



ISSN 1180-4335

**Legislative Assembly
of Ontario**

First Session, 40th Parliament

**Assemblée législative
de l'Ontario**

Première session, 40^e législature

**Official Report
of Debates
(Hansard)**

Thursday 5 July 2012

**Journal
des débats
(Hansard)**

Jeudi 5 juillet 2012

**Standing Committee on
Government Agencies**

Agency Review:
Workplace Safety
and Insurance Board

**Comité permanent des
organismes gouvernementaux**

Examen des organismes
gouvernementaux :
Commission de la sécurité
professionnelle et de l'assurance
contre les accidents du travail

Chair: Bill Mauro
Clerk: Trevor Day

Président : Bill Mauro
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GOVERNMENT AGENCIES**

**COMITÉ PERMANENT DES
ORGANISMES GOUVERNEMENTAUX**

Thursday 5 July 2012

Jeudi 5 juillet 2012

The committee met at 0902 in committee room 1.

The Clerk of the Committee (Mr. Trevor Day): Honourable members, it is my duty to call upon you to elect an Acting Chair in the absence of the Chair and the Vice-Chair. Do I have a nomination?

Ms. Helena Jaczek: I nominate Dr. Shafiq Qaadri.

The Clerk of the Committee (Mr. Trevor Day): Mr. Qaadri, do you accept the nomination?

Mr. Shafiq Qaadri: I do. Would I be permitted to give a speech for my mandate?

Interjection: No.

The Clerk of the Committee (Mr. Trevor Day): Are there any further nominations?

There being no further nominations, I declare the nominations closed and Mr. Qaadri elected Acting Chair of the committee.

The Acting Chair (Mr. Shafiq Qaadri): I thank the committee for their vote of extreme confidence.

AGENCY REVIEW:
WORKPLACE SAFETY
AND INSURANCE BOARD

The Acting Chair (Mr. Shafiq Qaadri): As you know, we're here to review a number of concerns with regard to the Workplace Safety and Insurance Board. We have a number of presenters who are outlined. Each member should have received copies. I'd just respectfully remind each presenter that each stakeholder has 10 minutes for their presentation, following which each caucus will have 10 minutes in rounds for questions. I do also just remind us all that the timings will be enforced very rigorously.

OLD ORDER MENNONITE
GOVERNMENT RELATIONS COMMITTEE

The Acting Chair (Mr. Shafiq Qaadri): I will invite our first presenters to please come forward. Welcome, Mr. Weber, Mr. Frey and Mr. Shantz of the Old Order Mennonite Government Relations Committee. Please be seated. I'd invite you to please introduce yourselves for Hansard. I'd invite all members of the committee to begin, please.

Mr. Aaron Weber: My name is Aaron Weber. I'm a resident of Perth county and chairman of the Old Order Mennonite Government Relations Committee.

Mr. Levi Frey: I'm Levi Frey from Mount Forest. I'm the secretary of the committee.

Bishop Ian Shantz: I'm Ian Shantz, senior bishop from the Old Order Mennonites.

Mr. Aaron Weber: First of all, I would sincerely like to thank you for the opportunity to present our concerns to this committee today. We have been asked to represent the Old Order Mennonites and the Old Order Amish, who hold deep religious convictions against participation in insurance programs. We are pleading for a religious exemption or other acceptable resolution to our dilemma with WSIB.

This plea is made on behalf of approximately 60 congregations in a dozen denominations throughout Ontario with an estimated population of 10,000 people. These groups hold strongly to traditional lifestyles that do not allow automobiles, radio, television, Internet etc. We're often referred to as the "plain people" or the "horse and buggy people." If you were to visit each of these groups separately, you would notice some differences in our customs and community practices. The groups we're representing share the same belief and practice of helping each other within our faith communities in times of illness, injury, disaster or other hardships. All of these groups refrain from participating in any insurance programs. Participation in insurance plans runs counter to our commitment of bearing each other's burdens.

In the past, we found ways to avoid involvement with workmen's compensation insurance, but in the last few years we are being pushed into a dilemma from two fronts. Traditionally, most of our people have been self-employed as farmers, but more and more people must resort to other occupations as a supplement or alternative to farming. This creates employer and employee relationships that legally need to conform to the Workplace Safety and Insurance Act.

In 1974, our groups obtained religious exemption from participation in the Canada pension plan for self-employed earnings. At that time, few of our people were employed other than on farms. Many of these farmers hired young people from within our faith communities to work for them. Government actually encouraged us to structure these business relationships so that these workers could be considered self-employed on their income tax returns. These arrangements worked for about 35 years.

The introduction of Bill 119 severely impacts us. Next to farming, construction has become the second most common occupation for our groups. Many of these people have avoided this insurance by forming partnerships or using other ways to be self-employed. After this year, this will no longer be a legal way to avoid WSIB.

The insurance issue is a matter of principle; it is not a monetary issue. So why don't we simply pay the premiums without ever intending to collect any benefits? We are, after all, paying all our taxes, even though we do not accept government handouts and funding. Why can't we use the same rationale and simply pay the premiums without ever collecting?

The point we really want to impress on your minds is this: Involvement in any insurance program is a direct threat to the very principles fundamental to our faith community values. Accordingly, we want to be perfectly clear in our distinction between taxes and insurance, and our belief in separation of church and state. We do believe in paying all our taxes. The allocation of tax money is left to the discretion of government. If WSIB were funded through general tax revenue, we would not object to paying. We could still decline to accept the benefits. However, because the Workplace Safety and Insurance Board is an independent government agency committed entirely to the specific administration of this insurance program, many of us have convictions against voluntarily paying these premiums. Paying premiums to an insurance program identifies us as part of that system regardless of whether we ever collect or not. Also, paying premiums brings us one step closer to the acceptance of such benefits through the erosion of our convictions.

In our minds, there is a definite difference between charity and insurance. Practising true charity among ourselves maintains a cohesive fellowship where we care for and appreciate each other. If we choose to replace these faith community values with insurance, we no longer have quite the same bond of a caring brotherhood, and we no longer really need each other at the same community level. Instead of the personal interaction of sharing and caring, insurance tends to become a system of rights and obligations.

We acknowledge government's intent of fairness in treating all persons equally. We understand the intention of universality. We would like to suggest that the provisions for religious freedom under the Constitution Act of Canada deserve regard as well. Precedents have officially been set that provide positive discrimination in similar cultural or religious issues. We have already mentioned our religious exemption from the Canada pension plan on self-employment.

A more recent example involving Old Order Amish ended with a court ruling I would like to quote from: "The equality necessary to support religious freedom does not require identical treatment of all religions. In fact, the interests of true equality may well require differentiation in treatment.... The main consideration must be the impact of the law on the individual or group concerned."

0910

I believe the ruling of that case is relevant to the issue we face today. The intended fairness of universal insurance participation conflicts with our freedom of religion.

We appreciate government's concern about the so-called level playing field of competitive industry. We understand the concerns about exempting a few select groups from paying these mandatory insurance dues while others must comply. We also believe that our groups should not have an unfair advantage over others. However, there are several points we want to make about this concern.

(1) For employer-employee relationships, we are only asking for exemption in situations where both the employer and the employee are members of the proposed qualifying groups. In a situation where either the employer or the employee would not be a member of such a group, we agree that we would need to pay these premiums. This would ensure that nobody takes advantage of collecting WSIB benefits unless they are registered and paying their dues.

(2) Our groups are, in fact, already supporting our own system of aid without any dependence on other insurance or government funding such as OHIP, accident or disability benefits and pensions. We believe that the issue of fairness can be considerably levelled by the recognition that we provide our own self-sustaining system of helping each other in times of injury, illness, disaster and other hardships.

(3) As previously mentioned, we do pay all our taxes, but we do not accept government funding such as OHIP, accident or disability benefits, pensions, child tax benefits or supplements, HST credits, farm income stabilization programs, farm subsidies or other government grants. Our refusal to accept government funding and insurance demonstrates the sincerity of our convictions.

(4) We would be willing to have further discussion about paying amounts equivalent to WSIB premiums to an alternative tax used as general tax revenue or to an acceptable charity.

(5) Our convictions that do not allow us to participate in insurance remain non-negotiable.

Some of our members have experienced garnishments because of their refusal to voluntarily pay these premiums. There is no doubt that there will be more and more cases like this unless a resolution can be reached.

Are garnishments satisfactory as a long-term solution? Unless government is willing to seriously consider the possibilities of resolution, we really have no other options than to accept all forthcoming consequences.

Preservation of our community values is of utmost importance to us. We are trying hard to explain our position and hope we can convey the sincerity of our plea for resolution. Can you help us?

The Acting Chair (Mr. Shafiq Qaadri): Thank you, gentlemen, for your precision-timed remarks. We now invite the NDP caucus. There will be 10-minute rotations, beginning with Mr. Natyshak.

Mr. Taras Natyshak: Good morning. Thank you so much for your presentation this morning. The complexities of this issue as well as many others that involve religious rights and freedoms and the relationship between church and state is really one of the more interesting aspects of my job. It's actually why I enjoy it so much. I get to understand and learn about those complexities and try to help weave our way through them, as I'm sure my colleagues do as well. So thank you for your presentation. It conjures up a whole host of questions and concepts for me that I don't think I'll be able to fully work out, entering the context of this committee hearing. However, I do appreciate and understand the direction and the intent of your presentation today.

I do appreciate also some of the ideas that you've put forward in terms of mitigating your involvement in the workplace compensation system. Some members may have differing opinions of what the actual mechanics of the system are. Indeed, some may believe, as we do in the NDP, that it should be a compensation system rather than an insurance model and should follow the lines of that directive. However, in that light, I understand your concerns.

I'm wondering if you could tell us what workplace safety systems you have in your community. Could you bring us through a day in a workplace within one of your communities and how you've worked towards ensuring that there's safety on the job within the Mennonite community?

Mr. Aaron Weber: May I ask one of our delegation back here, the secretary of our safety committee, to speak on that?

Mr. Taras Natyshak: Sure.

The Acting Chair (Mr. Shafiq Qadri): Yes, of course. At the microphone, please. There's enough ventriloquism here.

Mr. Taras Natyshak: Welcome.

Mr. Aaron Bowman: Thank you for the privilege to address this issue. I am the secretary of our Old Order Mennonite safety committee. We were appointed by the elders of the church. There's—

The Acting Chair (Mr. Shafiq Qadri): Sorry. Could we just have your name for the public record?

Mr. Aaron Bowman: Aaron Bowman.

The Acting Chair (Mr. Shafiq Qadri): Go ahead.

Mr. Aaron Bowman: We were appointed by the elders of the church, and our mandate is to teach and promote safety within our community. We meet once a year as a committee and hold safety awareness workshops through the school as our avenue of doing that. Recently, we have been meeting with regional planners for road safety.

But as far as workplace safety, we stress the importance of it. We meet with police, first responders and other people who teach safety, like WHMIS and that.

I don't know if that answers the question.

Mr. Taras Natyshak: Well, somewhat. Maybe a visit to one of your workplaces might offer me a visual reference of some of the processes.

Does your community embark on aggressive, proactive safety measures in terms of mitigating exposure, some of our more fundamental aspects surrounding working at heights, confined-space training, chemical awareness, some of the basic areas within our safety regimes? Is that a part of your community?

Mr. Aaron Bowman: One of the people that we would meet with regularly as a committee and then convey those concerns out to the broader community through our school—I mentioned the school workshops—is an instructor for WHMIS, fall arrests, confined spaces. We encourage people in especially the chainsaw safety courses, because we are farm-oriented and would be working in woodlots. So that is one of the things.

One of the things we really encourage people to do that are employers in wood shops, welding shops, farmers for sure: We have a safety checklist that they would go through with an employee before the employee starts. The checklist is fairly comprehensive. It is signed by both the employer and the employee to indicate that they understand the points on the questionnaire and that. There's another space to further describe any training that was provided. One of the questions is, "Is the employee comfortable with the assignment?"

Mr. Taras Natyshak: Would you have specific designated workplace safety representatives on each job, similar to the mandated requirements under the WSIB? Do you follow some of the mandated legislative requirements regarding health and safety legislation?

Mr. Aaron Bowman: If I understand your question correctly, the requirement, as spelled out by the Occupational Health and Safety Act, would be—I think it's that if there are more than five employees, a safety rep is needed; if there are more than 15, I think there's a committee needed. I may be a little off on those numbers—

Mr. Taras Natyshak: Twenty, yes.

Mr. Aaron Bowman: In our circles, there are some, but few that have five or more employees. I think the answer is, no, there is no specifically designated safety rep where there might be in excess of five.

0920

Mr. Taras Natyshak: Because I would want to be comfortable—it's sort of outside of the involvement of and participation within the WSIB, but I would want to be comfortable that the adequate safeguards are being addressed and that those laws that are enacted are actually being followed. Although you're asking to not participate within the WSIB, you are not explicitly asking not to have to follow some of the health and safety laws within the province, right? We're delineating those two.

Mr. Aaron Bowman: Could I differentiate between those? We spend a great deal of time teaching and promoting the requirements of the Occupational Health and Safety Act. It is with the insurance element of that part of the Ministry of Labour that we have our difficulties, as we're trying to convey here.

We actually record all workplace accidents within our community, and that was at the behest of John Slinger

from the WSIB. We had a meeting with him some years ago. They are recorded; they're available on request.

Mr. Taras Natyshak: Could you tell me how a worker who was injured on the job would be adequately compensated or receive support? You mentioned within your presentation that you have some sort of a communal system that does identify and does recognize that when workers are injured there are support mechanisms there. Can you tell me what that looks like and how that works?

Mr. Aaron Bowman: You're looking to me, or—

Mr. Taras Natyshak: Anyone is fine.

Mr. Aaron Weber: Well, yes. As a charity rather than an insurance, whenever something happens and somebody gets injured—suppose there's a hospital stay. We all pitch together to pay his hospital bills. We don't use OHIP. We're there as a community to support him, both financially and otherwise.

Mr. Taras Natyshak: Do you have any formula based on that worker's prior earnings or what they may require going forward? Is it an ongoing type of system that would supplement their wage post-injury? How is that decided?

Mr. Aaron Weber: That would depend on the circumstances. Levi, would you be willing to speak on that?

Mr. Levi Frey: This plan is administered through the church, and the deacons of the church—there are approximately 25 of them—are the administrators in charge of the plan. When their fund is depleted, then they ask for more funds from the church brethren. We write a cheque and they throw it in there. Then when something happens, when there's a hospital bill, the person with the bill will hand it over to the deacon. The deacon will write a cheque to pay for somewhere between 75% and 90% of it. There is sort of a means test, not a formal means test but an informal means test. If it's somebody that can well afford the day-to-day living expenses while he's off, then—the church is a charity. Remember, it's a charity. It's not a right; it's a charity. They will supply it if it's required: if the person is poor, doesn't have enough money to cover the day-to-day living expenses. But if he has enough money of his own, if he's well-off, then the church probably will not cover lost wages.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. I'll need to intervene there and offer it to the government side. Mrs. Cansfield.

Mrs. Donna H. Cansfield: Thank you very much for your presentation. I'm delighted that you came this morning.

Before I make my comments, I also wanted to say thank you for the extraordinary work that you do in charities throughout the world, actually. The Mennonite Order is well known for its work.

I understand what you've put forward and I think what we need to be able to do is to sit down with the Minister of Finance and his bureaucrats and to be able to do what I call the art of the possible here, along with the workers' compensation board. As the PA to finance, I undertake to do that for you, Mr. Weber. We could contact you, find a time where we could have a conversation together that's

mutually agreeable, and see how we can move forward with your concerns as you've outlined them in your brief.

So what I will do is, when we finish the meeting today, I'll be going back into my office. I'll speak with Deputy Orsini, who is the Deputy Minister of Finance, ask him whether this goes to labour, whether it's finance or it's a combination of both, and get the WSIB and see, as I always say: What is the art of the possible? How can we work to help to meet some of your—from a religious perspective.

Also, because there is a section in the Canada pension plan, obviously accommodations have been made in other areas, so maybe there's something that we're able to do here. I'm more than prepared to work with you, sir, to see what that could be.

Mr. Aaron Weber: Thank you.

The Acting Chair (Mr. Shafiq Qaadri): We're off to the PC caucus. Mr. McDonell.

Mr. Jim McDonell: I'm going to pass off to my colleague.

Mr. Randy Pettapiece: Thank you for coming. We met in my office once last fall, talking about this very subject. We did write a letter to Minister Jeffrey concerning your issues. You have had a meeting already, on June 18, with the Ministry of Labour?

Mr. Aaron Weber: Correct.

Mr. Randy Pettapiece: Can you outline what happened there?

Mr. Aaron Weber: We did have our meeting, not with Linda Jeffrey herself, but we had a senior policy adviser, a deputy minister, two policy advisers. They certainly did listen to our concerns, but we really didn't get any indication at that meeting what they were going to—well, they promised to get back to us, but to them it was a new issue, even though they previously had a chance to look at the letter, I'm sure, to Linda Jeffrey. What we presented to them that day was very much the same thing. I've changed a few things for today, but it's basically the same presentation.

Mr. Randy Pettapiece: Have you heard back from that ministry at all?

Mr. Aaron Weber: Not yet.

Mr. Randy Pettapiece: You don't accept OHIP payments if somebody gets hurt?

Mr. Aaron Weber: We do not.

Mr. Randy Pettapiece: Do you pay any premiums to OHIP through your businesses?

Mr. Aaron Weber: Levi, you're a tax accountant. Would you like to speak on that?

Mr. Levi Frey: I'm not sure how familiar you are with tax returns. On the ON428 form where you do your provincial tax calculation, the very last thing after you've deducted all the things you can, somebody tacked something at the very end called a health premium. Yes, we pay that. We call it a tax because we believe that was the intent of it. The only reason it's not called a tax was because of—we won't get into that. But we do pay that. Mr. Bowman pointed out that there are not too many large employers, so most of us do not get into the Ontario

health tax because—I forget what the limits are; I think it's \$400,000, and there are very, very few businesses within our community that reach that level. But yes, we would pay it as a tax.

Mr. Randy Pettapiece: But if someone gets hurt and you need to go to the hospital or your doctor, you pay that out of your own pocket. You do not dip into OHIP.

Mr. Levi Frey: That's correct.

Mr. Randy Pettapiece: So what you're considering with the WSIB is not to pay the premiums because you do not accept payment from WSIB if something happens. Is that correct? Even though some of you are paying premiums?

Mr. Aaron Weber: Yes. We don't collect the benefits of OHIP. Again, it's not a monetary issue. It's not the money. We're offering to pay an equivalent amount, an alternative tax, but what we don't want to do is to be a part of an insurance system.

Mr. Randy Pettapiece: I understand that, but I think it does get down to money in some people's minds. Do you know what I'm saying? I understand your position, the religious part of your—you've explained that to me before. However, it may seem to some people that you're trying to get out of paying something. That's all I'm saying here.

Anyway, I'm going to pass it on to my colleague Jane.

Mrs. Jane McKenna: I'd like to say we can learn something from you. Not everybody is a chatelaine, and it is—you can hear the passion in your voice. This is about your beliefs. It's not about taking something from the system. You, to me, are an asset to the WSIB, that you pay into something and take nothing. I've actually been out to your sites before and see how you work with your barns. You're probably more on top of your accidents, not having any, as opposed to anybody else, by how you all work together as a team. So I wanted to bring that up.

I have a question, though: In light of your principled objections to insurance and paying WSIB premiums, if you do not obtain religious exemption, what do you view as your options?

0930

Mr. Aaron Weber: Our only option at this time is to accept garnishments, and those garnishments have been happening. We expect that will certainly increase once Bill 119 is in full effect. But that's the only recourse we have. They'll come in, they'll seize the bank account and they might make a third party claim. One thing that's not as handy for us is if they make third party claims.

Let's suppose—I myself have a woodworking shop—one of my dealers, for instance, gets instructions that he may not pay me; he has to pay the government instead of paying me. Actually, it doesn't really help business relationships. It's inconvenient. We're not going to resist garnishments. We'll even strive to have amounts in our bank accounts that it can happen if we know it's going to happen, but we're not voluntarily doing that. Have I answered your question?

Mrs. Jane McKenna: Yes. You've got a great presentation here today. I would just say that you should really be thinking on the other side, if this is the situation and things aren't going to change because you need legislation to change it: What are you going to do to make it different for yourself; how can you look at your own business plan or what you're doing to move forward, right? Because the only option you have right now is, your wages are being garnished.

Mr. Aaron Weber: Yes, that's the only option we have. That's the only option that's left for us.

Mrs. Jane McKenna: Right, right.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. McKenna, and thanks to you, gentlemen, for your deputation on behalf of the Old Order Mennonite Government Relations Committee.

UNITED FOOD AND COMMERCIAL WORKERS CANADA

The Acting Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters to please come forward. Representing United Food and Commercial Workers Canada: Mr. Neath, Ms. Backus and Mr. Depoe. Welcome, and I'd invite you to please be seated so we can keep to the schedule. You've seen the drill: 10 minutes initially, followed by 30 minutes in rotation for questions. Please begin officially now.

Mr. Bryan Neath: Thank you, Chair. My name is Bryan Neath. I'm the Ontario director of United Food and Commercial Workers. To my left is Sherree Backus. She's a benefits representative of Local 175. To my left is Eric Depoe, who also is a benefits representative, of Local 1000A. They are the two people who know all of the ins and outs of the WSIB and assisting workers in their struggles in terms of getting benefits at the board. For me, as the Ontario director, I'm more on the political side of the scene.

Today, we have a submission, but it's more like a report than an in-depth submission. We, the United Food and Commercial Workers, are the largest and most progressive private sector union. We represent over 250,000 members across the country. Here in Ontario, we represent, in retail, food processing and hospitality sectors, more than 120,000 members who live all across Ontario, from Kenora to Cornwall, from Elliot Lake to Windsor.

USCW members may be your family members, friends or your neighbours. They are your grocery clerks and cashiers at your supermarket. They work at all of the Beer Stores in Ontario and they also work in meat packing plants. They take care of your elderly family members at nursing homes and retirement homes and work in many other sectors.

We represent workers in extremely small workplaces such as ones with as little as two workers, or in many large corporations. UFCW has been a long-time advocate for domestic and migrant agriculture workers. We submitted, as part of our submission in our package today, a good article from just the other day in the Toronto Star

about the struggles of migrant workers in terms of the WSIB.

Might I say: It's not just WSIB; the struggles of migrant farm workers and also immigrant or temporary foreign workers as well are extremely hard and difficult, as we know by being out in the fields with those workers. Their problem is, the minute they say something they will be, almost within minutes, put on a plane and sent back home, so it's a very difficult scenario for them.

In Ontario, our union has been active in representing our members in thousands of appeals at the WSIB and in return-to-work meetings. Additionally, we advocate on our members' behalf with a strong voice in regard to workers' compensation concerns, and over a number of decades we have acquired a thorough and practical knowledge of this system.

In our allotted time, we will not be able to spend time talking about many of the major important issues facing the board, such as review, governance, coverage, exclusions, employer incentive programs, etc., but we would definitely look forward to answering any questions in that regard after our presentation.

The last time that there were major changes in the Workplace Safety and Insurance Appeals Tribunal was in the late 1990s. In our view, the outcome of those changes was an increase in the unfunded liability, as well as the deterioration of the outcome and support for injured workers. Since then, as well, without much dialogue and with little consulting, there have been further policy and staff changes.

Now, with the proposed modernization of the appeals system, we see a growing hardship for injured workers. It appears to us that the goal of the WSIB is to eliminate oral hearings from the appeals system. With a worker unable to appear at a hearing, this approach would deny injured workers fairness and justice in a matter critical to their lives and their future.

The proposed changes put forth are even more unreasonable given that workers are already in distress and in pain as a result of their injuries, yet they would be expected to fill out even more complicated forms than in the past. The board has been contracting out translation services, making it even harder for non-English-speaking or non-French-speaking persons to understand what they have to do to make a claim, and creating far more obstacles for them to navigate.

I'm going to point out that a Mexican migrant farm worker came to one of our centres and was talking about the difficulties that they face. In their words, "You're never near a telephone. It's a problem because the boss leaves you abandoned there in the field and there is no way to communicate. If something happened to someone—a cut, a fall, a fracture—you would have to walk very far to find a road to try and stop a motorist, and on top of that, you don't speak the language."

Those who don't speak English or French as their first language are going to be faced with far more concerns in terms of filling out forms or trying to work their way through the WSIB.

And then, if that's not bad enough, in the new proposals they have the downside risk changes which will even heighten workers' fears and could even limit our ability, as representatives, to fairly assist an injured worker in a legitimate appeal. What I will do is read to you item number 8 on these new proposed appeal readiness forms. Item 8 is the declaration and acknowledgement of risk. It says, "I understand that the WSIB has the authority under section 121 of the Workplace Safety and Insurance Act to reconsider any decision at any time if it considers it advisable to do so."

The second point, which is probably our biggest concern: "I understand that in order to address my appeal, the appeals resolution officer may also reconsider other decisions in my case which may result in a change in my entitlement." It goes on to say, "I understand the potential downside risk and wish to continue with my appeal," and there are two other questions that aren't related to that. You have to sign that.

As we see it, that's bullying. That's bullying an injured worker to not pursue a claim. We find this extremely unacceptable.

What's happening now is that they're threatening to reopen cases that have already been established, using an unpublished interpretation of policy and applying the new directives to adjudicate cases. This is even prior to the conclusion of Jim Thomas's consultation process. We think this is totally unfair as well. This makes us think that the board has already concluded that the outcome of the consultation is only looking to save money on the backs of injured workers.

0940

To so drastically change a system that has worked for the most part over a number of years is senseless at best. Under the old system, the claims adjudicator had the time and the training to make decisions through investigation and the collection of facts from workers, doctors, employers and company witnesses. As a result, there were better decisions made, with fewer claims sent off to appeals.

Under the new system, we have what is called an "eligibility adjudicator," who has a short time limit to make decisions. The result? Poor decisions, resulting in more appeals and more backlogs. Complicated forms, time limits on decisions and poor decision-making based on little to no information are the problems, not the appeals system.

We hear calls for opting out by employers, to find their own way to pay. At UFCW Canada, we operate in partnership with some of our employers solely, as well as many multi-employer health and welfare plans, to provide such coverage. We know one thing for certain in dealing with those plans: You need the proper funding in order to cover the cost of claims. Further, the claims need to be based on fair and reliable coverage for workers.

That appears not to be the case with the WSIB, which has been committed to denying or reducing coverage for workers as opposed to raising premiums or finding other ways of funding. It seems to be their preferred method of

dealing with the unfunded liability. We at UFCW Canada do not support any of those reductions in coverages or additional clawbacks for workers.

Given the schedule of this committee, we would be prepared, if you ask us to, to do a more in-depth submission and a report for your additional deliberations. But clearly understand, from yesterday's OFL submission and recommendations, that we fully endorse them. They cover off, I would say, the majority of what we would do in a more in-depth report.

With that, we would be willing to—

The Acting Chair (Mr. Shafiq Qaadri): Thank you, gentlemen. We're going to move to the government side. Ms. Albanese.

Mrs. Laura Albanese: Thank you for your presentation. We have a few questions, both myself and my colleagues here. We heard yesterday that the WSIB implemented the new work reintegration program in 2011. Have you noticed any improvement with that, any faster return to work—any improvement, even, for the injured workers?

Ms. Sherree Backus: What's happening with work transition—that's a specialist that comes in now—they really explore with the employer any possibility of a return to work. Sometimes, the modifications or accommodations are so extreme that the dignity of the person performing the work is lost, because there really is no work; they are just filling a spot.

What's happening now is that the board has determined that no one is unemployable. In our cases, we usually get senior people who have worked there 15 or 20 years or more. They're injured to the point that they can't perform their own job; their own job cannot be accommodated to fit within their physical restrictions. They keep looking for something—and we've had people in retail, for example. At the front of the store, you've seen the tables, and they'll hand out coupons, coffees, cookies or something like that. It's very different for these people who have been busy all their lives. Stocking shelves, being cashiers—they're busy. For them now to go and be more or less what they tell me is "on display" for people coming in—you have to remember: After working for a while, they build up relationships with customers too. The customers come in and say, "What's wrong? How come you're up here?" and it starts to eat away at their self-esteem.

We prefer that people go back to work. It keeps their vacation pay up, it keeps their pension and it gets them out of the house and in the social life they're used to. However, we find some of the work that is given to them to be very demeaning. Yes, I would say we've had people going back more often, but sometimes that's the sole focus, and there's a loss of the person as a whole. Sometimes, that's not the solution.

Mrs. Laura Albanese: You state in your presentation that under the old system, the claims adjudicator had the time and training to make a decision through investigation and the collection of facts from workers, doctors, etc. It seems to me that what we heard yesterday was

exactly the opposite of this: that under the old system, there was a backlog, and now things are being streamlined, and they're working much better. Can you clarify what the view is?

Ms. Sherree Backus: Since the establishment of the eligibility adjudicators, if there's a denial in the claim—either initial entitlement or lost time; whatever the issue may be. When we're given access to the file, the beginning section is called the memorandum. In there is what the eligibility adjudicator has done. We're only finding two memoranda, and in neither of those have they ever spoken to the worker. They may not have the medical information, the form 8, the physician's first report from the doctor. The claim is denied. The only memorandum is a brief summary of why it's denied, and that's it.

Previously, you had memoranda where the case manager spoke not only to the worker at length, but also to witnesses that were listed on the form 6, the employee's report of injury or the worker's report of injury. Sometimes they would call the doctor or the physiotherapist.

So in fact, we're seeing the very opposite. What the eligibility adjudicator has is a time limit to move the file from their desk to somewhere else. So yes, it's being pushed along, but there's no work actually being done. That's why we said at the end of our submission that it's not the appeals process where the problem is; it starts right at the operating level with the eligibility adjudicator not being given the time to do the full investigation and, therefore, creating more denials.

Mrs. Laura Albanese: I have one last comment, and then I'm going to pass it on to MPP Jaczek. What can be done, in your opinion, to improve the service to injured workers and to improve the relationship between the WSIB and injured workers?

Mr. Eric Depoe: Just procedurally, the first thing would be the elimination of delays at all levels, but I'm more familiar with the delays in the appeals. Several years ago, the delay was three or four months before we got to the first level of appeals, and then two years to get to the tribunal. The tribunal backlog is relatively similar now, but the appeals backlog at the first level of appeals is now two years as well. It could be potentially four years before someone—and at the appeals tribunal, about 50% of adverse decisions are overturned. It could be about four years for 50% of the people who are in the appeals system to actually get a verdict. In the meantime, of course, they've lost their house; perhaps they've had a family breakup; the financial stress is incredible.

The other thing that this does is, it transfers costs from where they are properly, in the workers' compensation system, to other systems. Ontario Works has greater costs because the compensation system has a backlog. The Canada pension plan was never meant to be a disability system, but injured workers apply for CPP disability because they have a three- or four-year wait before they can get an adverse decision overturned. Other agencies now have to bear the costs—taxpayers bear the costs—of these workplace injuries instead of having the employers,

who are supposed to be paying these costs, paying them. So the taxpayers pay them.

Mrs. Laura Albanese: Thank you.

The Acting Chair (Mr. Shafiq Qaadri): Ms. Jaczek.

Ms. Helena Jaczek: Thank you for explaining your advocacy for migrant workers. This is an area that I'm very interested in, as a former medical officer of health. Public health had the responsibility to inspect accommodations, and often found them to be very lacking, in fact. We served orders to improve the accommodations for migrant workers in York region. Explain to me what coverage WSIB provides at the moment for migrant workers and then what you would like to see in the future.

0950

Mr. Bryan Neath: At this stage, our understanding of the coverage is that they are covered. The employer pays the premium and therefore they are covered. That's not where the problem exists. The problem exists where they fall under a whole bunch of rules because they get sent home. The article in the newspaper is basically that. A man crushed his hand so he couldn't work at the same level on the farm where the farmer wanted him and said, "We do not need you; therefore, you go home." For him to get a claim—and, by the way, they know this process better than I do—in terms of the process now, they've got to look for another job and they have to be doing a lot of other items on there which they can't do because they're not going to be here.

Ms. Helena Jaczek: So how would you like to see that change? What would you recommend?

Mr. Bryan Neath: There's a whole bunch of recommendations that don't just cover the WSIB. The first case, for us who are in UFCW where we've been able to negotiate and when we have a collective agreement with workplaces that have either migrant farm workers—and we do have contracts with them—or with employers with temporary foreign workers, we negotiate language in a collective agreement where if something happens where, as an example, they were to be fired, before any action is taken in terms of them being sent back home or being sent somewhere, we have the right to the appeal. In this case, it would be the arbitration appeal process. So I guess if you're applying that same theory to WSIB: Before anything happened and they were sent away, they should have their hearing, and a good hearing. As Eric mentioned before, that could be four years from now. What are you going to do for four years?

There needs to be a much more improved system for them as well. Them connecting with the board is nearly impossible. We find them all because we have centres all across Canada—and there are four centres here in Ontario—which those migrant workers will come to because they don't know where else to go.

The Acting Chair (Mr. Shafiq Qaadri): I thank the Liberal caucus and offer the floor to the PC side. Mr. McDonell.

Mr. Jim McDonell: Thank you for appearing today. As you can see, I guess the WSIB has a real issue here.

Their premiums are now above average, so we're not competitive when we look at other provinces. From what you're saying, we're not doing a great job of paying out premiums, and we doubled our unfunded liability over the last five years. What would you recommend as far as a way of fixing this? The answer is not just to strictly add to the benefits where you continue to add to the system. If we increase our rates, we just result in more employers leaving the province. It's not an easy answer.

Mr. Bryan Neath: No, it's definitely not an easy answer. I would suggest, if I could, to you that it's not much different for us, because we are in the private sector. An employer comes to us either through negotiations or in the middle of a collective agreement and says, "We're in trouble." What can we do to help? Our answer is almost exclusively, "We're more than willing to sit down and have a discussion about what needs to happen in terms to hopefully save the employer," if you can. There's not always a case where the employer can be saved, because they don't want to be saved, potentially, and/or there are just issues surrounding them that have nothing to do with labour and/or other issues. They're just going to go.

You've got to have a discussion about what's going on. But clearly understand: For us, we represent the workers. For us, we want to make sure that what we're doing is representing them the best that we can. When it comes to them coming to us for reductions in benefits, as an example, through our benefit plan, we have very long discussions. We talk about the amount of money they could pay additional into this fund if the fund was not operating well before we ever would look at anything in terms of the reduction of benefits.

I would suggest to you that potentially with the WSIB and certainly for our advocates who deal with the cases, the problem that we have is that it's a moving target on eligibility. If you clearly knew what was going to be eligible and what could be there, then I think that the funding part could help.

The final piece on the funding part: If you literally were to follow the Arthurs report, that gives us an opportunity to start addressing the issue of the unfunded liability. I believe it has a good mixture of talking about premiums and also talking about the claims section. Without saying, of course, too many employers always want to shoot averages around. They say, "Ontario is the highest province, or one of the higher, above the average, in terms of premiums." But we're also, I think, the worst province in Canada in terms of who's eligible. There's only, like, 71% of employers that are in, and that's the worst. That's another opportunity of fixing the problem.

Mrs. Jane McKenna: I'm dumbfounded sitting here. I'm trying to figure out where all the money is. I guess you people are as frustrated because you're paying into something and you have nothing to show for it. So I'm sitting here kind of scratching my head.

Eric—I think it was Eric, with the fabulous glasses on—brought up a point about the money being transferred when it gets out of WSIB, and that Canada

pension is not meant to be disability. Bang on, because that is actually what the problem is. Because it does go everywhere, there isn't one place where we sit down and look and then figure out how to go from that ground solution. Clearly, it is a broken system, and we have a problem. When you talk about that and say that, that is 100% true, because the money does get put in different positions, so where is it all going? Then, in the end, it ends up probably costing more than it would have if it was allocated to the right places in the first place. I'm actually embarrassed for us, for myself and government, that the migrants are in such a vulnerable situation.

My question to you is this: The Star's article that you have here notes that "WSIB does not collect statistics based on immigration status." That seems like an important step to serving those workers, don't you agree? Or do you? What do you think on that?

Mr. Bryan Neath: I would agree. If you don't mind, I will take an approach of answering your deep concern with migrant farm workers and the way government has handled them. I would suggest to you, in terms of whether Quebec or BC or other provinces where there are also a lot of migrant farmers, that one of the best ways you can protect them is to give them the right to unionize, the right to join a union. If that was the case, that would improve their lot better—I didn't say it's the best, but definitely, in our case, we know that that is one of the absolutely necessary areas in which you can improve the migrant farm workers' request.

Mrs. Jane McKenna: So have you brought that up to the board? Have you brought that up to anybody, about that?

Mr. Bryan Neath: About unionization?

Mrs. Jane McKenna: Yes.

Mr. Bryan Neath: Apparently, you haven't seen our two Supreme Court of Canada cases that we fought all the way to the Supreme Court.

Mrs. Jane McKenna: Okay, yes. I'm sorry.

Mr. Bryan Neath: Yes, we've been fighting on behalf of workers, especially on the migrant—not just migrant; I should call them domestic and migrant farm workers—here in Ontario, for sure. Again, because we represent workers all across Canada, Ontario and Alberta are the only two provinces that don't allow unionization for farm workers. There seems to be, in those other provinces where that right is—that's not to say or suggest that there aren't a lot of problems that exist still in there which we have to fight. The good part, though, is that we can represent them.

Mrs. Jane McKenna: Okay, great. Thank you.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mrs. McKenna. To the NDP side—

Interjection.

The Acting Chair (Mr. Shafiq Qaadri): Oh, I'm sorry. Mr. Pettapiece, go ahead.

Mr. Randy Pettapiece: Just a short question. Having been through this a little bit myself and been denied a claim because I broke one little rule—and it was a very minor one, I thought—it seems to me that the red tape

involved in this agency is incredible. The amount of rules that you probably have to know is insurmountable. When I asked for my claim, I had broken my ribs at my job place and was denied any compensation because I did something which I wasn't supposed to do, which was that I quit that job and went on to another one that I could work at. That was why I was denied. But there was no investigation. As soon as the person I called asked me a few questions and I said, "No, I'm not working there anymore because I went somewhere else because I could work there," it was, "Oh, well, you're denied." That was the end of the story. It was only a small claim as far as I'm concerned, so I didn't pursue it because I just didn't have the time to do it.

But if I was a civil servant or a person working for these agencies, I would just rejoice in red tape because it does discourage people from going to these agencies because you get frustrated with it. So I would suggest that we need to get a handle on that type of thing and really look at the amount of red tape involved, some of the silly rules that are involved, and get those things fixed.

Do you have any examples of some things that you might want to have a real, hard look at to get rid of some of this?

1000

Mr. Eric Depoe: It's difficult to put your finger on one thing and say that if you fixed X, then the system would work a lot better. I think it's partly attitude. I think now we're seeing an attitude where there's a general tightening of what goes on, and I think that comes right from the very top, from the leadership. We see things coming out, like Mr. Marshall's efforts to improve efficiency and address the unfunded liability, that have made a difference, including a new focus on increased discipline in benefit entitlement decisions. Well, what does that mean? It means we're going to tighten up benefit decisions and people who would have received benefits in the past are now not going to receive them. To me, that's what that says.

Just for your example, had you been a member of a union and you had someone to represent you, you probably could have appealed that decision and won it. You should have gotten benefits, by the sound of it.

Mr. Randy Pettapiece: It was only a month, and I moved on because I thought, "What's the sense of fooling around with this thing?" I quit that job and moved on and was told, "Sorry, guy, you broke a rule." So I was denied any claims.

It's difficult to change one rule and make everything better. I understand that. But we have seen an increase in the red tape involved in all government for too long, and I think it just allows people like myself to get frustrated with the system, that we just back away and then do something else. Maybe that's what's going on here right now. I just wondered if there was anything that you could—go ahead.

Ms. Sherree Backus: There's one portion of the modernization proposal of the appeals process, and that's the reconsideration—

The Acting Chair (Mr. Shafiq Qadri): I'll need to intervene there, with apologies.

Now to the NDP side: Miss Taylor, you have the floor.

Miss Monique Taylor: Jeez, we have a tough Chair today.

Thank you so much for being with us today and bringing your perspective to the table, because it's definitely important.

My question is regarding the appeals procedures and the changes and the downside risk. I know it was mentioned within your report. I was just wondering if you would be willing to comment further on the potential results of this proposal.

Ms. Sherree Backus: We've already seen the results. For example, we had a person who pursued their appeal—the adjudicator went back 11 years or more; the injury was in 2001—allowed initial entitlement. This person had four other injuries to the same area—only allowed six weeks, revoked the permanent impairment, revoked the NEL. That means that this individual has no permanent restrictions now, so now the employer is wondering what they have to do. After living with a permanent impairment legitimately for years, the board has now gone back and revoked all entitlement.

Because that has happened in a few cases now, I believe it's our responsibility when we're pursuing an appeal for a worker to tell them of the downside risk. Unfortunately, as the gentleman said before, more and more of the workers don't want to have anything to do with it.

The oral hearings may be the only time that an injured worker actually will deal with an employee from workers' compensation face to face to get their story out. We're talking about language barriers. We're talking about unrepresented workers as well. Just imagine the difficulties we're facing. We know about the system. We're capable of representing people. What about those who are not represented? It's very discouraging.

Miss Monique Taylor: Absolutely. Thank you for that. In your experience, do you find that the WSIB actions are open and transparent?

Ms. Sherree Backus: No, because here's the other thing that's happening: We are actually getting decisions based on the board's new interpretation of existing policies, policies which are up for consultation through the Jim Thomas consultation process. If they have this new interpretation already, I don't believe that that is transparent, nor is it open, and it brings the result of that consultation process into question if the board is already, in their mind, deciding what the policies are going to be. It's discouraging because we don't have those documents. How are we supposed to assist workers when we don't know what new interpretation has been coming down the line to the eligibility adjudicators? At this point in time, those four policies that are to be reviewed—they're already implementing their own interpretation of those. So, yes, we're kind of confused.

Miss Monique Taylor: Thank you. As union representatives, what is your insight on workers who are not

currently represented and may be now more vulnerable under the proposed changes?

Mr. Eric Depoe: Injured workers who are not represented are much more vulnerable. Their option is to go and hire somebody. How do you find a person like that? It's difficult—or to go to the Office of the Worker Adviser, which has criteria and has budgetary constraints. But certainly, in the initial stages of a claim, they're not going to have the expertise that they need to have in order to carry a claim or an appeal forward. There are time limits involved. There are forms to be filled out. If your first language is not English or French, they're not going to be able to deal with that. There are two sets now. There used to be one set of forms; now there are two sets of forms that have to be filled out before you can get in, get your appeal launched and get in the queue waiting for a scheduled date when your appeal will be heard. You have to do written submissions in order to convince them to actually have a hearing into your appeal. I don't know what a written hearing is, but apparently that's something that was put in in 1997 into the act: that hearings could be written. Now it's a written hearing. But in order for someone who's unrepresented to deal with a written hearing—it's a Herculean task, an enormous task, to try to get that done. Workers who are not represented, I think, are going to be much more vulnerable, under the proposed changes, to the appeals process.

Miss Monique Taylor: Thank you. How much time do I have, Chair, before you cut me off?

The Acting Chair (Mr. Shafiq Qadri): About four minutes.

Miss Monique Taylor: Thanks.

Mr. Bryan Neath: Can I just add—

Miss Monique Taylor: Oh, sure; go ahead.

Mr. Bryan Neath: I'd just like to add to that. The other thing that has happened in the last while—I'm not sure exactly what the time frame is—is that the employers, especially the big employers, now have hired claims managers who manage all these claims and are dealing with the board on behalf of that employer. If you can imagine an employee working in Walmart who has no representation—it's hard to get representation—and then goes up against a claims manager to fight all of that, where do they go? First of all, they're not making enough money to hire anybody, as Eric indicated. That's an additional piece that's happening that's troublesome for us as a union, because we are meeting up with those claims adjusters as well, and it's a tough time right now for that.

Miss Monique Taylor: Absolutely. Thank you.

The Acting Chair (Mr. Shafiq Qadri): Please, Mr. Natyshak.

Mr. Taras Natyshak: I'm going to waver from my line of questioning here, and I'm going to ask you to paint a picture and pose a scenario. I'm going to give you the scenario. Members of provincial Parliament—we're all at work here right now. We're working, you're working, and folks in the gallery are working as well—many of them. I'd like you to assume that one of us, as

members of provincial Parliament, is injured here at Queen's Park. This is a bubble. There aren't the same hazards in this building as I experienced on construction sites prior to being elected. But there are big stairways. Imagine that we are injured on this job. Tell us how, in the light of a migrant worker, someone who's unrepresented—tell us the challenges that we'd be faced with, as members of provincial Parliament, to get back to work.

1010

Mr. Bryan Neath: I guess it might depend on who the employer is.

Mr. Taras Natyshak: The employer is the people of the province of Ontario.

Mr. Bryan Neath: Let's face it: The employers play a huge role in all of this as well. Simply, if all the forms are done correctly—if I was to say that, because employers are not good at that. So if, first of all, you make a claim and the form—7, 6, whatever the form number is—isn't there, you're in trouble.

Mr. Taras Natyshak: Form 7, yes.

Mr. Bryan Neath: You're already in trouble. So the first part is your employer: How are they going to be? The difference, obviously, here, amongst probably everybody in here, is that we have knowledge of the system.

To your question about a migrant farm worker, as we pointed out, first of all, half the time they don't speak the language and have no knowledge of the system whatsoever. Secondly, they don't really know where to go to get that particular help. Here, at least, you would make your claim, you would follow a process, you will likely be denied the claim, and then you'll likely have to appeal. Unless it's potentially a very obvious problem such as falling down and breaking your leg—

Mr. Taras Natyshak: If they were to make some provisions for us to return to work, we would assume that if we had mobility issues, they'd make provisions for that here at Queen's Park, ensuring that we access to elevators. Is that what other folks can expect out in the workplace? You've got 10 seconds left, by my clock.

Ms. Sherree Backus: No, because—I'm sorry, in your scenario, for a lot of our workers, we have a long way to go before we establish a claim. If there's no visible wound, like a bone sticking out of your leg, let's say—

The Acting Chair (Mr. Shafiq Qaadri): I apologize, Ms. Backus, for interrupting you serially. I would thank Mr. Natyshak for his questions. I assumed that your issue of injuring an MPP is hypothetical, but in any case I'd thank the United Food and Commercial Workers Canada for your deputation.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Acting Chair (Mr. Shafiq Qaadri): I'd now invite our next presenters to please come forward, representing the Ontario Professional Fire Fighters Association.

Welcome, gentlemen. I know you know the drill very explicitly. I'd invite you to please begin now.

Interjections.

The Acting Chair (Mr. Shafiq Qaadri): The floor is now with the Ontario Professional Fire Fighters Association.

Mr. Jim Holmes: Good morning. President McKinnon sends his regrets. My name is Jim Holmes and I'm the executive vice-president of the Ontario Professional Fire Fighters Association. I am also a fire captain in London. With me today are Mr. Paul Atkinson, chair of our occupational disease committee, and Mr. Chris Wheeler, chair of our WSIB committee. Mr. Atkinson is a firefighter in Toronto and Mr. Wheeler is a firefighter in St. Catharines.

The Ontario Professional Fire Fighters Association represents approximately 11,200 professional full-time firefighters across Ontario. Our members provide emergency response, training, prevention, inspection, public education, fire investigation, emergency communications and maintenance for much of Ontario's fire services.

Our members are represented through 80 locals—77 municipal, two airport and one industrial—who are chartered through the International Association of Fire Fighters. Relying upon the most recent Census Canada data from 2011, our 77 municipal locals respond to the needs of approximately 81% of Ontario's total population.

Members of the OPFFA sit on several standing committees. Two of these committees focus on the issues contained in the review of the WSIB: our WSIB committee and our occupational disease committee. As an organization, the OPFFA takes seriously its commitment to promoting the health, safety and well-being of our members.

I'll now turn it over to Mr. Atkinson and Mr. Wheeler.

Mr. Paul Atkinson: Good morning. It is indeed a privilege to address this committee today. I sincerely enjoy the opportunity to address our elected officials. Thank you for making our province a great place to live and to raise our families.

Firefighters are very concerned with occupational disease. The OPFFA is proud to participate with the WSIB as it continues a review of illness and disease from workplace exposures. WSIB continues a methodical review of illness and workplace-related diseases which is, from our perspective, a transparent process and allows for input into that process from the firefighter's point of view.

The OPFFA has worked for over a dozen years to streamline the process with the Workplace Safety and Insurance Board to ensure that our members receive benefits in a timely manner and, when necessary, receive the assistance they require. Furthermore, in the event of the death of one of our members, working with the WSIB, we can strive to have the appropriate benefits flow to the surviving family seamlessly in their time of need.

We are currently working with the WSIB to resolve several illness-related issues that have been identified over the past period of time. The science surrounding oc-

cupational disease is an ever-evolving process. We have found the WSIB to be very responsive to the occupational disease issues that we have raised as an organization. To that end, we look forward to continuing to work with the WSIB to resolve these complex illness issues as they arise. By being proactive, our sense is that we will assist the WSIB and our government in anticipating the costs associated with these illnesses so that they will not become part of an unfunded liability for future generations.

As well, firefighters have worked on a prevention strategy, hand in hand with the WSIB, to reduce the incidence of our members contracting occupational disease. We are confident in stating that our Mask Up! poster campaign and video would not have been as successful without the WSIB's input and assistance. The video, which involves real firefighters suffering an occupational disease, is available to every fire department in this province as part of their ongoing occupational disease prevention training program.

With respect to our policy review, we, as labour, recognize that for the WSIB system to operate in the best interests of all, the system must function for the worker, the employer and the WSIB. To have the WSIB system function effectively, there needs to be a review mechanism to address policy concerns as they develop, not after the policy has been instituted and, in some cases, become ineffective.

The firefighters advocate that the current issue surrounding the calculation of monthly spousal benefits of retired workers is an example of the need for a responsive review mechanism. The OPFFA believes and advocates that the calculation method can be addressed reasonably and fairly by utilizing our current legislation and reorganization of existing policy. We are currently in discussions with WSIB staff and Ministry of Labour officials to ensure that the aforementioned policy is reviewed in a manner that will see the calculation of spousal survivor benefits in a fair and balanced way.

Proactive policy development that involves stakeholders from the beginning will ensure that future policy development does not inadvertently negatively impact workers.

I'll turn it now over to Chris.

Mr. Chris Wheeler: Thank you for allowing us the opportunity to speak to you today.

The chair of the WSIB has suggested that one of the challenges facing the board is the growing costs of claims, particularly around occupational disease. Firefighters are working toward an early detection and awareness program that will identify and reduce the overall devastating effects of occupational disease. This, in turn, will reduce the costs associated with occupational disease for the board. Senior staff at the WSIB are fully aware and supportive of these programs and continue to offer support in the development of further initiatives to achieve these goals.

The OPFFA looks forward to working with the new Chief Prevention Officer to continue and enhance our

prevention initiatives for the firefighters in the province of Ontario.

The OPFFA will continue to participate in the appeals review process. We appreciate the volume of work that senior staff at the WSIB have already put into the appeals system review. We are fully confident that the concerns of the OPFFA, such as access to files in a timely manner, will be addressed in the ongoing transparent review process.

While we do have concerns with some of the proposed changes to the appeals process, we are confident that if the review process welcomes and values input from all stakeholders, there is an opportunity to, in the end, improve the appeals system in a positive manner.

I will now turn it over to Jim.

1020

Mr. Jim Holmes: In closing, from the inception of our compensation system there have always been challenges to be dealt with. Workers' compensation was born from a need to protect injured workers and promote a safer workplace. It is our belief that the WSIB, if working with all stakeholders, will continue to move forward in addressing issues proactively rather than reactively.

The OPFFA has in the past 15 years worked cooperatively with the WSIB and the Ministry of Labour to ensure that the WSIB system works for all parties. We look forward to addressing today's challenges and pledge a commitment to work with the WSIB and the government to ensure that our workers' compensation system remains cost-effective for employers while providing fair compensation to injured and sick workers in a timely manner.

On behalf of the OPFFA, we thank the committee for their time today and look forward to entertaining any questions you may have.

The Acting Chair (Mr. Shafiq Qadri): Thank you, gentlemen. To the PC caucus. Mr. McDonell.

Mr. Jim McDonell: Thank you for coming today. It's good to hear your perspective.

I'm just stepping back to a higher level here and trying to think of a fair compensation system. As an example, if somebody is walking in through a gate at their employment and on the outside of the gate they trip and fall, they're on their own hook. Step through the gate, and all of a sudden it's the employer's fault. What's fair? Most accidents are probably, whether they're at home or at work, something that's an issue. We seem to treat people differently. If people get hurt on their own time, they're fighting through the system. Many of their problems are because there are benefits given to people that get hurt at work because there's a rush to get them through the system to get them off benefits.

In a lot of ways, does that seem fair? Does it seem fair that you're treated differently? There are no extra premiums. If you're on the private system, you work for yourself; you have to take insurance out to cover your income. But if you're working through a WSIB system, your employer is obliged to do that. You have no respon-

sibility to do that. Looking at it, is it a system that we can work with or something we should change slightly? It just seems to be that it's setting up groups of people that are treated differently. Any answer?

Mr. Paul Atkinson: I believe that we advocate, as firefighters, to work in the safest manner possible to reduce and eliminate injuries from happening in the first place. By reducing, through health and safety programs, those injuries, we really treat everybody consistently fairly, whether they're hurt on work or—sorry; if they don't have accidents away from work and they don't have accidents at work, they would be treated fairly.

That being said, we believe that the system is a good system. As you say, it needs some tweaking here and there. It has needed tweaking since 1914. It is always an ever-evolving system. As with all of our laws in our province, we need to take them out and exercise them, and this is a law that we need to bring out and exercise. It is, I believe, an affordable insurance program for employers to be involved in that removes the need for litigation and the suing of an employer for benefits. I think that with universal coverage, if we had every worker covered in the province of Ontario, while there would be more liability by bringing those people under that umbrella, everybody would be consistently fairly treated.

Firefighters are very aggressive in their return-to-work programs. We have looked at the reports and the science and we know that the longer somebody stays away from work, the less likely we are to ever get them back to work. We've worked really hard with the Workplace Safety Insurance Board on some of the most complex claims, such as post-traumatic stress disorder. We can actually report to you that we're getting our members returned with post-traumatic stress to the workplace because we're working effectively to get early interventions that may not be there otherwise in a private insurance system.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Pettapiece.

Mr. Randy Pettapiece: I'm looking under the section on policy review that you gave here. In the second paragraph, "The firefighters advocate that the current issue surrounding the calculation of monthly spousal benefits of retired workers is an example of the need for a responsive review mechanism." What are you talking about there? I don't understand that.

Mr. Paul Atkinson: The calculation of the monthly spousal benefits involves retired workers. Many of our firefighters and many of our workers in this province become sick after they leave the work that made them sick, that exposed them to toxins in the course of their employment. When a retired worker becomes ill, the words in the act currently state that "where a worker has a loss of earnings." For retired individuals, there is no loss of earnings, so the employer groups are advocating that where there is no loss of earnings, the net average earnings should be calculated at zero. The firefighters are not currently fighting back on the loss of earnings. This is the

law of our land, and the language is clear: Where there is a loss of earnings, the WSIB will pay for it; where there is no loss of earnings, there is no payment of loss of earnings.

The problem becomes when one of those people passes away from that job cancer. The employer groups advocate that because there was no loss of earnings, the net average earnings should be set at zero. We're suggesting to the WSIB that under the current policies that were created in 1998, they missed out on the concept of total disability. They were going under that concept of total disability which was in the pre-1998 acts. As such, when they transitioned into the new concept, which is a loss of earnings, they mistakenly put a piece of the calculation for net average earnings in the loss-of-earnings policy. Because a worker has no loss of earnings, that policy is no longer valid. We're suggesting removing that section from that particular policy and placing it into the calculation of the net average earnings for long-term illnesses.

Mr. Randy Pettapiece: I'm still confused.

Mr. Paul Atkinson: It is an issue that we've been spending probably four or five years on.

Mr. Randy Pettapiece: I think what you said was that if one of the spouses dies, say a firefighter passes away—is the one who is left supposed to get some benefits out of the WSIB?

Mr. Paul Atkinson: The surviving spouse is entitled to benefits under our current legislation, yes.

Mr. Randy Pettapiece: Oh. Is that common throughout Ontario society, that the spouse would get these benefits?

Mr. Paul Atkinson: In society generally?

Mr. Randy Pettapiece: I mean, just general society. If I've paid workers' comp all my life and I pass away, does my wife get the benefits?

Mr. Paul Atkinson: No. What we're talking about is when the Workplace Safety and Insurance Board makes a determination that a worker has died due to a traumatic injury while at work, in the course of their employment, or if they make a determination that an occupational disease was related to an exposure or a process in their employment period of time.

Mr. Randy Pettapiece: I can understand that part of it. That's fine. But usually an insurance policy ends when you pass away.

Mr. Paul Atkinson: The Workplace Safety and Insurance Board—

Mr. Randy Pettapiece: The insurance policy ends if I pass away, but the benefits really aren't passed on to my spouse. Is that correct, usually, except in this case?

Mr. Paul Atkinson: If you had a private life insurance policy that was payable upon your passing, then your spouse would receive benefits.

Mr. Randy Pettapiece: Oh, for sure. But what you're asking for is the WSIB benefits to continue to the spouse who wasn't the firefighter.

Mr. Paul Atkinson: That is the current legislation and has been the legislation since 1914, where there are sur-

vivor allowances for people who go to work and unfortunately die in that work environment.

Mr. Randy Pettapiece: So what's going on is, they want to change that legislation. That's what you're saying.

Mr. Paul Atkinson: No, it is just the way that the benefits are calculated. It's simply the calculation of those benefits: how much is paid out.

Mr. Randy Pettapiece: Interesting. Thank you.

The Acting Chair (Mr. Shafiq Qaadri): We go now to the NDP. Miss Taylor.

Miss Monique Taylor: Thank you very much for being here today and—

Interjection.

The Acting Chair (Mr. Shafiq Qaadri): Sorry, I need to intervene. The PCs still have two minutes. Ms. McKenna.

Mrs. Jane McKenna: I'm saying "wow" myself, because I want you to negotiate for me.

Do you feel you're part of the problem of the unfunded liability?

Mr. Paul Atkinson: I don't think that we're part of the problem. I think that the awareness and the claims that we've advocated for over the last 12 years have certainly piled into the system unexpectedly—maybe not unexpectedly, but not funded for, not currently anticipated as they were going through.

The scope of the firefighters' experience is not too different than many of the mining experiences from the 1960s and 1970s, where somebody knew at some point that these things weren't good for you and exposed our workers in this province.

1030

I do know that in the example of lung cancer, as an example, there are class actions and lawsuits in the States that the Workplace Safety and Insurance Board is able to recover funds from, from places like Holmes Foundry and whatnot. I know that the WSIB, when they pay out benefits to a family, turn right around and go right to that class action and make a claim under that class action and receive benefits back for that.

That's not something that we want to put our firefighters or our workers in this province in the position of having to do, where you have to get part of a class action lawsuit that will pay out years and years and decades later. We need to look after our workers here and now. Myself and Colin Grieve with the provincial association have worked really hard to make sure that when a member gets sick, they get the benefits from the Workplace Safety and Insurance—

The Acting Chair (Mr. Shafiq Qaadri): I thank the PC caucus. Now the floor returns to the NDP. Ms. Taylor.

Miss Monique Taylor: He's tough.

Thank you, Chair, and thank you again for being here today. Thank you for bringing this portion to the table, because occupational disease is something huge and definitely needs to be addressed on many different levels.

I like the way the firefighters are so proactive in making sure that every worker stays safe, with the videos and everything, that you're making sure your workers are staying safe—right?—and nobody is at risk of inhaling stuff that they're not supposed to. I don't think there are many organizations that work as closely with the WSIB, probably, as you do, by the sounds of it. I think that you should be a champion of that and of it being more proactive, that the WSIB should work closer with employers to make sure they have that same kind of relationship that you are dealing with, in whatever form that could be. I'm sure there are many different jobs happening out there where they're not getting that video of Mask Up! and they're not as proactive on those things. We really could cut back on the occupational disease if things like this were definitely more proactive. So congratulations for that.

I don't know how many questions I actually have. I just really wanted to make those comments about the prevention and that kind of stuff, because I really do think that's important and I think many people and employers should be looking at you as the lead on what a great job you are doing with that. Taras?

The Acting Chair (Mr. Shafiq Qaadri): Mr. Natyshak.

Mr. Taras Natyshak: I just want to touch on a couple of things that we've heard. It was stated earlier that the delineation between if a worker is on public property, trips and falls, it's no one's fault, but as soon as they enter into a workplace, it's the employer's fault—that premise is contrary to the actual premise of our compensation system. It is a no-fault system. I want you to just validate that that is your understanding of the system as it is as well.

Mr. Paul Atkinson: The Workplace Safety and Insurance Board is a no-fault system, meaning that there might be fines under a Ministry of Labour inspection, but the WSIB does not say that the worker was at fault or the employer was at fault and pay more benefits or less benefits—

Mr. Taras Natyshak: Therefore I wouldn't have the right to sue under any type of tort law.

Mr. Paul Atkinson: There are very narrow margins on which a worker can sue under the Workplace Safety and Insurance Board, one of which is if there's third party liability vis-à-vis an automobile accident in the course of employment.

Mr. Taras Natyshak: Very good. Thank you. I just wanted to clarify that.

Secondly, in terms of survivor benefits, it was also mentioned that you had negotiated those survivor benefits, and I want to clarify that your association has not negotiated those benefits for yourself.

Mr. Paul Atkinson: That, we cannot take credit for. Those are currently under the Workplace Safety and Insurance Act. They are legislated from this government.

Mr. Taras Natyshak: Although it's not a novel idea, I think the concept is appropriate.

I want you to expand on that as well: the need that has arisen for survivor benefits. Ultimately, my understanding is that it comes out of the fact that a worker was injured on the job because they went to work, or became ill through some sort of an occupational disease that they incurred as a result of their line of work, through exposure or sudden injury. I want you to tell me why it's so important to extend those benefits to survivors in that scenario.

Mr. Paul Atkinson: Firefighters do not make a differentiation between a traumatic death and an occupational disease death. It is treated in an identical way, in that we have line-of-duty death status. We've got a memorial just south of this building here, where firefighters' names are engraved on that wall.

Mr. Taras Natyshak: I pass it every day on my way to work.

Mr. Paul Atkinson: Thank you. For us, we make sure that the people who die from these cancers, who really are no different from that one who came to work and fell out of a window, or one that fell through a floor and died instantly and traumatically, or had a heart attack, as Bob Leek did in the Sunrise Propane explosion several years back—because these firefighters and our workers in this province go to work and are slowly, toxically poisoned every single day that they're there, unknowingly and unfortunately. By recognizing these as just as traumatic as the people who die instantaneously, it puts an onus back on the employers to make their workplaces safer.

I can say to you that firefighters have worked diligently over the past 20 years to make their breathing apparatus more contained, so that they don't get the toxic flow into their faces and into their lungs. We're working better on hygiene practices to make sure that our firefighters—for example, here in Toronto, when a fire occurs, the trucks go back to the station. They're actually taken out of service for a period of time, after they've reloaded that truck with the hose and the water, to cleanse themselves, to go in and shower and scrub all of the toxins off, to change their clothes. We have two sets of bunker gear for every single firefighter so that that dirty, toxic gear isn't placed back onto their body, continuing those exposures. Those things are taken out and washed immediately. It's no longer a badge of courage to walk around in dirty, filthy gear.

We've worked really hard over the last 20 years to make better safe-work practices, and our employers, I think, by and large, understand the need for that, because they're losing valuable resources. When a worker gets sick at 35 years old and dies at 37 years old, places like the city of Brampton lose valuable resources, and this affects all of us. The same as in any workforce: You hire these people, you train these people, you spend a lot of time getting to the level they get to to provide a service for that employer, and now they're no longer able to provide that. Then there are other benefits that kick in, and there are costs associated with that. In all reality, we don't want the cost to flow to the family. We don't want that money to go there. We don't want the employers to

bear the burden. We'd rather have our workers safe and healthy.

Mr. Taras Natyshak: Hear, hear. Thank you for that.

The proactive work that you've done as an association, as professionals: I think that the lessons learned from your work and the job that you do can be transferred into other industries quite seamlessly, even the fact that it's no longer a badge of courage. As a construction worker, I was exposed to many different elements—*asbestos, silica dust*—things that are rough and tough in the industry but should be mitigated at all costs.

Thank you for the work that you do on behalf of our communities. I can't tell you how revered you are, certainly in my small community of Essex county. I've got two little kids at home who look up to you as well, so it's really something that conjures up the best of what we can be as a public service.

I want to just quickly touch—you've got a minute and 40 seconds left—on the challenges of receiving benefits when exposed to PTSDs. How's that going? Do you face any challenges on an ongoing basis, and where are we heading?

Mr. Paul Atkinson: Post-traumatic stress is a huge problem for the firefighter and emergency services, the police and ambulance personnel. Many are seeing things that really should never be seen by anybody, but it is things that are being exposed. We've worked really well with the WSIB to demonstrate our problem, to the point that we have streamlined the process so that when one of our members comes forward claiming post-traumatic stress, they're immediately referred to CAMH for an assessment. In the past, it was six months, a year or a year and a half waiting for medical notes while these people were percolating away, getting worse and worse with their symptoms. The sooner the intervention on post-traumatic stress, the higher the odds of returning that person to work are. We've gotten really good with the WSIB to at least get the people in the stream that they need to be in, that mental health stream, so that they're getting the treatment that they need and the support that they need.

1040

As I say, it wasn't too many years ago that they would never come back to work. It wasn't even contemplated. We're actually returning our members to modified duty, supporting them, bringing them back into the fold and assisting them through this process. In the same breath, we are working with our employers to have better EAP programs, better counselling available immediately.

I know that the police and the ambulance are right on board with doing these things to prevent these becoming—

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak, for your remarks and your timing assistance.

I'd also like to thank the members of the Ontario Professional Fire Fighters Association for your deputation—

Mrs. Donna H. Cansfield: Hello.

The Acting Chair (Mr. Shafiq Qaadri): Oh, I'm sorry, gentlemen. You still have 10 minutes.

Liberal side: Ms. Cansfield.

Mrs. Donna H. Cansfield: He's too efficient.

Thank you very much for coming and for your presentation.

One of the challenges that you've identified is the issue around prevention and keeping your firefighters as safe as possible. That comes with extensive training. I think the literature would tell you that virtually 98% of all events that occur are preventable. Unfortunately, we call them accidents, so that sort of gives us, "Well, it's fate. It's going to happen anyway." They are not accidents; they are preventable. Your approach is commendable, and I think you've proven that in terms of your track record.

Now you're dealing with the whole occupational disease issue, and I think a lot of us are going to be benefiting from that in other sectors as well, so I thank you for that.

One of the things you've identified is the issue around—well, there were a couple of things: occupational disease, and we talked about the spousal benefits—the appeals process and the review process. I'd be interested in where you see some of the challenges and where you see some of the opportunities. You did say that if we all worked together, we would improve the appeals system. Can you identify some of those challenges as you see them?

Mr. Paul Atkinson: I think one of the challenges with the appeals is actually having a clearing house for those appeals. Currently, when you do your appeal forms, they go into a multitude of branches and areas within the Workplace Safety and Insurance Board and tend to not make it to the place that they're supposed to, which adds time into the system. The senior management of the board is proposing this central clearing house so that we know where all of the appeals are going.

What they're doing is not too dissimilar to what was done at the Workplace Safety and Insurance Appeals Tribunal at 505 University. They have an agency that takes the appeal in, they process it, and get it case-ready, hearing-ready. Then, when you have your hearing date, everything is in place and ready to go: We have all the up-to-date medical—there's nothing more frustrating than getting to a hearing to find out that one party didn't get all of the medical or that there are big pieces of the file missing or that the appeals officer didn't have this or didn't have that. That happens, and it's wasted time for everybody. It's wasted time for the employer, for the advocate as well as the worker and the system, generally speaking.

While there are some issues surrounding file access, expediency, getting that out, these are things that I think that as we go through the summer and submissions are made to senior staff on where the employers see this going, where the workers see this going—I think that some of the better ideas from the more experienced advo-

cates on both sides can really fix the problems, or problems as they're perceived.

As far as the downside risk, that has always been there. That has always been an aspect of the appeals system. When you open up an appeal, they can come back and review just about anything. As firefighters, what we try to do and what we train our advocates to do is to pre-screen your hearings before you even enter into that system. We're not just taking needless appeals on a wing and a prayer—that hopefully somebody won't be smart enough to figure out that this isn't going through. If we take something to an appeal, we're pretty sure that we're going to win, in whole or in part, that appeal.

Mrs. Donna H. Cansfield: When you're a large organization, obviously you have the advocacy, and it's easier than if you were a very small employer or an individual, for example, and you didn't have access to that advocacy that you have. In your discussions with the WSIB on this whole issue, will you raise that on behalf of all of us as well? Because it's something we certainly have heard.

I really liked your approach: the idea that if you can find a way to work together—all stakeholders—you can move forward in addressing the issues. What would you consider to be an optimum way of doing that? I presume there are regular ongoing stakeholder conversations, but is there a better format to do this?

Mr. Paul Atkinson: What we did with the Mask Up! campaign was, we had a small working committee. If you ask the senior staff at the WSIB, if you ask the adjudicators, they can tell you about good employers versus bad employers and they can tell you about good worker advocates versus bad advocates. By bringing the best people to the table, you can solve the problems fairly quickly and expeditiously. As we worked on the Mask Up! video, we selected Pat Burke, and from London, your chief—we selected people that we knew that were coming to the table that had the best interests of everybody to solve the problems.

The solution never lies on one side or the other; it always is somewhere in the middle. It's the WSIB's role to bring the best people to the table to find that common middle ground that ends up with a solution that works for everyone. The system broken doesn't work for anyone. High premiums are no good for the employers because it chases business away from our province. We need these jobs; we need the work; we need to encourage business to come to this province to work and to employ our people. We need good coverage for our workers so that they're not placed in a position of poverty or homelessness as a result of a workplace injury.

If the WSIB acts as a mediator to bring these people together, I think that we can solve a lot of the problems fairly quickly.

Mrs. Donna H. Cansfield: In fact, we've had a lot of policy discussion by many of the deputants, and we're actually just doing an overview of the WSIB. You've identified that you've worked with them in a number of areas and been very successful. Could you find other

areas where you think there could be improvements within the WSIB in terms of that relationship?

Mr. Paul Atkinson: In terms of the relationship, I think that we operate on the premise that it's worth getting together over a cup of coffee to discuss. That was Jane McCarthy that placed that on us, probably 12 years ago. Myself and Colin Grieve are always at the compensation board. You know you're downtown too much when people are saying hello to you on the street on Front Street. John Slinger: We've met with him, on a chance occasion, just to talk about a few things, just to discuss a few ideas that emanate into a meeting that bring more people into the process.

It's a matter of putting a face to things and really being involved, concerned and caring about the system and about your workers, too. We become intimately involved with these people that go through the cancers, even through physical injury. It's not something that you ever wish on anybody. I can thankfully say I've never been injured in the course of my employment, with the exception of one rock when I was really young and stupid. When we meet with our recruits, when we go and talk to them, I don't call it an accident; it's a preventable occurrence. This is what they know. It is a preventable occurrence, because if they can figure out how the space shuttle blows up, I can figure out how they tripped over a fire hose at 3 in the morning.

Mrs. Donna H. Cansfield: I couldn't agree with you more. As I said, I chaired the SmartRisk foundation, which is injury prevention, and we did a lot of work on just getting that word "accident" out of people's vocabulary. Unfortunately, it has slipped back in again. But if you stop thinking about it as an accident and as fate, and it's preventable, then everybody bears a responsibility.

You're saying, sir, there's an informal approach towards the formal, and I suspect that could be said for all of the potential stakeholders that would have some opportunity for conversations. Would that be your advice, to build those relationships?

Mr. Paul Atkinson: My advice is, it is all about relation-building, relationships with the people. Our adjudicators at the WSIB are people too. They have good days; they have bad days. You have to treat them nicely. The senior staff: They're people. They have good days; they have bad days. You have to treat them nicely. It's just a matter of advocating your position. You're not always going to agree, but you can agree to disagree and move things on to different venues as they are required.

1050

But really, it's that relationship-building that allows you to present your points in a calm and cool fashion so that they can understand where you're coming from and they can also understand where the employers are coming from. I think, in a nutshell, it's the relationship-building that needs to occur with these people at the compensation board, because I've never met anyone at the compensation board who isn't willing to solve a problem. They're always willing to talk.

Mrs. Donna H. Cansfield: Thank you. Now, on the occupational disease file, you indicated that you had been working with them. Have you found that to be a productive process?

Mr. Paul Atkinson: Extremely productive. When we started in 1998 with our brain cancer and lymphatic cancer policy, through the years that followed, we were able to demonstrate—we were bringing our science to the WSIB for review. They said, "If this is going to be solved at the tribunal in 12 years, why aren't we solving this now? Show us what you've got." So that started that process of bringing everything to the point where we continue to see things—as I say, science is an ever-evolving aspect of our lives. People are being studied all the time. Science reviews are coming out, and they're showing things or showing stronger indications, and we present that to the compensation board and say, "What about this?" or "What about that?"—

The Acting Chair (Mr. Shafiq Qaadri): I need to intervene there. Thanks to the Liberal side and thanks to you, gentlemen, on behalf of the Ontario Professional Fire Fighters Association.

DOUG TARRY LTD.

ONTARIO HOME
BUILDERS' ASSOCIATION

The Acting Chair (Mr. Shafiq Qaadri): I'd now invite our next presenter, who comes to us via teleconference from St. Thomas: Doug Tarry, co-owner and director of marketing of Doug Tarry. Are you there, Mr. Tarry?

Mr. Doug Tarry: Yes, I am.

The Acting Chair (Mr. Shafiq Qaadri): Great. You have 10 minutes in which to make your opening remarks, followed by 30 minutes divided evenly amongst the parties. I invite you to please begin now.

Mr. Doug Tarry: Okay. Thank you for having me. I want to just give full disclosure that I'm also the president of the Ontario Home Builders' Association, and I will be making my opening remarks based on—

The Acting Chair (Mr. Shafiq Qaadri): Just a moment, Mr. Tarry. I need to adjust the volume. Can we do something? Perhaps you might do something on your end as well.

Mr. Doug Tarry: Down?

The Acting Chair (Mr. Shafiq Qaadri): Yes, that's a little bit better. Go ahead, please.

Mr. Doug Tarry: Is that better?

The Acting Chair (Mr. Shafiq Qaadri): Yes.

Mr. Doug Tarry: Okay. I am also the president of the Ontario Home Builders' Association. I will be making my initial opening remarks in that regard as well.

I want to thank you for inviting me to speak to you today about the WSIB. The WSIB is an integral part of Ontario's labour market regime and its long-term viability, as the province's no-fault insurer is important to our industry.

The Ontario Home Builders' Association is the voice of the residential construction and professional renovations industry across Ontario. Our association includes 4,000 member companies, organized into 29 local associations across the province. The residential construction industry is the largest industry in the province, supporting over 325,000 jobs here in Ontario, paying some \$17.1 billion in wages and contributing up to \$39 billion in the provincial economy. In 2011, the home building rate group, 764, was billed \$149 million.

On behalf of the Ontario Home Builders' Association, I want to thank the past WSIB chair, Steve Mahoney, for his hard work in this important file. We always appreciated his open and transparent leadership style. Mr. Mahoney always made himself available to speak to our members, whether it was at a large conference or throughout our network of local associations. I had the pleasure, actually, of personally speaking to Mr. Mahoney on a couple of occasions.

The WSIB plays an important role in our industry, and I will be addressing three main themes as they relate to our broader home building industry, as well as my company, based out of St. Thomas, Ontario.

First, I will discuss funding the system, which remains the most important challenge for the government and the board to address, as the current unfunded liability reaches over \$14 billion.

Second, I will discuss education and prevention and why the WSIB as well as other related government ministries, such as the Ministry of Labour and the Chief Prevention Officer, need to be more active in improving health and safety practices instead of merely handing out tickets for infractions.

Third, I want to touch on our association's opposition to mandatory WSIB coverage for independent operators and executive officers in construction, and I'll go into detail on that one.

Funding the system remains a key theme recently, with the Professor Arthurs report released only a couple of months back. We participated in those consultations and continue to be concerned with how the liability will impact future premium rates. We believe that the current premium rate regime is already—

The Acting Chair (Mrs. Laura Albanese): Mr. Tarry, sorry to interrupt you. Could we ask you kindly to speak up a little bit and perhaps a little slower, because we're having difficulty following you.

Mr. Doug Tarry: I'm sorry. I thought I was told to turn my speaker down here. Is it not loud enough?

The Acting Chair (Mrs. Laura Albanese): Yes, now you are. If perhaps you could speak just a tiny bit slower.

Mr. Doug Tarry: I'll try and relax for you. I'm used to doing this in person, you see, so it's a little bit odd doing it this way, but I do appreciate the opportunity to talk. Anyway, I'll try and relax a bit, okay?

Funding the system remains a key theme. Recently, with the Professor Arthurs report released only a couple of months back, OHBA participated in these consultations, and we continue to be concerned with how the

liability will impact on future premium rates. We believe that the current premium rate regime is already at very high levels and any adjustment higher is going to act as a deterrent to the hiring of more workers. This concept was confirmed in the 2009 Auditor General's report, which stated that Ontario's average premium rate is already amongst the highest in Canada. It is within this context that home building and renovation companies continue to believe that they are not receiving the appropriate value for the cost of the WSIB. OHBA recognizes the legislative obligations, such as the many worker benefits that the board has that fall outside of jurisdiction at the WSIB, and that significant cost savings cannot come from administrative cuts alone.

With that said, the WSIB cannot continue to tap into the premium rate structure to deal with this problem. If the government is serious about tackling the unfunded liability, then both the province and the WSIB needs to look at benefit structures that are in place. When WSIB premiums are increased, it imposes a direct cost to employ additional workers. This cost is already higher than in a number of other provinces, making Ontario less competitive and less attractive for businesses to invest in.

From my perspective—and I'm going to go on an aside here—it also makes it so that our housing is more unaffordable to consumers. Specifically, it is unfair to certain builder groups because of the way their corporate structure is. I will come back to that.

One positive signal from the Harry Arthurs report was a recommendation for rate group consolidation. Recommendation 5-1.1 states that, "The existing system of rate groups and industry classes should be replaced by a new system of 'sectoral groups.'" While OHBA understands that there will be winners and losers in the construction sector if this occurs, we believe it harmonizes with best practices in other provinces and eliminates issues associated with a large number of rate groups such as the problem of rate group shopping.

The second theme is education and prevention. Unfortunately for many small businesses across Ontario, there is a fear of reprisal when they come forward to WSIB, IHSA or the Ministry of Labour with a question about health and safety. We believe that this is not a healthy culture for businesses to operate in. The best method to deal with safety challenges is changing the culture of safety through education. This explains why incentive programs such as safety groups are such positive initiatives to have in place. Employers need to have confidence and trust in the system if we are to see large improvements.

The third theme is Bill 119, or mandatory WSIB coverage for independent operators and executive officers. Although the Ministry of Labour and WSIB explained that this policy change was done to level the playing field and improve health and safety in Ontario, our association believes that this is a cash grab that will increase the size of the underground economy, again making housing less affordable. In part because of mandatory coverage, it is increasingly difficult for home

builders and renovators, especially renovators, to see any value for money with the WSIB. Our members already cover private insurance that will cover them 24 hours a day, seven days a week. If the WSIB does not replace this insurance, instead I will be forced to continue to carry private insurance to cover me when I'm not working.

The impact to our sector from this legislation is significant. The Auditor General estimates that the government will receive \$72 million more annually because of this legislation. While OHBA maintains a positive working relationship with the WSIB throughout this process and appreciates being able to provide input, we believe that the path towards mandatory coverage in construction will ultimately be detrimental to our industry and will increase the cash underground economy.

That's basically the gist from the OHBA standpoint. We hope for and look forward to the opportunity to make a larger presentation with actually having staff available to answer the questions in greater detail, because they certainly know some of these files better than I do.

I would like to take a moment to speak briefly, though, if I may, about some of the situations that I'm concerned about, the first of which is the fact that—I'm going to give my company as a very specific example in a couple of cases. I have a board of four siblings. Right now, as I understand it, we're going to have one sibling that would be exempt as being not on the tools and me not paying the coverage. Let's say that that's my sister Kathy. She has never seen our job sites. I think that's probably a good one to say that that makes sense on. Secondly, I've got my brother Greg. He suffered a stroke a year ago. He has to be driven around. He's actually the land developer, so he actually never really even gets out of his truck, but I'm going to have to pay, as I understand it, about \$7,250 per year in WSIB coverage for him, even though he has to have separate health insurance.

1100

Then there's my brother Bill, who is occasionally on the job site. Maybe 20% of his time is on the tools. We would have to be covering him for the full amount as well, even though he's actually in a supervisory role.

Lastly, there's myself. I'm actually the conceptual designer for the company. I'm the energy efficiency guru for the company, if you will. I go out on the job site with staff on about a two-hours-a-week basis to inspect the sites to make sure that the framers or the insulators or what have you are actually following the procedures that I've laid out for them and building the homes according to my specifications. I'm not on the tools.

Between the three of us, that's almost \$22,000 in costs in WSIB that will be incurred by us through this process. At an average of 40 homes a year, that's almost \$550 in additional costs in the home, with, to my mind, no perceived benefit, because I still have to carry additional insurance. That's adding cost to the home because we have to pass it on to our consumers. If I've got a large corporation that has four directors and builds 200 homes a year, that math falls by five, so it's \$100 a home. I've got to

compete against companies that are in that boat. How is that fair?

That's the crux of this: There doesn't seem to be an element of fairness; that it's being applied with such a broad brush as far as I can understand and read, because it's very difficult to fully understand this. My understanding is that it will be applied to me even though I'm not on the tools. I'm actually a designer by trade, and I'm on the job site for about two hours a week, but because it's a supervisory capacity, I'm going to have to pay full pot. Something has got to be done about that.

Secondly, with regard to my staff, I have a total staff of 26. That's including the four directors. As far as the number of staff who are always on the job site, it's 27%. Those who are occasionally on the job site—that would be 10% of their time or less, or about four hours or less—would be 38% of my employees. Those who are never on the job site—in fact, some of them probably don't even know where the job sites are—is 35%. So 73% of my employees, including my directors, are either never on the job site or seldom on the job site and yet we have to pay at the full construction rate. How is that fair? That's the part that really galls me. I think that's why the system is broken.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Tarry, I'll need to intervene there. You'll now be cross-examined for the next 30 minutes, 10 minutes each per party, beginning with the NDP caucus. Mr. Natyshak.

Mr. Taras Natyshak: Thank you, Mr. Chair. Can you hear me?

Mr. Doug Tarry: Yes, sir, I can.

Mr. Taras Natyshak: Thank you for your presentation, although with some of the technical difficulties that we had, I missed a good chunk of it, I have to say. I think our clerk is going to request a copy of your briefing. I don't think you delivered that all off the cuff, had you?

Mr. Doug Tarry: No.

Mr. Taras Natyshak: Okay. If you wouldn't mind, I'd love to just go over some of the specifics because I missed a whole bunch of it.

Mr. Doug Tarry: I will do my best. I will qualify that the staff did prepare this for me. Towards the end, it was about my own company, which I know much better.

Mr. Taras Natyshak: Okay, thanks.

I've got a little background in construction. My sister owns a heavy construction firm that I worked for for nearly a decade. I was on the tools all the time, but my sister being one of the front office folks and also the health and safety director, she found herself on the sites about the same amount of time that some of your front office staff—you had mentioned. Nevertheless, it didn't necessarily mitigate her exposure to a potential accident, because we're always—on a site, you never know what's going to happen. A rigging could snap, a boom could go down, you get different types of—all those things that we know that you're exposed to the minute you step on to a site.

As well, the front office at our shop was built on the same grounds as the back office—as our shop, actually—so you’ve got trucks coming in and out of there all day long. You’ve got multiple areas to get injured, and even though you don’t—that’s why, actually, when the front office folks come into the back, they have to have all the same safety precautions in terms of boots, hearing. Are you saying that you can delineate completely the exposure from your front office people with the rest of your operation 100% of the time?

Mr. Doug Tarry: My offices are two small bungalow-type buildings that are on pretty much a residential street that’s actually in a commercial portion of the residential street in St. Thomas. It’s probably a couple of kilometres away from where the construction is actually occurring. I have a parking lot there. There’s direct access right into those buildings. The construction trucks virtually never enter.

To the comment about as much exposure when I’m taking a designer on-site as for a labourer, I would say that it would be about one twentieth. If I’ve got a designer that’s on-site for two hours a week versus a labourer that’s there for 40 hours a week, I would say that that exposure is one twentieth of the risk.

Mr. Taras Natyshak: Yes, and I would agree with you, the exposure is. But if you could time an accident, if you could tell us when the accident was going to happen, then that exposure period really doesn’t matter. You never know. As long as you’re on the site, you’re there. Of course, your percentage would go down, but regardless, you are involved in construction and that site, in its nature, is potentially dangerous, more so than other industries that don’t have the same types of activities that go on. So I think that’s the general premise of the inclusion.

I’d like to move to—

Mr. Doug Tarry: Okay, but hang on, now. What about the office staff that never go there? How come they don’t get a different rate?

Mr. Taras Natyshak: I’m under the understanding that there could be different rates that are structured for that staff as well. That’s all—

Miss Monique Taylor: Ergonomics.

Mr. Taras Natyshak: Yes, obviously, within clerical staff, there are other incidences of workplace accidents and illnesses—ergonomics and musculoskeletal, repetitive strain injury. And I know your business may be different—

Mr. Doug Tarry: Yes, but shouldn’t that be qualified under secretarial, the same as secretarial would be?

Mr. Taras Natyshak: Sorry? Say that again, please.

Mr. Doug Tarry: If I’ve got a secretary, why am I paying a construction rate for her?

Mr. Taras Natyshak: I’m under the understanding that your clerical staff could be under a different rate than your construction staff due to the nature of their operations.

Mr. Doug Tarry: I’m absolutely not under that understanding.

Mr. Taras Natyshak: Okay, we’ll get clarification on that.

Here’s the other thing that I’d like to talk to you about. I’ve got the website in front of me, and it talks about the HST and the GST and the effects in that shifting growth and the underground economy. I’m wondering if you see any merit in the imposition of WSIB, on those underground, grey-market operators now having to comply with WSIB regulations and reforms and having to report to WSIB. Should that not weed out those underground contractors that obviously affect you as a legitimate business person?

Mr. Doug Tarry: How are they going to comply?

Mr. Taras Natyshak: Well, you would have enforcement of their compliance.

Mr. Doug Tarry: This is already an underground economy.

Mr. Taras Natyshak: You weed them out. You force the compliance to them.

Mr. Doug Tarry: How do you do that?

Mr. Taras Natyshak: Well, the same way you stop somebody at a stop sign. You have someone who, hopefully, is able to catch them in the process and to enforce the law.

Mr. Doug Tarry: I used to do renovations, and we literally had to stop doing it because we couldn’t compete with the guy in his pickup truck who’s buying \$4,000 worth of lumber and going and finishing off a basement for somebody. How are you going to catch that guy when it’s in a residential neighbourhood, when the inspectors are only actually out in construction sites?

Mr. Taras Natyshak: It’s a valid point. Obviously, with any new legislation comes the need for appropriate enforcement. Your point is well taken. My hope is that actually the adequate resources are attached to the legislation to ensure that actually is one of the outcomes, that we get that added catchment from those who have been avoiding being a part of the system. Even in your own figures here, we have a loss of up to \$767 million from revenues such as CPP and WSIB that could be taken up from some of the underground operators. So I think it’s well worth taking a look at ensuring that the adequate enforcement processes and resources are available so that we do get catchment. I would think that your input on doing that, on contractors that are already in the business doing the right thing, can help the system and help us weed those underground operators out.

Mr. Doug Tarry: We would very much so like to be at the table for those conversations.

Mr. Taras Natyshak: Clerk, how much more time do I have?

1110

The Acting Chair (Mr. Shafiq Qadri): About three minutes.

Mr. Taras Natyshak: Say that again, please, Mr. Tarry?

Mr. Doug Tarry: We would very much so love to be at the table for those conversations. Helping the government with how to find a solution to the underground

economy is of paramount importance for our association and its members.

Mr. Taras Natyshak: It's paramount to myself as a member, too, and I certainly would welcome any of your ideas on how we can do that within the context of the WSIB as well as other things to be able to ensure that you have a level playing field.

That's it for my questions, Chair.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. The NDP cedes its time?

Miss Monique Taylor: No.

The Acting Chair (Mr. Shafiq Qaadri): Miss Taylor.

Miss Monique Taylor: I would just like to comment that my understanding also is that a person working in the office wouldn't pay the same premiums as the person on the person on the construction field. That is definitely been what has been said around the table for the last day and a half, and I have people at the table shaking their heads saying that I'm correct in that.

I completely understand the frustration that you're feeling on that, but there are things that can happen within an office space. There are other offices within the province that do have to pay WSIB premiums for those staff members. It just puts that person in a better position so that when they do have, whether it be a back injury—if they slip and fall in the kitchen; it happens, right? It's definitely unfortunate, and we want to make sure that all workers are safe and have the best outcome at the end of the day for their family.

Those are my only comments. Thank you very much for your time.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Tarry, I now hand you over to the Liberal caucus. Ms. Albanese.

Mrs. Laura Albanese: Thank you for your presentation, Mr. Tarry. Yes, I would like to reiterate what MPP Taylor was just mentioning and the fact that we've been hearing that the WSIB has been working on all these issues that you were mentioning, in particular the rate groups. The question about the other staff is being addressed: We were told yesterday that the WSIB is going to be looking at specific policies that will be released soon in that regard. I just wanted to make that comment and reassure you in that regard.

During your presentation, you spoke about not receiving appropriate compensation. I wanted you to elaborate for a second on that. What did you mean by that exactly?

Mr. Doug Tarry: As the director of the company, WSIB would only cover me, my understanding is, while I'm actually on the clock. I still have to, in order to protect the assets of my company—in other words, my ability to work—carry private insurance that's actually better than what's covered by WSIB for full 24/7 coverage. That's what's frustrating about this: that we as an industry, when we're at the director level, are already carrying separate insurance.

Mrs. Laura Albanese: But I think that's the same for everybody else. I don't think that there is a difference with other types of companies.

Mr. Doug Tarry: So why would we need to have WSIB as well?

Mrs. Laura Albanese: Because, as MPP Natyshak was mentioning, a construction site is potentially a more dangerous place—

Mr. Doug Tarry: But if my insurance is already covering me, why do I need WSIB?

Mrs. Laura Albanese: That will be modified. We're saying that the WSIB is addressing this policy as well. That's going to be modified in a way that—

Mr. Doug Tarry: Sorry; when you say "modified," what do you mean? What numbers are we talking about here? Is it still going to be at the full rate of—was it \$1,700 a year?

Mrs. Laura Albanese: I believe that the insurance rate will be modified to reflect what you're paying for WSIB. Anyway, the changes will be released soon, so that should be addressed. Your concerns in this regard should be addressed as well.

I also wanted to ask you what you thought about the current experience rating program, if you had any thoughts, any opinions, on that.

Mr. Doug Tarry: The training program, is that what you said?

Mrs. Laura Albanese: The experience rating program.

Mr. Doug Tarry: I'm sorry. I would have to defer that one to my staff. I'm not familiar enough with that one to answer that question. We would gladly answer it for you, though.

Mrs. Laura Albanese: Okay. This is basically a rebate system for employers where employers receive rebates if they have good safety records.

Mr. Doug Tarry: Well, that sounds like a good idea. I'd want to see the details of it, though.

Mrs. Laura Albanese: Okay. Do you think it's important for the WSIB to balance the unfunded liability in the short term or in the longer term?

Mr. Doug Tarry: I think you need a long-term game plan, because it's too big of a number to do it in the short term.

Can I come back to that previous one?

Mrs. Laura Albanese: Yes.

Mr. Doug Tarry: So you're saying that employers that have a good record might be getting some type of rebating back. So kind of like a carrot and stick there, here; we'd actually get a benefit for doing well?

Mrs. Laura Albanese: Yes. That's the experience rating program.

Mr. Doug Tarry: And then if you could really hammer the underground economy, guys? That would be great.

Laughter.

Mrs. Laura Albanese: Yes, we agree. We agree. Absolutely.

Mr. Doug Tarry: I can hear laughing, so I guess it was intended the right way, then.

Mrs. Laura Albanese: Has the WSIB been successful in any way in the last few years in helping you, as an organization, to bring down accident rates?

Mr. Doug Tarry: No. We do our own training. We still work with the safety inspectors and we co-operate when we find that we're not in the right—if we're doing something inappropriately, we correct it. We're more than happy and willing to learn as a company and to grow. But as far as—you're talking about WSIB premiums, now? No.

Mrs. Laura Albanese: So in other words, you're involved in your own health and safety campaigns independent of the WSIB?

Mr. Doug Tarry: Yes. In fact, the Ontario Home Builders' Association separately from that has an actual health and safety committee, and we've got a really great trainer named Bruce Bolduc who's been going around to a lot of our locals doing presentations.

Mrs. Laura Albanese: So you're providing education to your employees on your own to improve workplace safety?

Mr. Doug Tarry: Yes, and also in compliance with when the inspectors are out and about. We have a pretty good training program for fall-assist here in St. Thomas and also for the guys that have to handle propane—that's mandatory. We also try and make sure that our subtrades are in compliance as well.

Mrs. Laura Albanese: I see. Are there any recommendations, other than the ones you made, on how to improve the relationship between employers and the WSIB?

Mr. Doug Tarry: Yes. We would really like to be at the table when you're having the conversations about how you might restructure WSIB and looking at the underground economy. We clearly are not in favour of having directors who have to be covered. We think that that's a duplication of insurance. We'd love to have an opportunity to talk about that. But we want to be at the table. That is our philosophy: that we want to work with government for better outcomes for our members and for our customers.

Mrs. Laura Albanese: I thank you for that, Mr. Tarry.

The Acting Chair (Mr. Shafiq Qadri): Any further questions on the Liberal side? Then I will offer the floor to the PC caucus. Mr. McDonell.

Mr. Jim McDonell: Thank you for coming before us. I guess one of your issues is, you're requested to pay full construction rates for somebody that may or not be on the site and, in fact, is maybe on the site 5% of the week. Is that what you're getting at?

Mr. Doug Tarry: Well, I have some employees that literally do not even know where the job site is. I'd say there's probably seven employees that are in that category: They don't know where the job site is. I'd have probably an equal amount that would be two to four hours a week, at the most.

Mr. Jim McDonell: So they're now expected to pay the full construction rate, which has a higher premium versus someone that would normally be secretarial or office-type?

Mr. Doug Tarry: Well, my concern is that up until this conversation today, we were also paying that on secretarial. We've argued that point for many, many years. So this is complete news to me that secretarial is going to be at a different rate, and I applaud the action.

1120

Mr. Jim McDonell: It sounds like that's something that's in regulation that hasn't been issued yet, but that's being considered. I guess we'll have to wait to see that.

The other issue is on the underground economy. It's a huge issue in the construction industry. Do you see this adding to the problem? It's another form of tax, you might say, so since they're there to avoid a tax, the encouragement for them to actually hide the fact that they are working will actually increase.

Mr. Doug Tarry: These guys are breaking every rule there is. They don't care. They're not going to care until you throw them in freaking jail. What part of that message am I not getting through to you? The problem is, they don't care. They are underground, illegal work.

Mr. Jim McDonell: That's my point. I was just asking you to clarify that. I think everybody in the room would be burying their heads in the sand if they didn't acknowledge that there's a huge underground economy. Actually, some of the federal programs where they receive tax funding back alleviated some of that problem, where people had to pay the tax to be able to get the refunds.

Mr. Doug Tarry: As a provincial association, we are actively lobbying or advocating with the federal government and the provincial government for a permanent renovation tax credit, because we think that's one of the greatest tools that can be used to battle the underground economy.

I think over 60% of customers admitted that they would pay cash for a deal at home. That means they're not necessarily getting skilled workers; they're not getting people who are actually trained in health and safety; they're not getting people who are remitting to the government. When you're looking at the energy efficiency part of our industry, there's a significant amount of building science that's completely ignored, to the detriment of the occupants' health. There are so many benefits to actually making the aboveground economy work.

Mr. Jim McDonell: I agree.

I'll just pass this off to Randy.

The Acting Chair (Mr. Shafiq Qadri): Mr. Pettapiece.

Mr. Randy Pettapiece: Good morning. I have two questions, and they should be rather short.

You got back to your own insurance that you carry on yourself. Do you carry enough insurance that you have an equal amount of insurance on yourself to the WSIB, or do you have more benefits?

Mr. Doug Tarry: More.

Mr. Randy Pettapiece: You have more benefits. I know there are going to be some adjustments, but they were asking you to pay another premium even though you didn't need it.

Mr. Doug Tarry: Correct, and that would be industry-wide.

Mr. Randy Pettapiece: You're in a partnership, and your partner doesn't actively work with you at all. Your partner is just there as a—

Mr. Doug Tarry: Shareholder.

Mr. Randy Pettapiece: —a shareholder or whatever else. Is that partner, in your understanding, going to have to pay these premiums?

Mr. Doug Tarry: We're very concerned that that is in fact the actual case.

Mr. Randy Pettapiece: I'm sorry?

Mr. Doug Tarry: We believe at this point that that will be the case. We haven't seen the final presentation here, so we don't know, but everything that we've heard to this point is that that will be the case.

Mr. Randy Pettapiece: That's interesting.

That's really all the questions I have. Jane?

Mrs. Jane McKenna: Hi, Doug. It's Jane McKenna. Thank you for coming on today. It was great to hear some of what you said.

My first question to you is: If you had the power to remodel the system, what changes would you make?

Mr. Doug Tarry: Number one, I would say that when you're talking about directors of companies, they must provide proof of insurance—not necessarily have WSIB, but they must provide proof of insurance. If they're significantly on the job site—and I mean significantly—then maybe that's a different point. If they're an actual acting guy who's out on the job site every day and that's his role, that's different than the guy who goes out and supervises periodically because he's covering somebody being off on holidays.

Number two, there has to be something done—and I really applaud the move to secretarial being separate, if that happens, because that's long, long overdue—when you've got staff who need to go to the job site to inspect jobs because that's part of their role in a supervisory capacity on an occasional basis, having to pay the full freight. That's not fair.

The last thing is, please ask us to be at the table when you talk about the underground economy, because we really desperately want to be of help.

Mrs. Jane McKenna: You're a wealth of information. It's great. I love listening to people like yourself.

My next question is: You brought up Bill 119. Can you elaborate on that? My couple of questions are: Why do you think it was introduced and what impacts, if any, has it had up to now?

Mr. Doug Tarry: I would say that, honestly, this has a far greater impact on small to mid-sized companies than it does on, say, a large corporation. A large corporation—this might be a blip to them, because an extra \$5,000 or \$6,000 a year over four direct shareholders

may not be that much. For my company—as you know, in my town I'm a fairly big company but in the overall scheme of things I'm a relatively small company—it's a big deal. It's quite unfair how it impacts against me having to go and compete with those other companies. We're being penalized for having been moderately successful.

Mrs. Jane McKenna: Right. When you sit back in the position that you're in, because you can hear your passion in your voice. You have great concerns because the reality is, capital is mobile, right? Bay Street knows it. People aren't going to come to high debt, high hydro and high taxes and, coupled with this on top of it with the premium rates even if they go up whatever percentage—hopefully you'll be able to have your voice and have your say, but leaving here today, your final thoughts: What would you like to add to that?

Mr. Doug Tarry: On all levels of government, we are concerned about the multiplier effect of tax upon tax upon tax, and what it's ultimately going to do to the ability of consumers to buy a home, have a roof over their head and good housing. We're desperately concerned about that. We think that the only reason why our economy is still doing relatively well and is relatively okay—and it is totally attuned to markets—is because of low interest rates right now. Get outside of Toronto, and the markets are not doing nearly as well. We have been pummelled by job losses, and affordability is a major, major issue. When you start saying that you've got this WSIB added in and then you've got development charges and voluntary development charges on the municipal level and all that sort of stuff added in, and then you tack on the HST on top, which is a totally different story but it's still adds to the price, and then the customer gets to pay for that extra cost in their tax base every year, year in and year out—it's the gift that keeps on giving. At some point, this is going to break the camel's back. Affordability has got to be taken seriously and looked at.

Mrs. Jane McKenna: Yes, and thank you so much, because you did quite point out the fact that we are held hostage by our interest rates right now, because if we're spending \$1.8 million more an hour than we take in, even if it goes up 1%, that's 500 million extra dollars that we're just paying on a debt that we already had that we could be spending somewhere else. Anyway, thank you so much for your time. It was great talking to you.

Mr. Doug Tarry: Thank you. Thank you for having me.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. McKenna, and thanks to you, Mr. Tarry, for your deputation.

Just to advise the committee, because of our collective efficiency, we're done ahead of schedule. The committee is in recess till 1 p.m. today in this room.

The committee recessed from 1128 to 1301.

Le Président suppléant (M. Shafiq Qaadri): Mesdames et messieurs, chers collègues, j'appelle à l'ordre cette réunion du Comité permanent des organismes gouvernementaux.

Ladies and gentlemen, as you know, we are here for an agency review of the Workplace Safety and Insurance Board. I officially call this meeting to order.

ONTARIO PUBLIC SERVICE
EMPLOYEES UNION

The Acting Chair (Mr. Shafiq Qaadri): We'll begin with our first presenters of the afternoon, from the Ontario Public Service Employees Union, more affectionately known as OPSEU. To begin with, gentlemen, you'll have 10 minutes in which to make your presentation, after which we'll have 30 minutes divided evenly amongst the various parties. I would respectfully invite you to please begin now.

Mr. Allen Jones: Good afternoon. I am Allen Jones, benefits counsellor at OPSEU. This is Mike Grimaldi, regional vice-president of OPSEU. Thank you for inviting us here today. OPSEU's 130,000 members are split fairly evenly between schedules 1 and 2. Mike and I together have been in this business quite a while, representing injured workers for between 50 and 60 years. That's collectively.

In our presentation today, we want to raise concerns regarding the administration of the Workplace Safety and Insurance Board and the workers' compensation system in Ontario. Those charged with managing the system seem to have lost their way.

The Workplace Safety and Insurance Act gives direction as to the purpose of the act. The act states four purposes: to promote workplace health and safety; to facilitate return to work; to facilitate labour market re-entry; and to compensate injured workers. The act intends that these things actually be accomplished, that they happen—and they're not happening. What is happening instead is that the WSIB has established other priorities. The result is that our members are suffering.

I refer to two examples here, two members. Dolly C. was injured at work in August 2009. She returned to work as the result of a work transition plan in March 2012 and stopped work in May 2012 due to reinjury.

Mike K. was injured initially in 1994. His injuries were assessed as permanent. He continued working at modified duties with the employer until July 2010, when he suffered another accident at work and sustained different injuries. These subsequent injuries were considered permanent as well. He returned to work in November 2011 after the intervention of a work transition specialist from the board. He sustained reinjury and stopped work in December 2011.

Both claims were allowed. Both cases resulted in claims for reinjury on the part of these members. One was allowed; the other denied. This reflects the denial rate for recurrence, which is historically around 40%.

Both reinjuries resulted from return to work to unsuitable work. Both members raised concerns, based on the medical advice of their doctors. That advice and those concerns were ignored by the WSIB and the employer.

Both members' return-to-work plans were developed after meeting with the WSIB. However, the plans that were developed did not reflect our members' input at all. Indeed, Dolly was presented with a plan at a meeting with the WSIB in which the plan was presented on a "take it or leave it" basis. There had been two prior "take it or leave it" plans. This terminology was used by the WSIB staff involved, not us.

Mike's experience was the same. The terminology "take it or leave it" was not used, but it could have been.

The question is: Was the whole return-to-work consultation process that our members participated in designed to give them the illusion that their input was valued? It seems so. Have the purposes of the act been accomplished? It seems not. Both employees have been reinjured at work. The first purpose of the act has been lost. Neither employee is working, so the second purpose of the act has yet to be accomplished. Only one of them is getting benefits, so the fourth purpose hasn't happened either. All of this is going on in spite of WSIB involvement in the claims for two years.

If this is not frustrating enough for these members, both Dolly and Mike have identified suitable work with their employer, both to the employer and the WSIB, work that they feel they have the ability to do, would be safe for them, would restore their earnings and not require further benefit payments; work that accomplishes the purposes of the act. Both members requested section 41 determinations, determinations regarding the employer's compliance with the re-employment provisions, in writing, that the WSIB hold their employers in breach. Both requests have been largely ignored. This behaviour on the part of the WSIB cannot be explained solely on the basis of financial responsibility.

Why is this happening? The policies of the WSIB do not appear to be aligned with the purposes of the act. They do not reference these purposes, nor do they accomplish these purposes. I take, for example, the recent audit of LMR done by KPMG. This was the second audit. It found no greater LMR success than the first audit. It seems that the response by the WSIB has been to abandon LMR altogether. We have seen no new LMR programs since the audit. For instance, Dolly's first two "take it or leave it" work transition plans involved LMR. These plans were pulled off the table in favour of having her return to the work that injured her.

How is this happening? Firstly, it is the WSIB's practice to use off-policy criteria to deny entitlements. I call these criteria, or their source, the secret board policies. The majority of decisions to deny our members statutory entitlements cite criteria that cannot be found in board policy, never mind in the statute. For instance, the WSIB denied Dolly's recurrence. The letter cited the criteria that she was doing suitable work for her. The WSIB policy on recurrences does not mention this criteria. The WSIB has always used secret policies. In 2005-06, the WSIB disclosed a lot of these secret policies and put them on their website. I've seen nothing since, and requests for disclosures are routinely ignored. It is un-

acceptable for an Ontario government agency to be determining the statutory entitlements of the citizens of Ontario, of OPSEU members working for the government of Ontario, by the use of secret policy criteria.

Mike has something to say here, and I'm going to run over if I keep talking. The presentation is here; I urge you to read the rest of it.

Mr. Mike Grimaldi: I'm going to deal with two issues briefly, I won't have time to deal with them fully, but I want to talk about coverage for a second and then I want to talk about loss of earnings.

On the coverage aspect, I think it's important for the people in this room to know that many of the provinces and territories in Canada have mandatory coverage for all workers in the province, and clearly, that's the way Ontario should be. Currently, for example, our young offender officers who were part of the Ontario public service until privatized by a former government—those privatized facilities don't have to be covered by WSIB. So you have people who are now working with the most violent of young offenders who are incarcerated, and those correctional officers who have to take care of those people aren't mandatorily covered by WSIB. How can we justify that? There's actually no justification that anybody can rationally put to the fact that people who have to take care of and make sure that society is safe don't get covered under WSIB. That's one of the aspects that I want to talk about in coverage.

The other one is developmental service workers. Developmental service workers which were once part of the Ontario public service, many in larger facilities that have been closed or privatized—when they go into the private sector, again in many cases they're not covered by WSIB.

I can just give you an example of what happens in one case. We had two women at a developmental services situation who had a client who lost his temper. They had what was called a safe room, where they could lock themselves in. That's our defence for our developmental services workers who get bit, who get beat up, depending on the situation, depending on what the diagnosis of the client is. They locked themselves into this room, but there was a window in the door. This client picked up a huge planter out of the lobby area, busted the window, broke in through the door, broke one woman's arm and assaulted the other woman before the police could come in and resolve the situation. I don't know what the rationale is, but it seems to me there's no rationale why those two individuals shouldn't have been covered by WSIB, but they're not. That's, in my view, a disgrace, and I don't understand how we, as a society in Ontario, can say those people should not be covered by WSIB.

1310

There are other instances of coverage where people should be covered and aren't, but I wanted to give you those two specific examples, because, again, it's one of the negative aspects of privatization and downloading of services from the provincial government.

On the LOE side, I'm just going to talk briefly about two aspects. One is, if I get my back injured at a job and I'm 60 years old and I go off, I get paid loss of earnings, I go through a recovery period, get some physiotherapy or whatever—but let's say I still have ongoing problems with my back. I might even get a small non-economic loss award. But I continue to work and I continue to suffer. Many workers work through pain. You work through the pain. A couple of years later, I decide I've had enough of this pain, so I retire. Then a year later, I suffer a recurrence, where my back has now deteriorated to the point where I need surgery. The WSIB determines at that point in time that, in fact, I get no loss of earnings, because now I'm retired. It doesn't matter that my back has now required surgery. It doesn't matter that I'm probably never going to be able to do the things that I want to do: play catch with my granddaughter, go fishing with my grandson. Those things are eliminated, but I get no loss of earnings.

We have to remember that workers gave up their right to sue in order to get these kinds of benefits. Under the right to sue, you'd get loss of enjoyment of life, loss of companionship. All of these kinds of benefits that you'd get under the right to sue, you don't get under WSIB. To take that one step further, if it's an occupational disease and I'm dying of mesothelioma or I'm dying of asbestosis, I get nothing if it happens after I retire? My poor spouse probably has to work to take care of me. She gets nothing during that period of time—

The Acting Chair (Mr. Shafiq Qadri): Thank you, gentlemen. I now offer the floor to the Liberal caucus, to Ms. Albanese.

Mrs. Laura Albanese: Thank you, Chair, and thank you very much for your presentation. I know it was cut a bit short.

It seems to me that one of the first things that you said is that you would be in favour of full coverage. I guess that would be the position.

Mr. Mike Grimaldi: Yes; absolutely correct.

Mrs. Laura Albanese: Is that correct?

Mr. Mike Grimaldi: It seems to me that every worker in the province of Ontario should have the same benefit to be covered by the Workplace Safety and Insurance Board. You're going to hear me say "Workers' Compensation Board" a lot because I'm an old guy.

Mrs. Laura Albanese: We've had other people who have said that as well. They will always call it that because they've called it that for too long.

You were mentioning this secret policy criteria. I guess I would want to ask you: How would you characterize your relationship with the WSIB? Have you spoken to them about this? Do you have a good relationship with the WSIB where you feel you can bring these discussions up and talk to them about what's of interest to you?

Mr. Allen Jones: There was a committee, what's called a schedule 2 committee, and I happened to be on that committee. The WSIB has apparently abandoned its

consultation with schedule 2 employers and schedule 2 unions, so that committee doesn't exist anymore.

As an individual rep, I make my requests of the WSIB's—the person who uses the criterion that I don't recognize in the policy and ask for a policy reference. That doesn't go anywhere. Then I ask the WSIB's freedom-of-information coordinator. I've never gotten any disclosure from the WSIB. It doesn't matter who I ask, whether it's a manager, a director. I've gotten no disclosure from the WSIB since that massive disclosure that was in 2005-06. I think it was around that date. There was a lot of stuff put on the website that were copies of, actually, documentation that the WSIB was using and not disclosing.

Mr. Mike Grimaldi: And just to follow up on that, there's a difference between the WSIB policy manual, which we all have access to, and the WSIB's internal procedures, which they use in order to adjudicate a number of claims. A lot of times, these so-called secret policies are procedures that the WSIB follows internally, which—it should be accessible both to worker reps and to employer reps. I know that I've had discussions with employer reps who have had the same or similar kinds of complaints.

Mrs. Laura Albanese: Another question that I had is, in your opinion—and I know you deal mostly with injured workers, right? I guess I have two questions. One: What suggestions would you give so that the WSIB could give better service to injured workers? That would be my first question—at this point in time.

Mr. Mike Grimaldi: In my view, there are two things that are necessary. One is, much better training for front-line staff. Unfortunately, the WSIB is almost like an inverse pyramid. You get front-line staff who deny claims; you take them to appeals; appeals expands that a bit and allow more, given a better view, maybe, of what the legislation and policy say; and then you take it to the appeals tribunal, where it expands again and where they maybe have the best view of what the overall policies and legislation say. Rather than having the front-line staff making good decisions, you have to go up through the system, which sometimes takes two years.

Front-line staff, in my view, don't get enough intensive training. The other thing is, they're overworked. They have far too heavy caseloads to do the job properly. It's my understanding that the WSIB is still downsizing and laying people off. I can't understand how they can be doing that at a time when they have huge backlogs.

Mrs. Laura Albanese: You said that was the first suggestion. The second one?

Mr. Mike Grimaldi: The second suggestion is that in my view, in an appellate system, if you have a judge and the case goes to the court of appeal, the judge knows that the court of appeal has overturned his decision and why. You've got appeals resolutions officers who consistently make bad decisions, wrong decisions, that get overturned at the appeals tribunal. Those appeals tribunals should go back to that appeals resolution officer so they know that they're going to get overturned every time we take it to

an appellate level so that they know what they're doing wrong and they know why they're doing it wrong. I don't think there's enough of an explanation on WSI Act determinations.

Mrs. Laura Albanese: There should be communication back and forth between the appeal system and—

Mr. Mike Grimaldi: And the front-line staff and the appeals office. It shouldn't be, "No, we're always right. It doesn't matter that the appellate division has overturned us." A judge doesn't say, "I'm always right. It doesn't matter what the court of appeal says." A judge says, "The court of appeal says that. That's the law."

Mrs. Laura Albanese: Have you seen any difference since the WSIB introduced its new return-to-work program in 2011?

Mr. Mike Grimaldi: Allen and I probably have different views on this. I would say that in the cases where I've worked with work transition specialists, I have had some really good input and really good ability to work through cases. Allen and I were just at a facility within the Ontario public service where we're trying to work through a return-to-work. But it's very inconsistent. It depends on the training of the work transition specialist. It depends on their ability to view the workplace as a whole. Sometimes it works and sometimes it doesn't.

In my view, again, that's an area where there needs to be more concentration on somebody who has developed good return-to-work skills. For example, in the trade union movement we negotiate return-to-work consistently, whereas these people don't have that kind of background because that's not where they come from.

Mrs. Laura Albanese: I will now turn it to MPP Cansfield.

The Chair (Mr. Shafiq Qaadri): Ms. Cansfield.

Mrs. Donna H. Cansfield: I want to ask you a question about the Friedland formula, because it was introduced in the 1990s by the NDP.

Mr. Mike Grimaldi: I know very well when it was introduced, yes. You're right—another mistake.

Mrs. Donna H. Cansfield: Yes, and then it was modified, I think, by Mr. Harris.

Mr. Mike Grimaldi: Yes.

Mrs. Donna H. Cansfield: We've been doing some adjustments. Obviously, there's always more to do. Harry Arthurs has actually put through some recommendations, and I'm curious to have what your position is on record.

Mr. Mike Grimaldi: I agree completely with Harry Arthurs on the aspect of the fact that full indexation should be brought back within the system. Why we would punish someone who has a partial loss of earnings by not giving them at least a cost-of-living increase per year seems to me to be punishing the most vulnerable people in society. There's really no rationale, outside of saving money, for the board, and that's not the way to save money at the board.

Mrs. Donna H. Cansfield: The reason I asked the question—because I know that full indexing is—you're right: I think you need to look after the folks. Remember what happened with the rent when we had 0.7% and then

it jumped to 3%? There is that tendency to have an inconsistency, which is also very difficult for people who are managing on what might be a modest budget. I was curious as to whether or not it was just an automatic cost of living or you think there should be some rationale around that discussion as opposed to just basing it on that particular figure.

Mr. Mike Grimaldi: I think that's an excellent question. The fact of the matter is that, in my view, it needs to be automatic. The problem is, if it's not automatic—no disrespect to legislators; I know the pressures that you're all under—if you do it only periodically, in good times people will get it—and sometimes they get significant jumps all at once, and other times they don't. As you'll know, back in the old days, that's the way the WSIB worked. The Legislature used to bring a motion every couple of years and increase the benefits, and it proved that historically, injured workers never kept up with the rate of inflation because of that. So if you do automatic indexation, then the Legislature doesn't have to determine, "Are we in bad times or good times?"

1320

Mrs. Donna H. Cansfield: Okay, great. Thank you very much.

The Acting Chair (Mr. Shafiq Qaadri): To the PC caucus. Mr. McDonell.

Mr. Jim McDonell: Thank you for coming today. I know that it's a tough balance. You bring up the case of people retiring and, after, having an issue. Through my circle, people I know, that tends to be an issue. People, as they grow older, have more health problems. Some of them don't know where they got the problems. Where do you go with that? How do you track these later on? How do you exclude people who maybe don't know where they hurt their—

Mr. Mike Grimaldi: For me, that's an easy answer. I appreciate the question. The fact of the matter is, the board has to adjudicate every claim individually. They have to first adjudicate, "Is this work-related?" When they do adjudicate that it's work-related, where workers don't get loss of earnings is—as I got cut off when I was saying it, let's say I get mesothelioma. I've been exposed in the workplace, because it's proven that it's only caused by asbestos. I have asbestos exposure in the workplace. When I get that, I get no loss of earnings. But if I had the right to sue, I could make a lot of money on suing somebody who caused me to get mesothelioma—not to even take into account the fact that, as I was trying to say earlier, I can't play catch with my granddaughter; I can't go fishing with my grandson because I've got this oxygen tank I've got to carry around. We're talking about people who are, at that point in time, suffering and dying because of the disease they got in the workplace, and we're saying, "You get no loss-of-earnings benefits." How can we justify that when, if they had not given up the right to sue, they would have a right to sue not only for themselves, but for their spouses, for their dependants? It's just not reasonable.

Also, now we're telling their survivors that they don't get any benefits because their benefits are based on loss of earnings, and all they get is a legislated minimum under the Workplace Safety and Insurance Act because, again, they don't have the right to sue. If those people had the right to sue and their spouse died because of negligence on behalf of the employer because of the exposure, they would be well off and taken care of for the rest of their lives.

Why is it that because you're an injured worker, you don't get taken care of, but if you had the right to sue, you are taken care of? Why is it that if you're the spouse of an injured worker, you don't get taken care of, but if you're a spouse of an automobile victim, for example, you do get taken care of?

Think about the children, the grandchildren and the dependants. I can't for the life of me understand why, in any kind of compassionate society, we would say that those people, because they're workers, should get treated differently than somebody who has a right to sue.

Mr. Jim McDonell: My point is, as you get older—as an example, back issues. Probably more than 50% of the population has a back issue, and that's just an example. Where do you go with that? Why are they any different than the people who—there are only a few people—

Mr. Mike Grimaldi: It first has to be adjudicated—

Mr. Jim McDonell: No, let me finish my question. There are only a few people who can actually track their issue back to a certain occurrence. Usually, they're cumulative. They happen as a fact of life. What puts somebody ahead of somebody else in line for treatment, and how do you make those decisions? Who acts as God in these cases?

Mr. Mike Grimaldi: As you probably know or at least should know, the fact of the matter is, the WSIB examines the medical evidence. If I go to the WSIB at any point in time—not only when I'm older; at any point in time—and say, "Hey, I've got a back condition," in order to prove that I have a back condition that's work-related, I have to have strong medical in order to prove that I have a back condition, in order to prove that it relates to the workplace. You have to have a whole bunch of criteria that you meet in order to get WSIB in the first place. If you and I both have back conditions and you got yours because you were lifting up something heavy at work, and I'm in the same workplace and I have a back condition but I haven't lifted up anything heavy at work, I don't get benefits and you do. All of that has to be adjudicated by the board. It's adjudicated now.

I can tell you, people don't just get benefits because they showed up at work. You have to have a specific workplace injury or a disablement that's brought on by the work, and that's adjudicated very strenuously by the board.

Mr. Randy Pettapiece: Thank you. I want to get back to these workers that were beat up, and you said they didn't have any WSIB coverage. Did their employer have any other kind of insurance?

Mr. Mike Grimaldi: Those workers—because, of course, they're our members, right? We've negotiated sickness and accident benefits for them, and in the case of these two workers, we were able to negotiate something with the employer where they were covered for medical expenses and covered for some lost wages. But the fact of the matter is, that's because they have a union. If they're in the same workplace without a union, where they haven't negotiated those benefits and haven't negotiated those kinds of contractual agreements with the employer—and there's all kinds of views on unionization from your political party, but because they did have a union and because they're covered and because everybody in that workplace is covered, they were able to get benefits. That's the benefit of having a union.

Mr. Randy Pettapiece: I don't think this is about unions. What I'm saying is, these people got coverage other than WSIB.

Mr. Mike Grimaldi: They got coverage because we negotiated it in their collective agreement. They didn't have coverage before they were in a union.

Mr. Randy Pettapiece: Were they union members before?

Mr. Mike Grimaldi: They were union members at the time they were injured, but originally—

Mr. Randy Pettapiece: Okay. My point is, somebody could have gone in there, a lawyer or whatever, and probably negotiated the same thing. You don't have to have a union to do this.

Mr. Mike Grimaldi: I have yet to see a workplace where I go into the workplace and negotiate personal coverage for myself with the employer. If you have examples of that, I'd like to know where they are.

Mr. Randy Pettapiece: I would suggest that could be done. I don't think that this is a union thing.

Mr. Mike Grimaldi: I would suggest that could be done maybe in a fairy tale, but not in real life.

Mr. Randy Pettapiece: No, it's not a fairy tale, sir. Would you agree there's too much bureaucracy involved in the WSIB?

Mr. Mike Grimaldi: I wouldn't say that there's too much bureaucracy. I would say that the bureaucracy needs to be fixed. The bureaucracy needs to be efficient. The bureaucracy needs to be trained. You need to have front-line staff who are trained, who understand the legislation and understand the policies. In fact, what you're going to call bureaucracy, I'm going to call front-line workers, and I would say, in fact, if there's anything, the WSIB should have more front-line workers, not less.

Mr. Randy Pettapiece: I don't call front-line workers bureaucracy. It's the bunch up there.

Mr. Mike Grimaldi: Oh, okay. Then you and I will probably agree. I could tell you a whole bunch of things about middle management.

Mr. Randy Pettapiece: No, you're not answering my question. Do you think there's too much bureaucracy, or could it be streamlined?

Mr. Mike Grimaldi: I think that there is probably too much middle management at the WSIB and I think

there's too much middle management in the government. You and I would probably agree on that.

Mrs. Jane McKenna: Thank you for coming and doing your presentation. I'm trying to listen to what you're saying and, first and foremost, when something started in 1914 and there haven't been any changes, it's morphed into something else, where sometimes we just blow up and start all over again.

You've said a couple of times here today that there's no process, that there's no one overseeing what's actually going on with the certain processes that are there. So clearly, that doesn't work. We've got two different issues here. One is how the system runs, and then we've got—my question to you, I guess, would be: How do we extend benefits and eliminate a \$15-billion unfunded liability? I'm trying to figure that out myself.

Mr. Mike Grimaldi: Boy, am I ever glad you asked that question. Two issues that I want to say: First of all, the legislation has probably changed a dozen times since 1914, so to suggest it hasn't been changed—it's been changed time and time and time again, to the point where injured workers think that the whole thing is too complicated because you keep changing it. If you'd have one method, they'd probably be able to work their way through it.

Secondly, with the unfunded liability, it's my understanding that the government has currently got a Mr. Morneau going around looking at conglomerating and giving this big pension pool investment fund, and that they're also looking at bringing the WSIB funding into that huge investment pool. If they're doing that, then who cares about the unfunded liability? It's all going to be in some pool that's separate.

Secondly, with regard to the unfunded liability, the unfunded liability only becomes a crisis situation if you're going to close the board, and nobody that I know is suggesting that we close the board. Your party has suggested that you invest, that you bring insurance companies in for competition. If you bring insurance companies in for competition, it means that people are going to be making a profit on the injuries and deaths of injured workers. I can't believe that that in any way justifies an unfunded liability where you bring people in to make profit off the injuries and deaths of injured workers. That makes no sense whatsoever. If you really want to get rid of the unfunded liability, one way is to extend coverage right across the province of Ontario, which should be done. You bring in a bigger pool and that pool takes care of your unfunded liability.

1330

The second way to cure the unfunded liability is to bring in better health and safety measures so that people don't get injured. And the third way of dealing with the unfunded liability is to allow claims up front, grant people better return-to-work policies, grant people better retraining policies. If you do that, people get back to work faster, which is what most injured workers want, and you cut down on the length of time the people collect

benefits. So there are many ways of reducing the unfunded liability if you think it's an issue—

The Acting Chair (Mr. Shafiq Qadri): Thanks to you, Mrs. McKenna from the PC caucus. Just before handing the floor over to the NDP, I'd just like, on behalf of the committee, to acknowledge the presence of former member of provincial Parliament Elizabeth Witmer. Welcome.

I now hand the floor to the NDP. Mr Natyshak.

Mr. Taras Natyshak: I'd like you to comment on some of the issues that Professor Arthurs touched on in his report and what some of his recommendations would mean in terms of the viability of the WSIB, going forward.

Mr. Mike Grimaldi: I certainly don't agree with all of Professor Arthurs's report. The indexation aspect of it I think is crucial. Injured workers should never have been de-indexed. That was a compromise that a former government made that, in my view, was a mistake. It doesn't seem to me that you try and cure funding problems on the backs of the most vulnerable people in society, and that's what was done. So I think all partial loss of earnings should be fully indexed.

I think that in other aspects, there are better methods of solving the problems than what Arthurs did, but I think that the Arthurs report in whole is a step in the right direction.

Mr. Taras Natyshak: I think you just proposed three measures that seem quite holistic, in terms of the three proposals that you put forward, and I would hope that we move this committee towards those types of proposals, although roadblocks tend to get in the way. I'm wondering if you could expand on some of the policies and potential policy directives that we aren't aware of that present some of those roadblocks. I think you referred to them as secret policies, internal directives that might not necessarily help.

Mr. Mike Grimaldi: This is not a secret policy, but I'll give you one example. When the changes were made when the loss-of-earnings benefits were first brought in, the board had to look at return-to-work. What they did when they looked at return-to-work—they looked at: How do we develop a program? They did a labour market re-entry assessment and they determined under that assessment how you could get back to work.

What they did is, they looked at: Can we return you to work with the skill set that you have, or do we need to re-train you? The goal was to look at: If we retrain you, how close can you get to approximating your pre-accident earnings? If not, is it cheaper—they called it more cost-effective but I called it cheaper—to stick you in a minimum-wage job somewhere and let you stay in that minimum-wage job for the rest of your life and pay you 85% of the difference, yada yada yada, for the rest of your life, rather than taking a longer period of time which might cost more in the short run but get you back to productive employment, real employment where it's a career, where you can be a productive member of society,

where you can be paying taxes, where you can be satisfied in your work?

It seems to me that policy doesn't make any sense from a societal standpoint. From a societal standpoint, what we should be doing is trying to get people back into productive work, into real jobs that they can be proud of, where they can support their families, rather than putting them into some kind of piecemeal benefit where you get a partial loss of earnings and a minimum-wage job. It doesn't make any sense to me, especially when you've got someone who has got a number of skills.

Mr. Taras Natyshak: Can you tell me more about injured workers that have chronic injuries that continue past the age of 65 but ultimately receive no benefits? What's the impact on that segment of workers?

Mr. Mike Grimaldi: We can tell you that both Al and I have handled cases where we've had members who have contracted occupational diseases after the age of 65. It has devastating effects. People who have to walk with oxygen tanks, people who are dying a slow, long death because of mesothelioma or asbestosis—their spouses are devastated. Many times, their spouses have to give up their own work because they have to help take care of them at home. Many times, where they have dependants who are still school age, it impacts their ability to get an education, never mind the relationships at home. Oftentimes they have grandchildren. As I said, they can't do things that most of us like to do with our—I guess you're too young—most people like me like to do with our grandchildren, where I can take them fishing; I can go swimming with them; I can play catch with them. Those folks have to give all of that up and, in return, get nothing. It just seems to be that it's not reasonable. In any kind of compassionate society, any type of society that we should be proud of, the province of Ontario wouldn't allow that to happen.

That impacts their spouses. What's happening now is, because of this interpretation of the legislation, a number of employers are going in and appealing spousal benefits so that the surviving spouse now gets their benefits that they've probably planned their life on significantly reduced, sometimes more than cut in half. That impacts on the quality of life that they have forever. Why would we be saying to people in the province of Ontario that, "Because you contracted an industrial disease, you don't get the same benefits, you don't get the same enjoyment of life that, if you were in a right-to-sue environment, you would have"? It just doesn't make any sense, and it's not fair.

Mr. Taras Natyshak: You've been around for a long time, Mike, in this game, and I'm wondering if you can measure the state of, specifically, the number of claims that go to appeals today, as in previous years.

Mr. Mike Grimaldi: I'll tell you, it's interesting, because the WSIB and some people in health and safety will brag that there's better health and safety and that claims have gone down. If you look at what's happening to manufacturing in the province of Ontario, of course claims, on balance, have gone down, not because any-

thing is any better, but because we've lost such a significant portion of our manufacturing—

Mr. Taras Natyshak: But the rate of workplace injury remains the same.

Mr. Mike Grimaldi: The rate, yes.

Mr. Taras Natyshak: Do you think that's a way to simply just kick the can down the road for a future generation to deal with those obviously undealt-with claims?

Mr. Mike Grimaldi: What they're doing, in my view—we've clearly found now that many workers have been poisoned in the workplace as a result of chemical exposures and workplace exposures, whether it has been asbestos or whether it has been other kinds: coal dust or byssinosis or whatever. Many of those claims are just coming home to roost, and that's going to be an ongoing problem down the road. What we're basically doing is, we're condemning those folks to poverty forever. We're saying, "Because you grew up in a workplace in the 1960s, 1970s and 1980s and you contracted an industrial disease that takes 25 to 30 years, your children and your grandchildren are going to suffer. They're going to pay the dues, they're going to pay the debt, because they no longer have"—whether it's a father or mother, a grandmother or a grandfather—there to help them further down the road in life because we've decided we're not paying those people benefits. In a civil society, I don't know how you can think that that's an acceptable way of going.

Mr. Taras Natyshak: In a modern society, regardless of its civility, you would think that we would have been able to ensure that people can go to work without exposure to processes and procedures that might kill them. How far away are we from that?

Mr. Mike Grimaldi: You're right. Unfortunately, when you look at situations like that, we've gone back to, under the old system, where those people would be rated on the basis of disability and would still get benefits based on their level of disability, and we're now taking those benefits away from those people. So we're going from bad to worse rather than trying to improve the system, which is the direction we should be going in.

Mr. Taras Natyshak: Thanks.

The Acting Chair (Mr. Shafiq Qaadri): There's one minute left for the NDP, should they wish to use it.

Miss Monique Taylor: Thank you very much for being here. It was raised earlier when you were talking about—I'd better be quick here—the underfunding and the funds that would be used in—sorry, I forgot the wording—

Mr. Mike Grimaldi: An investment pool?

Miss Monique Taylor: Investment pool; thank you.

Mr. Mike Grimaldi: We've had some of our members meet with Mr. Morneau, whom the government has got to review pension funds across the province of Ontario. They want to build a superfund. They're looking at apparently targeting between \$50 billion and \$100 billion in this super investment fund. It's our understanding that one of the funds they're looking at is WSIB. If that's going to be part of a superfund, then I don't

know how the unfunded liability even plays into this because this money is going to be off here somewhere. The government could probably speak to that better than I can, but that's our understanding of the direction that they're going in. That would mean that the pool of funds that are currently handled by the WSIB—whether it's handled properly or not is a different question, but it's my understanding that it's going to be part of this super investment fund that they're creating.

The Acting Chair (Mr. Shafiq Qaadri): Thanks to you, gentlemen, for your deputation on behalf of OPSEU.

1340

OFFICE OF THE WORKER ADVISER

The Acting Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward, from the Office of the Worker Adviser: Mr. Farquhar and Ms. Trower. Welcome. Please be seated. Your time officially begins now.

Mr. Alec Farquhar: I very much appreciate the chance to meet with the standing committee. I'm Alec Farquhar. I'm director of the Office of the Worker Adviser. With me is Cindy Trower, our general counsel. We both have long experience advising and representing injured workers.

For the presentation in front of you, the whole first part is background on the OWA. Given the time, we're going to get pretty well right into the issues, but I did want to highlight a couple of the slides.

The first one is background on the system. We're almost to the 100th anniversary of our workers' compensation and workplace insurance system in Ontario. It has been mentioned a lot that workers gave up their right to sue. It was a valuable right; employers gained a valuable benefit. So we really do come from the perspective that we have a valuable system, but obviously it has problems that need fixing, and we want to play a constructive role in helping fix those problems.

The next slide describes our position in the system. We're part of a co-operative set of agencies, including the Office of the Employer Adviser, the Workplace Safety and Insurance Appeals Tribunal, the board. We really try to work together to make this system work properly, and we're all paying a lot of attention to the deliberations here to learn from them.

The rest is background on the OWA staffing, our budget.

I want to highlight our partnership role and just give you a couple of examples of how we work with others to try to make things work best for workers and employers in the province. This has to do with partnerships for those who are perhaps most in need. One example is our FAIR project. It's a partnership with the board, Threads of Life, which is a families' organization, and MOL to respond to fatal injuries immediately, compassionately and in the most supportive, coordinated way possible. We have a similar kind of partnership to respond to workers in crisis, some of whom you've heard about today: people

who are just at wits' end, perhaps losing their housing, perhaps thinking of suicide. Of course, for you here on the committee, we've got some specific partnerships with MPPs, with your constituency offices and a lot of collaboration on helping those very workers.

Now as we get to the issues of the day, I'll turn right to our slide 6, page 6. We want to focus on three key areas: initial decision-making and reconsideration, the appeals backlog and consultation, and the policy consultations.

First of all, initial decision-making and reconsideration: We do see some uneven quality of adjudication decisions, some very good, perhaps some not as good. In these situations, it's really important to get to the root of the problem, and we've got a really good collaboration with WSIB looking at the front line for best practices, where we share the best of what we see, and they share the best of what they see; for example, how to write a good letter to a doctor and how to get a good report back. That's so vital to determining whether something is work-related or whether it isn't. We've had a lot of good dialogue with WCB on that issue.

There have been a lot of comments about a more restrictive approach to entitlement. What we're recommending is that during this policy consultation phase, it is really important to stick to the published policies. Remember, inside a big organization, someone may have a training document or something else that they rely on to adjudicate a claim. It doesn't really mean they're keeping it secret, exactly, but it may not be the official policy. So we've worked a lot with the board to identify what's official policy, what's perhaps a little bit unofficial and how to ensure that the official policy is followed. There has been a lot of work on that. I think it was mentioned that a while back a lot of documents were put on the website.

We're concerned about the broad use of the reconsideration authority. When this act was brought into play almost 100 years ago, it did have a right by the board to reconsider its decisions. It was never really meant that the right would be used lightly, and at our appeals tribunal we've had a lot of jurisprudence on how this authority should be used. We believe it should only be used in compelling circumstances, not simply when someone looks at a case differently a little bit later on and might disagree with the initial decision-maker.

I'm going to go on to the issues around the appeals backlog and consultation. We do have an appeals backlog in our system. It's around 5,000 cases. I want you to be confident, as members of the Legislature, that a lot of really good work is going on to reduce and deal with that backlog. We at OWA are very, very involved with that. We're in collaborative discussions with the WSIB. We're taking a look at our 700 cases in that backlog and trying to figure out which ones can go back on a reconsideration, which ones might go quickly through the system by written submission, and which ones need a hearing. We've had a lot of co-operation with the board back and forth on that and we're hoping to move hundreds of cases

through this and deal with that backlog in a constructive, effective way.

In the longer term, we're going to comment on just a couple of the issues in the consultation. First is the proposal to get stricter on the appeal time limits. We think that if that is to be done, there needs to be a sort of escape clause for the more vulnerable workers, especially the new immigrants who just don't understand the documents they're receiving and might miss an appeal time limit. We're looking for continuation of that flexibility, and I think the board is listening to us on that matter.

You've heard a lot about the issue of downside risk. I sat here all day yesterday and through the morning today. Downside risk is about reopening your whole case when you bring it forward for appeal. I think it's really dangerous territory. No one is going to take away the authority of the board to reconsider its decisions; on the other hand, to say to somebody, "Sign this form before you appeal, acknowledging that you know your whole case might be reconsidered"—that's an enormously serious thing to ask someone to do, and we don't think it's necessary to go quite that far. We think that the policies are already there. People know there's a downside risk in certain situations. Skilled representatives know when to advise a client, the same as in a criminal case. If you appeal a sentence—they gave you one year. If you appeal, you know that you might get two years. That's a downside risk that everyone is familiar with. On the other hand, to look at potentially losing your whole claim is another matter. So we're recommending that we continue the current approach, which would allow the board to take a look at the case anew, but really to advise the worker when they're going to do that rather than getting them to sign off in the first place.

I'll turn very briefly, as I finish off, to the issue of the policy consultations. We've learned a tremendous amount in the last year on how to do consultations right. The Arthurs review, I think, was a model of transparency and engagement. The Jim Thomas review for policy consultation is shaping up similarly. I think both workplace parties are going to find their voices heard and responded to.

We want to acknowledge some areas where the board has made progress. I'm quite willing to speak to these in the discussion period. A lot of you won't have heard of their stigma initiative. That's an initiative where they've tried to identify negative stereotyping of injured workers and made their staff aware of how to avoid these.

Bringing labour market re-entry back inside the board has been a tremendous step forward. It means that we can deal so much more quickly with the return-to-work issues than we were formerly able to.

I know there has been a lot of discussion of the coverage to independent operators. We see the most vulnerable of them as people who aren't really independent operators; they're under the control of the employer. They're called an independent operator on paper, but they really are subject to an employment relationship. In those kinds of situations, we really do need the protection for them.

So I just wanted to sort of counterbalance that, but I was listening a lot to the discussion around who's covered and who's not. I think there are a lot of important areas there that the board is addressing in the policy development process, and I think we'll come out with a balanced approach.

1350

Finally, I guess to finish off: In a situation that maybe is quite polarized sometimes between employers and workers, how can we move forward together? I'm involved in some exciting work around joint return-to-work with a major employer that I'm glad to talk to you about. Return-to-work is an area where employers and workers can really co-operate effectively. If we can get it right, we'll save money and we'll really improve people's well-being. So I'm urging that, if you're making recommendations, co-operation and return-to-work.

Protecting the vulnerable: The chair, Elizabeth Witmer, spoke yesterday about this. We share in that concern. We've got a mandate to protect vulnerable non-union workers, and we'll certainly keep doing that. We're really going to focus on helping the board work on improving initial adjudication quality and working on the appeals process changes. A lot of good can come from that if we can have better, quicker, more effective dispute resolution.

I'll stop there. Whatever questions you wish to raise, I'll be glad to deal with them. Probably Cindy and I will trade off some of those questions.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. To the PC caucus. Mr. McDonell.

Mr. Jim McDonell: Thank you for coming today. Somebody talked yesterday about the transfer of funds from the WSIB to the Ministry of Labour for accident prevention. Do you have any more information about that—what the amount is and what the benefits back are?

Mr. Alec Farquhar: I really think the detailed question is for the board. I can say in general that Bill 160 transferred leadership for prevention from the board to the ministry, and I know that funds flowed. I am in a special position because, until last month, I was the managing director of one of those health and safety associations, the Occupational Health Clinics for Ontario Workers, and our budget shifted over. I can assure you, it was a revenue-neutral operation. Our budget at OHCOW did not increase. I only really know about our budget. Overall, I believe it was revenue-neutral. I don't think people should be worried about great additional costs. A lot of attention has been paid to that aspect, but in terms of detailed dollars and cents, it's probably better to get that from the board.

Mr. Jim McDonell: Just to follow up, we've heard a lot of sad cases of events here, and it's always tough when you're trying to balance benefits and paying for them, especially in today's climate, where there's always a lack of money. Do you have any improvements that you could see coming through the system, or anything that jumps out, other than, I guess, spreading the pool, because we've heard that before? If you do that, then

really you've got this unfunded liability, and who should pay for it? Is it the people who haven't been involved before? Or maybe the province in general should fix the system and then start ahead.

Mr. Alec Farquhar: What you've had in front of you yesterday and today, especially starting with Professor Arthurs—I think it's a really balanced approach. Workers and the worker community weren't enthusiastic about every single one of his recommendations, but I think they saw it as balanced. My impression is that certainly a lot of employers who engaged found that the process was one where they were really listened to. So I think we've come with a balanced approach. There are several aspects of it that are really important. One is long-term versus short-term. I think it was mentioned this morning by the home builders' association: A longer-term approach puts less pressure on, year-to-year. I think that's an important element of it: a gradual approach, a sense that it's not a crisis that needs to be solved today or tomorrow, but to head in the right direction. We don't want to load too much on today's economy.

I really want to emphasize with the committee members that primary prevention has enormous potential to save money. I don't know if you know this statistic, but I'll put it in front of you: Cancer Care Ontario estimates that 500 workers every year in Ontario are dying from historical asbestos exposure—150 mesotheliomas and around 350 lung cancers. Think of the burden on our health care system. A lot of those aren't compensated by workers' compensation because we can't really prove the origins of everything. These are epidemiological estimates. If we can prevent similar exposures in the future, we're going to save a lot of lives. I can say to you confidently that a lot of work is being done on the prevention front to do that.

The other area where we can save a lot of money is return-to-work. I'll speak to that very briefly. The Niagara Health System is a very big health care employer in the peninsula. They've been troubled; it's been well known in the media. They've launched a really innovative partnership with their unions—ONA, OPSEU and SEIU—very well supported by the employer, where they're training everybody in better return-to-work: their supervisors, their union folks. They're having some real success getting people back to work, and guess what? Their costs are going down. That's because both parties committed to work together, and there's a submission that will be in front of you from the nurses' association detailing that. If we could replicate that success story in a lot of other sectors and workplaces, especially small and medium-sized business, we will make a lot of progress.

I can tell you, from yesterday's report, the board has switched its resources around so they're getting at this issue. They're getting folks into workplaces—I think they mentioned 23,000 workplace visits by their 300 return-to-work staff. These are big changes, and if we can, on the part of politicians and those out in the employer community as well, galvanize that kind of commitment to getting the workers back to work, we're going

to see some really big, positive changes. Remember, the costs of workers' compensation are partly the initial injury, but they're partly the delay in return to work and the problems with it, the duration issue, and we're getting at those.

Also mentioned yesterday were the changes to health care. There are some really promising changes happening there to get the doctors understanding better the needs of the injured workers and of the employer and fitting it all together better. Right now, the doctors are sort of distant and may not be fully knowledgeable about how they can help the most.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Pettapiece.

Mr. Randy Pettapiece: Thank you for this report. It's quite good, and I've been very interested in what you've had to say as to what you want to see done.

I'm interested in the coverage to the independent operators section here on page 6, in construction. Independent operators can be people who build 100 homes or two homes a year; it's the same classification. I guess Bill 119 is going to put a lot of pressure on especially the smaller guys who are going to be required to—it's about \$11,000 average, they figure, on a small operator, in WSIB benefits. I worry about the pressure on these guys and the result of the pressure to our economy. Where I live is a very rural riding, so you have a lot of contractors that don't do a lot of big business; it's just a small custom-type thing like that, and they're going to be required to spend a lot of money on this, even if they have their own insurance policies. I wonder if you could comment on that as to maybe we should have another look at it.

Mr. Alec Farquhar: The issue of coverage for independent operators: It's a really long-term issue in workers' compensation and workplace insurance. It goes back decades.

Generally speaking, in the jurisdictions across Canada—I've studied it a little bit. I can't say I'm an expert right now, and there are folks from the board here who know a lot more about it than I do. Generally speaking, there's been a push to protect the front-line workers, the front-line independent operators that were exposed to the risks of construction and other sectors. Those front-line workers sometimes are true independent operators. The ones we encounter at the Office of the Worker Adviser are very often not really true independent operators. They're what we'll call dependent contractors, people who on the books are independent but in reality they're workers. It's simply that on the books there has been some kind of agreement signed that perhaps they're not officially workers. So a lot of us who've pushed for this coverage have really been focused on those workers.

The discussion this morning was getting into areas I'm not quite as familiar with. I know that the pricing of insurance coverage can take into account the various other coverages. So there may be some solutions in there that

would get the other insurance they have perhaps reduced in exchange, but I'm not an expert on that.

In terms of the burden on people who aren't really working at the front line, that the fellow from the home builders was mentioning, my impression is that some of those issues are being dealt with in the consultation. There are policies developed or being developed. Probably when the board appears, maybe today or maybe later in writing, there could be commentary on that. I'm not familiar in detail with the policies. But the overall objective of protecting the front-line people—I think it does have to be brought into the balance here, because at OWA we encounter a lot of people on the books as independent operators. They get hurt, sometimes very, very seriously, and then we, in a sense, have to see if we can fit them into the system. Sometimes we succeed; sometimes we don't.

I'll just give you one example. A worker is operating a lathe with 30 other workers in a machine shop. One day, they ask them all to sign papers. Later, they find out all 30 of them have become corporations and they all own their lathes. The worker comes to us because a piece of metal goes off the lathe into his eye and essentially blinds him in one eye. Under law, we were able to show he was a dependant contractor and therefore should have been covered as a worker, but sometimes the arrangements are a little bit different and we're not able to show that.

1400

You can see there that he probably never really intended to buy the lathe and rent the space from his old employer. It was more of a strategy to avoid cost. Then, somebody else might be in a different situation and not be working at the front line. I am sympathetic to some of those situations, and I think balancing it out somehow is the way we have to go.

Mr. Randy Pettapiece: There can be games played, and I understand that, but I'm just worried—our economy is quite fragile right now—that we don't go around too much with it and—

Mr. Alec Farquhar: Yes. Let me throw another issue at you that might help with this—

The Acting Chair (Mr. Shafiq Qaadri): I'll need to intervene there. Thanks to the PC caucus.

To the NDP: Mr. Natyshak.

Mr. Taras Natyshak: I'm going to allow you to finish your thought there, because I think I know what it is.

Mr. Alec Farquhar: Okay. I'll just finish that short thought. Right now, we have a review of incentive programs that's coming when Professor Arthurs is finished and has made his recommendations. I'm certainly favourable to incent a program review that starts rewarding the employer for meeting recognized international health and safety and environmental standards that give them a competitive advantage.

One simple example: If you want to export goods from Ontario to the European Union, you have to comply with something called REACH. REACH is about chemical hazard management. It's a big EU program. Their borders are closed to manufacturers who don't comply.

Some Ontario manufacturers have complied, and therefore they can still export to the EU. I'd really like to see our incentive programs linked to efforts that support employers in meeting these standards so they can then put sort of like an ISO 18001 or a CSA Z1000 label on their goods. Then they've got a competitive advantage—and they haven't just paid their money to comply; they're getting some recognition that helps them compete in the global economy.

Solutions like that might really help both parties, and I'm sure the workers working for those companies would love to help their employer comply, because they know they can export those goods to the European Union, so it's a win for everybody. That's one solution, anyway.

Mr. Taras Natyshak: There you go. Did you get your answer, there, Randy?

Interjection.

Mr. Taras Natyshak: You're welcome.

I'd like to talk about the operations of the Office of the Worker Adviser specifically. My mom used to work at the Office of the Worker Adviser in Windsor. As well, she processed and helped a lot of injured workers as a constituency assistant for my predecessor Pat Hayes. So I've sort of been around your operation and known about it for quite some time. As well, my office relies on our regional worker adviser office from time to time, actually. But more and more, they're unable to deal with the amount and volume of claims that are coming in. I'm wondering if you can speak to the need for more of these types of organizations and supports that are offered to unrepresented workers.

Mr. Alec Farquhar: I think maybe Cindy should speak to that, because I just took over three weeks ago and she was acting director for about a year and a half and, I think, knows a lot more about the resource space.

Ms. Cindy Trower: Okay. Well, in terms of the Office of the Worker Adviser, I think historically—and Alec would probably know more about the historical piece than I do because he was with us a long time. But generally speaking, our demand always outstrips our resources. We've had to employ various measures in order to focus our resources on the most vulnerable and the most needy.

We do that in a number of ways. We do it by what we call "selecting out" some more simple issues. That's one of the ways that we do it. We tend to focus our representation service on the more complex rather than the ones that are worth a lot—there's a lot at stake for the worker. We also do a case review before we agree to represent, so we look at whether or not there is sufficient evidence for us to proceed to an appeal. That occasionally does leave some workers going out on their own—quite a number of workers, actually.

In most cases, we're trying to take on the ones who really have a case to take forward. But those are two of the main ways in which we've had to address the demand. The most difficult one is where those measures don't allow us to meet that more selected demand and we

have to put people on a waiting list. There were times when we had very, very large waiting lists.

At the end of our fiscal year, which ends at the end of March, we had 110 cases province-wide. We have 15 offices across the province, so most of our offices did not have a waiting list, but about half a dozen did, and I think the average wait time was around two months. That's a bit of a picture, just having recently looked at some of the statistics for the last fiscal year.

Mr. Taras Natyshak: Just for the record, I would like to thank you for the work that you do. Unfortunately, it's incredibly necessary in today's environment as the incidences of workplace injury and accidents and deaths continue to remain steady.

I'll pass it to my colleague.

The Acting Chair (Mr. Shafiq Qadri): Miss Taylor.

Miss Monique Taylor: I would like to thank you also on behalf of the work that the Hamilton office does on behalf of our injured workers because I know that my office uses your resources quite frequently, so I appreciate that.

I understand that the OWA represents non-unionized employees, many who are very vulnerable. Can you give us an idea of some of the circumstances that these vulnerable employees face?

Mr. Alec Farquhar: We use the term "vulnerable workers" to refer to the situation people find themselves in where they don't have much power in the work setting. That tends to be new immigrant workers, young workers, migrant farm workers or other temporary foreign workers, but it also includes people who have a contingent attachment to the workforce, somebody working for a temporary agency.

I'm going to hand it back to Cindy in a second because we have a new mandate to protect workers regarding reprisal for health and safety.

On the workplace insurance end, we're dealing with a lot of people who may be a little bit afraid or unaware of their rights, and we do a lot of work to encourage them to understand their rights and then we try to bring forward their cases. That means dealing with them in their native tongue. It means going to where they live for local clinics and other kinds of contacts, rather than just where we have an office. We do a lot of outreach and we work a lot with partners in the community, with MPPs' offices—lots of different ways that we make ourselves more accessible.

Knowing the time pressure here, I'll ask Cindy to comment a bit on our new mandate, just since April 1, to help people who may be the subject of a reprisal for exercising health and safety rights.

Ms. Cindy Trower: Coming out of the expert panel report on occupational health and safety, the Tony Dean report, there was a recommendation that non-unionized workers with health and safety reprisal complaints have access to services similar to those that the Office of the Worker Adviser provides to injured workers and survivors. Through Bill 160, we were provided the mandate to

provide that service. We started providing that service on April 1 of this year. It's actually very busy. We have two full-time representatives and one support person. As general counsel, I manage that program, as well as a small legal group that supports the workers' compensation work.

Non-unionized workers—I think Alec outlined that the most vulnerable of them, but in fact many workers, even ones who have been employed for some time, are vulnerable as well. We have workers from all walks of life, sometimes people who were unionized and their plant closed and now they're out of work and they're eligible for our service.

1410

Mr. Taras Natyshak: Have you received additional resources to facilitate that?

Ms. Cindy Trower: For the reprisal program, we did receive additional resources. Those three positions were in addition to our regular budget.

Mr. Taras Natyshak: Three positions to—

Ms. Cindy Trower: To provide the health and safety reprisal program.

Mr. Taras Natyshak: For the entire province?

Ms. Cindy Trower: For the province, yes, out of the Toronto head office.

Mr. Taras Natyshak: The province is bigger than just Toronto.

Ms. Cindy Trower: Indeed. Well, we have helped people from across the province.

Miss Monique Taylor: One of the issues that I know that you deal with often is occupational disease. How do you feel that the board is doing with the occupational disease cases and what do you feel it could do better?

Mr. Alec Farquhar: I know we're running under time pressure here and I'm glad to respond. It might take just a tiny bit longer. So I don't know if—no?

Miss Monique Taylor: How long have we got?

The Acting Chair (Mr. Shafiq Qadri): Six seconds.

Mr. Alec Farquhar: Six seconds? Making a lot of progress, and I'll speak more if there's a chance—

The Acting Chair (Mr. Shafiq Qadri): Two seconds. Thanks to the NDP.

To the Liberal side: Ms. Albanese.

Mrs. Laura Albanese: Thank you for your presentation. For us, it's been an opportunity to learn more in detail about the work and the valuable assistance that you give to workers throughout Ontario. Thank you very much for that.

I had a few questions; specifically, if you could elaborate on how you help workers who may not speak English or French. Do you have translation services?

Mr. Alec Farquhar: First of all, remember that we're often dealing in situations where it's a formal setting, so it might be, for example, that the board or tribunal would provide an interpreter. And the board has quite an elaborated system inside where sometimes, when we're dealing with a worker who doesn't speak English or French, we've got access to someone inside the board's staff who can help. So sometimes it's not us having to

find that; it's already provided in the system. When we have to deal directly, we have a lot of language skills on staff. I speak fluent Italian, myself, just for example.

Mrs. Laura Albanese: Bene.

Mr. Alec Farquhar: Lo parlo bene. I could do this hearing in Italian if you wanted me to. Therefore, we have a lot of people who speak a lot of different languages. If, for example, a worker adviser dealing with somebody doesn't have that specific language, we have internal resources and, where necessary, we retain them externally.

We also deal a lot, as probably a lot of you do, with the family members, and often a child or a relative is in to help translate. I think we do a pretty good job. We're pretty accessible, and the system, as a whole, has proven very responsive through the years to workers who don't have English or French as a first language.

Mrs. Laura Albanese: Do we also do outreach to workers who are not unionized?

Mr. Alec Farquhar: We do a lot of outreach. As Cindy mentioned, we have to be really careful about how we allocate resources so that we don't do sort of broad-brush outreach. What we tend to do is to try to work with community organizations, MPPs and others, to reach the specific populations for the specific issues where we can be of the most help. Cindy could comment further on this, but in the reprisals work, as it's just getting started, people may not understand fully what we do and what others might do, so we want to make sure we're not doing too much broad-brush outreach.

I'll give you one example. After church in the Korean community, we used to go and talk to people about exposure to dry cleaning chemicals—by the way, both the small business people and the workers. That was a practical kind of setting where they felt comfortable talking about it. But we wouldn't probably do a whole big outreach in a community advertising our services because it would likely attract a lot of work we wouldn't be able to do. I hope that's sufficient.

Mrs. Laura Albanese: Do you deal with any migrant workers?

Mr. Alec Farquhar: In my previous job at OHCOW we had clinics for the migrant workers and we had active relationships with OWA and the legal clinics where, if a case came forward, they would handle it. In our case, we would tend to receive those referrals through a network or some other community contact. OWA doesn't have an office or a presence down in farm country, per se. It would have to come through someone who knows that farm worker. Some of you may be familiar that church organizations and other community organizations bring the workers forward.

By the way, as an agency of the ministry, we don't just help the vulnerable workers. We've got a lot of services for their employers, for the small businesses that employ them, for the farmers. It's meant to be a comprehensive service for prevention—in our case, for workplace insurance. We're really trying to help everybody get through the complexities of the modern world.

Mrs. Laura Albanese: Within your deck here, on page 7, under “Appeals Backlog and Consultation,” one of the issues that you identify is the downside risk proposal. I wonder if you could talk a little more about that.

Mr. Alec Farquhar: That was discussed a little bit over the last couple of days. “Downside risk” means that when you appeal something, you may lose something you already had entitlement for, roughly speaking. I’m fully recognizing that in any legal context, you can’t just appeal and expect to get more; sometimes when the court or another body reviews your situation, they may find that you just get the same or even less.

In a criminal law context, if I appeal a sentence—I’ve gotten a year, and I want to get it down to six months, then the Court of Appeal says I’m going to get two years. Every lawyer knows you must advise your client that the issue is quantum of sentence, and therefore it could go up or it could go down. That’s the kind of downside risk people are familiar with.

The proposal the board currently has on the table takes it a step further and says, “We need you to sign, as you launch your appeal, that you acknowledge the downside risk, and it doesn’t just extend to the issue you’re appealing; it could extend to any of the issues in your case.” We think that’s taking it a bit too far. We’d rather see the principles around downside risk and reconsideration enshrined in a guidance document that could be made available to everybody but not made a requirement for when you launch your appeal. That’s the concept we’re working from now.

Mrs. Laura Albanese: So if I’ve got this correctly, this provision is already in place; it has always been like this. It’s not one of the proposed changes. It’s just that now—

Mr. Alec Farquhar: It’s formalizing it.

Mrs. Laura Albanese: —in the changes, you’re asked to sign and to acknowledge that beforehand.

Mr. Alec Farquhar: That part is new. It does have a chilling impact on the worker because they’re afraid that if they appeal, they might lose everything. It’s not really meant that way. It’s about reconsideration. Nevertheless, it can have that kind of impact, and we don’t think it needs to go that far.

Mrs. Laura Albanese: Thank you for that clarification.

The Acting Chair (Mr. Shafiq Qadri): Any further questions from the Liberal side? Then I will thank the Liberal caucus. Thank you, as well, to the Office of the Worker Adviser for your participation.

COUNCIL OF ONTARIO
CONSTRUCTION ASSOCIATIONS

The Acting Chair (Mr. Shafiq Qadri): I’d now invite our next presenter, Mr. Cunningham of the Council of Ontario Construction Associations. Mr. Cunningham, welcome. Please begin.

Mr. Ian Cunningham: Thank you. My name is Ian Cunningham. I’m the president of the Council of Ontario Construction Associations, otherwise known as COCA.

COCA is a federation of 30 construction associations whose more than 10,000 member contractors operate in all regions of the province as general contractors and trade contractors in the industrial, commercial, institutional and heavy civil side of the construction industry. COCA serves as their voice on matters of provincial public policy. COCA is the largest and most fully representative advocate for the non-residential construction sector in Ontario.

Since the time of its genesis in 1975, COCA has maintained a central interest in WSIB matters, and over its 37-year life has worked constructively with the WSIB and the Ministry of Labour in pursuit of a workers’ compensation system that’s fair, equitable, stable and sustainable and which supports a competitive Ontario economy.

I’m pleased to be here this afternoon to provide the views of COCA’s membership with regard to the Ontario Workplace Safety and Insurance Board. In general, COCA is very pleased with the very significant organizational transformation that’s under way at the WSIB, which is being most capably led by its president, David Marshall. I’m sure you’ve heard already from the WSIB at these hearings that, among other things, in 2011 the WSIB achieved its best operating results in 10 years. For the first time since 1997, the organization did not have to draw down its investment fund to help cover operating costs, and fewer lost-time claims were registered in 2011. And I’d like to correct the record that over the last 10 years, the rate of injury has been approximately halved.

1420

Workers are recovering from their injuries more quickly and returning to work sooner. The total benefits costs are on a two-year decline and the WSIB is finally learning to properly and accurately price its product so that premium revenue is coming into line with costs. These are impressive results indeed and provide the evidence for COCA’s support.

Allow me to highlight some principles that help guide COCA’s thinking with regard to the province’s workers’ compensation scheme:

(1) Ontario’s workers’ compensation system must be financially sustainable and positioned to meet unforeseen negative events such as drastic declines in investment income or unanticipated sharp increases in claims.

(2) Premiums must be paid on behalf of every worker who qualifies to receive benefits.

(3) The program of benefits available to injured workers must be comparable to those of other jurisdictions.

(4) Employer premiums should be the lowest of all Canadian jurisdictions.

(5) Policies guiding WSIB practice must be clear and applied evenly and consistently.

(6) Administration must be efficient and modern, similar to those of other similarly sized compensation organizations.

(7) Importantly, operations must be open and transparent for purposes of accountability.

With regard to the first principle, a sustainable compensation system, while the current financial state of the WSIB is extremely weak, we believe the organization has put itself on the track to financial sustainability. The WSIB's strategic plan for 2012 to 2016 identifies sufficient funding as one of the five major themes, and the current senior management appears to have the rigour, discipline and commitment to restore financial stability.

In addition, the recently released report, *Funding Fairness*, provides some thoughtful recommendations on how to get there.

The second principle speaks to the free riders in the system, those who don't pay premiums but who make claims when injured. There should be no room for free riders in the system.

The third principle speaks to the benefit levels. Ontario's array of benefit levels is certainly comparable to those of other jurisdictions.

Despite the fact that WSIB premiums are currently among the highest among Canadian compensation systems, we believe that Ontario's rates can, in time, be the very lowest. Ontario already has the lowest cost of new injuries; administration costs are in line with other jurisdictions and are improving as operations are modernized; and investment returns should be less volatile in the future as the WSIB transitions to a new investment strategy. Once the unfunded liability is eliminated, Ontario will be well positioned to have the very lowest premium rates of all Canadian jurisdictions, and our workers' compensation system will serve as a competitive advantage for the province in attracting new investment and new jobs.

With regard to clear and understandable policies, the WSIB has introduced a policy renewal framework to guide the review and updating of all its major policies every five years. A consultation secretariat has been established within the board to support stakeholder consultations in the renewal process. The first review under the framework recently got under way and an independent chair was engaged to lead it. We're hopeful that this important process will lead to clear policies with guidelines that support their consistent application.

The WSIB has made significant strides in modernizing its customer-facing operations. In particular, it has introduced a suite of e-services, including e-registration and e-clearance, that provides employers with easy access to WSIB services 24/7. I like to say that WSIB has finally embraced the 1990s.

It's in the area of transparency of its operations that I must give the WSIB considerable credit. COCA, as well as many other employer and worker organizations, participates on the chair's advisory committees, the WSIB's primary stakeholder relations conduits, where the WSIB seeks early-stage feedback on important new initiatives.

In addition, members of the WSIB's senior management team have made themselves available, whenever requested, to attend meetings of COCA's own WSIB

committee and our board of directors' meetings to provide updates.

Also, we were particularly impressed with the openness of the funding review led by Professor Harry Arthurs, and we understand the process he used will also be used by the WSIB's consultation secretariat in its policy review and renewal work. This captures in a general way our thinking regarding the WSIB.

A very important and exciting organizational transformation is well under way, and COCA expects to play an active role, working with the WSIB and other stakeholders to help chart the new way forward.

Among the recommendations we would make going forward are the following:

(1) The WSIB must adopt a contemporary model of governance, where directors are selected according to a matrix of competencies and expertises that are required for the board of directors to conduct its work effectively.

(2) An Arthurs-style comprehensive review of costs must be undertaken to ensure that injured workers are compensated fairly and appropriately.

(3) Consideration should be given to transferring oversight of the WSIB from the Ministry of Labour, an organization principally responsible for the development and enforcement of health and safety policy and labour relations policy, to the Ministry of Finance, which is better equipped to monitor a large, complex financial organization such as the WSIB.

(4) Cost-based experience rating must continue to be an integral element in WSIB pricing. Experience rating refines employer premiums. It adjusts for the lack of perfect homogeneity within risk classifications.

(5) The ongoing government practice of increasing benefits without consideration for their funding must be stopped.

(6) Many occupational disease claims are multifactorial. In addition to workplace causes, there may be exposures outside the workplace, environmental causes, lifestyle causes and genetic predispositions. In such cases, COCA believes that costs must be apportioned according to workplace and non-workplace causes, such that the WSIB assumes the cost for the cause determined to be workplace-related and the public health care system compensates for the portion that is non-workplace-related.

(7) The WSIB's safety groups program should be continued, at least and until the Ministry of Labour's prevention office introduces a successor program.

(8) Consideration should be given to eliminating the 72-month lock-in of benefits.

(9) Further consideration should be given to a waiting period before WSIB benefits kick in, during which time injured workers would continue to be compensated by their employers.

(10) The WSIB must be encouraged to publish its quarterly and annual financial results in a more timely fashion. Here it is July 5, and the 2011 statements have not been made public yet.

Thank you for your attention. I would be pleased to take questions.

The Acting Chair (Mr. Shafiq Qaadri): Thank you very much, Mr. Cunningham. To the NDP side: Mr. Natyshak.

Mr. Taras Natyshak: Thank you very much for your presentation. You opened up with the accident claims number decreasing. It may be that the actual claims receiving approval have decreased. However, I would argue that the number of workplace accidents overall and incidences of workplace injury overall have not decreased. As well, we do know statistically that deaths due to workplace accidents or illness are on the rise in this province. That statistic you can find readily available.

I'd like to talk about the "free riders." That's a term that is being used in the debate across the border, south of us, in the United States with Obama's health care legislation. I'm wondering if you can make some correlations there. We're talking about specifically involving worker groups that aren't included in the board or under the purview of the regime to actually be mandated to participate. What are your thoughts on that?

1430

Mr. Ian Cunningham: I wasn't addressing the idea of expanding coverage beyond those industries that are defined in the act. I was speaking about individuals who claim benefits, who are operating in a WSIB-covered industry, who are not contributing—

Mr. Taras Natyshak: How do you propose that we ensure that they are encompassed into the regime? What mechanisms or resources would you put into place to ensure—

Mr. Ian Cunningham: Better enforcement, better auditing—just ensuring that everyone working in the covered industries, that premiums are paid for them.

With regard to your comment about deaths, I'm a member of the provincial section 21 committee, and every month one or two deaths in the construction industry are reported at that meeting. Comparing Ontario's construction industry to others, our record is certainly among the very best, if not the very best. Still, this is certainly tragic, and there's lots of work to be done. I certainly agree with you there.

Mr. Taras Natyshak: Let's talk about that work. How do you feel about the transfer of responsibility for accident prevention to the Ministry of Labour from previously under the purview of the WSIB?

Mr. Ian Cunningham: We supported it.

Mr. Taras Natyshak: Are you working with the Ministry of Labour in that regard?

Mr. Ian Cunningham: Yes. We've met fairly frequently with staff at the secretariat. In fact, one of my former staff members has been recruited to be a staff member at the prevention secretariat. We've met with Mr. Gritzotis and his senior staff members regularly, and tried to assist in every way we can in that transfer and getting them up to speed. As you're probably aware, they've had a number of consultations. Currently, there's a consultation on the supervisor's awareness workbook

that was recommended in the Dean report, and we've provided feedback on that. So yes, we supported it in Bill 160.

Prevention was kind of an add-on to the Workplace Safety Insurance Board. I don't mean to discredit anybody who was there in the past or any of the past initiatives, but I think there were serious challenges on the insurance side of the business.

This allows the WSIB to focus on the compensation side of the business and put prevention over in a separate place where it gets a senior leader's full attention and resources.

Mr. Taras Natyshak: How vital a component do you think that is to the overall system, in terms of the viability of our compensation system and as a proactive, holistic approach? We're looking at all these segments here: the liability, the remuneration, the compensation, the legislative aspects. But ultimately, as my colleague Mrs. Cansfield presented, we have to get back to a comprehensive regime of prevention and safeguarding every worker in every industry. Is that not the ultimate goal?

Mr. Ian Cunningham: As in our health care system, in workplace accidents, injuries and sickness, prevention efforts are critical, absolutely. As you know, the health and safety associations are supported by WSIB premiums.

Mr. Taras Natyshak: One of the reasons I was able to have a career in construction and literally escape unscathed is because of the massive amount of training that I had through my union. I hold certifications in almost every aspect of construction that you can imagine because they were free to me and they were in-depth and well-nuanced. I took pride in not only knowing them but being able to actually advocate for safe processes on the job. What happens to industries that don't have that type of access to those types of training modules?

Mr. Ian Cunningham: All construction companies, whether they're participating in the WSIB or not—and they should be—have access to the Infrastructure Health and Safety Association. The biggest challenge is preaching to the non-converted. Typically at meetings at the Infrastructure Health and Safety Association, which deals with construction prevention initiatives, you do find those who are strongly committed. I think there's a number of typically smaller contractors that don't belong to their local mixed trade association, don't belong to their trade association and don't get the message.

Mr. Taras Natyshak: And can we do a better job on that front?

Mr. Ian Cunningham: Absolutely. We've got to find ways of reaching these people.

Mr. Taras Natyshak: Okay.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Three minutes.

Miss Monique Taylor: Thank you for your time today and being here with us.

I know you mentioned the underfunded liability. What are your thoughts on how to—first of all, does it bother you? Do you think that it needs to be 100% funded? The

Arthurs report talked about 60% and the tipping point. What are your thoughts on it?

Mr. Ian Cunningham: We supported 100% funding through the Arthurs review. We wondered if he would recommend 100% funding and we were pleased that he did; 100% funding is the conclusion that every other compensation system across Canada has. Most of them are much closer to 100% funding than we are. Consequently, they have much lower rates than we do. If we didn't have this charge against the unfunded liability built into employer premiums, we would have the lowest rates in Canada. Our cost of new injuries is around \$1.31 or \$1.32, something like that, and is one of the lowest in the country.

Looking in front of us, if we put this unfunded liability behind us, this legacy of debt—and let's stop trying to point fingers and argue what the causes were. We know generally what has contributed to the unfunded. Let's move forward in a disciplined way. There's a plan to—the government has already committed to eliminating it in 15 years so we don't transfer this debt to a future generation of employers. Then we can be really competitive in Ontario, at least with respect to WSIB premiums. I think it's critical that we get at least to 100% funding.

Arthurs provided kind of what he called a corridor to get there. He strongly recommended that we get to the tipping point of 60% in five years, and the government committed to doing better than Arthurs had recommended, to a 15-year window to get there.

Miss Monique Taylor: I believe that when he was here speaking yesterday that he did mention that he was concerned that the government had locked themselves into providing a mandate for themselves of getting to that point, and if they didn't reach that target, what would be the consequences at that point. So, yes—

The Acting Chair (Mr. Shafiq Qadri): Thank you, Miss Taylor. To the Liberal caucus: to Ms. Albanese or Ms. Cansfield.

Mrs. Laura Albanese: Thank you for your presentation. I wanted to ask you if you could describe your overall relationship between the WSIB and your association and its members, and any recommendation on improving that.

Mr. Ian Cunningham: I would say the relationship is very strong at the most senior levels. Mrs. Witmer called me when she was appointed, and I've met with her in her office. Mr. Marshall—our organization is represented on two of the chair's advisory committees, which were established by former chair Mahoney. In my view, those are the primary conduits used by the WSIB to seek early-stage feedback of new ideas and exchange in a confidential way some ideas and best practices and so forth.

I would describe our relationship as professional and respectful. We don't always agree, but I have a great amount of admiration for the senior management team there.

Mrs. Laura Albanese: What is your opinion of Bill 119? In your opinion, will it help to combat the underground economy?

Mr. Ian Cunningham: COCA supported Bill 119. There was considerable debate within our organization. Of course, construction is largely comprised of small businesses and lots of independent contractors.

1440

I think the argument that won the day was the situation that the previous speaker spoke of: Many good-sized contractors turned their workers or their employees into independent contractors simply to avoid the payment of WSIB premiums and giving them an unfair advantage in the marketplace over those contractors who were operating more legitimately. A level-playing-field argument was the argument that won the day within our organization. So we supported Bill 119 and mandatory coverage for independent operators.

Mrs. Laura Albanese: In the list of your final recommendations—I don't remember exactly what number it was—I want to just make sure that I understood correctly: Did you say that increased benefits must be stopped?

Mr. Ian Cunningham: No.

Mrs. Laura Albanese: No. If you could clarify, because you were going very quickly—

Mr. Ian Cunningham: I said the government—not any government in particular, because I think this has been problematic over the years—would jump in without giving any consideration to premiums and retroactively introduce new levels of benefits. That cost burdened the system with significant unanticipated costs and simply added to the unfunded liability. I think this is consistent with Professor Arthurs's thinking in his report.

Mrs. Laura Albanese: So you were talking about government interference in the WSIB.

Mr. Ian Cunningham: I suppose the government could say it's not interference. They're given, through the legislation, the responsibility of setting the benefits, but to set benefits retroactively without consideration for their impact on the system is not a tenable situation. When the funding level is around 50%, 51% or 52%, whatever it is, it threatens the viability of the WSIB.

Mrs. Laura Albanese: Okay. The other questions that I had have been answered. I understand you're very supportive of balancing the unfunded liability, and you spoke a lot about that.

I don't know if my colleagues have any questions.

Interjection.

Mrs. Laura Albanese: We don't. Thank you for your presentation.

The Acting Chair (Mr. Shafiq Qadri): All right. I thank the Liberal caucus and now move to the PC side. Mr. McDonnell.

Mr. Jim McDonnell: You talked about the increase in benefits. The Auditor General talked about the unfunded liability increasing by almost a third in 2008 just because of very much the same thing, where benefits were increased without any regard for inputs or costs to the sys-

tem. Do you have any ideas on how we might stop that in the future?

Mr. Ian Cunningham: I think the current government listened to Professor Arthurs's advice. You will know that, concurrent with the release of the Arthurs report, the government signalled that for 2013, benefits for partially disabled workers will be increased by 0.5%, so that provides the WSIB with the opportunity to incorporate that into their rate-setting process. I would say the government should give those signals in advance of the rate-setting process. Also, the rate-setting should be done well in advance so that contractors who are bidding work can build that bidding work today into contracts that they may win six months down the road.

Mr. Jim McDonell: Also, in your report you mentioned some of the diseases and the various causes. Sometimes they are being contributed to from the workplace, but of course, those things are always unknown. People can be somewhat prone to get certain diseases, and it's hard to put a finger on what caused what, especially with some of our technologies. I mean, coal has been used since the mid-1400s, 1500s. With technology, as we move ahead, we learn a lot more, and that continually happens as our knowledge increases. Any comment on that? Or should we just cover those things basically under the health system itself, not knowing where the issues come from?

Mr. Ian Cunningham: Well, where there are multi-factor diseases, the cost should be apportioned to the workplace and to the public health system based on the extent to which those causes can legitimately be assigned. As you say, there is an increasing amount of science developing every day that helps us make those assignments.

Mr. Jim McDonell: So it's basically, on a percentage-type basis, dependent on what the issue is?

Mr. Ian Cunningham: Yes.

Mrs. Jane McKenna: Thank you so much for coming today. It was a pleasure to listen to you. You're very articulate.

My question is, what will the economic impact be of higher rates on the construction industry?

Mr. Ian Cunningham: Anybody who represents employers is not paid to promote higher rates, but this conversation has been going on long enough. Everybody knows that rates are going up. Professor Arthurs, I think, gave a couple of different scenarios where rates could go to about \$2.50 or to \$2.70, the average rate, from the current rate of about \$2.40, I think. It's not a good thing for anybody. It doesn't do anything to improve the province's competitiveness, but a dose of strong medicine has to be swallowed and we've got to move forward in a disciplined way to put this unfunded liability behind us.

Mrs. Jane McKenna: Yes, because it's strictly like a math question when you look at it, because you're saying \$2.40, and when you look at it over 15 years, that's a billion dollars a year. If, right now, the operation is \$3 billion, you need \$4 billion, which is an increase of 25%, so you've got to come up with monies. You just can't

look at saving \$50 million, because then you've got to find another \$950 million somewhere else. To me, the logical question would be, "What is that rate going to be?" and have that answer, because that's doing your job to move forward. It's just strictly a math question to me, when I look at it, the bare essentials of what that is. Do you see that the same?

Mr. Ian Cunningham: Yes, and you should make your inquiries to the representatives of the Workplace Safety and Insurance Board who are up next as to when the rates will be published—I think they're going to be published in the late summer or early fall—and exactly what the cost of new injuries is, what the administrative costs are, what the unfunded contribution is, and all those various components that go into the rates.

Mrs. Jane McKenna: Yes, because, just sitting here, it does impact the small businesses and the medium businesses, more so than the larger businesses. Just going through this process and having this privilege of sitting and subbing in for somebody for the last day and a half, it's not rocket science, some of the things that have come in here that you look at that we could do to fix, but you need to make sure that we do do something, because we need to keep businesses here. I've said it many times today: Capital is mobile and Bay Street knows it, and they're not going to stay where there's high debt and high taxes and high hydro. And then you've got a percentage, regardless of what that is, that's going to impact businesses as well.

Mr. Ian Cunningham: To me, the plan going forward does have an element—and I hope you've gathered that in my remarks—about restoring our economic competitiveness. We've been off the track for a long number of years. We're stuck with some legacy debt that we have to deal with. Let's deal with it in a disciplined way and put it behind us so that we can restore our competitiveness. That's part of the argument. In a way, we have to also—I don't want this to be totally economic and financial. Employers understand that there's kind of a social bargain, that we have to provide fair and good levels of benefits to injured workers.

1450

Mrs. Jane McKenna: And it has been great listening to you today, because you were very articulate, listening to the information that you brought forward, so I thank you myself from everybody else for coming.

The Acting Chair (Mr. Shafiq Qaadri): You still have about three minutes. Mr. McDonell.

Mr. Jim McDonell: You mentioned the 72-month lock-in period. Have you seen any instances, or many instances, I should say, or a percentage of them, where they should be reviewed again?

Mr. Ian Cunningham: I think the 72 lock-in creates a milestone in the life of an injured worker, in the life of a claim, where you just kind of give up. The system gives up on the employee. It says, "We can't help you anymore." I don't think that's in the best interests of the injured worker, who should continue to be mobilized to get back to work. This isn't available in every case and in

every claim, but he shouldn't be in a position where he's forced to give up on himself and simply spends the rest of his life collecting benefits in a way that's got to be unfulfilling and puts you in kind of a downward spiral.

I think it's unfair to the worker to give up on him. I think these lock-ins should be made on a medical, scientific basis and not simply on a 72-month time period. It seemed to be efficient at the time the system was made, but I think it's wrong in a way that's unsympathetic to injured workers.

Mr. Jim McDonell: And one last one: When you look at our benefits and how they've increased, how do we stand against the other provinces in the country? Are our benefits similar or ahead or behind?

Mr. Ian Cunningham: I think that if you looked at a listing of the menu of benefits that we offer, it would be considerably more fulsome than any other compensation scheme in Canada. I don't know this, but I suspect there is the opportunity for benefits to cascade over benefits over benefits in a way that's not intended. That's why we recommended one of our strongest recommendations, which was an Arthurs-style review of system costs. We complained vigorously to the WSIB that the scope of the Arthurs review was far too narrow. It only examined one side of the ledger in a way that made employers suspicious that it was all about getting more money from employers. We also think there should be a similarly-styled review looking at the cost side of the ledger as well.

The Chair (Mr. Shafiq Qadri): Thanks to you, Mr. Cunningham, for your deputation on behalf of the Council of Ontario Construction Associations.

WORKPLACE SAFETY AND INSURANCE BOARD

The Chair (Mr. Shafiq Qadri): I would now invite our final presenters of the day: Elizabeth Witmer, chair of the board, and Mr. Marshall, president and chief executive officer of the WSIB.

I'd also just like to take direction from the committee. As you know, Ms. Witmer and her colleague have 30 minutes in which to make their presentation, after which each caucus has 30 minutes to question. Either you can have 30 minutes as a block or ask the Chair to work extra hard with nine transitions in 10-minute rotations; so, 30-minute blocks or nine transitions of 10 minutes?

Interjections.

The Chair (Mr. Shafiq Qadri): I'll be seeking some kind of compensation, though, in any case. Fair enough.

Ms. Witmer, welcome to you and your colleagues. I invite you to officially begin now.

Mrs. Elizabeth Witmer: Thank you very much, Mr. Qadri. It's always a pleasure to have you in the chair. You're very decisive and fair.

Good afternoon. It's great to be back here after two days of hearings. I hope that you now have a better appreciation of the magnitude and the scope of work that's carried on by the very dedicated and committed staff at

the WSIB on a daily basis, and also the many challenges and issues that face us all.

I think as well you can see that we are trying to do all we can to transform the WSIB into a strong and sustainable workplace safety and insurance system that is going to be there for employers and workers today and well into the future.

We have very carefully read the submissions. I can tell you that staff were up till midnight last night as we took a look at what had been said. We do appreciate those submissions. We've listened to the concerns. We've listened to the issues that have been raised. We will not only be, of course, preparing some responses for you today, but, moving forward into the future, we will continue to review those submissions that have been presented to us.

We thank all those who took the time to come forward: not only the people who presented to you in this room, but also some of the folks who have given us written submissions. They're extremely important. I would say to you, personally, since I'm just into the first few months of my mandate, I do welcome very much the opportunity to hear from stakeholders—the worker community, the employers and anybody else who has an interest in this particular system—to have the chance to see what they perceive to be the problems and the priorities for change, and I look forward to the recommendations.

I can certainly tell you that one of the biggest changes that I have seen and that I have heard about is that there is an increased focus at the WSIB on working in collaboration with the stakeholders, having consultations with the stakeholders. When we talk about consultations, it's not just listening to them; it is about actively considering them. As you make your decisions and you change your policies, you take that into consideration, because everybody has a valid point of view that should be considered. I can assure you that that is going on, and I see that as a priority, and I believe it's very important if we are to meet the needs of the workers and the employers in the system.

Also, I've heard concerns expressed about the whole issue of prevention. Since my time as Minister of Labour, this has been a huge priority for me personally. Although we've lost the prevention function, we continue to have a huge responsibility to ensure that our workplaces are safe and healthy. I can also assure you that since my arrival, we have talked about the fact that we need to make sure that we focus on that part of our mandate to keep our workplaces healthy and safe. So we are continuing with the work of our health and safety committee. Also, we did make a commitment to continue with the Workwell program and also with safety groups, and that has happened in the last month as we have met with stakeholder groups.

So I want to tell you that the WSIB management team and board are not only listening to the concerns that are being expressed to us, but we are making changes that we feel are in the best interests of keeping our workplaces safe and healthy for all those who work there.

The other priority that I see and I've heard about is that in everything that the board is doing now, they want to ensure that there is transparency, that people can see what is happening but also understand why decisions are being made. As we move forward with the setting of the premium rates, I can assure you that that information will be presented to—obviously, in this case, it would be the employers who would have a greater interest.

We also want to make sure that in all of the decision-making that takes place, there's fairness to both the work and to the employer. We want to make sure there is integrity in everything that we do. I just go back to the fact that since Mr. Marshall has assumed the presidency of this organization some two years ago, and with the support not only of the senior management team but staff throughout the province of Ontario, there is a noticeable change in the way that the board conducts its business, based on some of the factors that I've just presented to you.

1500

We continue to recognize that our main mission continues to be to help workers who are injured return to work. I heard somebody say that that work needs to be productive. We agree. We need to return those people not only to productive work but to productive lives. At the same time, we need to protect employers from financial loss through a collective insurance plan.

Our goal—and I expressed it yesterday—is to be the leading workplace compensation board in Canada and North America. So we will do everything we possibly can by working together with the stakeholders to ensure that we deliver better services but do so in a financially responsible and accountable way. We are committed to change, and that change is taking place now, and has been, under the leadership of Mr. Marshall.

You probably heard, as we did, that there are many divergent and sometimes polarizing views on how the WSIB should conduct its business. That's okay. We need to take those all—and I stress “all”—into consideration. They're all important. As I read the presentations and as I listened, you think about, “Okay, this is what they perceive; this is what they believe.” We have to make sure that that is correct, that it's accurate, and if that exists, we need to make sure that we address it.

I think you've also heard that when some of the recommendations are made, they're actually not changes that the board can make; they're changes that the government can make. I think sometimes there is a little bit of confusion as to the role of the board and the role of the elected MPPs. But we have listened carefully to the views and, as I say, we're going to move forward and take them into consideration as we work to do all we can to improve services and access to those services.

Since I'm not sticking to my notes, I just want to move into policy governance and stakeholder consultation. Yesterday, in my opening remarks, I referred to the fact that we want to make sure that we do have a strong board, strong governance; that we do have the competencies on the board to take into consideration all of the

issues that need to be considered and decisions made on behalf of all those we serve. If you take a look at the policy agenda—and I referred to it yesterday. In 2012, this year, the WSIB did publish and distribute a formal policy agenda. It is now giving an open and transparent view to stakeholders of our annual policy review and consultation process. This is so important, because that has never before been done. Again, I believe that speaks to the transparency of the organization and also to the desire to get input from all of the stakeholders.

The 2012-13 policy agenda, as you know, has a significant benefits policy component and does include extensive consultation on elements of the Arthurs report. A consultation secretariat has been formed to coordinate and oversee the consultation as well as to make sure the stakeholder views are not only heard but taken into careful consideration. In doing this, we listened to the stakeholders who wanted a process that was similar to Professor Arthurs's when he looked at the benefit policies. We hired respected expert Jim Thomas to lead the benefit policy review. As I say, we welcome the input from our stakeholders.

In fact, it was interesting to hear the Canadian Manufacturers and Exporters, who in their submission noted, “There has been progress with respect to both the financial crisis at the board and stakeholder engagement. The WSIB has developed a very comprehensive policy framework model for policy” revision “and development which we believe will significantly improve the quality of policy development at the” board. “Consultation is not a one-way communication of information, but rather a meaningful exchange and debate on issues or policies which the new consultation model provides the framework for.”

That's what we're endeavouring to do, and that's what the team have been doing for the last couple of years: to really become involved in more meaningful exchange and debate on the issues or the policies.

We're also making sure that the stakeholders can participate in the process and that they have an opportunity to provide us with input. Yesterday, you heard from ONIWG and the Ontario legal clinics that were here. In looking at their presentation and reviewing it, I didn't see them mention the fact that they did ask us for some financial support in order to assist them. I'm going to say to you that we did listen to them, and it actually has been provided. I think that's important, that that funding is there and that we are listening to the injured worker group.

We are consulting extensively on funding issues in the fall, beginning with the premium rate-setting, rate groups and incentive programs, such as the experience rating program, and you've heard about some of the concerns, particularly with experience rating. We are very concerned about claim suppression and the underreporting of injuries. You know what? It hurts everybody. We have commissioned a study to explore this issue, and that study will be conducted, and it will have an independent

chair review that particular issue. There are other consultations ongoing as well, and there will be into the future.

I want to get back to what I mentioned yesterday, and some reference has been made. I will tell you that the new—they're not so new now, but they're the chair's advisory committees that were established by my predecessor, Steve Mahoney. I do believe they're playing a very important role in that we meet with the organizations quarterly. These are consultations that didn't take place before.

For example, one of the changes that was made, based on the meeting that we had with the labour/injured worker advisory committee, was—they were looking for more time to do the consultation on the appeals process. It was supposed to end in July. As a result of their feedback as to why the time wasn't long enough, we have set the new timeline as September 30. As I say, we want to make sure that people have ample opportunity to provide us with good evidence and information and allow them to do the job that is necessary.

We have four chair's advisory committees, involving more than 40 organizations, and I just want to list them for you: (1) the labour/injured worker advisory committee, (2) the industrial/manufacturing advisory committee, (3) the general business advisory committee and (4) the construction employers' advisory committee.

These groups meet with me and the president and senior management quarterly. We discuss policy. We take a look at their concerns, their positions on issues, and hopefully, at the end of the day, we are able to find solutions and have done so in a very constructive dialogue. I do believe they will continue to work well.

Many of the 40 organizations who are members of these four committees actually were here over the course of the last two days, and I'll just mention ONIWG, the Ontario Network of Injured Workers Groups; Canadian Manufacturers and Exporters; the Ontario Federation of Labour; OPSEU; the Ontario Home Builders' Association; and the Council of Ontario Construction Associations. They're all members who sit on those committees.

1510

There was certainly a lot of discussion about benefits, and there always will be. Certainly the goal of the WSIB, and what I have come to understand very well, is that the entire team is very committed to ensuring that workers who are injured on the job receive fair benefits and do so in a very timely fashion. A lot of work that has been undertaken in the past two years to make sure that we can improve the system and that we can focus on improving access to services for our customers, improving the quality of the service and also the fairness.

We're also making sure that we're raising the awareness of the services that are available. I made reference yesterday to the fact that with so many new immigrants who don't speak English as their first language, we're trying to make sure that they can access the system and learn about the system and the board even before they get a job. We also want to make sure that young workers are aware of their rights and their responsibilities.

We've heard some mention about the fact that benefits to injured workers are being cut, but when we take a look at the data, there's an indication that that's not the case; in fact, the opposite is true. The number of claims has dropped significantly—and I know this has been an issue just this afternoon—and the rate of injury has also gone down. The statistics tell us that 2.37 per 100 people employed was the rate of injury 10 years ago. That's now down to 1.15 per 100. We're near the lowest rate of injury in Canada, if not the lowest. I think that's important information. So not only have the number of claims dropped, but the rate of injury has as well.

We're getting workers back to work more quickly and more safely than ever before. Some 91% of injured workers are returning to productive work within one year of their injury with no wage loss, through our new service delivery model, and 74% of injured workers with permanent impairments are returning to work.

Our medical strategy is increasing access to health care for the injured workers, and it's providing more timely care for those individuals. One of the initiatives has been to double the number of specialty clinics to 35 offices—and yes, the province does not start and finish in Toronto. We have expanded those clinics in order that people can access them more closely to their home, so they're throughout the province of Ontario. These specialty clinics are treating specific injuries such as: lower back pain, which is very common, those types of injuries; shoulder and knees, and I think there are about 11 other specialty clinics as well.

So there's better access to care throughout the province, and as a result of that, we're seeing that recovery times have been reduced when people don't have to travel into Toronto and more people are able to return to work more quickly. We've also, as a result, seen fewer workers suffering permanent impairments as a result of their injuries. This is all very, very good news for those people.

To better serve injured workers, we've really changed the focus to active treatment. Rather than being a passive player and having our staff sit in an office, they're now out on the front lines: They're meeting with the injured worker; they're meeting with the employer. And we're not paying now for potentially addictive narcotic prescriptions to keep the pain from becoming, obviously, overwhelming. This is all paying very huge dividends for the injured workers.

Some 87% of injured workers now are getting a decision in two weeks, compared to 65% three years ago, so that's better. In fact, you might not know this: 50% of workers are receiving a decision within 24 hours. So half of the people injured are getting a decision within two days. Decisions are quicker and injured workers are also—and this is always good news—getting their paycheques, the money owed to them, more quickly than ever before, so there's obviously less stress on the family. As a result, the WSIB now has among the lowest administrative costs in the country and one of the lowest new-claims costs in the country.

I know it has been asked, “What about the benefit package?” Recently, Mr. Marshall and I were at a conference with our colleagues. Our benefit package is very comparable to what’s happening throughout Canada.

Improved front-line service: I think you can see we’re doing everything we can to modernize and provide the best service possible. We recognize that all people, all stakeholders, workers and employers, deserve a responsive, effective and efficient response, and we’re doing a better job of getting the people back to work.

The other note I just want to make here, and it goes back to the medical, in some respects, and services: We have expanded the role of the ergonomist so that they have an even greater impact. We’ve improved the medical specialist model in such a way that they are out there on the front lines providing services rather than, again, in our offices here.

I also would say to you, based on the fact that we recognize we have more immigrants than ever before, the approach to multilingual services has been expanded. There is greater access than ever before to those individuals who do not speak English or French. I’ve been quite impressed personally, when I had an opportunity to meet with some of those people, to see how much access there is for those who don’t speak English or French.

Moving into the future, the goal is to continue improving the services we provide and to ensure we can meet the changing needs of the system. Again, that’s why the input today and yesterday was very important, and moving into the future.

I think we’ve talked a little bit about prevention. As I say, it continues to be an imperative and a priority for us. What we’re doing now is we’re working with the Chief Prevention Officer and the Ministry of Labour, who have the responsibility on the transition, and helping to facilitate that transition. As I say, I always believe that has to be the first priority. You don’t want fatalities; you don’t want injuries on the job. The health and safety associations continue to be up and operating, the safety groups, and the Workwell program.

I’ll just go to premium rates. Premium rates are always going to be a difficult issue, but the reality is, they have not been covering expenses for quite some time. Between 1996 and 2009, the premium rate decreased by 25% at the same time as benefit payments were increasing quite significantly. Obviously, that’s just not a sustainable model and you can’t operate that way. So we have recognized—and the government has recognized, and Harry Arthurs has recognized, and the Auditor General—that decisive action needs to be taken. We now have a mandate from the government to address that unfunded liability. I do know that under the leadership of Mr. Marshall, a very comprehensive and prudent plan has been developed that I do believe and my board does believe will achieve that objective. Any rate increases that come forward, I can tell you, based on the work that the management team has done, will be consistent with actuarial science and will be transparent and also predictable. In fact, if we didn’t have this UFL, Ontario would

have one of the most competitive premium rates in Canada, and as you can well see, if we take a look at that—and recognize we also have the lowest administrative costs in the country. So we are on the right track.

1520

I would just close by saying that we’ve appreciated—everyone has appreciated. I can assure you that the senior management team and staff throughout our province are taking the concerns and the questions that have been raised into serious consideration. We welcome the opportunity to continue to transform the board into a modern, sustainable and accountable workplace insurance system for our workers and our employers.

We certainly look forward now to your questions.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. Witmer, for your precision-timed remarks.

We’ll begin with the NDP: Mr. Natyshak. Just a reminder, there will be 10-minute cycles, also vigorously enforced. Please begin.

Mr. Taras Natyshak: Ms. Witmer, thank you very much for your presentation once again today and appearing before the board for an extended period of time. I certainly appreciate the information that you gave us yesterday, and I know you’ll present clear, concise information for us today.

Yesterday we also had the opportunity to hear many deputations, one of which was from Professor Arthurs. In the context of his report, he clearly stated that “the WSIB cannot and should not make premium rates affordable by subverting the intention of the Legislature or denying injured workers their legal rights.” Given the deputations that we heard yesterday and the information that we see each and every day in our offices, I’m concerned that that is effectively exactly what is happening at the WSIB. Members can very well acknowledge that we have many injured workers coming in with significant problems accessing their benefits through the program.

Let me be very clear that there is mounting evidence that over the past two years the WSIB has attempted to deal with the very real unfunded liability by putting in place a set of informal and semi-formal practices and procedures that have ultimately led to the effective reduction of worker benefits, in a way that amounts to denying injured workers their legal entitlements. Many of these informal guidelines and procedures have their origins in the KPMG value-for-money audit and were implemented at precisely the same time that Professor Arthurs was writing his report, which also intended to deal with the unfunded liability.

Our questions today are not intended to blame a singular person; they’re intended to get to the bottom of what the implications are of these informal procedural issues and to ensure that injured workers are not denied, obviously, their legal entitlements.

I’m also concerned about what I read in CUPE’s deputation. They mention an \$825,000 consulting contract with Deloitte to look at reducing claims costs. CUPE says that the statement of work for this report states that “the cost of new claims coming into the sys-

tem and those reaching the legislated lock-in duration must be mitigated.” It’s what the intent and mandate of that report is.

Do you agree that that was the mandate of the report by Deloitte? Also, was it the board’s intention to make the Deloitte report public and, if it was planning on doing so, when can we expect that? Aside from CUPE identifying it, it’s the first time that some of our stakeholders have had any awareness of that type of a report being issued.

Mrs. Elizabeth Witmer: Mr. Natyshak, I really do appreciate your in-depth knowledge of the board and the very legitimate concerns that you’re raising regarding those two reports of KPMG and Deloitte. I’m going to ask Mr. Marshall to respond to that.

Mr. I. David Marshall: I could address the central issue that you’ve raised, which is denying claims. I think that’s probably the key thing that you’ve asked us to comment on. What I’d like to let you know about is that the percentage of claims that we allow has not changed very much at all for about a decade. We allow about 75% of the claims that come in.

What has changed is, claims that previously used to be abandoned: Now that we are looking at them quicker, more of those are being denied. Between the abandoned and denied, there’s very little change, and there’s very little change in the total claims that we accept as a percentage of those coming in.

In terms of the actual awards that are given on these claims, we did a very careful study to ensure what was happening there. We compared the amounts paid to workers in 2009 compared to 2011, so that’s before the changes that we put in and after. What our chief statistician found was that there was a drop in total benefits paid, but that the amount paid for a single day off work that a worker would require help had not changed very much. It had gone up, but that was because of wage inflation. When you adjusted for that, if a worker needed help for 10 days off work, in 2009 they got paid exactly the same as they did in 2011—

Mr. Taras Natyshak: Forgive me, Mr. Marshall; I’m going to cut you off there because I have a couple more that I need to get to. We’re concerned about the process, not necessarily the different types of denials or approvals. We’re concerned about the process that leads to an individual’s denial. What was stated prior was that claims were denied more in the fourth quarter of 2010 because of the more stringent application of eligibility criteria. We’d like to know what that more stringent eligibility criteria is and the application of it, as well.

Yesterday we had some questions surrounding some of those processes. You had mentioned that all we needed to do is table, or request via a letter, some of the documents that we would like to see. I’d just like to let you know that I’m going to be giving you quite a voluminous list of documents that we’d like to see that would certainly address some of the issues that we heard from deputations earlier yesterday and throughout today. One of them is, of course, the Deloitte consultation that was

initiated. I’m wondering if you are at liberty to table that to the committee.

Mr. I. David Marshall: Certainly.

Mr. Taras Natyshak: Okay, so we would like that.

Mr. I. David Marshall: As long as we get a list of what you want.

Mr. Taras Natyshak: Yes, I can certainly do that. There are a couple of others.

I’ll get to my second question. We’ve heard that the average length of labour market re-entry programs for injured workers was getting cut off from almost 19 months to five months. How does cutting off the amount of retraining for unemployed and injured workers help them to find new work?

Mr. I. David Marshall: I think the issue here is, you can’t tell the amount or value by just looking at how much was spent. What happened when we had outsourced labour market retraining is that workers complained bitterly for many years that they had no choice in what that training was, that it was not very good training and that they were being trained for very low, entry-level type jobs. When a worker couldn’t get back to their original employer and had to be trained for some other kind of work, the clock started there and we handed the worker off to an outsourced supplier. That typically took about 19 months, cost quite a lot of money—about \$165 million a year—and the resulting success rate of workers finding work after that period of 19 months or so was just 36%.

We’ve changed all that. We brought that back in-house. Before we hand a worker over into training, we spend a lot of time working with the employer to see if we can retrain the worker on the employer’s own premises for different kinds of work, and pay for that. We never used to do that. We give the worker a chance to decide what kind of retraining they think they would benefit from. The result is that the time that it takes for a worker to get back after not being successful with the employer is now down to about five months and the costs are down to about \$110 million a year, and the success rate is up to 74%. So this is much, much better for workers than before.

Mr. Taras Natyshak: There’s a difference between re-entry with the original employer and re-entry into a different labour market. So the numbers may come down, but to place a worker into their original placement has certainly not been effective through the programming.

Mr. I. David Marshall: Well, it has. We’re getting 91% of workers back within a year—

Mr. Taras Natyshak: Within their own original—

Mr. I. David Marshall: —and there are fewer of them coming back. Yes, 91% of workers who suffered a single day off work or more are back to their original employer, with no loss of pay, within a year or less of being injured.

1530

Mr. Taras Natyshak: I have more questions around labour market re-entry afterwards. I’d like to simply state for the record some of the documents that I will be re-

questing—I've got 30 seconds—regarding: loss of earnings; pre-existing conditions; aggravations; recurrences; benefits following work disruptions; permanent impairments; workers' approaches to the six-year lock-in; and lower back injuries. Those are all pretty forthcoming documents that I would hope the committee could be privy to. I'll stop there, Chair.

Mr. I. David Marshall: Certainly. I'd be happy to do that.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. To the Liberal caucus: Ms. Albanese.

Mrs. Laura Albanese: I want to thank you for yesterday's presentation and today's presentation. We've obviously listened to many presenters between yesterday and today, as you have. One of the concerns that you have pointed out has been this reference to cuts in benefits that are being paid out to injured workers. I would like to know if you could confirm whether the amount of benefits and health costs covered per injured worker has changed or not changed in the last few years. I know that the number has gone down, but really, the cost of those benefits per injured worker.

Mr. I. David Marshall: Yes, I'll be glad to talk about that. There has been a drop in the total amount of benefit costs over the last two years, and that is tracking the drop in the number of claims that have come in. Over the last dozen years or so, that didn't happen. Costs kept going up even though the claims were coming down, which is not what you should really have happen in the system. What was happening before is that we weren't being successful in getting workers back—the medical care was not appropriate; the interventions were not appropriate. While the number of claims was coming down, the costs were ballooning up exponentially. They went up \$1 billion a year or more over the period of 1999 to about 2009. Starting in 2010-11, we started to turn that around. That's really what has been happening. We've been much more active getting workers back, much better medical care, so you're finding the cost coming down.

That's what I was referring to a little earlier. We did a comparison of how much workers were paid per day off to make it comparable, because they were staying off more days before than now. Over the three-year period of 2009 to 2011, our chief statistician found and proved that a worker needing a certain amount of time off work was getting paid a little more in 2011, but that was because of wage inflation. When you adjusted for that, he was getting paid exactly the same.

The drop in cost was not a cut to any kind of benefit; it was simply fewer workers needing a claim, needing benefits, and more of them getting back earlier.

Mrs. Laura Albanese: I just would like you to confirm: We have also heard concerns about workers not finding suitable work, or returning to a type of job that was not suitable to them. Did I hear correctly that you're saying that they're now returning to the same employer?

Mr. I. David Marshall: Yes.

Mrs. Laura Albanese: I guess my question is: Do you have a way to measure satisfaction within the injured workers returning to work?

Mr. I. David Marshall: Yes, we do. Obviously, it's a fairly new system, the change, but what we can tell you is that we measure what we call the recurrence rate. If a worker went to work and then that job was not suitable, and for some reason they came back to us for benefits, we measure that rate. The rate has dropped by about 20%—workers coming back.

Again, it's early in the system, so we are going to keep measuring it, but there's a very noticeable improvement in the ability of the worker to continue in the work where they went back. We've also found quite a big improvement in the satisfaction surveys that we've done of workers and employers in this whole area of return-to-work.

Mrs. Laura Albanese: Thank you for that.

Another issue that was raised was this void in prevention between what's happening at the WSIB and what's happening at the Ministry of Labour. Would you be able to table for the committee a list of all the prevention activities that are still being done at the WSIB and what has been transitioned to the Ministry of Labour?

Mr. I. David Marshall: Certainly. We would be more than happy to do that.

Mrs. Laura Albanese: And could you, in the meantime, just tell us what—I know that Mrs. Witmer had mentioned that the Workwell audits are still going on. Could you give us a bit of an overview of that?

Mr. I. David Marshall: Sure. What's happened is that we work very, very closely with the new Chief Prevention Officer, Mr. Gritziotis. He's a very, very competent individual. Obviously, he has to build up his office to be able to execute all of his mandate. In the meantime, we're working very closely with him in certain cases where he's not ready to take over functions, like the Workwell audit of premises. We are continuing to do that on his behalf and letting him know how the results are coming out.

The health and safety committee of the board is still meeting.

I think something that's quite important for everyone to understand is that the major part of work that's happening out in the communities to help businesses with prevention and educate them and provide expert advice is coming through the health and safety associations in the various communities. Those are fully functional; there's nothing that's happened in their case. We've transferred the funding for them to the Ministry of Labour, but they continue to be funded and fully staffed and working in their communities.

Mrs. Laura Albanese: So there is sufficient staff to do the work?

Mr. I. David Marshall: There's plenty of work going on. I think you would probably want to ask the Chief Prevention Officer how he feels about that, but certainly there's a lot of attention being paid to prevention.

Mrs. Laura Albanese: Another concern that has been expressed by many of the presenters is in regard to the appeals process and the changes that are coming forward. I'm sure you've taken note of those.

One of the concerns that I've heard that has really interested me is the fact that perhaps the adjudicators or the training of the front-line staff—that many of the decisions taken by the front-line staff end up being then overturned at the tribunal level.

Mrs. Elizabeth Witmer: Yes, and I think I made reference to the fact that the consultation time has been increased in order that the stakeholder groups can prepare presentations that would reflect all of their concerns. The timeline was the middle of July; it's now the end of September. So, again, we heard them. We want to make sure that all of their concerns can be properly considered and that whatever final decision is going to be made would reflect that.

I'm going to let Mr. Slinger respond because he deals with the appeals.

Mr. John Slinger: I think it's a very fair question. In fact, it ties into a number of the things we've been talking about.

From my perspective, we are in the best position we've ever been in operationally. What we have done when we went to the new service delivery model, which really developed late 2008 into 2009, was, of course, we put people into more specialized roles, and we added 300 return-to-work folks. So our capacity grew significantly, and we haven't reduced any of our case managers.

We're in a situation where, as claims have gone down by 32% over the last three years and our operating staff has gone up, we've been in a better position to scrutinize cases, understand them better, have more conversations and get better results. From our perspective, that has been a key part of this whole thing.

I know you've certainly heard from people saying, "There have been cuts. There have been cuts." Well, as the individual responsible for service delivery, we haven't had cuts, and in fact we have reinvestments specifically in return-to-work. That has been huge.

1540

The other thing it has allowed us to do, of course, as we've developed these specialties, is that people's skill levels have grown. In fact, last year—2011—we actually provided two times the amount of front-line training that we did in 2010. In fact, we committed 30 trainers specifically to providing training to those front-line staff.

From our perspective, we're now in a position where we're meeting the legislated requirements, in our view, better than we ever have before. We have smaller case-loads than we've ever had before; we've had more training and greater specialization. From my perspective, all of this speaks to improved quality. Of course, the question is, "Are there more appeals?" The appeal reversal rate is the lowest it has ever been since 1995. I use 1995 because I became the director of appeals in 1995 and we had a backlog of 18,000 cases.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. Albanese. To the PC caucus: Mr. McDonell.

Mr. Jim McDonell: Yesterday, we heard from one group that was suggesting that after almost 100 years, it's time for a royal commission to look at: Really, is the commission doing what it should be doing? In today's world, maybe it needs to look at what it's paying for, how it collects and who's paying. Any comment on that?

Mrs. Elizabeth Witmer: If there were to be a royal commission, obviously that would be up to the government to make that decision.

There have been a lot of studies taking place recently. We had the Tony Dean report, we had the Arthurs report, and now Jim Thomas is going to be doing some work.

If that was what was deemed to be necessary, certainly it's something that the government could decide should happen.

Mr. Jim McDonell: But from the inside, do you see the way it works, comparing to not only other provinces, but other jurisdictions across the continent?

Mrs. Elizabeth Witmer: Perhaps Mr. Marshall might want to respond, since he's certainly well aware of what's going on across Canada with the other provinces when it comes to the WSIB. I can tell you that at the one meeting that I did attend, they really were looking, in many ways, to leadership from Ontario. Mr. Marshall?

Mr. I. David Marshall: I think the questions you ask us and we ask ourselves are all very, very important because we're trying to resolve a pretty serious situation. It's not easy to try to recover from a huge financial challenge, be fair to workers and get the job done right. It's a long horizon. You're talking about 15 years, 20 years. It is very important to ask these kinds of questions.

What I can tell you, as we see it internally as one input, is that when you look at the benefits side of the equation, it comes into two parts: the actual benefit required and then how it's administered. What we found is that the benefits in Ontario are very comparable to what is being offered in all the other provinces, with the exception of this provision for the lock-in of benefits at six years, which was referred to, I think, by Mr. Cunningham earlier. That is a feature that's unique in Ontario, and it's something that you could look at or think about. But in terms of the general benefits, they're very comparable.

Having a big inquiry to see whether or not you could cut the percentage of wages that you replace or cut something else and so on I don't think is going to be really that productive. I think the issue is: We've had the same legislation for benefits for a long time and we've seen costs spiralling over a 12-year period. Now we're seeing them come down.

It's a question of doing the job efficiently, and in that regard, Ontario now has one of the lowest costs to support new claims of any of the other provinces, and one of the lowest administration costs. So we're really down to getting rid of that overhang of loan that we have to pay off, and then we can get very, very competitive rates. That's really the strategy that we're on.

Mr. Jim McDonell: I wasn't so much thinking of doing the current job better, but I was looking at—and tying this back to the health system: Is it the right way of doing things? Should you set up your own clinics to look after issues more quickly, or is it better to bring it back to the overall health system? Are we giving extra benefits here that really we shouldn't be giving any more than we give to the general public? It's a matter of fairness. Is the system doing what we want it to accomplish within the greater scope of things, not just in the workplace but in the province of Ontario?

Mr. I. David Marshall: Maybe we'll pick up on just the medical piece that you talked about. The workers' compensation system began before there was an OHIP system in Ontario, and so the WSIB pays all medical costs. It reimburses OHIP for anything that's paid in a hospital, for example. When people compare private insurance with ours, they don't remember that we have to pay medical costs, whereas they charge them to OHIP when they can.

We do provide more than what OHIP does. We provide about \$500 million a year of medical benefits, whereas OHIP would only pay for about \$100 million of that. So we're providing a lot of medical care to workers that's not available to a person who was not injured at work, who was injured at a cottage or something like that. But that's necessary; that's part of compensating a person for being injured at work, and that's the judgment of governments over time, and that's what we administer.

It would then come back to whether you want to reduce that; for example, not provide physiotherapy or drug coverage. But then a worker would stay out for longer and you would incur more costs that way. It's something that has to be considered in total.

Mr. Jim McDonell: I wasn't really looking at reducing benefits but maybe looking at the other sectors that don't get the benefits. Just because you're not injured at work, if you're injured at home in this province that we're so proud of, should your benefits be reduced? I know that's a philosophical question.

Mr. I. David Marshall: Yes.

The Acting Chair (Mr. Shafiq Qaadri): Four minutes.

Mr. Randy Pettapiece: It's nice to see you guys, especially Ms. Witmer, who happens to be a constituent next to my riding. It's good to see you again.

This morning, the committee heard from a group of Old Order Mennonites and Amish people from Perth, Wellington and Waterloo. They explained that workers' compensation and Bill 119 forces them to participate in a program that is against their beliefs. The federal government has exempted them from paying CPP because of their faith beliefs, and Pennsylvania exempts Mennonites from paying into that state's workplace insurance premium. Is the WSIB aware of the concerns of the Old Order Mennonites and Amish of Ontario? Is granting them an exemption from paying these premiums something you are willing to look into?

Mrs. Elizabeth Witmer: We certainly are aware of their concerns. In fact, I have a meeting scheduled with the Old Order Mennonites. I'm aware of the exemptions that they currently get, but I do believe that any exemption that would be determined to be appropriate would need to be a decision made by government. I don't believe it's within the purview of the board to do that.

Mr. Randy Pettapiece: When are they meeting with you?

Mrs. Elizabeth Witmer: I believe, if not next week, the week thereafter.

We are trying to be responsive to stakeholders who, like the Old Order Mennonites, have concerns about some of the policy changes that are being made.

Mr. Randy Pettapiece: Thank you.

The Acting Chair (Mr. Shafiq Qaadri): About two minutes left.

Mrs. Jane McKenna: I want to say hello to Ms. Witmer. I am selfishly saying that I didn't have the privilege of working with you for very long, but it's unbelievable for you to be at WSIB. They're going to have your wealth of knowledge and all that you bring to that, so that is very exciting for me.

When I sat here today, lots of questions came up, but one of the things was about these 5,000 cases that are backlogged. Being a past MPP, you know how it would be so important to get that looked into and find out, number one—if you can figure out where the problem is, then you can fix it, because how many more are behind that? That is clearly a problem, the backlog of that. So I just wondered, right off the top of my head: What are you doing about that?

1550

Mrs. Elizabeth Witmer: Thank you very much, Ms. McKenna. I can tell you that one of the things that my staff in my constituency office told me before I did accept this responsibility was that over the last number of years they've seen less need for them to become personally involved in WSIB cases. They interpreted that to be a good sign. I'll ask Mr. Marshall to specifically respond to your concern.

The Acting Chair (Mr. Shafiq Qaadri): I'll need to intervene there. That's the end of round one of rotations. Now to the NDP: to Mr. Natyshak.

Mr. Taras Natyshak: I'd like to put the focus back onto the claims denial process. The board's claims denials rose from 7.9% in 2009 to 11.3% in 2010—in the fourth-quarter 2010 report on page 2. This is an increase of over 43% of claims denied in your fourth-quarter report of 2010. It stated that the increase in claims denial is due to more stringent application of the eligibility criteria. My question is: Has this more stringent application of the criteria continued into 2011-12, and can you provide us with the data as to how many and what percentage of claims didn't meet the eligibility criteria in 2011 and the first quarter of 2012?

Mr. I. David Marshall: Yes, certainly. We'd be more than happy to provide that for you. I just want to reiterate that the number of claims that have been allowed has re-

mained steady at about 77% or 78% for about a decade and hasn't changed very much. The denial rate has gone up but the abandoned rate has come down, and they've traded off with each other. That means that we're getting earlier to claims that would have previously have been abandoned by a worker, but we're not classifying that as denied because we've made a judgment on it. There has been a very, very steady rate of claims allowed. The claims are not being denied for any reason other than that they don't apply. I'd be happy to give you those statistics.

I should also tell you that we asked our chief statistician to do a special quality review, a statistically valid sample of eligibility decisions made over a period of time, and his conclusion was that there was a very high standard of quality made on those claim decisions.

Mr. Taras Natyshak: Is that public information as well?

Mr. I. David Marshall: Absolutely.

Mr. Taras Natyshak: I'd like to take a look at that, and I'm sure other members of the committee would as well.

I understand that the 2010 KPMG value-for-money audit said that the increase in claims denial was because of specialized training and management oversight. That's from page 22 of the KPMG report. Do you agree with the KPMG report that the increase in the claims denial rate is because of the new specialized training and potentially some increased management oversight?

Mr. I. David Marshall: I think what's happened is, we're getting to more of the marginal claims that used to previously be abandoned and now they're being classified as denied, so the total denied has gone up but the total abandon has come down. There is more scrutiny. There is more discipline, but we don't deny claims that need to be allowed. And that comes back to the quality of the decisions.

Mr. Taras Natyshak: What's the process for identifying an abandoned claim, because you had mentioned—I don't know if it was Ms. Witmer who had mentioned—that the majority of claims now are being accessed within 24 hours or decided upon within 24 hours. What gets you to identifying that it's abandoned?

Mr. I. David Marshall: All right. Maybe Mr. Slinger in operations will answer that.

Mr. John Slinger: Yes, and I think some of this really goes to the change in process we made in 2009 when we specialized a number of functions. We created a specific role called an eligibility adjudicator. Previously, it had been the role of a consolidated adjudicator to be responsible for every decision from stem to stern, from initial entitlement to lock-in, and every issue, including health care, in between.

One of the concerns we had over the 60% increase in costs over a 10-year period while injuries were declining was that in fact we weren't getting workers back to work. We were very passive; we weren't active in terms of return to work. Frankly, one of the things that we learned in a study we did had to do with the relationship between

how long it took you to make a decision and duration. The longer it took you to make a decision at eligibility, the more likely a worker would stay off work longer—

Mr. Taras Natyshak: I would agree with that premise, of course.

Mr. John Slinger: One of the reasons, of course, was that you had the worker focused more on their disability and getting it demonstrated to the satisfaction of the board and less on getting that worker back. So when we created that group, the work we did with the Institute for Work and Health said—

Mr. Taras Natyshak: Sorry to cut you off. Is that group exclusively on abandoned or orphaned claims, or on all? Is that a management group or—

Mr. John Slinger: I'm trying to describe to you how the eligibility group changed from one that was done by 800 people to one that was done by 175 people.

Mr. Taras Natyshak: So we have less people looking at it—

Mr. John Slinger: Right. And the process changed—

Mr. Taras Natyshak: Okay, so that—

Mr. John Slinger: Do you want me to answer? Here's how the process changed. The process changed to the point where, instead of waiting for forms to come in, which is typically how we do it—we'd wait to receive the paper form 7, the paper form 6—now we made calls and we began to get information very early to allow us to decide—

Mr. Taras Natyshak: Was there new, specialized training to enact this type of—

Mr. John Slinger: It was an entirely new role; that's correct. The whole objective was to get—

Mr. Taras Natyshak: Can we see the constructs of that new role and the mandate—

Mr. John Slinger: Of course. We shared information about the model and what it was intended to achieve.

As I say, the role has been in existence since 2009. What we have found is that because we're making those calls and not waiting for the paper to come in, we're getting to cases and we're not having to write letters. It used to be a process where if we didn't get the form, we'd write a letter, and if nobody responded to the letter, we'd treat it as abandoned. Now we actually go out and get the information. So while the denial rate has gone up, the abandonment rate has gone down, but the allowed percentage has remained exactly the same, and if you drew a line you would find it was absolutely flat. Again, the intention was, let's get cheques in the hands of workers sooner—

Mr. Taras Natyshak: I'm going to pass it off to my colleague.

Mr. John Slinger: —and the result has been, of course, that a far greater proportion are getting decisions in two weeks and cheques earlier than they ever have before.

Miss Monique Taylor: Can I just ask how management is overseeing that process; that this is being done and that we know that it's not being pushed off and denials aren't being made on a regular basis? How do

you know that your front-line staff is doing this? They're put under time constraints.

Mr. John Slinger: We have teams of from 10 to 12 eligibility adjudicators who report to a manager, and it's the manager's responsibility to review a certain percentage of the decisions they make. At one time, it was 15%; I'm not exactly sure what it is right now. As a result, we have far more oversight and feedback to our staff than we ever have before. Frankly, I don't think there were ever any targets around what number we should be reviewing, and there was a lack of oversight. So we feel very comfortable with the quality of those decisions.

Miss Monique Taylor: When the board management oversees decision-makers, is this oversight always documented in the worker's claim file? And if not, why not?

Mr. John Slinger: No, it's done as a performance tool with our staff. We communicate that information to our staff.

Miss Monique Taylor: Don't you think workers and employers should know who is deciding their cases and how their cases are being decided?

Mr. John Slinger: The cases are being decided by the eligibility adjudicators. The managers are looking at those cases to provide ongoing feedback and coaching to their staff around how well they're doing and how well they're applying the law and policy.

Mr. Taras Natyshak: It doesn't seem as though it's a cohesive plan, though. It seems as though it's an ad hoc—it depends on the managerial staff that you have over your shoulder at the time; it is dependent on the amount of claims that actually get processed.

Mr. John Slinger: No, quite the opposite. We actually have a very fixed structure around—first of all, it's based on the experience level of the staff person. We require more reviews for the less-experienced staff; fewer reviews for the more-experienced staff. But it's very structured, and we document the number of cases that get reviewed and whose cases get reviewed.

1600

So, unlike the previous process, which really had no structure for oversight, the new system has very clear structure for oversight, and in our view that's all to the benefit of workers, employers and the entire system. We want to be satisfied at the end of the day that we're allowing the right decisions and we're allowing them in a timely manner.

Mr. Taras Natyshak: Well, we'd certainly be interested in seeing that structure as it's presented—

Mr. John Slinger: We'd be pleased to provide it.

Mr. Taras Natyshak: How much time have we got, Chair?

The Acting Chair (Mr. Shafiq Qadri): Nineteen seconds.

Mr. Taras Natyshak: I'll cede my 19 seconds. If you want to add it to my next round, that would be great.

The Acting Chair (Mr. Shafiq Qadri): I thank you for your generosity. To Ms. Jaczek and the Liberal side.

Ms. Helena Jaczek: Thank you, and thank you very much for your presentation. I think each of us had a long

list of things we would require clarification on, and I'm down to two.

I would just like to pick up a little bit on the case denial issue, because as you've heard through the two days, it has been something that has been concerning to many. I would like to quote directly from OPSEU's presentation: "... it is the WSIB's practice to use off-policy criteria to deny entitlements. I call these criteria, or their source, the secret board policies. The majority of decisions to deny our members statutory entitlements cite criteria that cannot be found in board policy, never mind in the statute."

This is obviously the way that OPSEU sees the situation. Could you try and help us understand why there would be this perception, this idea of the secret board policies? If you could just please try and clarify for us.

Mr. John Slinger: Well, that's a bit of a loaded question, because if the question is, why would OPSEU tell you that we're letting go front-line staff who are valuable in the service of workers and employers, I don't know the answer to that question either. There are a number of questions: why we got rid of our ergonomists, when in fact we promoted our ergonomists to jobs with a greater degree of responsibility and more impact on day-to-day return to work.

No, we don't rely on secret policies. We rely on the policies and law of the province of Ontario. We are required in every case to determine whether or not the situation, the injury, arose out of and in the course of employment, and we assess the facts of every case to determine that.

Ms. Helena Jaczek: Thank you.

The Office of the Worker Adviser did allude to the potential for some sort of training document, or perhaps the lack of consistency in using eligibility criteria. Is there a very clear list, and is it clearly documented?

Mr. John Slinger: I would say we are more consistent now than we ever have been in eligibility decisions. I think the benefit has been as a result of having a smaller group who are well trained and are focused on one particular issue, as opposed to having it the responsibility of 800 people, with no oversight.

Ms. Helena Jaczek: Then just one other issue. You've heard that a number of us have been concerned about migrant workers, a particularly vulnerable group of workers here in the province. I'm wondering if you could clarify how WSIB may be handling situations where, as we've heard, people may leave the country and not have opportunities to perhaps return to work, which of course is the goal.

I do recall that there was a very tragic accident. Some migrant workers were being transported to their work site. I'm wondering if you could fill in for us how that situation was handled.

Mrs. Elizabeth Witmer: Do you know what? That's a very good question. That was one of the issues that happened close to my home. Actually, I was quite surprised at the type of support that was provided to those

workers by the WSIB. I had no idea that these services and benefits were available.

I'd ask Mr. Slinger to respond.

Mr. John Slinger: Obviously, that was a tragedy that no one could have expected to occur. It does serve to raise the whole issue of migrant workers and the fact that there is not a well-coordinated way of dealing with these cases. Some of it has to do with the fundamental nature of the agreements that workers come here on. Obviously, there are federal government agreements. There are different kinds of arrangements. Some go for two years, with multiple employers; some are just seasonal, with a single named employer. They're here on limited visas. Where an injury is sustained, obviously it creates tremendous challenges in terms of the recovery process, getting the right medical, and paying benefits.

I think the Hampstead situation showed even more challenges because, of course, we as the WSIB filled in the gaps in those cases. We dealt with the coroner's office, we dealt with the consulates and we dealt with the funeral homes. We outreached to initial responders around the potential for traumatic mental stress. We also, working through the consulate, had to reach out to the families and the survivors in Peru, up to and including having to assist them in choosing banks that could receive funds.

What all of this served to point out is: It's not a seamless system. It's a system that I think still needs work between the provincial government and the federal government. I would say that one thing we've learned from all of this going forward, and I think the Ministry of Labour certainly concurs, is that we need to work with the federal government—ourselves and the Ministry of Labour and the federal government—so that we have less gaps in the kinds of services that are available to migrant workers, because there's no question that there are some issues that are dropping between the cracks.

The Acting Chair (Mr. Shafiq Qadri): Mrs. Cansfield.

Mrs. Donna H. Cansfield: I have a couple of questions.

I just wanted to share something with you. We've had a lot of discussion about the increases—I want to say, kudos. A 32% reduction in claims is something that you should be congratulated on, to be honest, when you go back. I thought to myself, "What difference does this make to me?", so I went and asked my staff. From the year 2004 to 2011, I averaged 10 folks walking in complaining about the WSIB. Their complaints were primarily refusal of coverage, problems with modified back-to-work and, obviously, some who didn't like the pension and the lack of increase. This year, just so you know, I'm at three. I think that's indicative of some of the good things that you are doing.

The most important thing is that the people are not getting injured. I think we should be celebrating that and looking at how we can continue with that kind of prevention.

I wanted to chat a little bit as well around migrant workers. I'm going to say, Elizabeth, that you and I go back a long time. If you'll remember, when there was the NAFTA agreement, we were discussing the issues around child labour with migrant workers on farms and child labour on farms, period, with Mexico, the United States and Canada. You and I had a lot of discussions on how we could change—because it was the babies; they had the little ones picking the onions. Then, of course, it was the mom who had to look after that child at the same time.

That migrant worker issue has been around us a long time, and you were very valuable at the time getting that changed within that area. I just wanted to say: I think that people shouldn't underestimate the value you bring to the job, because there's no way they would've known about your work way back when on that NAFTA agreement when we were dealing with child labour issues and migrant child issues. As I recall—and I'll paraphrase a bit—you used to say, "If they're too small to be in school, they're too small to pick onions." The idea was, they had to be in school, and then they got paid for the work that they did, but you made sure they went to school first. I just wanted to remind you of that, and others, because I think that, on the record, you need to know.

We talked about the Hampstead crash. I think that you, again, deserve credit for the amount of involvement there.

I wanted to ask you a couple of questions. Talk about being confused: We had a delegation that came in, the UFCW, today. They have 250,000 members. It was interesting: On page 4, they indicated that, "Under the old system, the claims adjudicator had the time and the training to make decisions through investigation and the collection of facts"—except, that old system was the outsourced system, not the in-sourced system. I just share that with you. So I was surprised to have a union wanting to outsource or keep an outsourced system that obviously resulted in a longer time frame for claims.

1610

Then the other—I need to have an understanding of this. You identified that it's the lowest since 1995, and yet the comment here is, "The result? Poor decisions, resulting in more appeals and more backlogs." I'd like you to speak to that. It goes on and it says, "Complicated forms, time limits on decisions and poor decision-making." In fact, it's "not the appeals system." I want to ask you about those questions, and then I also wanted to ask you about the other comment that they are hearing calls—

The Acting Chair (Mr. Shafiq Qadri): Ms. Cansfield, the question will have to remain rhetorical. I now pass it to the PC side. Ms. McKenna.

Mrs. Donna H. Cansfield: Okay. It will give them time, and I'll get it next time around.

Mrs. Jane McKenna: Or you can do what I'm going to do right now. I'm going to go back to my question that

you were unable to answer because we were out of time, Mr. Marshall. Do you want me to refresh your memory?

Mr. I. David Marshall: Yes, I do, please.

Mrs. Jane McKenna: Okay. My question was, what are you doing to make steps for the 5,000-plus cases that are backlogged right now?

Mr. I. David Marshall: Right, right. Okay. First of all, we make about a million decisions a year, and only 1% are appealed, so let's put that in perspective.

What we've found is that, as we looked at the process, there were a couple of places where you could really make a difference. For example, about 68% of the decisions that are changed on appeal relate to new information that's introduced by the worker that wasn't available at the time the original decision was made. Well, new information is new information. There's no need to invoke the whole appeals process. If it's new information and we can get it to the operations people quicker and get a decision quicker, and kind of get it out of that appeals inventory, that's a big thing that we want to be able to get at and change. That's an example of that kind of thing.

The other one is, advocates for workers would lodge an intention to appeal. The legislation says that they need to do it within six months of the decision. We've been allowing that to drift, so there's really no limit. People are filing an objection to a decision a year or more after and then just letting it sit there. They're not really ready to bring it forward; they are gathering information and so on. Now we've said, "Look, if you want to appeal, you should be ready with your appeal. Otherwise, you're creating a lot of work for everybody to schedule things and so forth." So we've said to them now, "We're going to put you in a hold section until you're ready, and when you're ready, we'll start to look at it."

There are a lot of administrative kinds of improvements like that: new information being streamed quicker, making sure the person's ready before we start to deal with it, and that kind of thing. We think it will be much better in the end for everybody, because they'll get quicker decisions, and the really complex cases will actually get looked at with more time.

Mrs. Jane McKenna: Thank you very much. But also today, I think we heard a few times about the front-line workers and how their job descriptions—they were being called, and then they were called back, and they were kind of dismissing it. People were calling to find out where their cases were, and on and on.

One thing that I've often wondered is, if you had your own business, you would definitely have all of your employees on a performance level of how they work, what their performance is and your expectations from your job description, because I think sometimes things get morphed into your job, and all of a sudden you've got an overwhelming amount of things to do, but you're not really sure where your job description is anymore.

Everything has to start at the ground level. Do you believe that there should be a performance level so people

(a) know what they are doing and (b) have an expectation to live up to a certain level of what they are doing?

Mr. I. David Marshall: Right. John, why don't you talk to this? John manages the front line, and there's been a lot of work with the unions on a new agreement and so on.

Mr. John Slinger: Yes, I think performance management is obviously important. If I go back a few years, again—and maybe this will answer your question, Mrs. Cansfield—we had caseloads that the union certainly said and our front-line staff said were unbearable. Part of it was, "What do you want me to focus on? I have an initial entitlement case. I've got a lock-in case. You want me to do return-to-work; you want me to do health care. You want me to know everything about everything. I can't cope. It's an impossible job."

Certainly, when I took this job in 2007, one of the first things that I was struck by was this: It was almost impossible to set performance standards with our staff because of this overwhelming workload. It was difficult to separate out all of the things that they were responsible for, let alone train them effectively in performing all those functions. I would say that as our roles have become more defined, we've become much clearer in terms of what the expectation is for each of those functions.

We have, over the last year to two years, introduced a new performance management system, which is beginning to get at that notion of: "There are expectations in terms of quality, communication, the number of cases that you're responsible for," and we now need to be able to compare how people are performing and coach and mentor around that and, at a certain point, deal with performance. It shouldn't be a large proportion, but there will always be those who, in spite of the training and coaching, are not performing and need to be dealt with. I think we now have a system that's doing that. When I compare that to the system when I came in 2007 into this job, there was none of that. It was almost impossible. I felt absolutely sorry for our front-line staff. They didn't have a chance.

So I think we do believe that that needs to happen. Certainly, we are encouraged when we receive the report from the Fair Practices Office that said this year that she has seen improvement. She saw a 20% improvement in the cases that she was required to ask us to deal with. Her average turnaround time for complaints, in terms of resolving, was three days. That's encouraging, from the point of view of: It tells us that in fact our staff are responding in a reasonable way.

Mrs. Jane McKenna: Yes, because I think, all in all, we assume a lot of things. Just because I have expectations of what I think I want you to do, you might not understand what those expectations are. Communications is nine tenths of all the problems, right? We've all got our silos; we're all in them. We all want things to be better, but who's communicating that out to facilitate that to make it better? So I'm very grateful to hear that you've made those changes. Thank you very much.

The Acting Chair (Mr. Shafiq Qadri): You've still got about three minutes left. Mr. McDonell?

Mr. Jim McDonell: If I understand right, I think the current unfunded liability is about \$14.5 billion, from what I hear, which means that it increased somewhere around \$2 billion just last year. With the tools you have, do you think you can turn that around? I guess what we've heard is that if you were a private insurance company, the government would have stepped in a long time ago. Is that a reasonable, I guess, expectation—that we would see this being handled and addressed properly?

Mrs. Elizabeth Witmer: I can assure you, Mr. McDonell, that under the capable leadership of Mr. Marshall they have developed a plan. Based on the information that has been provided to not only me but other members of the board, there is confidence that they can achieve the objective of reducing and eliminating that unfunded liability. Perhaps Mr. Marshall might want to give further information.

Mr. I. David Marshall: Yes; thank you. The \$2 billion you referred to is a result of changing the discount rate on the liabilities—that is, the expected rate of investment income we could earn—becoming a little bit lower because of market conditions. We have a very defined plan. We have many different projects that are addressing it, including the new medical strategy, the new return-to-work strategy.

One of the big milestones that we passed just last year is that we returned a surplus. That hasn't happened for about 10 years. If you're making a deficit each year, your unfunded liability is growing and growing. For the first time, our revenues were able to cover our costs. Now we have to proceed from there to make a surplus because we've got to find money to pay down the liability. We're proceeding on that path, as Mrs. Witmer said.

Mr. Randy Pettapiece: How long?

The Acting Chair (Mr. Shafiq Qadri): One minute.

Mr. Jim McDonell: Just one: We talked about bringing employees back to their employers. Sometimes, because of the job, you're just not able to do that, to that employer. Are you able to bring them back to a different employer or a different type of a job that maybe they're better suited to? Is that within your mandate?

1620

Mr. I. David Marshall: Yes, definitely. In fact, it's right in the act. We have to try to help the worker back to their original employer and, if not, to provide them training to enter the general labour market in a suitable job, as good a job that we can do.

That's part of the work transition teams that we have. It's to first go back to the employer, and if there's no hope of finding a job there—and now we'll do something that we never used to do, which is to actually pay for the worker to take training at the employer's premises for an alternative job. We never used to do that; now we do.

The Acting Chair (Mr. Shafiq Qadri): Thank you, Mr. McDonell. That ends round two. We'll now move to the NDP for 10 minutes. Please begin, Mr. Natyshak.

Mr. Taras Natyshak: Thank you. Just a quick question off the top. You mentioned the investment fund. Are there any plans to take the investment fund, the balance of the fund, and put it into a pooled fund outside of the purview of the WSIB that would be locked in with other investment funds and portfolios?

Mr. I. David Marshall: Right. Now, this was something that was introduced in the last budget by the finance minister. What's driving it is that investment funds that are not very large don't get a lot of opportunities to look at opportunity to invest in infrastructure and other kinds of long-term investments.

Mr. Taras Natyshak: Is that a directive that you're pursuing right now?

Mr. I. David Marshall: It's not a directive; it's an intention to improve the return and the quality and the stability of investment funds. If and when we do merge with other funds, which is very much done in BC and other places as well, they're still our funds. Instead of having many managers that we hire and pay to manage them, we will have now a provincial manager—

Mr. Taras Natyshak: But if you're required to lock them into a portfolio for a longer term, then they wouldn't necessarily be accessible to mitigate any conditions that you had done previously.

You answered my question. I'll cede to my colleague.

Miss Monique Taylor: Thank you very much. I just want to touch quickly on what my colleague was speaking to on the return-to-work and making sure that we're getting them suitable positions. I'm going to take you back to my constituent one more time and make sure that, really, everybody understands this. This man has serious brain injuries and has now been told that he can work in a convenience store. I would love for you to meet this man because, sitting across from my desk, there was no way that we could put this person back to work in a convenience store. I'll just leave it at that.

I would like to get into the reversing commitments to workers on full benefits. We've heard troubling stories from injured workers whom the board told in writing that they would receive full benefits until the age of 65. These people relied on this and they planned their life accordingly. Then, sometimes years later, a six-year lock-in approaches and the board changes its mind and tells these workers that they have to go back to work or be re-trained. We've heard this has happened to workers even in their 60s and that they were deemed—even when they didn't find jobs.

Can you tell us how many workers the board did this to from January 10 to the present, approximately?

Mr. John Slinger: January 10 of this year to the present?

Miss Monique Taylor: No, sorry; January 2010 to the present. How many do you think that this has probably happened to?

Mr. John Slinger: I will say this, and this goes back to my earlier comment where we had case managers, or adjudicators at the time, who weren't following cases very closely. Some of them, in fact, were writing a letter

at three years, saying, “You’re locked in to age 65.” Well, of course, not only was that contrary to policy, it was contrary to legislation and—

Miss Monique Taylor: But people have now put their lives around this, right?

Mr. John Slinger: Yes. That’s absolutely fair. But we had an obligation to go back in and look at every case to see if there was an opportunity to get that worker back to work. Frankly, in our view, if we weren’t doing that, not only weren’t we serving the long-term interests of workers and employers, we were also not following the legislation. Again, it speaks to the fact that we had a model that simply was not working and provided no opportunity to get people back to work in an effective way.

Miss Monique Taylor: It would be great if we could ask for a report on that—knowing how old each worker was when the decisions were reversed and how much time had passed since the board had told each worker that they were going to be receiving these full benefits, how many of these workers actually returned to work and at what wage loss, how much retraining was provided to each of these workers, and how many were deemed to be able to work in a job that they didn’t have previously.

Taras?

Mr. Taras Natyshak: I’d like to move to the appeals backlog issue. I understand that the board’s appeals branch has a backlog of over 4,500 appeals that aren’t assigned to an appeals resolution officer. Many of these appeals involve injured workers whose claims have been denied. Some workers are at risk of losing their family homes and are forced to rely, obviously, on other social assistance measures such as ODSP.

My question is: Is that number, 4,500 unassigned appeals, correct? And how many other cases are at the appeals branch waiting to be decided?

The second part is: I understand that the delay in the appeals branch is not necessarily a new problem. What has precipitated the board taking so long to actually address the issue?

Mr. John Slinger: In terms of the time frames, one thing should be pointed out: Appeals has always maintained a 60-day option. In other words, it will decide any case within 60 days without an oral hearing. If, in fact, a representative—and a significant majority of our workers are represented—wants to have a hearing, then there’s first a process whereby they have a discussion with the appeals resolution officer and they discuss how the case can best be resolved through a hearing, through additional information and further investigations.

At a point when the appeals system is operating at regular capacity, there would probably be 4,000 cases. In other words, we think of that as a working inventory of cases that are being worked on. It means that within 30 days, which was generally the rule for many years, a case is assigned, contact is made with the parties and discussion occurs. The average time to resolution, I think, at that kind of inventory, was five and a half months. They are still meeting their 60-day obligations, where someone requires 60 days, but where it requires an oral hearing is

obviously where a great deal of time is being taken right now.

Mr. Taras Natyshak: How many appeals resolution officers do we currently have?

Mr. John Slinger: There are 90 permanent and probably 10 or so temporary.

Mr. Taras Natyshak: Is that down from previous years?

Mr. John Slinger: No, that is the same as it has been for—

Mr. Taras Natyshak: That’s the same, across the board, that it has always been. Is that an adequate amount of resolution officers to deal with the backlog?

Mr. John Slinger: No. In fact, we have committed an additional 20 at the outset, and then we will add as necessary.

One of the important things of the new system that we’re now in consultation with is to say—really, there are three parts. First is a more robust reconsideration process, so that if you have new information, it gets reconsidered quickly. After that has occurred and the party or representative indicates that they’re prepared to proceed, then we, in appeals, will be on a very tight time frame. A hearing will be set within 90 days and a decision within 60 days after that, and if no hearing is needed, then it would be a decision within 90 days. What we’ve committed to is, under that system, having it resourced as fully as is necessary to meet those time frames.

Mr. Taras Natyshak: I’m going to assume that you have done somewhat of an analysis on the effect, and if you have, we’d certainly like to see what that analysis is in terms of front-line decision-makers and the effects that it has on the backlog.

I’m going to quickly switch—I think I have a minute and a half left—to permanent impairment awards. Your fourth-quarter report for 2011 says that there have been 4,000 fewer injured workers who have received permanent impairment awards in 2010. Has the board changed its approach to determining when a worker is entitled to a permanent impairment award, and has it changed its approach to determining the level of permanent impairment awards?

1630

Mr. John Slinger: The significant reason for the reduction, of course, is the 32% reduction in incoming claims over the last three years. That has had a significant impact.

The second thing is the fairly significant improvement in return-to-work rates, particularly in those soft-tissue injuries which were going on to permanent impairment and needn’t have been permanent impairment with the right early health care and better return-to-work. I know Mr. Marshall has quoted you a statistic of 91% within a year; three years ago or even two years ago, I think that rate was 85%, so it has increased fairly significantly.

Those are two important things. Then, of course, we believe that the less early narcotics is contributing—

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Natyshak. I'll intervene there. To the Liberal caucus: Ms. Cansfield.

Mrs. Donna H. Cansfield: Thank you very much. Now I can go back. As I said, I was actually quite confused with a number of positions, so I'm going to ask very direct questions.

Under the new system—not the old system—they have indicated that poor decisions are resulting in more appeals and more backlogs. Is that true or is that false?

Mr. John Slinger: It's false.

Mrs. Donna H. Cansfield: Thank you. The next question I'm going to ask is: They are saying that there are calls for opting out by employers. Have you heard of anything about employers opting out of the WSIB?

Mr. John Slinger: I certainly haven't.

Mrs. Donna H. Cansfield: Okay; that's good.

This is an interesting one. You need proper funding; we've all talked about the issue of funding. But it says, "This is not the case with the WSIB, which has committed to denying or reducing coverage to workers." Is that a true statement or a false statement?

Mrs. Elizabeth Witmer: That's definitely not true. I would say to you that every effort is being made to be responsive to the claims that are filed.

Mrs. Donna H. Cansfield: I appreciate that there are different points of view, and I understand the issue around statistics and people needing the opportunity to have legitimate statistics. Actuarial statistics are fairly legitimate. The statistics based on the actuals that you have—your data—are good. So I guess it appears that there needs to be some communication so that we get those statistics out so people have a good understanding.

The WSIB has been in place now for almost 100 years, and the premise of why it's here is to help injured workers. That's everybody's responsibility to be able to do that. I don't think there's anything in the mandate that says that once they're injured they're there forever. At least the people I've spoken to want to go back to work. It's an important part of who they are and what they are in terms of a contribution they make to our civil society.

I'm having trouble at times dealing with the negative—here we have some things to celebrate, you've done some really good things: 32% down in claims; 91% return-to-work. Is there work to do? Yes; you've identified that. Are there ways that we can do it? Definitely: by all working together and listening to really good options that come from all of the stakeholders.

It has been an interesting two days. Maybe I'm the Pollyanna here. I don't know.

The last question I would like to ask you, and then I'm going to let everybody go home early, is: There is a lot of confusion about the insurance. We had a fellow today who is absolutely determined that he had to pay a construction rate for his secretary in his small business. Although it was suggested and shared with him that that was not the case, he was pretty suspicious and very sceptical. So I would really like you to have a bit of a conversation around WSIB insurance, why it's there, the

advantages and the benefits. I think the fact that you can't be sued has to be probably the biggest benefit for any employer, but in particular a small business employer. What is it they can actually do in terms of the need to cover their own—because he spoke directly about the issue as a director. As a director, he needs a different kind of insurance; it's called liability insurance, and that's for running his company. So maybe you could have some clarification for me on the insurance issue.

Mrs. Elizabeth Witmer: Before I ask Mr. Marshall to respond, Mrs. Cansfield, I would just say to you that I have committed to visiting all the regional offices in the province, and I've made a good start. I've met with people on the front lines. Obviously, they're part of the new service delivery model. I've also met with individual injured workers, who simply want their claim dealt with.

I would say to you that there is definitely a higher level of satisfaction. There's a lot of enthusiasm about the fact that the injured workers that our staff are dealing with on the front lines are able to return to work more quickly, because, at the end of the day, that is what people are looking for. The staff feel that this new model allows them to be much more responsive. Certainly, the level of satisfaction among the individual injured workers is much higher than ever before.

Mr. Marshall, why don't I let you respond?

Mr. I. David Marshall: I think you're quite right. It's going to be important for us to communicate more clearly what we cover and what value we bring to the business. For example, with these new independent operators that are coming in, we have a special rate that I think was about 21 cents or 24 cents—really, really low—for executive officers, who are not going out on construction. So we've taken that into account after hearing about this issue from them.

The fact that you can't be sued is very, very significant. WSIB takes over the claim. We might need to pay that person for 40 years after they're injured, and the employer can go on with their business, having paid their premiums.

There are a lot of benefits that WSIB brings, and I think we should communicate that better.

Mrs. Donna H. Cansfield: I want to say thank you for coming and sharing with us your responses to some of the questions. I think we all probably have a whole lot more, but it has been a long couple of days, and I'd like to again just say thank you for the work that you're doing.

I know—and I say this sincerely, because I worked with Elizabeth for a long time—that you've always had an open-door policy, and I don't see it changing. So thank you very much.

Mrs. Elizabeth Witmer: And thank you.

The Acting Chair (Mr. Shafiq Qaadri): Thank you to the Liberal caucus. To Mr. McDonell.

Mr. Jim McDonell: We heard earlier that there's a transfer of an amount of money over to the Ministry of Labour for accident prevention. Maybe you could just

clarify what that is and where you see that going. Was that a change last year?

Mr. I. David Marshall: Yes. I think you're referring to the amount of money that we transfer to the Ministry of Labour that we call legislated requirements. That is to administer the Occupational Health and Safety Act and the inspectors that the Ministry of Labour has. We transfer just over \$200 million a year, about \$227 million a year, to the Ministry of Labour. That will increase by the amount of prevention activities that we're also transferring to them. There's no net increase. It's simply a transfer of responsibility from us to them. Employers do fund that kind of activity over at the Ministry of Labour through their premiums.

Mr. Jim McDonell: Is the process working well? I mean, they're taking over the accident prevention part as well, as opposed to being in your shop, where you're actually involved with the accidents.

Mr. I. David Marshall: Yes. Go ahead.

Mrs. Elizabeth Witmer: Yes, we are. That was a recommendation that came out of the Dean report, that the prevention function, which had been at the WSIB, would be returned to the Ministry of Labour. That was based on extensive consultation that Mr. Dean had with the stakeholder community in the province of Ontario. That is currently under way. In the process, we are working very actively with the Chief Prevention Officer to ensure a smooth transition to the Ministry of Labour for those functions.

In the meantime, we are continuing to assume responsibility for the safety groups, which is an employer initiative, in order to help make our workplaces as safe as they possibly can be, and also the Workwell audits. Also, our health and safety committee at the board will continue to operate until such time as we are thoroughly confident that those responsibilities have all been transferred and that we continue to do everything we can to help make our workplaces as safe and healthy as we possibly can.

1640

Mr. Jim McDonell: With the stats showing that we're the lowest in the country, does that seem a wise thing to do? Is that where it sits in other provinces? Is it counter-productive?

Mrs. Elizabeth Witmer: A transfer?

Mr. Jim McDonell: Yes, the transfer over. I'm hearing today that our accident rate is actually the lowest in the country. If that's the case, are we looking for big improvements by moving it over? Is that how other provinces do it that are higher?

Mrs. Elizabeth Witmer: Sure. Maybe Mr. Marshall has more information about where the other provinces are currently at.

Mr. I. David Marshall: They vary quite widely. In some provinces, the prevention function is done within their workers' compensation board, like in British Columbia. In Alberta, it's done at the Ministry of Labour and not at the board. There are variations right across the country.

The basic logic, I think, that emerged out of Tony Dean's consultation with workers—who supported this, by the way, as well as employers—was that it made sense to combine where standards were set and health and safety inspections were being done, and the responsibility for prevention. So there's a logic to put it together so that as you promoted prevention, you could influence legislation and so forth. It can work either way, and it's working either way in different provinces.

The Acting Chair (Mr. Shafiq Qadri): Mr. Pettapiece.

Mr. Randy Pettapiece: According to your website, there are 70,000 to 90,000 independent contractors in Ontario and approximately only 10,000 of those contractors have voluntarily registered with the WSIB so far under provisions required by Bill 119. Is that number correct? Can you confirm whether those numbers are correct?

Mrs. Elizabeth Witmer: The number of people that are going to be required to—yes, we anticipate it could be anywhere between 65,000 to about 90,000, Mr. Pettapiece. Obviously, no one knows for sure. So far, very few have registered, so I think there is a big task ahead to raise the awareness of the need to register. We will be embarking on a more aggressive campaign in order to raise the awareness of individuals throughout the province of Ontario. I know I've been meeting with groups and certainly reinforcing it. Our staff have been going to meetings in order to reinforce the need to register. That's a huge task that does await us.

Mr. Randy Pettapiece: I've been speaking to a few of these people, too, and I know that this only one person, but they're considering not being in business because of this.

Mrs. Elizabeth Witmer: Yes.

Mr. Randy Pettapiece: He only employs three people, and the costs are up to \$11,000, which is an estimate. That certainly puts a dent into their bottom line. I know you have nothing—this is set in legislation. But it certainly is something that has to be considered, if the legislation is going to have an effect on small business that way.

Who's responsible for collecting these fees in January? Do you know that?

Mrs. Elizabeth Witmer: Obviously, it will be our responsibility.

Mr. Randy Pettapiece: It's your responsibility?

Mrs. Elizabeth Witmer: Because we're responding to the legislative requirement of the bill, from here on in, we'll be administering the recommendations. It will be our responsibility to make sure that people are registered and also that the money is collected from those individuals.

Mr. Randy Pettapiece: Do you have a plan right now to go after the people that haven't registered yet, or is that going to be done after January?

Mrs. Elizabeth Witmer: Since we still have about six months left, that is something that we will be moving forward with in order to ensure that as many people as

possible would voluntarily register. It's the hope. Obviously, for those individuals who don't, we will have to determine a course of action.

Mr. Randy Pettapiece: Can you give us some idea of the penalties involved?

Mr. John Slinger: Right now, there is a relatively modest penalty of \$250, but I think there is also the potential for charges to be laid in the event that it's somehow intentional: that in fact, we've been misled or someone has tried to evade.

I will say that we have been pretty clear in all of this that we won't be penalizing anyone, certainly, within the first year, and the big role will be education and getting voluntary compliance. I think it will only be after the first year, if we're having some challenges, that we would think about penalties.

Of course, we continue to have an information-sharing agreement with the Canada Revenue Agency, which will also bring some of those cases to our attention.

The Acting Chair (Mr. Shafiq Qaadri): Thank you to the PC side.

I would like to thank you, Ms. Witmer, and your colleagues for your—

Interjection.

The Acting Chair (Mr. Shafiq Qaadri): Actually, yes, you do have about a minute or so.

Mrs. Jane McKenna: I just want to ask one question. I asked Mr. Cunningham when he was here, and he told me to direct the question to you, Mr. Marshall. The question is, what is the target rate to fully fund the system? If it's \$2.40 right now for an average assessment, what number do you think that will be? Don't say you don't have an answer, because that means you're not doing your job.

Mr. I. David Marshall: I know. We do have an answer, obviously.

I think it's the most innovative attempt to get at the premium rate we're going to announce very shortly. We've done a lot of work on it. We have an actuarial advisory committee, and we've taken our assumptions to them. There will be an increase over the \$2.40—it's not huge—and we intend to announce a rate two years forward so that people have some certainty. If we get our calculations right, we may not need to increase it again for a very long time. We've been paying very close attention to what investment returns we're getting, what the inflation rate is, what we expect employment to do over the next little while. It's a very complicated set of calculations, but—

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. McKenna, and thanks to you, Mr. Slinger, Mr. Marshall and Ms. Witmer for your deputation on behalf of the WSIB.

Before we conclude, I understand we have a motion from Miss Taylor of the NDP with reference to some document requests.

Miss Monique Taylor: Yes. Copies are being handed out to all of the committee. It's nothing that you haven't been told about as we've been speaking. Shall I read the whole thing?

The Acting Chair (Mr. Shafiq Qaadri): You need to read the whole thing.

Miss Monique Taylor: We would like to move a motion that the committee asks the WSIB to table the following documents by August 1, 2012:

—the Deloitte report to the committee, along with any other consultant's report it has received and/or commissioned that deals with assessing worker claims and which might lead to reductions in workers' benefits; as well, the contracts and terms of reference for such reports;

—all new or revised directions to board staff from board management since January 1, 2010, addressing the adjudication of the following issues: loss of earnings benefits; pre-existing conditions; aggravations; recurrences; benefits following work disruptions; permanent impairments; workers approaching the six-year lock-in; and lower back injuries. This should include, but not be restricted to, practice directions, training materials, intra-net communications, and memoranda to staff;

—statistical information on re-employment levels for injured workers whom the board has retrained, with figures for the past five years and a detailed explanation as to how he arrived at these statistics; and

—a report for the committee detailing all processes for manager reviews of front-line staff benefit decisions. The report should identify when those review processes were initiated.

Please also produce new reports for the committee showing (a) how old each worker was when the board reversed its decision granting full benefits; (b) how much time had passed since the board had told each worker they would be on full benefits; (c) how many of these workers actually return to work and at what wage loss; (d) how much retraining was provided to each worker; and (e) how many were deemed to be able to work in a job they didn't have.

Please table for the committee all documents that set out predictions as to how changes in appeal procedures will affect the number of workers objecting to decisions and pursuing those objections to appeal.

Please table a report for this committee detailing the number of appeals, both assigned and unassigned, during the past five years and the number of AROs employed at the board month by month for the past five years.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. By the way, this motion is internal to the committee and not for you, so you are officially and cordially dismissed.

Shall we adopt this motion, as read? Is there any debate for this document-request motion? Shall the motion carry? Going once, twice—is that a yes or a no, Mr. Pettapiece?

Mr. Randy Pettapiece: My head's going this way, so no.

The Acting Chair (Mr. Shafiq Qaadri): So there will be a vote, then. All those in favour of this particular motion? Those in favour, please vote now. Those opposed? The motion carries.

This committee is now officially adjourned.

The committee adjourned at 1651.

STANDING COMMITTEE ON GOVERNMENT AGENCIES

Chair / Président

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Vice-Chair / Vice-Président

Mr. Phil McNeely (Ottawa–Orléans L)

Mrs. Donna H. Cansfield (Etobicoke Centre / Etobicoke-Centre L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. Jim McDonell (Stormont–Dundas–South Glengarry PC)

Mr. Phil McNeely (Ottawa–Orléans L)

Mr. Randy Pettapiece (Perth–Wellington PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Miss Monique Taylor (Hamilton Mountain ND)

Ms. Lisa Thompson (Huron–Bruce PC)

Substitutions / Membres remplaçants

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

Ms. Jane McKenna (Burlington PC)

Mr. Taras Natyshak (Essex ND)

Mr. Shafiq Qadri (Etobicoke North / Etobicoke-Nord L)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Carrie Hull, research officer,
Legislative Research Service

CONTENTS

Thursday 5 July 2012

Agency review: Workplace Safety and Insurance Board	A-215
Old Order Mennonite Government Relations Committee.....	A-215
Mr. Aaron Weber	
Mr. Levi Frey	
Mr. Aaron Bowman	
United Food and Commercial Workers Canada.....	A-219
Mr. Bryan Neath	
Ms. Sherree Backus	
Mr. Eric Depoe	
Ontario Professional Fire Fighters Association.....	A-225
Mr. Jim Holmes	
Mr. Paul Atkinson	
Mr. Chris Wheeler	
Doug Tarry Ltd.; Ontario Home Builders' Association.....	A-231
Mr. Doug Tarry	
Ontario Public Service Employees Union.....	A-238
Mr. Allen Jones	
Mr. Mike Grimaldi	
Office of the Worker Adviser	A-244
Mr. Alec Farquhar	
Ms. Cindy Trower	
Council of Ontario Construction Associations.....	A-250
Mr. Ian Cunningham	
Workplace Safety and Insurance Board	A-255
Mrs. Elizabeth Witmer	
Mr. I. David Marshall	
Mr. John Slinger	