



Fifth Session - Thirty-Sixth Legislature

of the

Legislative Assembly of Manitoba

Standing Committee

on

Public Utilities

and

Natural Resources

Chairperson
Mr. Peter Dyck
Constituency of Pembina



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	Arthur-Virden	P.C.
DRIEDGER, Albert	Steinbach	P.C.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
ENNS, Harry, Hon.	Lakeside	P.C.
EVANS, Clif	Interlake	N.D.P.
EVANS, Leonard S.	Brandon East	N.D.P.
FAURSCHOU, David	Portage la Prairie	P.C.
FILMON, Gary, Hon.	Tuxedo	P.C.
FINDLAY, Glen	Springfield	P.C.
FRIESEN, Jean	Wolseley	N.D.P.
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.
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, Hon.	St. Vital	P.C.
ROBINSON, Eric	Rupertstrand	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, Hon.	Turtle Mountain	P.C.
VODREY, Rosemary, Hon.	Fort Gary	P.C.
WOWCHUK, Rosann	Swan River	N.D.P.
<i>Vacant</i>	St. Boniface	

LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON PUBLIC UTILITIES AND NATURAL RESOURCES

Tuesday, May 25, 1999

TIME – 10 a.m.

LOCATION – Winnipeg, Manitoba

**CHAIRPERSON – Mr. Peter Dyck
(Pembina)**

**VICE-CHAIRPERSON – Mr. Denis Rocan
(Gladstone)**

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Radcliffe

Mr. Ashton, Mrs. Driedger, Messrs. Dyck,
Helwer, Lamoureux, Maloway, McAlpine,
Penner, Reid, Rocan

APPEARING:

Mr. Wally Fox-Decent, Chairperson,
Workers Compensation Board
Ms. Pat Jacobsen, President and CEO,
Workers Compensation Board
Mr. Tim Sale (Crescentwood)
Ms. Deborah Vivian, Chief Appeal
Commissioner, Workers Compensation
Board
Mr. Rob Campbell, Vice-President of
Rehabilitation and Compensation Services,
and a Director of Sector Services, Workers
Compensation Board

MATTERS UNDER DISCUSSION:

1996 Five Year Operating Plan of the
Workers Compensation Board

1997 Five Year Operating Plan of the
Workers Compensation Board

1998 Five Year Operating Plan of the
Workers Compensation Board

1999 Five Year Operating Plan of the
Workers Compensation Board

December 31, 1996, Annual Report of the
Workers Compensation Board

December 31, 1997, Annual Report of the
Workers Compensation Board

December 31, 1998, Annual Report of the
Workers Compensation Board

December 31, 1996, Report of the Appeal
Commission

December 31, 1997, Report of the Appeal
Commission

December 31, 1998, Report of the Appeal
Commission

Mr. Chairperson: Good morning. Will the Standing Committee on Public Utilities and Natural Resources please come to order. This morning the Standing Committee on Public Utilities and Natural Resources will be considering a number of reports from the Workers Compensation Board. The reports are as follows: the 1996, 1997, 1998, and 1999 Five Year Operating Plans; the Annual Reports of the Workers Compensation Board for the years ended December 31, 1996, 1997, 1998; the December 31, 1996, 1997, 1998 reports of the Appeal Commission. The 1996 reports and the 1996 and the 1997 Five Year Operating Plans were first considered by the Standing Committee on Public Utilities and Natural Resources on April 24, 1997, but consideration of those reports was not completed at that time.

Before we get started with the opening statements, did the committee wish to indicate how late it wishes to sit this morning, or should we revisit this issue at noon? What is the wish of the committee?

Some Honourable Members: Noon.

Mr. Chairperson: Thank you. As agreed upon, we will rise at 12 noon. Does the minister responsible have an opening statement, and did he wish to introduce his officials in attendance from the Workers Compensation Board?

Hon. Mike Radcliffe (Minister responsible for The Workers Compensation Act): With your permission, I would like to make a couple of introductions and a brief opening statement. I would like to begin by welcoming the chair of the Workers Compensation Board, Mr. Wally Fox-Decent. In a moment or two, Wally will introduce the president and CEO of the Workers Compensation Board who has an opening word or two. I am also pleased to introduce the Chief Appeal Commissioner of the Independent Appeal Commission, Ms. Deborah Vivian.

Mr. Chair, I would like to start my remarks by saying how proud we are of the good work done by our Workers Compensation Board. I would like to commend the work of the board of directors and of the management and staff. I believe that we have one of the finest Workers Compensation Boards in Canada. When one looks at the record, it is clear that we have the third lowest average premium rate in the country. We have a benefit package that is comparable with any other. The board maintains a prudent reserve to maintain and preserve financial sustainability and survey results, which, I think, is quite significant, demonstrate a high degree of satisfaction from both employers and injured workers.

The Workers Compensation Board has not only done an excellent job of meeting the needs of injured workers in Manitoba, but it has also added to the competitive advantage of Manitoba. Lower compensation premium rates help attract new business, new investment, and new jobs for Manitobans. Lower compensation premium rates lower the cost of production of the goods and services that our existing businesses produce.

As a result, Manitoba companies can compete in new and expanded markets. This increased production means more work for Manitoba workers and growth in both domestic and export production.

Last year, I am told, the Workers Compensation Board received more than 45,000 accident or occupational disease claims. Of those claims, less than 2.5 percent were initially denied. Independent survey results indicate injured workers reported an overall satisfaction rate of 7.1 out of a maximum of 10 in 1998. That being said, we all know from our contact with our constituency offices that some injured workers have problems with the system and some are less than satisfied. We acknowledge that.

This is a good time to talk about the separation of roles of government and the Workers Compensation Board. As government, our role is to provide the legislative framework for the benefit package, the insurance policy, whereas the Workers Compensation Board's role is to deliver the services and administer the insurance policy both fairly and compassionately while working to ensure that the financial sustainability of the system endures.

With that, I am pleased to introduce a gentleman who is no stranger to the members present, the chairman of the Board of Directors of the Workers Compensation Board, Mr. Waldrin Fox-Decent.

Mr. Wally Fox-Decent (Chairperson, Workers Compensation Board): Mr. Chair, I am very pleased to introduce the president and CEO of the Workers Compensation Board, Pat Jacobsen, who will make a short statement and will introduce other colleagues from the board who are present.

Ms. Pat Jacobsen (President and CEO, Workers Compensation Board): Thank you, my chairman, and good morning. I welcome the opportunity in terms of the first time before the standing committee for the reports of the Workers Compensation Board.

Mr. Chairperson, I would like to begin by introducing the staff that are here with us today. Maybe to help the committee I would ask them to rise so that you can all see who they are. Most of them you are more familiar with and have seen along the years.

Alfred Black, Vice-President, Financial Services and Administration; Sid Rogers, Vice-President of Corporate Development; Rob Campbell and John Strickland, who are directors of our Sector Services; Harold Dueck, Director of Finance; Glenn Hildebrand, Director of Communications; Darren Oryniak, Director of the Business Process Review, which is the new technology area; Dr. Brian Onoferson, who is the Director of Health Care Management; Alan Scramstad, the Director of Legal Services, General Counsel, and Corporate Secretary; and Janet Sprout, Director of Research and Program Development.

We wanted to be prepared to answer all of the questions in terms of the committee.

* (1010)

My interest in joining the board last October was largely influenced by the solid foundation laid under the leadership of our chairperson, Wally Fox-Decent, and the staff of the board itself. In analyzing the past, the minister has referred to the financial performance of the board, which is very strong. We now have a \$20-million deposited accident fund and in less than a decade have retired the unfunded liability and have a strong financial base. We have an average premium rate in the province of \$1.49, which is the third lowest in the country. We have contributions to our rate stabilization fund of \$13.7 million in 1997 and \$10 million in 1998, for a total of \$48.6 million. I think, however, the board in its efforts around financial performance has also been very mindful of the service indicators. Our general worker satisfaction has increased from 6.2 to 7.1 out of 10 between 1995 and 1998. Our employer satisfaction has increased from 6.7 in '96 to 7.3 in '98. Injured workers by survey indicate the WCB treated them fairly. That factor, which, I think, is probably the most significant factor that we poll, has increased from 69 percent to 85 percent in 1998. Appeals are also down; they are down 31 percent since 1997. Requests from the Fair Practices Advocate and the medical review panels are also down.

However, we face a number of challenges in the years ahead, and those challenges we look forward to making significant improvements in.

One is the growth in time-lost claims from nearly 18,000 in 1997 to 19,000 in 1998, and that represents a 6 percent increase in claims. The second area that we are putting efforts into is duration, and our average duration of 19.2 days in 1998 and 18.8 in 1997, we consider a considerable challenge. The last is the frequency of injury, which has grown from 5.5 in '97 to 5.8 in '98.

Just briefly, what we are doing in terms of the key thrusts ahead to work on those factors: minimizing the risk of injury is a major strategic goal. We are developing closer linkages with Workplace Safety and Health. We are looking at fine tuning our rate model to make sure it is as sensitive as possible in terms of factors that help in safety. We are looking at incentives in our community initiatives and research proposal, and we are reorganizing the board along industry-specific lines so that we can provide better claims information to employers and workers.

In the second area of minimizing the risk of injury and disease, we are reviewing all of our major administrative policies to make sure that we are providing the maximum entitlement that the law provides for, and that includes looking at many of the policies that workers have raised as being of concern. The second is that we are developing a disability management strategy to improve our return to health and return to work for injured workers.

The third area is the commitment to an integrated health management strategy that will look at access to timely and appropriate health care.

The last area I would raise that we are investing in over the next two years is building an expanded capacity for service improvements. We are re-organizing around sectoral lines, and we are doing an analysis of field services because we feel that need to provide better services across the province. The second area is the development of an integrated claims management system which, we think, will have a very important impact on the timeliness of our service and the quality of our service. The last is that we are implementing this year improvements around telephone and Internet

access and other key service measures so that we will provide a more timely service.

I look forward to the years ahead in working with the committee and the Legislature and the board and the recipients of our service.

Mr. Fox-Decent: Mr. Chair, I wanted to introduce a member of the board who is present this morning, one of our nine board of directors members, Mr. Barrie Simoneau, and I would ask him to stand. Barry represents the employer group, along with two colleagues. Thank you.

Mr. Radcliffe: Mr. Chairman, would it be possible I would ask members to consider passing the '96-97—

Mr. Chairperson: If I could just interrupt you for a moment. First of all, I want to thank you for the comments made, but I did want to leave an opening for the critic for the official opposition to make comments if they so wish.

Mr. Daryl Reid (Transcona): Thank you, Mr. Chairperson, for that opportunity to add some comments. I should start, I should say, by welcoming you here to your new role and capacity as the CEO of the board. I hope you enjoy your time at the board's operations. I am sure you will find that it is a very good staff to work with. I have had the pleasure of meeting with many of your staff people that are here today. I do note that there was one individual—I know Mr. Fox-Decent has always said that the puck stops at his desk with respect to the board's operations—but I do note you have a member here of your board operations today, a Mr. Lafrance, who, I note, in his own right, is a good backstop, netminder, in his time. I have had the opportunity to play hockey with him on a number of occasions; he is quite a hockey player. So I welcome him here today, too, as a member of your delegation.

I look forward to many questions on several areas. I am going to ask some questions with respect to your capital purchases, with respect to your building that you have at 333 Broadway. I am going to be asking some questions with respect to your operations on your new home for your Appeal Commission, and also questions dealing with some of the individual cases. A lot

of my questioning today is going to be confined to your five-year plan.

In the past, as you are probably aware of, I asked questions dealing with more case-related issues that had been brought to my attention. I have asked several of my colleagues if they are interested in any cases that they may want to raise, so I am going to give them the opportunity to raise some issues as well. But most of my focus will be dealing with the five-year operating plan and the annual reports of the Compensation Board.

Before you go into the discussion on passing the past years' reports that we have before us, at the end of this time it would be my preference today, closer to the noon hour, that if my questioning is completed on those two reports that the minister referenced, then perhaps at that time we could pass those reports, but leave it open so that some debate can occur during the course of these committee hearings. I know that this committee has not sat for about two years now. It was two years prior to that that we sat the last time and then two years before that. So, even though this committee was supposed to have sat every year, it has a demonstrated history of only sitting once every two years. I am not sure why that is occurring, but that seems to be the practice.

With those few comments, Mr. Chairperson, I am not sure if the minister had something further he wanted to add, but I am prepared to commence with some questioning and perhaps turn it over to my colleague the member for Crescentwood (Mr. Sale) because he has a specific case he would like to reference for the committee members who are here.

Mr. Chairperson: We thank the member for those comments.

Mr. Radcliffe: Mr. Chairman, I have no problem with my honourable colleague's suggestion of a full-ranging discussion on the material before the committee today. For the purposes of the record, I would urge that we take the opportunity perhaps just prior to the adjournment hour of addressing the '96, '97, '98

reports, the ones that are of long standing and perhaps take that opportunity at that point.

I would accede to his suggestion of proceeding now on all the material that is at hand.

Mr. Chairperson: We thank you for those comments. It has been my understanding that we will be considering all the reports at one time in questions right now. Is that correct? Okay.

Mr. Tim Sale (Crescentwood): Briefly, on that broad issue, this is not exactly one of the busiest sessions of the Legislature that we have had in the last two years, and it seems to me that this is the perfect opportunity for the government to get caught up. My honourable colleague has pointed out that meeting every couple of years and then expecting to deal with all the reports at once may not be a fair definition of accountability. I think there is absolutely nothing preventing this committee from meeting again, even more than once before the end of the session. If the minister is truly interested in getting caught up, then I suspect he will find a way to have his House leader work with our House leader to schedule an appropriate number of committee meetings to get caught up.

* (1020)

I want to ask just a very simple question. Mr. Fox-Decent and his staff were very gracious in meeting with us around the issues of pancreatic cancer at the Powell, now Powell's, formerly Federal Pioneer transformer plant, which was the subject of considerable controversy in the media and in the House last year. I appreciated those meetings, particularly I appreciated the frankness and clarity with which the staff and board approached the very difficult issue.

Very simply, I want to ask whether there has been any consideration given to revisiting the question of probable, versus dominant, cause in regard to areas in which medical evidence is that it is simply not possible to prove dominant cause. No oncology person can ever tell you why a particular cell decided to go wonky at a particular time, essentially, to rule out organic cancers for the most part as causes for which

compensation might be considered. I am thinking particularly of the new work that Annalee Yassi is undertaking currently that is an attempt to expand and update her studies that led to the pancreatic linkage in the prior legislation period.

So just a very simple question. Is there a process at present underway to examine the question of probable versus dominant in regard to carcinogens and workplace?

Ms. Jacobsen: Mr. Chairperson, first of all, in terms of the subsequent study, we are in fact funding that study so that we are very interested in the unfolding literature and knowledge in this area. We are still dealing with it however as a case-by-case basis in terms of in each case.

Mr. Fox-Decent: As I understand it, Mr. Sale, the question is: are we considering shifting from dominant cause to probable cause? Certainly at the board level that is not being considered at this time, to be very straightforward with you in terms of answer, meaning board of directors. I do not know whether Ms. Jacobsen has anything to add relative to the admin side.

Ms. Jacobsen: We could outline in terms of the current status, but we are not at this point looking at changes to policy, but we are watching very, very carefully both the study and also any interjurisdictional studies in this area.

Mr. Sale: Mr. Chairperson, I do not want to prolong this particular area, but I do want to ask Ms. Jacobsen if she would undertake to review with people who are familiar with the function of carcinogenic exposure and what its ideology is because I think by your current legislation you effectively make it impossible for there ever to be an award on the basis of dominant cause in many cancers, various kinds, subsequent to the change in legislation which changed the requirement from dominant to probable.

It seems to me that the history of Workers Compensation is a history of evolution and recognition that workplaces have changed and workplace hazards have changed and that practices and legislation have to evolve. I will not be pejorative in terms of the willingness of boards to evolve quickly or slowly, but they

have evolved. I would like to ask very specifically whether the board and administration would undertake a commitment to review that question that I have raised, and that is simply whether it is in the view of leading Workplace Safety and Health cancer specialists to ever prove dominance in regard to many organic cancers. I do not want to have a long discussion. I simply wonder if you would be able to undertake that commitment.

Ms. Jacobsen: I would be pleased to make that undertaking because we do know it is an unfolding area and that we are constantly monitoring, but I would make a specific commitment to report back in terms of the analysis, both after the findings of the next study, and also an update in terms of interjurisdictional study in this area.

Mr. Sale: I have one other question in one other area, Mr. Chairperson, and that is in regard to the Manitoba Capital Fund. This is something involving the financial administration of the board. Am I correct that the board is a partner in Manitoba Capital Fund in terms of the investment of its surplus? I think \$5 million is the commitment.

Mr. Fox-Decent: We are indeed a participant in the Manitoba Capital Fund under our investment umbrella.

Mr. Sale: Mr. Chairperson, does the Capital Fund have a representative on the investment committee of Manitoba Capital Fund? I am sorry, I meant does the Compensation Board have a representative?

Mr. Fox-Decent: Yes, we do have a representative.

Mr. Sale: Who is that representative, Mr. Chairperson?

Mr. Fox-Decent: Mr. Dan Burton, who is our continuing consultant on investment matters. He is really our investment manager on a day-to-day basis.

Mr. Sale: Mr. Chairperson, the Manitoba Capital Fund lost about \$4.5 million on two investments in June, and in the later part of the

fall, Rescom Ventures and Shamray. Questions have been asked about the appropriateness, effectiveness of the due diligence procedures that were undertaken by the investment committee.

Has that issue been raised at the board level, and has any action been taken to review or revise the due diligence approach that is supported by your investment people?

Mr. Fox-Decent: Certainly the issue of the Manitoba Capital Fund and issues relative to its investment policy have been discussed in some detail at our investment committee. Our investment committee consists of the Deputy Minister of Finance, a person named by Order-in-Council appointment, myself as chair. We have recently, in this last year, taken two advisors unto the committee who now meet regularly with us on an ongoing basis. One is Sherman Kreiner, the president of Crocus, who we feel not only brings very shrewd advice to the table but also represents the interests of the labour side of our governance. We have also taken unto us the second advisor who is the former manager of investments for the City of Winnipeg.

The Manitoba Capital Fund has indeed been discussed at our investment committee. There are ongoing issues relative to due diligence with all funds of that sort where really we are talking about venture capital.

Mr. Sale: Mr. Chairperson, has the Compensation Board surplus investment management group, whatever it is called, ascertained the fair value of its investment in Manitoba Capital Fund, and is that fair value below or above its investment?

Mr. Fox-Decent: Sir, we would have to take that as notice, and we would be happy to get back to you on that one.

Mr. Chairperson: Mr. Lamoureux, would you please move the mike closer.

Mr. Kevin Lamoureux (Inkster): Mr. Chairperson, I actually did have a few questions. I appreciate the member for Transcona's (Mr.

Reid) courtesy in extending me the opportunity right now to pose the questions.

First of all, I would just want, on a personal note, to compliment Mr. Fox-Decent and those who were involved in assisting Manitoba in having our nurses back onside along with the management, a wonderful job and very much appreciated.

* (1030)

Having said that, I did want to express some disappointment with respect to the government, as alluded to earlier. I do believe that this Workers Compensation does need to come before committee on a more regular basis, that it is definitely not advantageous for MLAs to have to take a particular two-hour session in a year-plus in order to fairly go through the documents that we have before us in an attempt to hold Workers Compensation accountable in a mere couple of hours. I just do not believe that the government is doing its job when it is not calling the Public Utilities to deal with Workers Compensation. It should be done on a more regular basis. I say that in part because of frustration. Unfortunately I cannot stay here for the full morning, and I would have liked to have done that given the amount of time it actually spends in committee.

Having said that, in the past when I have been in front of the committee, a big concern that I have had, and which I am sure all MLAs get, is the sense of frustration that constituents have in going through the Workers Compensation process, in particular the appeals. In dealing with appeals and my constituents, I always advocate for them to be given due process to expedite some sort of a decision so that they can get on with their lives. In the past, in coming before the committee, a big concern I had was when you go through an appeal, what obligation is there to get a lawyer, because it is something that is quite often brought up. A couple of weeks ago I was provided the document that we have before us today, the Fairness For All: Appeal Commission Annual Report. Actually, a constituent brought it to a local restaurant, and we sat down and we talked about it.

In it it talks about numbers of claimants represented by legal counsel, union representative, worker advisor, advocate, self-representation and other. I have always thought that this was one of the most important aspects of workers compensations. I have also felt that it is important that Workers Compensation does not give the impression that in order to be able to win your case you have to go out and hire a lawyer at somewhat of a great cost. I am always in a bit of a bind when the constituent says, well, what should I do, should I get a lawyer? I try to indicate as much as possible that that is not necessarily what you have to do in order to go through the appeal process. I see that you do have it broken down, but the part that is missing, in my opinion, on this particular report, is the percentages.

For example, those, and if I just go to the month ending December 31, '98, you have legal counsel, 19; union representatives, 23; worker advisor, 52; advocates, 14; self-representation, 47; and five for other. The question, to be very specific, is: does the board have any sort of statistical number that I am missing, or anything that can give us some sort of a breakdown in terms of rates of success? If you have 19, for example, getting a lawyer, what is the likelihood of success compared to 47 that get self-representation, that choose to represent themselves? Do we have those numbers?

Mr. Chairperson: Ms. Vivian, could you pull your mike a little closer as well.

Ms. Deborah Vivian (Chief Appeal Commissioner, Workers Compensation Board): Yes, indeed, we do have those figures. I would be pleased to provide them to you. I can give assurance to the member that the acceptance rate is—bearing in mind that you have to look at the complexity of the cases, also that an individual has the right to have whatever representation they seek. As you know, this is a nonadversarial system. We do have a lot of people, and the highest percentage of people represent themselves, but from the rates that I am looking at in front of me, getting a lawyer does not increase your success rate. I can actually give a commitment to give you this breakdown.

Mr. Lamoureux: I would appreciate that if sometime over the next short time I can get a copy of it. It would be definitely most valuable, because it always has been an important issue. I like to believe that something which the board is aware of is that many people just cannot afford the luxuries of having to get a lawyer. Some individuals do not have the opportunities to be in a union, to have that sort of representation, and I think we have to ensure that individuals who choose to represent themselves in going through the process do have a chance at prevailing.

Ms. Vivian: Certainly I do not mind providing you with these numbers.

Mr. Chairperson: Excuse me. Could you pull the mike a little closer. I believe they are having difficulty.

Ms. Vivian: I certainly do not mind giving the honourable member these numbers.

Just for an example, if you had raised the December 1998, having a lawyer in 1998, you had a 5.3 percent chance of success and a 21.1 percent chance for partial accept. However, I would qualify my comments that it would depend on the complexity of the case. Claimants, we had 52 represented, i.e., 32.5 percent represented by worker advisors, 14.4 percent represented by union representation and 29.4 percent represented by themselves.

I would assure the member that the representation, in and of itself, it is not necessary to have a lawyer. We are an informal tribunal, we listen to the claimants. In fact, the success rate for claimants on their own is quite satisfactory, I think.

Mr. Lamoureux: In reading through the document, there is a lot of statistical information. As I say, I would appreciate that.

The number of individuals, the overall number of people who make application for workers compensation, followed then by the numbers who are actually turned down and go to the first level of appeal or the supervisor, is there indication, have I missed something that refers to the numbers of individuals going to that first level of appeal?

Ms. Jacobsen: Those would not be in the report for the Appeals Commission. They would be as part of the operation of the Workers Compensation Board. There are two forms of appeal within the Compensation Board. One is for reconsideration in the review office. The second is through the Fair Practices Office.

Mr. Lamoureux: The question is just more so what sort of numbers are at that level? Is there a document which we can actually refer to, or is that just more in internal numbers?

Ms. Jacobsen: I cannot put my finger on it right this instant, but if we do not have it, I know we collect it. It is on page 42 of Focus on Service, which gives the numbers of requests for reconsideration, item 8, and then the Report of the Fair Practices Advocate is on page 7 of the same report.

Mr. Lamoureux: There is always a great deal of concern in terms of the number of people who are finding that they are being put out. The bills do not stop coming in and so forth, and they start going into the appeal process.

Can we get any indication in terms of the numbers of individuals who are actually appealing year over year? Are we seeing more people filing appeal where adjudicators are saying, no, you do not qualify? Is that a relatively steady number, or are we seeing an increase, decrease over the years?

* (1040)

Ms. Jacobsen: We are seeing, in fact, a decrease, and you can track that through year over year in the annual reports. What we are seeing is both a decrease in the number of reconsiderations and in the numbers of requests for the Fair Practices Office. What we are particularly seeing is a decrease in the appeals to the Fair Practices Office that relate to timeliness and communication, which is not about the quality of the decision or the way that the decision went but in fact our speed and timeliness. We still think that there are initiatives that we should put in place to improve that, but we are finding that those appeals, which

are noted in the Fair Practices Advocate report each year, are going down.

Mr. Lamoureux: How would that relate to the numbers of individuals then applying for workers compensation? Are we seeing a decrease, increase?

Ms. Jacobsen: We are seeing a rise in the numbers of claimants, in fact, a 6 percent and then an 8 percent increase in the numbers of claims. So, in fact, what you have got is a rising number of claimants and a lowering in terms of the appeals processes, which you will also see in the formal appeals process—requests for appeals are also down.

Mr. Lamoureux: Those are the things which most interest me. The next concern, I guess, is more so with respect to medical review panels. Quite often you get doctors that will say one thing in Workers Compensation and the personal doctor or other specialists are saying something entirely different. The use of medical review panels, or the more independent medical review panels, are we seeing more of a tendency in resolving our issues by using these independent panels? Just looking for a comment on the medical review panel.

Ms. Jacobsen: We have, in fact, found that the use of medical review panels has dropped by about 50 percent over the last two years. I think that in part reflects some of the strategies within the department to have more early intervention by board staff to resolve issues earlier.

Mr. Lamoureux: Finally, because I did indicate that I would not consume very much time this morning, I would appreciate it if I could get some sort of information again from the board in terms of the times. Ms. Jacobsen made reference, you know, from the moment that an adjudicator, and I am looking for average times—if an adjudicator says, no, you are not qualified, then it is appealed to the unit supervisor.

Then, if they do not like what they are hearing at the unit supervisor, it is appealed to the board. When I was first elected back in '88 I know that you could easily wait in excess of a year, even probably closer to two years. I can

remember taking a tour of Workers Compensation and there were boxes all over the place and everything was done manually. I do not know in terms of to what degree the waiting period is today, but I would appreciate some sort of information on that waiting period, what the average waiting period would be. That would be it for me this morning. Thank you, Mr. Chairperson.

Ms. Jacobsen: I could answer on the actual request for service, and then perhaps the Chief Appeal Commissioner could answer on the appeals. In terms of the actual service, we are running fairly constant at 22, 23 days in terms of notification from the point that the board finds out to actually paying people. We are running on average 37 days from the actual injury to pay of which 17 to 20 days is the actual reporting period. The third issue is that we are running in terms of duration of claim about 18, 19 days on average.

Mr. Chairperson: Ms. Vivian, were you going to make comment?

Ms. Vivian: Did you specifically want comment, Mr. Lamoureux, on appeals as well?

Mr. Lamoureux: That would be nice. Thank you. I would appreciate it.

Ms. Vivian: You had alluded to medical review panels. They are in the Appeal Commission report, and that is because they are an independent process. Currently—

Mr. Chairperson: Excuse me, could you speak into the mike, please? We are having difficulty hearing.

Ms. Vivian: Sorry. It is working. The overall average for an MRP from the date the file is received to the date the MRP is reported in 1998 was 16.32 weeks, which is currently just over four months, and across the national average that is very, very comparable. In British Columbia it takes them almost two years to get to MRP.

An Honourable Member: 16 weeks.

Ms. Vivian: Mr. Chairperson, 16.3 weeks from the date people ask for it to the date the medical review panel is published.

Mr. Reid: I neglected to mention in my opening remarks that I have a couple of issues that I wanted to deal with in more specific terms and to give fairness to the staff that are here, give them a chance to collect their thoughts, perhaps. One I will be dealing with will be Mr. Doug McCulloch's case involving social assistance deductions from his compensation entitlement.

I would like to start first, though, dealing with what we commonly refer to as the WCB Widows and the legislation that is in place affecting them and plans and policies perhaps that the board has to deal or to rectify that situation.

I know I have had the opportunity to ask the minister who himself is a lawyer about this case during Question Period. Of course, he referenced the fact that in the best legal advice that he could gather it was not a Charter issue. In fact, they were not entitled to that under Charter. It is interesting to note, too, that almost, if not all, other Canadian jurisdictions are now in the process of restoring, at least in part, if not in all, benefits to widows who have remarried. Manitoba is, I believe, one of the last or perhaps the last in Canada to look at dealing or resolving that issue. I think it is a black eye for our province. I would hope that we would have rectified this situation some time ago.

I can only reference back to this issue going back to the King commission report which perhaps you may not be familiar with, Ms. Jacobsen, but this was an issue when the King commission had dealt with compensation issues and there were some problems in the system at the time during the '80s. They came out with 178 recommendations on how to improve the compensation system in Manitoba.

One of those specifically dealt with the restoration of benefits for widows who had had their benefits terminated upon remarriage. In recommendation 133 it says: we recommend

that Section 27.1 of the current act—The Workers Comp Act—should be removed as soon as possible because it is in contravention of the Canadian Charter of Rights and Freedoms.

And it goes on from there talking about restoration of benefits. So I am not sure where the minister perhaps gets his best legal advice, but I will leave that to him to answer.

With respect to that particular part of the question, maybe we should start there and ask: what is your legal advice? Do you have a copy of your legal opinion here today so that we might be able to reference that more specifically?

Mr. Radcliffe: In response to my honourable colleague's inquiry, I do not have copies of the legal advice present with me today. However, I can give him the citation with regard to—and this I will have to take notice and supply to him at a later date—of a Supreme Court decision, I believe, with respect to retrospective or prospective applications of the Charter. In fact the Supreme Court of Canada, my recollection, ruled that it was ultra vires any retrospective consideration of the Charter.

As I stated on the floor of the House and, I believe, in a subsequent scum, when the individual advocates came to meet with me personally, they indicated to me very specifically that their argument at that time—this is only two months ago—was not predicated on any issue of need, nor compassion. Their argument—this is for compensation for pre-'85 individuals, be they males or females, so it would be widows or widowers—was predicated on a right of action based on a constitutional claim as a right, as a matter of right.

* (1050)

I therefore focused my attention at that time on a legal premise, and the information I received was that in fact there was no sustainability to that argument at all. However, once we had passed that threshold, and I communicated and shared that with my honourable colleague on the floor of the House, our government is prepared to address the issue of fairness and balance. We are in the process of

doing that at this time. I cannot be any more specific than that, but we are carefully considering what all of the ramifications of this might be. We have discarded the position of a matter of right, which was the initial position that these advocates advanced to me, because we feel they are in error on that. So when he says that we have been dilatory, I would suggest with the greatest of respect that in fact the goal posts on this issue have moved very recently from one of a legalistic nature to one of a more humane nature.

Mr. Reid: Well, I have the Supreme Court of British Columbia decision in front of me here. I understand, at least in part, although I do not profess—just an ordinary person who worked with my hands most of my life—to even be in the same arena as the minister who went through law school. I am not going to argue the points of law with him, because I would be out of my league in that regard.

But I can only deal with the humane issues and fairness for individuals who come to us with their cases dealing with these matters and how they feel that they are aggrieved. I am inclined to agree with them, the way that the compensation system has treated them. I would not want my wife or the spouse of any other member of our society whose partner is killed at work to find out, as I had to find out in talking with these widows—there were some widowers that were involved, but for the most part it was widows—some of these widows saw their spouse, their husband off to work that day and then, a few hours later, the RCMP or the police came to the door and knocked and said you had better come to the hospital, and then arriving there to find that their spouse is dead.

In a couple of situations that I dealt with as a part of that group, two of those widows were seven and, I believe, I think one was just about nine months pregnant at the time. Now you can imagine, under the policies that we had in place, that individual, under the new legislation that we have, that child, that unborn child, would not even be in school yet under the current legislation before those benefits are terminated. That is the new policy that we have in place here. It only goes I believe for 60 months, for five years.

So you can see that there is a practice in place that poses a hardship for those young families, yet-to-be families. It creates a hardship, not only the stress of losing your spouse when you are expecting, but to have your source of income cut off and then having to make a decision. Do you remarry? Do you go out and find a job before your young child is even in school? Then having to go through the trauma of losing your spouse before your unborn child is even in school, you have to make those decisions. I would think that would be a pretty traumatic event for any person to have to live through and to have to deal with.

Perhaps the minister wants to comment on that part, but I have other questions dealing with the issue of the benefit entitlement itself, and more specifically, we are talking about when policy decisions are going to be made, who is going to be making them, what money has been set aside and the number of widows who are involved as well.

Mr. Radcliffe: Mr. Chairman, I thank my honourable colleague for that question. I will deal with some of the broader aspects of the issue and then defer to Mr. Fox-Decent on some of the board policies. I would make common cause with my honourable colleague and I believe our government makes common cause with him in expressing our compassion and sorrow at any individual who loses their spouse, that the human tragedy involved is in fact something that is visceral and just totally debilitating. That is something I think that everybody from a humane level would agree with my honourable colleague that this is a devastating position that individuals find themselves in.

The issue, I think, is quite specific in that the changes that were implemented in 1992, and what we are talking about now is not compensating people who have lost a spouse but rather the issue of qualification on remarriage which applies to the pre-'85 people, the people who have suffered loss post-1992, be they people with—the legal expression is *en ventre sa mere*, but if people are pregnant, individual women are pregnant, then they receive compensation, and I defer to Mr. Fox-Decent's specificity on this, but such parents receive

compensation for that child until the child reaches the age of 18 years.

So I would not want the record to be confused with anything that were—Mr. Reid is suggesting that there is any diminution in coverage in that respect. Section 29(a) of the Workers Compensation Board is the specific coverage which I believe my honourable colleague is probably very familiar with. Mr. Fox-Decent, I would look to you for any of the specifics of policy from the board.

Mr. Fox-Decent: Mr. Reid, I wonder if you could redirect the question just so I know exactly what I could help you with, if I can.

Mr. Reid: Well, I understand that—perhaps I did not explain it quite clearly enough. I have a tendency to do that. Please forgive me; it seems to be my habit. If any of you do not understand my questions, please ask me to explain them or expand on them a little bit.

With respect to the widows now under the new policy, the current government's new WCB policy and law, it is my understanding that, yes, the dependent children will continue to receive a dependant's allowance, if we can call it that, until they achieve the age of 18 or perhaps a post-secondary education would be involved in the decision-making process there as well. But it is my understanding as with respect to the widows that the widows themselves will have their benefits limited to 60 months. So the situations that I have encountered, in two cases with the group of widows that I have met with, their benefits have been terminated. One was due to deliver the child when her husband was killed and that she is aware that her benefits would be terminated. She would have to find a job or remarry or make some career decision with respect to her future and her child's future after the 60-month period had elapsed. So before that unborn child is even in school, it is my understanding that that widow would be in a position of having to make a determination with respect to financial support for the family.

If there are other compassionate grounds that I am not aware of or some other policy, please advise me of it because I would like to make sure that these families are not put in a situation

where they have to make some significant decisions with respect to income continuity, in fact, leaving the child with a babysitter, a day-care, preschool, while the surviving spouse, partner, would have to go out to work because the survivor benefits would have been terminated by the board.

* (1100)

Mr. Fox-Decent: Under the '92 law, Mr. Reid, of course remarriage becomes irrelevant because there is a defined benefit, and the defined benefit to a widow or widower is a lump sum of approximately \$50,000 plus five years continuation of benefits or until the youngest child is 18. So, if your child is one year old at the unfortunate moment of spousal death, there will be another 17 years of full benefits before the benefits cease. Of course, regardless of children, you have the lump sum of \$50,000 plus five years continuation of benefits. The continuation could be as long as another 12 or 13 years if you have a dependent child under 18.

Mr. Reid: So then the issue of loss of income for that family, for that unborn child, the surviving spouse would be entitled to receive survivor benefits for the spouse and the unborn child until that child is 18 years of age? Is that correct?

Mr. Fox-Decent: That is correct.

Mr. Reid: Okay, there appears to be some misunderstanding then in the group of widows that I had met with because they felt that their benefits would be terminated. I will have to go back and clarify with them, but it is my understanding that they had their benefits terminated. But I will check on that further. If that is the case, then I will refer them back to the board for further adjudication of their claim.

Can you tell me, with respect to the issue dealing with the widows that are involved in resolution of this matter, how many has the board estimated would be affected by—because there are two groups of widows? You have the post-Charter group which is I think April of '85 when it came into effect in Manitoba, up until your legislative change of January 1, '92. Then you have a group of pre-'85. Could you tell me

how many widows are affected in those two groups separated by group, please?

Mr. Fox-Decent: The 1985 to 1st of January, '92, group is 45 widows, I think in one case a widower, who have remarried. So we are at this moment dealing with 45 although there are another almost 500 that could remarry at some point in the future but have not done so at this point. So we are only dealing with 45 people.

Mr. Reid: Can you expand further on what you mean by there are 500 other widow/widowers out there?

Mr. Fox-Decent: I think 481 to be specific who are in that group that have not remarried. They have suffered the death of a spouse, but they have not remarried. Forty-five have remarried.

Mr. Reid: That 481 in part have not remarried, and they are in the group of '85-92?

Mr. Fox-Decent: That is correct.

Mr. Reid: Can you tell me how many of widow/widowers are in the pre-Charter group?

Mr. Fox-Decent: Yes, Sir. We do not know exactly what that number is, but we have had an actuarial study done which suggests that it would be about 260 who have remarried in the group of '85-minus.

Mr. Reid: In going through your annual report in dealing with the surplus, and we will get into that part later in the discussion, it mentions that funds have been set aside to deal with the compensation of widows who have had their benefits terminated, I believe probably for reason of remarriage. Can you tell me what decisions have been made, what stage we are at in those discussions or decision making, and what funds have been set aside for resolution of that?

Mr. Fox-Decent: Mr. Chair, the group of 45 who have remarried and fall in the context of the '85 to '91 period, what we describe as the post-Charter but pre-new act period, those 45, if they were all to pass the dependency test which the law allows, the law of 1985, if they were all to pass it, we estimate it would cost approximately

\$27 million. We have reserved \$27 million from last year's balance, last year's surplus. We have reserved hoping that we are prudent financial managers. We have reserved on the basis of all the widows passing the dependency test, so \$27 million has been set aside for the purpose of dealing with the 45 widows in terms of restoring their benefits. That of course is the period '85 to the end of '91.

Mr. Reid: If you set aside \$27 million out of your surplus from last year, can you tell me because there are other Canadian jurisdictions and I believe I just—in fact, I can look it up in my file here that the Province of Saskatchewan has even through the newspapers here in Manitoba indicated that any widows who had remarried, who fell into the Saskatchewan compensation system, should apply in that province and that there was going to be a lump sum of I believe \$80,000 offered to the widows in Saskatchewan. It is my understanding that that would be in the pre-Charter group that they are referencing for that advertisement. What plans does Manitoba have? Have you come to a decision yet with respect to the pre-Charter group of widow/widowers in the province of Manitoba?

Mr. Radcliffe: Mr. Chairman, I thank my honourable colleague for that question. First of all, I would say that it will require a change in legislation in order to address that issue and no final decision has been made at this point on that issue. We are researching it with regard to looking at all the different alternatives and possibilities. We are certainly very aware of the Saskatchewan precedent, and as soon as a decision has been made, we certainly will share that. I undertake that we will share that with my honourable colleague so that he can be aware of what the position will be.

There are a number of issues that have to be considered before we actually cut the model or design the process for compensation, if any, for the pre-'85 individuals. Certainly, we are very aware of what has been done across the country, and Manitoba does not want to be the one province or jurisdiction out of step. As to what the model will look like, this is a little too early to say at this point.

Mr. Reid: Well, if you talk about one province not wanting to be the one province out of step, I

mean one of the benefits of the Internet is you are able to access workers compensation systems across Canada. It is very easy in a few moments to go into their home pages, their Web pages and see what programs, what decisions they made in those jurisdictions. I believe Nova Scotia has just made a decision recently with respect to their restoration of widows' benefits there; Ontario, New Brunswick, Prince Edward Island, I believe. A number of Canadian jurisdictions have dealt with that group.

* (1110)

Is there a reason why we have not dealt with this? I mean, I referenced a few moments ago that this issue was highlighted in the King commission report in 1987. I know it was during the Pawley government, the Pawley administration. We had one year, before the government changed. There has been 11 years of this government, and yet there have been no changes on that policy direction. Perhaps you can explain to me how we can go 12 years and not have a decision on how we are going to resolve the issue of fairness for the widows.

Mr. Radcliffe: Well, I believe I addressed this issue in part on the timeliness with an earlier answer to my honourable colleague. But in fact, for the record, I will just repeat it, up until two months ago the individual advocates on this issue were talking about a right of entitlement based on contract, based on the constitution, based on the Charter. In fact, they specifically stated that their position was not based on a position of need nor a position of compassion. So, therefore, when the individual claimants themselves were restricting their position, however well advised or ill advised, they were not including a broader issue. The government has not addressed that.

Now that the goal posts have changed, and I believe the advocates are acknowledging that—I hesitate to speak for them all, I certainly do not—but I think that they are quite prepared to accede to our reaction that in fact this is a matter of fairness and balance. We are moving in an expeditious fashion. Because it is a complex issue, and because there are a number of conditions or situations that have to be

considered and thought through before we come to a conclusion—we do not want to do it in an ill-advised fashion or a reactive fashion, but we will come up with a conclusion which we believe will be satisfactory or we hope will be satisfactory to the individuals in question.

Mr. Reid: Well, one of the difficulties that the widows have expressed in my many meetings with them is the fact that they have been treated like a ping-pong ball. They have been bounced back and forth between the Compensation Board of Manitoba and the Ministry of Labour responsible for the Compensation Board.

The minister references here a few moments ago that it would require a change in legislation for the pre-'85 group. I mean, that is no secret. That has been talked about for some time. I am glad to hear that you have come to a point where you are at least in a position to make a decision now with respect to legislation, because we have known for some time that it would probably require legislative change. Yet the widows have been bounced back and forth, nobody wanting to make a decision with respect to some settlement of this matter.

I guess, when we talk about the way that this matter was dealt with, I believe, in large part, from my research and my understanding of the issue, it had to deal with the way the dependency test was or was not applied. I guess maybe I should start at the beginning of that process and ask, in the cases dealing with those 45 widows who have remarried, and for which there appears to be some funds set aside for resolution of those cases now, how many of those widows have actually participated in a dependency test any time from the point of the death of their spouse up till today even?

Mr. Fox-Decent: Mr. Chair, subject to correction, which I would be happy to provide if I am misspeaking at this point, Mr. Reid, three were put through a form of dependency testing. The other 42 were treated as if they had essentially been pre-'85 and were denied the continuation of benefits.

Mr. Reid: So, out of the group of 45, three actually had the dependency test, and can you

tell me when that dependency test was undertaken?

Ms. Jacobsen: A point of clarification. Are you speaking of the dependency test over the last few years, or are you talking about what we are working on now?

Mr. Reid: Well, I am trying to get an understanding here because it is my understanding that, under the pre-'92 legislation, it allowed for, or it was board policy, I should be more accurate, allowed for a dependency test internal to the board's operations to make a determination on whether or not certain criteria or factors were met and that if the widow/widower could demonstrate that they were dependent upon their new spouse after remarriage, their benefits would be terminated. If they could determine that their survivor benefits were higher than the income of their new spouse, then their benefits would be sustained, would be continued. Now it seems to be a strange decision to make, to say the least, but I am trying to get an understanding here. When was that dependency test commenced for those three that had it, and why were the other 42 of the group of 45, why was the dependency test not undertaken, or implemented, I should say, for those individuals, the other 42?

Mr. Fox-Decent: The simple answer would be to say that the board did not handle this dependency issue very well over the years. I would like to except the last couple of years because I think there has been a determination that we did not handle this issue very well in prior years. The three—and I suspect the number may not be three—somebody has whispered in my ear that it is something else and we want to find out exactly what it is before I correct the record, but it is a small number. It is less than 10. It was long ago, that is to say, early in the period of the '85 to '92 paradigm and after that early period essentially the remarriages caused an end of benefits. One could describe that as being an arbitrary move, and that probably would be a reasonable way to describe it. The board did not handle this issue well at all, in my view, and it is only recently, I think, that we have recognized the extent to which there was an arbitrariness, a somewhat haphazard approach to

this whole issue. Certainly a dependency test has been developed in the last year, 18 months, which, we think, is reasonable and fair insofar as one describes a dependency test as being reasonable and fair.

Mr. Reid: Well, I guess it goes back to the original point that the widows were making, that it was a discriminatory practice or action that took place on the part of the board to terminate their survivor benefits with no test being applied to them and that therefore they have, I would consider to be serious merit to their argument that, because they were not treated with any consistency in policy, their benefits would be reinstated. I guess the question it begs out of that process is that, because it is my understanding that the board is now going through the process of implementing a dependency test for the group of 45 widows, why are we going through that process now? I mean, if we did not apply the policy consistently and fairly in the beginning, why are you going down that road now?

Mr. Fox-Decent: Mr. Chair, the test is ready, and there is an administrative support in the board for the tests to be administered, but we have not actually commenced in anything more than a preliminary way the dependency test. You will know, Sir, I suspect, that the act allows the board either to administer a dependency test or not. The word in the act is "may" not "shall." I think it is fair to say that within our jurisdiction, which is '85 to '91, the '92-plus being settled as we discussed earlier, and the pre-'85s being a matter of change to the law, with regard to the '85 to '91 group, we have under active consideration at the board level on an ongoing basis the issue of the dependency test and the discretion that is allowed to us under the law to either have or not have a dependency test.

* (1120)

Mr. Reid: So, if I understand you correctly then, no decision has been made with respect to whether or not you are going to ask the surviving spouses, the widow/widowers, to take part in the dependency test. Is that the point we are at now?

Mr. Fox-Decent: That is the point we are at, Sir.

Mr. Reid: When can we contemplate—because I know that the Manitoba WBC Widows Action Group has been after this Minister of Labour, has been after his predecessors with respect to a resolution of this matter for several years now—that a decision would be made with respect to restoration of benefits or the dependency test application?

Mr. Fox-Decent: With regard to the '85 to '91 group, I would think that the board's discussion of this issue may culminate in a decision within the next 30 days.

Mr. Reid: So then I take it, you have a board meeting that has been scheduled, and the decision will be made very, very soon then. Are you going to wait until that decision has been made to inform the widows, because they are becoming quite anxious? They were calling me again last night at home, trying to find out what is happening with this matter. Several years now that this has been dragging on.

Mr. Fox-Decent: My commitment to Merle Mutch, the co-chair of the Widows Action Group, whom you will be very familiar with, Mr. Reid, I am sure, is that as soon as the board has made any change, I will inform her immediately.

Mr. Reid: Can you tell me then, if someone is to be remarried this year and their spouse was killed on the job pre-'92 and I guess post-'85 would fall into that group, would the pension of that individual be terminated?

Mr. Fox-Decent: I am not sure I understood the question, Sir.

Mr. Reid: The question that has been posed to me because there has been no decision yet with respect to restoration of widows' pensions. If a surviving spouse, a widow/widower, is to remarry this year and they are in the group that has been receiving those survivor benefits now since their spouse was killed on the job, if they remarried this year, as one is contemplating at this point, which is a happy event, would their pension be terminated as a result of that remarriage?

Mr. Fox-Decent: Will they be remarrying within the next month?

Mr. Reid: Not being a party to that event—

An Honourable Member: Nothing you are planning anyway.

Mr. Reid: Not that I am planning at this point, but who knows what invitations can be received in the mail. I do not know. I guess the question is: what do I tell this individual who has sent me an e-mail asking the question what happens if they remarry this year? Are their pensions going to be terminated?

Mr. Fox-Decent: Mr. Chair, to stop trying being cute, which really does not suit me very well, and to answer your question, I think if it were someone who remarried in the context of this period of 1999, we would not cut them off at this stage. We would continue benefits pending a decision on the larger issue.

Mr. Reid: That is reasonable. Can you tell me: are there any factors of the group between '85 and '90, end of '91, the 45 widows/widowers that are involved, are there any criteria that you may be contemplating in there that would continue to disentitle those individuals from restoration of survivor pensions or benefits?

Mr. Fox-Decent: I am very reluctant to not answer a question, but I think since the matter is actively before the board and I do not want to compromise the board's independence with regard to decision making, I really should step aside from that question.

Mr. Reid: I understand there are things that are under consideration and that it is a final decision of the board. I take it the minister will not have a hand in any of the decision with respect to that, and perhaps you can correct me if I am in error on that, because there is some question about whether or not all of the group of 45 widowers that you reference who remarried are involved in this. I do not know if there are any extenuating circumstances that may be causing some problems with respect to restoration of pensions. The question that has been posed to me, will all of the widowers have their pension benefits restored as a result, I am not sure how I am

supposed to go back and answer them with saying, well, the committee could not answer me here today. I mean that again puts them into limbo, and it makes it difficult for them to comprehend how this system that has been dragging on now for many years has once again caused another delay for them.

Mr. Fox-Decent: I would say this, Sir, there is nothing before the board at the moment relative to this group that divides them in any way.

Mr. Reid: So, on the surface, then, it does appear that all those widows/widowers would be entitled to restoration of benefits. I am trying to figure a way I can word this in a way to achieve an answer for them knowing full well that the board has not made the final decision in this regard. I am not sure how best to approach that because there are the two groups here, as you are aware of. It is more than just the '85 to end of '91 group that is involved here. There is also the group before. So I am trying to get an answer for both of the groups who are interested and continue to call me on this, and I am sure they are probably calling the minister's office as well, or at least I hope they would be. Perhaps I will refer them to the minister because I know he has the answers to this, to find out how they are going to determine whether or not there are criteria or information that the board is seeking that perhaps they have the answer for.

Mr. Radcliffe: I would invite my honourable colleague, if he sees levels or different categories in the '85 to '91 group, to identify that at this point in time if he anticipates that there is a problem that the board has not addressed because he obviously has something in mind that he is directing his attention at this point in the questions that he is posing to the Chair.

* (1130)

Mr. Reid: Well, the standard question is the means test. I mean, that is pretty clear. It was applied inconsistently before. Is it going to be applied this time? It seems like there is no decision that has been made. I know that the restoration benefit, if you make that decision, will go back to the date of remarriage. I understand that would probably be one of the criteria that you would be building into the

process, and that it is fair and reasonable, but perhaps there are others that are being contemplated by the staff of the board in its advice to the board of directors, which perhaps I am not aware of. If there is something that the group that is being affected here, the widows and widowers that are affected, perhaps can supply some information to the board to help them in that regard, then it is a way to facilitate the process and a quick resolution of it and if there is something we can do to assist that?

Mr. Fox-Decent: The Widows Group, of course, either fully represented or through their co-chairs or one of their co-chairs, has been in regular and continuing discussion with the board relative to the '85 to '91 group. I told Mrs. Mutch that she could expect the board to have completed its current consideration of the '85 to '91 group sometime in the next month, and she seemed pleased by that. I do not want to speak for her, but I think she felt she was prepared to wait for what she considered to be a reasonable space of time. I think we have all the information we need, Sir, and I can only repeat that we are not at this stage in any contemplation of dividing that group of 45. They are being considered as a group.

Mr. Reid: Then going back to the pre-'85 group, the pre-Charter group, the minister referenced that it would require a change in legislation. Ontario and British Columbia, to name but two of the jurisdictions, and now Saskatchewan who has advertised, have indicated or have undertaken a solution to the pre-Charter group. What is the minister contemplating since he says it requires legislative changes? Is he contemplating introducing legislation this session, or will that be left to a future government to deal with?

Mr. Radcliffe: My intention is to present a proposal to my colleagues and with the prospect of bringing this before the House in this session, depending, of course, when honourable colleagues opposite agree to an adjournment, but we anticipate that there will be legislative time available in order to present such an amendment.

Mr. Reid: That is true. My colleague reminds me that Bill 27 for the paramedics was brought before the House in just five days. I would think

that, after 12 years of this matter hanging in limbo, one would have been able to draft legislation relatively quickly, we might say, to make some decision with respect to the restoration of benefits for the pre-Charter group.

Now, I do not know whether Saskatchewan required that, but they did offer a lump sum of, I think, \$80,000 to that pre-Charter group. So I guess we will have to wait in decision the discussion between the House leaders on when that legislation may be tabled because it is my understanding that there may be perhaps an impending deadline with respect to the tabling of all legislation for this session. The minister may or may not be aware of that. I guess it is something that he should be aware of that he may only have till the end of this week for that legislation to be tabled with respect to all bills before members for consideration. I just reference that for the minister's understanding. If that is his intent, Legislative Counsel would have to be aware of that. If the board has not made a decision with respect to that, it may impact on the way the minister proceeds with legislation for their pre-Charter group. So perhaps the minister could comment on that.

Mr. Radcliffe: I would like to thank my honourable colleague for that information. I was not aware that there was an imposed or agreed deadline, and I certainly will be moving with alacrity on the issue.

Mr. Reid: No other questions come to mind with respect to the restoration of widows' pensions. Perhaps some will come to mind as we proceed through these hearings. I reserve the right, if that is possible, to go back at this issue again.

I want to turn my attention now, if I might, to another matter and a case that has been drawn to my attention involving one Mr. Doug McCulloch who is a claimant of the board. Mr. McCulloch has gone through the hoops, so to speak, with respect to his claim at the board and has had his benefits terminated as a result of, I think, an adjudicative decision at the board and perhaps even through the appeal level.

I know the board deals with these matters perhaps on a fairly frequent basis, but in a case like this where claimants are having to go

through a long, long drawn out process to win their cases, to have their wage loss benefits paid and to have vocational rehabilitation, it sometimes can take many, many months and into the years to win these cases. In the meantime, many of the families I have encountered, who have called my office seeking assistance, have no source of income, no gainful employment and have left their families essentially destitute as a result of those workplace injuries.

In this case, Mr. McCulloch who was unable to go to work and under a doctor's advice and even to this point is still disabled, having undergone recent treatments in the last couple of weeks that have left him unable to walk now for periods of time, it is even more serious. He won his case eventually, but in the meantime while he had no source of income, he had to apply to social assistance. He lives outside the city of Winnipeg. When his family was without money, they applied to social assistance, got money. Social assistance put a lien against his home. Compensation, when the claim was finally won by the claimant, restored wage-loss benefits back to a point in time and then deducted social assistance payments from the claimant's monies that were sent to him.

I am no expert in comparison to the people who deal with The Compensation Act on a daily basis, but I mean my read of the act and in talking with people who are quite familiar with it, I am unable to find any section in the Manitoba compensation act that entitles the board to deduct, to withhold, social assistance payments and to remit them back to a Manitoba government department. I mean, I look to the minister in his opening comments here. He says there is a separation of roles between the WCB and the government.

Where you have the ability, without having something in legislation that says that you can withhold those monies and send them back, to add insult to injury in this case, the individual not only lost those monies—and I am talking several thousands of dollars—but those monies were not remitted to the social assistance office so that the lien could be removed from the individual's house. So not only did he lose the money, but he still had a lien on his house. You think that he was not furious, you should have

been on the other end of that phone and holding the receiver out here.

Mr. Radcliffe: Mr. Chairman, I thank the honourable colleague for that question, but before we proceed to any specific answer on the issue, I have some concern that we are discussing—

An Honourable Member: There is a waiver on file.

* (1140)

Mr. Radcliffe: There is a waiver on file—in order that information be disclosed on the public record with regard to this individual because I have a sensitivity of releasing private information. But if my honourable colleague's undertaking is that there is such a waiver on file, then I would ask—[interjection]

If there is such a waiver on file, either with my honourable colleague or with staff, then I would invite staff to respond, but I am receiving an indication that staff do not have such a waiver on file. I would ask my honourable colleague if he has such a document in his possession.

Mr. Reid: I am not certain I have the complete file here, but I would have to check on that. It is my understanding that there should have been a waiver that has been provided by Mr. McCulloch allowing me the opportunity to raise this case with the board directly and also to talk publicly with that. If that is not the case, then I will talk in general terms.

Mr. Radcliffe: I think my honourable colleague has indicated the solution to this problem. If we do not have the specific document now in our possession, perhaps I would invite Ms. Jacobsen to address the issue on a conceptual basis at this point in time, with the proviso that, if there are specific questions later upon production of the document, I would invite staff to respond specifically to my honourable colleague once we are sure that we have the permission of the individual. I would want to facilitate the full disclosure to my honourable colleague, but I want to be sensitive to the individual's needs at this time, so I would invite Ms. Jacobsen to proceed on a broad conceptual basis.

Ms. Jacobsen: I could answer in terms of the general format and why and how in terms of social assistance payments. I could also answer hypothetically in such a case how it would work. I would be concerned until we actually see the waiver, but would be happy if it comes after the standing committee to also deal directly with you in your office on this.

In terms of where the policy comes from, in the legislation under Section 40(1), is the capacity for the board to deduct monies that are paid to workers that are in lieu or duplicate to Workers Compensation payments, and that is the grounds in terms of the piece of legislation from 1992.

We then have an agreement in terms of a signed agreement with the City of Winnipeg that enables us to be repaid monies that the social assistance department pays out for claimants who are awaiting their claims being settled. I would say that we are concerned, as you are, of the length of time and see this as an unfortunate by-product of more complex claims and also of waiting periods, so that we also are similarly concerned in terms of the length of time.

In each case, the worker must sign an agreement in terms of understanding that they receive monies in lieu of Workers Compensation settlements and sign an assignment form that says that they will repay a portion of those, the portion that deals with wages. In some cases, those agreements have not been in place, if I am dealing hypothetically. In that case, if there is not a preagreed-upon assignment and it comes to our attention that there was not a preagreed-upon assignment, then we restore the full monies.

Mr. Reid: Well, I understand that a letter just went out last week to the claimant restoring the full wage loss. I am not going to use any more details about the case, and I know the board recognizes that there was some problem with that, but I guess it goes into the bigger picture here now.

I have no problem with individuals who find themselves destitute. They have to support their families. They need a source of income. I mean, you cannot go hungry for six, eight, 10 months, waiting for an appeal, so you have to

continue to pay the bills and eat, put a roof over your family's head. But if there are monies that are paid back for wage loss, then I understand that there has to be some responsibility for repayment of those monies. We would do it for EI on the sick benefit side, disability side, and personally I would not expect anything less on the social assistance side here.

The question is, is it a responsibility of the board to go through that process, because I have read Section 40, and I do not see how the board or how the ministry interprets that Section 40 gives you the power to deduct, to withhold, and to remit, so-called remit, to the social assistance office those monies. I do not see that in that particular section. Perhaps there would be again required a legislative change if you wanted to go down that road, but I do not see that that is the role of the Compensation Board to play that particular role.

In the employment insurance side, claimants have to sign a form that says that if you get any money from another agency as a result of your period of disability, then you have to repay those monies back to the EI program. I understand that. But that is between the claimant and EI itself. Now, perhaps a similar role would be appropriate for the social assistance office to have that type of form as well, so if you get any monies and you are awaiting an appeal before the Compensation Board, it may be more appropriate to have the social assistance office have that form put in place so that the claimant would then sign. It does not mean that the Compensation Board cannot send notification to that agency, but I do not see it as a role of the Compensation Board to be deducting at source any monies that have been maybe paid out by another agency. I do not see that as a role of the Compensation Board, and I do not see how you interpret Section 40 as giving you the power to do that.

Mr. Radcliffe: Before Ms. Jacobsen responds in specific to the question, I would not want to see staff at this point, who are not legal counsel, proffering a legal interpretation other than as they are advised through counsel. My honourable colleague says that I am a lawyer and I can advise. I would respond to that by saying that I do not at the present time hold an

active practising certificate, so that legal counsel are very cautious that they do not make interpretations of the law upon which people's rights hinge, unless they in fact are fully accredited by the Law Society of Manitoba with a full and active certificate. I would ask Ms. Jacobsen to proceed, in light of those remarks and those strictures.

Ms. Jacobsen: While I await our legal counsel's advice on this matter, I would answer the second part of the answer which is the assignment form, and that the member is quite correct that there is a requirement. There is in fact a form that is signed by the recipient and the member is correct, there is a form and there is a format and, therefore, unless the form is signed between the social assistance department and the claimant, the WCB has no right to be withholding monies.

Mr. Reid: In the case that I reference in my opening comments on this subject, the individual lived outside of the city of Winnipeg. There was, I am told, no signed agreement, yet the monies were withheld. Perhaps that was the reason for the decision of the board to restore those wage-loss benefits monies withheld by the board.

* (1150)

Now, I understand that you would look at that and look at your legal options in that regard in what you are supposed to be doing versus what you had done as a board, but I guess the bigger picture here is how many cases have you done this to? How many people have been affected as a result of these decisions? How many on social assistance?

I mean there are a lot of claimants that have their benefits terminated over periods of time and then they have to go through the appeal process, and then they are reinstated. Can you give me an understanding here of how many jurisdictions in the province you have agreements with to restore or to repay those monies to the social assistance agency? How many claimants are involved in cases like this? Do you have any statistical data on this?

Ms. Jacobsen: I am going to ask if Rob Campbell, who is the director of Sector Services,

and who is familiar with cases such as this, to talk to the number and the agreements.

Mr. Rob Campbell (Vice-President of Rehabilitation and Compensation Services, and a Director of Sector Services, Workers Compensation Board): Unfortunately, we do not have those numbers handy. I spoke with the senior director of the payment area on Friday and they are looking at trying to get those numbers for us. I can say that since October of '95, this is the first case that we have had where an individual did not sign the assignment of benefits. [interjection]

Mr. Reid: Well, the minister is giving him free legal advice, I guess.

Mr. Radcliffe: I would respond free legal advice, you get what you pay for.

Mr. Reid: So then do you keep this information? Are you putting together something? Perhaps, if you do not have it here today, I would understand that. If you are doing any collection of that data, perhaps you can send it along to me at some point down the road, as the board has a practice of doing. After these committees, they would send something through the minister's office to us.

Ms. Jacobsen: As the member requested on Friday, we are compiling this and we will forward it to the member.

Mr. Reid: Also information, I guess, when you are doing this, do you have communication with the claimant to tell them of what your policies are with respect? When they sign those forms are they just so desperate when they get those monies that they will sign anything just to get the cheque? I mean, I am trying to get an understanding here of the bigger picture with the number of claimants that are involved.

Ms. Jacobsen: The actual form that is agreed is not between the WCB and the claimant. It is between the city or the social assistance department and the worker, so it would be within either the province or the City of Winnipeg versus the board itself.

Mr. Reid: Okay, I mean, I will leave that line of questioning. I will just express to you that I was very, very frustrated to have to deal with a case like this. I do not see that this is the board's role or responsibility to go down this road. I do not mind if you have agreements where the agency itself that is giving the money would have some repayment format in place to allow for recovery of any monies for similar periods of time.

I do not have a problem with that, but I do not see that it is the board's role or responsibility to act as a collection agency on behalf of another government agency. I just do not see that as being your function or part of your jurisdiction. In fact, my understanding of the act is you do not have the power to do that. So perhaps there are differences of opinion on whether or not you have those powers, and we have some other differences of opinion in other areas, but this is another one of those areas.

I am glad to see that the claimant in this case was able to recover the monies, but I can tell you that it created extreme hardship for that family and a very large frustration for them in finding out that they lost several thousand dollars and then had the lien still on their property, and then having to jump through more hoops to get that removed several months later down the road.

I will leave that with you as something that needs to be addressed by the board to make sure that other claimants do not have similar circumstances and that when you gather the information dealing with the number of claimants that are involved, other jurisdictions that are a party to, or have agreements with, the board now, what your plans are with respect to continuance or discontinuance of those agreements and perhaps having another board decision or policy in place that will allow for notification versus a collection agency.

Mr. Chairperson, I know that there has been some reorganization that has been going on at the board, and perhaps the members of the Compensation Board can bring us up to date on what stage the reorganization is at? Perhaps do you have an organizational flow chart that you are contemplating so that we can have a better

understanding of where the end goal or the end result is supposed to be?

Ms. Jacobsen: Stage one of the reorganization, which was announced in January, amalgamates all of the claims services, the vocational rehabilitation, the health care and the compensation wage loss payments into one organization, and that is meant to reduce the duplication and handoffs and improve the service that is given to claimants. The other part of that reorganization sets up organizations to work on the new integrated claims management system, and so it establishes the organization that will lead the new development of a system. [interjection] April 1. That is January 1 which set the senior organization alignment; in April was announced the further alignment within the rehabilitation and compensation area which is the new integrated claims area. That is to be along sectoral lines so that we can be dealing with the same companies and the same workers and get to know the industries and the types of injuries that are specific to industries. That is right now in the process of being developed along case management lines so that there will be an integration in terms of services.

We would expect that to be completed by early fall. The only remaining organizational issue then is the issue of how we provide services outside of Winnipeg. We are committed as part of the strategic direction of the board approved in February, the board of directors, to come forth to the board of directors on services beyond Winnipeg. Eighty percent of our claims are in Winnipeg, 20 percent are outside, and we would like to improve our services outside of Winnipeg.

Mr. Radcliffe: Mr. Chairman, I notice that the hour of noon is fast approaching, and with regard to the discussion that we had at the commencement of committee hearing, I am wondering if we could direct the attention of committee to some of the older outstanding reports that are on the record at this point in time to see if there is a will of committee to pass some of the older reports? I would ask you to make the enquiry.

Mr. Reid: I still have some questions in regard to some of the older reports, in fact, even going

before the ones that we have before us today. I will be referencing some comments and asking for clarification from some of those reports. So if we can leave that in abeyance for now and perhaps if we have an understanding to come back into this committee in the very near future where we can continue our questioning, because I still have to ask questions with regard to the five-year plans and some of the decisions that are being made in that regard and other questions with regard to reorganization of the board itself. I would like to have that opportunity to do so.

Mr. Radcliffe: Mr. Chairman, I have no problem with either staff or myself being responsive to questions on reports that have been passed or that are now starting to grow a little moss because of their antiquity, but if my honourable colleague specifically chooses that he is not prepared to pass those reports, then may the record so show. I would extend to my honourable colleague the fact that we certainly would respond even though some of these reports have been passed.

Mr. Reid: If the minister could perhaps give me an indication of when the committee may be prepared to meet again. I know there has to be the co-ordination of the scheduling of many people in this room and I am not sure we need to have all the people here, but I would hope that there would be, as we have had in the past, the opportunity to ask questions and take them as notice and then perhaps come back with information. I do not want to see all of your staff time tied up here just answering sometimes questions of mine that are perhaps a little bit off the wall. So, if we can get an indication of when we might be able to come back to this committee with co-ordinating of the schedules, I do not have a problem with that. If the minister is agreeable to that, with his understanding to respond to questions regarding those reports, then we can perhaps pass those up to the current year then.

Mr. Radcliffe: I can only undertake to my honourable colleague to raise this matter with our House leader and share that information with the honourable colleague at the earliest opportunity. I am prepared to do that. I cannot guarantee or indicate what the will of the House

leader would be on that issue, but I certainly would try to be as co-operative as possible.

Mr. Reid: Well, I am not certain then what the minister is saying here. We will just hold the decision over until the House leaders have had a chance to talk about this and that the committee will end here in a minute, and then we will have to come back and have further opportunity to ask questions on the reports that are outstanding until such time as the discussions can be held between the House leaders then. That is the only thing I can interpret from the minister's comments.

Mr. Radcliffe: Then may the records show that the decision rests on the shoulders of my honourable colleague that he has made this decision.

Mr. Jack Penner (Emerson): Mr. Chairman, with all due respect, I think we have heard a good line of questioning here today, some of the line of questioning dealing with specific issues, and I am not so sure whether that is the intent of the committee or was initially the intent of the committee when the committees were established. But it is certainly an opportunity for members to ask those kinds of questions that deal with policy, deal with maybe change in required policy, and those kinds of things. I think I heard some of that today.

However, I would suggest to you, Mr. Chairman, and to the honourable minister, that next time the committee meets, we deal specifically on a year-by-year basis with the

reports. Maybe that way we can make some progress in this initiative. The will to co-operate in a broad-ranging discussion is clearly demonstrated not to be of a kind of thing that we as a committee should be dealing with, and that is to proceed with the passing of the reports.

Mr. Chairperson: What is the will of the committee here?

Mr. Reid: I think, Mr. Chairperson, I am not sure if my honourable colleague, Mr. Penner, was here at the opening of this committee or not, but we had an agreement to have a wide-ranging discussion on all of the reports that were outstanding, and that we would continue that discussion until such time as we had concluded with our questions. I know as has been past practice I have a tendency to get a little bit long-winded, and sometimes these committees drag over into a second sitting time, but for the number of questions that I have remaining, I would expect that we would be able to conclude in that second sitting time. Not to say that I will limit my questions, but it means that we will try and be as expeditious as possible in dealing with these matters.

Mr. Chairperson: I think as previously agreed upon, the committee was to rise at 12 noon, so what is the will of the committee at this time?

Committee rise, with the understanding that the reports are not passed.

COMMITTEE ROSE AT: 12 noon.