations were for 'prioritization.' As you had indicated, there's a very—sort of, the 80-20 rule. There's 20 percent of the employers have the majority of the incidents. Did I take your comments wrong where you were asked to inspect all employers, or was it just simply a 'prioritization' of those employers and inspect that high-risk area

Mr. Parr: As I—there—I mean, I may not exactly quote it correctly, but the recommendation—one of the recommendations was that we have a schedule to inspect all—we have a schedule to inspect all workplaces. We interpret that to mean all workplaces

in the province. So we're not in a position to do that but—

Floor Comment: Can I add—

Mr. Chairperson: Madam Auditor General.

Ms. Bellringer: If that was what you thought we were suggesting, that's not actually what we were intending for that to say. We did think that there should be an annual schedule. We're very supportive of the risk grading process and did have some recommendations in that area and that the high-risk employers be scheduled on an annual basis.

We had something in the description of what we thought should be in a policy manual where we say there should be a requirement to develop a plan that dictates how frequently each employer in the province should be inspected. Now, I mean that would also include the decision that low risk with no injuries don't need to be inspected so if that, you know, that shouldn't be interpreted as requiring every employer to be inspected on any particular cycle.

Mr. Borotsik: Yeah, if I can, I think what the Auditor General has said is basically what's been implied by the deputy minister where there are low risk, and I think the example was lawyers' office and accountants' offices, and as the Auditor General, I think, is putting on the table, the department should identify those as being low risk and not necessary for inspections on a regular basis if at all.

You've indicated that, as I understand it and my—It's been a long day, okay. I just want you to know that, but if I can comprehend properly, that's exactly the policy that the department has now put into place where in fact, low risk, you had said, are done only on an as-need basis, or a complaint basis, whereas the high risk, which is identified quite specifically in the Auditor General's report, the scheduling of high risk and the high-risk industry should be scheduled so that you do as a department inspect those, and I don't want to put words in your mouth. You can answer your question but I suspect that that's the process that you are now following in the department. Is that correct or not?

Mr. Parr: Yes, it is correct. I appreciate the clarification. I think and, you know, the number of recommendations that were not ever followed drops. That makes me very much happier.

Mr. Chairperson: Seeing no other questions, Auditor General's Report—Audit of Workplace Safety and Health, dated February 2007—pass.

What is the will of the Committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: Committee rise. Thank you.

COMMITTEE ROSE AT: 5:40 p.m.

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