

Whitehorse, Yukon
Thursday, April 3, 2008 -- 1:00 p.m.

Speaker: I will now call the House to order. At this time, we will proceed with prayers.

Prayers

Speaker's statement

Speaker: Before the House proceeds with the Order Paper, the Chair will make a statement regarding an event that occurred yesterday during tabling of returns and documents.

At that time, the Leader of the Third Party sent to the table a number of lapel pins that had been issued to him by the Legislative Assembly Office. That action was not in order.

Some members may recall May 2, 2001, when the former Member for Klondike attempted to table road fragments. The Speaker at the time ruled that the materials presented by the member for tabling were not documents and were therefore not acceptable for placement in the working papers of the Assembly.

The Chair now reiterates that ruling for the Leader of the Third Party. The Chair appreciates that members feel passionately about public issues, but that does not preclude them from following proper practice in this House.

We will now proceed with the Order Paper.

DAILY ROUTINE

TRIBUTES

In recognition of annual Territorial Skills Competition

Hon. Mr. Rouble: I rise in this House today to pay tribute to the 10th annual Territorial Skills Competition, which will be held at Yukon College this coming Friday, April 4.

Employers are becoming increasingly aware of the shortage of skilled workers across Yukon and across Canada. It is becoming increasingly difficult to find the people they need. The shortage of skilled workers has presented a wide array of job opportunities for those who are willing and interested in being trained for a career in the trades.

This, coupled with our strong economic future in mining, oil and gas, construction and other growing business and industry sectors, presents our youth with a chance to launch themselves into a productive and satisfying future working in the trades.

The Territorial Skills Competition this Friday will provide Yukon high school students and apprentices with a unique hands-on experience in a number of trades. Students from Watson Lake, Whitehorse, Carmacks, Pelly Crossing, Mayo, Dawson City and as far north as Old Crow have travelled to Whitehorse to participate in this exhilarating event. These young people are going to have a really exciting and fun day.

The wide variety of trades and technologies that will be showcased at the Territorial Skills Competition is impressive. With 16 disciplines either demonstrated or competed in, the field is endless for the students and apprentices. These include but are not limited to small engine repair, sheet metal, auto

body painting and auto body repair, carpentry, cabinet making, baking, electrical, hair styling, aesthetics and IT software.

I'd like to take this opportunity to thank our partners in this venture, primarily all the staff at Skills Canada Yukon and all the volunteers who have given freely of their time and who played such a valuable role in putting this competition together for all of us. Skills Canada Yukon is a valuable partner with the Yukon government in delivering skills trade education to Yukon youth, and our government is proud to be able to support their work. I am confident that the events tomorrow will provide our youth with an awareness of the wide range of opportunities that are available to explore as career choices.

Thank you.

Mr. Hardy: I just want to mention that the tribute was on behalf of all parties in the House as well as one correction. I believe since I had volunteered for a category to be a judge in the Skills Canada competition tomorrow, that category, unfortunately, has been cancelled -- the carpentry category.

Speaker: Are there any further tributes?
 Introduction of visitors.

INTRODUCTION OF VISITORS

Hon. Mr. Rouble: I'd like the Assembly to join me in welcoming two groups that we have with us today. Ms. Lisa Fairweather and her public administration class from Yukon College is here. As well, Mr. Judd Deuling and his grade 11 class from Vanier Catholic Secondary School is here. Welcome.

Applause

Speaker: Are there any further introductions of visitors?

Are there any returns or documents for tabling?

TABLING RETURNS AND DOCUMENTS

Mr. Inverarity: I have for tabling a letter that I've sent to the Conflicts Commissioner today.

Speaker: Are there any further returns or documents for tabling?

Reports of committees.

Petitions.

Are there bills to be introduced?

Notices of motion.

NOTICES OF MOTION

Mr. Nordick: I give notice of the following motion:
 THAT this House urges the Government of Yukon to continue to support the partnership with Skills Canada Yukon, which creates education opportunities and awareness about skilled trades in the Yukon by:

- (1) hosting a territorial skills competition each spring; and
- (2) qualifying participants in the Territorial Skills Competition to compete in the national and world skills competitions.

I give notice of the following motion:

THAT this House urges the Leader of the Official Opposition to: explain his assertions on page 2271 of *Hansard* of April 2, 2008, that the intention of the *Financial Administration Act* is to be a control and a protection so that public money would be protected from the overzealous, the careless or the less informed investor, thus implying that the Department of Finance officials had been acting in an overzealous, careless and less informed manner in making these investments since 1990; and

THAT the Leader of the Official Opposition apologize to the Department of Finance officials for implying that they acted inappropriately.

Mr. Hardy: I give notice of the following motion:

THAT this House urges the Minister of Environment to do his job of upholding the *Environment Act*, and make a commitment that the Yukon Council on the Economy and the Environment will be brought up to full strength within the next six months and be given the direction and support it needs to fulfill its mandate.

Speaker: Are there any further notices of motion?
Is there a statement by a minister?

This then brings us to Question Period.

QUESTION PERIOD

Question re: Nurse shortage

Mr. Mitchell: I have a question for the Minister of Health and Social Services. Members on this side of the House have spoken extensively on many occasions about staff shortages at Whitehorse General Hospital. Last year we were told that positive steps were being taken to address the problems. Yukoners were led to believe that this government had finally gotten it right.

Well, the minister misdiagnosed the problem and his prescription for a cure isn't working. Things are not getting better; they are getting worse.

As recently as this week, we heard of critical shortages in specialist areas such as the ICU, emergency and the operating room. There was even a situation where a doctor had to fill in as a nurse on the maternity ward.

My concerns are shared by nurses and they are shared by many Yukoners. Obviously the minister's old solutions are not working. What does he now propose to immediately do to address this situation?

Hon. Mr. Cathers: Unfortunately, while there is an issue, there is a lot of rhetoric coming forward from the Leader of the Official Opposition, which does not effectively serve public debate of this matter. If the member were accurately reflecting the facts, he would note that there are shortages of health care professionals nationwide. Some jurisdictions such as Saskatchewan have had significant problems resulting in staff shortages to the extent whereby maternity wards and emergency rooms were shut down. There is a shortage of health care professionals nationwide, particularly in specialty areas. One step that has been taken by Whitehorse General Hospital, using funding specifically provided for that purpose

by my department, is training specialty nurses in the operating room, because they had not been able to recruit operating room nurses. We provided them with additional funding and right now they have three operating room nurses who are receiving training and will be returning to Whitehorse General Hospital as operating room nurses this spring and this summer.

Mr. Speaker, as the member well knows, this government has stepped out beyond what previous governments have done, but we are coping with a national challenge. That is why we are working with Whitehorse General Hospital to invest in this area and to work with the staff and improve recruitment and retention.

Mr. Mitchell: Mr. Speaker, I think that the rhetoric is coming from the other side of the House. We all know that there is a national problem, but Yukoners are concerned about what this minister is going to do in Yukon. I think that I'll have to check *Hansard*, because this sounds an awful lot like last year's answers.

So let's deal with some facts: the Canadian Nurses Association predicts that this country will be short 78,000 nurses by 2011 -- that is only three years from now. Other provinces and jurisdictions will be aggressively competing for these nurses. In Yukon, more than half of our 293 nurses are over the age of 45.

Mr. Speaker, will this minister do the math or ask the Education minister to help him with it? We are only a short step away from facing a major crisis. The time to address it was yesterday, but since the minister did not do that, then he must do it today or heaven help us, if he waits until tomorrow. What is this minister going to do to assure Yukoners that our hospitals will have a full complement of nurses?

Hon. Mr. Cathers: The member knows full well that I have not waited to act on this program. One of the first things I did after being appointed as minister, with the support of my Cabinet colleagues, was to enact the health human resources strategy, launched a few short months after I was appointed Minister of Health and Social Services.

To date, the health human resources strategy has included the funding of the medical education bursary, which assists Yukon students in being educated as doctors, and the family physician incentive program for new graduates, which attracts Canadian citizens who are graduates of medical school. The nurse bursary previously existed but we doubled the investment and doubled the number of applicants it can fund. Also, there's the health profession education bursary, assisting Yukoners receiving education in various other health professions; the nurse mentoring program, which we launched; the licensed practical nurse program which, through the Department of Education and Yukon College, will be up and running this fall to train Yukon citizens here in the Yukon.

This is not even a full list of what this government has acted on, but my colleagues and I have acted in working with the staff of the Yukon government. In implementing these programs, we are continuing to invest in this area. I agree with members: previous governments should have acted. We have done and we are doing our best to compete nationally, and we're doing pretty well in comparison to other jurisdictions.

Mr. Mitchell: I'll agree with the minister: I support the family physician incentive program; I support the nurse bursary program. In fact, I asked this minister's predecessor to implement the family physician incentive program.

The chair of the Hospital Corporation has also expressed his concerns. He recently was quoted as saying we do have some actual vacancies, that there's no doubt about that. He went on to say -- and this is a comment that is of concern -- that we recognized that some time ago.

We have an excellent physical facility; we have highly dedicated staff and an aging population that is becoming rightfully concerned. We saw the result of the 12 beds at Copper Ridge, which were opened with such fanfare last year. Then later they were closed again because of staff shortages. So much for that announcement, Mr. Speaker.

We have a staff shortage problem, plain and simple. What is the minister going to do to address it?

Hon. Mr. Cathers: I realize that the member has not changed his script and I realize that he -- Mr. Speaker, I don't want to minimize the member's concern in this area, but again it is unfortunate the amount of political rhetoric that is injected in this area. The member knows that this government has acted far beyond what any previous Yukon government did in investing in health human resources.

We are facing national shortages and we're facing national problems in this area. Even Alberta and Saskatchewan, as I pointed out, have had problems with not being able to recruit enough staff and are having staff shortages impact their operation. In the case of Saskatchewan, it was a major issue in their last election campaign. There was a significant number of hospitals that had been forced to close emergency rooms and maternity wards due to a lack of staff. The Yukon compares quite well in that area but we are increasing our investment.

To give the member more examples beyond what I illustrated earlier, under this government we have increased the annual funding to the Yukon Hospital Corporation, which runs Whitehorse General Hospital, by over \$10 million per year. This again, as I indicated, adds to the investments that we have made in attracting doctors and in assisting Yukoners in receiving training as doctors, nurses and other health professionals. With regard to other areas, we have internally enhanced our recruitment and retention.

Question re: Nurse shortage

Mr. Mitchell: Mr. Speaker, what the Minister of Health and Social Services has is a problem that he has struggled and tinkered with but he has not solved. The solution to the problem is economic, as he points out, or more to the point, a supply-and-demand problem. We saw last year a young graduate nurse, a First Nation Yukoner and constituent of mine, apply for a position. She is now nursing in Dawson Creek, Mr. Speaker, because she was offered a permanent position there, but not here. I'm sorry she did that but I fully understand why.

In Canada, 10.8 percent of nursing positions are casual -- in Yukon 25.9 percent are casual. We wonder why nurses are taking positions elsewhere. They are doing it because they want homes and they want to be able to get a mortgage. They want a

quality life for their families, and casual employment just does not cut it at the bank, Mr. Speaker.

Will the minister undertake to take actions to reduce the number of casual employees to at least the national level?

Hon. Mr. Cathers: Mr. Speaker, the member's figures, first of all, are not correct. But secondly, I would point out that the member's assertions about a particular individual -- I would remind the member opposite that we don't deal with staffing directly. I don't hire people directly. As I pointed out with reference to this specific case, one does need to apply for a job before they can receive it.

One area that the member brought up in a previous question was the issue of staffing at Copper Ridge Place. As I recognized in my introductory remarks at second reading on the budget, we have had a challenge there whereby when we funded the additional wing opening at Copper Ridge Place, department staff did not anticipate a problem with recruitment and retention. Since that time -- through turnover and through the increasingly competitive field -- we have had challenges with staffing and had a decline in the number of staff at one point.

Now, through the recruitment and retention incentives that have been put in place internally to assist hiring, we are seeing the numbers come back up. Those incentives are working. There are still staffing challenges there, but we are in a very competitive field and, nationwide, there is a shortage of health care professionals. This government has done very well compared to other jurisdictions in ensuring a high level of care and access to those professionals, and we are going to continue to do more.

Mr. Mitchell: I cited the case of the individual as an example of what is occurring, and it's a sad one at that. That individual sat in this gallery where these students are today, some years ago, because of this situation.

Many nurses work six 12-hour shifts in a week. That is 72 hours of work. When people log those kinds of hours they are tired; they are very tired. It's only a matter of time before some sleep-deprived nurse makes a mistake on the job with possibly horrendous results. When that nurse goes home after a 72-hour week, what kind of quality time will she or he have with their family? Nurses tell us that they just go to sleep.

There are many reasons to address this issue, and any one of them would justify making changes. Will the minister acknowledge that this is long overdue and will he commit to taking further steps to address the casual employment issue?

Hon. Mr. Cathers: Again, we have here a lot of rhetoric in this area.

The member knows the answer. He knows that I, and the Department of Health and Social Services, assisted by and supported by my Cabinet colleagues, along with other departments such as the Department of Education, have been working in this area. We have invested in this area.

Previous governments did not address this area. We recognized that and we are facing that challenge. We launched the health human resources strategy in early 2006 and allocated \$12.7 million to it, which assists us through a number of ways. We have the family physician incentive program for new

graduates, the medical education bursary, the nursing education bursary which, as I pointed out, was a shadow of what it is today, under previous governments, and was the only incentive that was in place directly to assist students in receiving education.

We also launched the health profession education bursary to assist Yukoners in other health professions.

We launched the nurse mentoring program. We have also moved forward with other areas such as the incentives provided to assist Yukon physicians in expanding an existing family practice to attract a new physician. Those measures, as the member knows, have been part of the significant change we have seen in the number of general practitioners -- family doctors -- available. The number of general practitioners serving our citizens has increased from 56 to 63.

Thank you.

Mr. Mitchell: Here we go. We made a suggestion two years ago; the minister took it and it improved the problem. It diminished it.

Nursing students in Saskatchewan are guaranteed a permanent position upon graduation -- not a casual position. Other provinces offer nurses a similar deal. No wonder nurses are going elsewhere.

It will take more than a glitzy promotion program to fill the 150 positions plus that will become vacant here within the next 10 years. It will take more than a DVD.

Nurses should not have to work 72 hours in a week. They should not have their vacations cut short, and they don't deserve to be turned away at the bank. Fix that problem and you will be taking a major step toward solving the present situation and future concerns.

Will the minister give his undertaking to look further into this issue and report back to this House with fresh solutions?

Hon. Mr. Cathers: I find it interesting that the member desperately tries to take credit for a program that, first of all, he ought to know -- and knows full well -- the Yukon Medical Association suggested long before he took up the cry on that issue. I give him credit for recognizing that they were right. This government acted in that area at the request of health care professionals and the advice of the department. It had nothing to do with the member opposite and he knows that full well, but now, after he desperately tries to take credit for it, he refers to it as a "glitzy" program. Mr. Speaker, this isn't a glitzy program. This is an investment in attracting family physicians to the territory and complements the other investments that we've made through the good work of staff of the Department of Health and Social Services in developing a comprehensive health human resources strategy that previously did not exist. We began this in 2006; we have continued to add to it through the areas identified for doctors, for nurses, for other health professionals -- creating nurse mentoring, and in other areas such as increased incentives to assist existing family practices in expanding to allow at least one new physician to come in.

This is but a short list, Mr. Speaker, of the areas in which this government has acted, and again I mentioned that we in-

creased annual funding to the hospital by over \$10 million versus the paltry level it was at under the Liberal government.

Question re: Nurse shortage

Mr. Edzerza: Once again we find ourselves asking the Minister of Health and Social Services about recruitment and retention of registered nursing staff. It's a tired refrain, and the minister thinks it's rhetoric. Well, maybe he ought to pay attention to the real feelings of the nurses who are complaining, anonymously, for fear of losing their job. I know the minister will make comments to me following a script, because that's one of his favourite lines. He has to use it; he has nothing else.

It is not a waste of time supporting evidence that one has to repeat oneself many times before the minister understands. What new strategies to recruit and retain registered nurses -- not LPNs -- have been put into place since the last time we asked this question?

Hon. Mr. Cathers: I thank the member for what I'm assuming was a compliment. I believe the member was suggesting I was thick, so I appreciate what I'm sure was a compliment.

Seriously, I recognize the member's concern in this area and, as I indicated in my previous responses, this is an area that of course this government is concerned about. Every government in the country is; every government, every health authority in Canada, is coping with the challenge of a shortage of health care professionals, including nursing staff. That is why this government has invested in this area. That is why, both within the department and within the Hospital Corporation under the new CEO, work is being done on strategic planning and on assessing the manner in which staffing is done, recognizing this is becoming an increasingly challenging field, and that the same old ways of managing administratively may need changing.

They're doing that work, and we have great confidence in those officials for the good work they're doing. I'm not going to micromanage that. They're doing that work; they're doing that planning now; they're talking with staff on the process of doing that.

I appreciate the member's concern. I believe I'm about out of time in this response, so I look forward to what I hope will be a new and fresh question from the member opposite.

Mr. Edzerza: I imagine the minister would love this question to go away, but the only thing that will make it go away is action by the minister.

There is a nursing shortage across Canada, and we know that. More than half the nurses in the Yukon are over 45 and will be retiring in the next decade; we know that too. There's another figure the minister should be concerned about and that has to do with the nursing staff who are on casual. In the Yukon the number is 25.9 percent, more than twice as high as the rest of Canada. How on earth does the minister expect to attract nurses to the territory if the best they can count on is casual employment and lower wages, without the benefits that full-time nurses get?

Hon. Mr. Cathers: As I've explained to the member and as I indicated to the Leader of the Official Opposition, their numbers are incorrect. However, this is one of the areas that is

being looked at by the managers. In fact, within continuing care, changes have already been made to the staffing model to improve the recruitment and retention and create a number of full-time float positions rather than casual positions as had previously been the case. This was done as a pilot project and the staff is evaluating the success of this right now.

They have made these changes administratively at the government policy level. What we have done is invest in these areas, develop the health human resources strategy and roll out a number of programs that are assisting Yukon students in receiving medical education. The number of people who have been assisted with the bursaries to date is significant. As the member knows, I've mentioned this on previous occasions; we've read the list of those who have been given this assistance and we look forward to them coming back to the Yukon.

Mr. Edzerza: It appears the minister would like the public to believe that everyone is incorrect except the minister. The minister can't keep passing the buck. The hospital needs help; Copper Ridge Place needs help; rural communities need help. The nursing crunch won't be solved by sending people a DVD of pretty Yukon pictures. You might as well send them a fridge magnet and a six-pack of Yukon Gold. The problem isn't just about attracting new nurses; it's also hanging on to the ones we have. Nurses are leaving the profession because they're overworked and stressed out.

What kind of crisis will it take for the minister to give this problem the attention it deserves and provide the financial and personnel resources that are needed so that registered nurses in the Yukon have the job security, the working conditions and the professional respect they deserve?

Hon. Mr. Cathers: Mr. Speaker, the member knows the answer to that, and the member knows -- Mr. Speaker, the political rhetoric around this is unfortunate because this is a very serious issue nationally. We are coping, as is every government and health authority in the country, with the results of inaction by governments in the 1990s and, in fact, through a united approach, a reduction of the number of seats in universities to train doctors and nurses in a ridiculous attempt to try to control costs by restricting the number of people trained. We are coping with the outcome of that.

We have addressed that through some of the programs that I laid out previously: the family physician incentive program for new graduates, the medical education bursary, the nursing education bursary, the nurse mentoring program, the health profession education bursary -- these are but a few examples of how this government has acted. As I mentioned to the member, and the other member previously, the amount that we have assisted the hospital in increasing its own resources -- we have increased their annual funding by over \$10 million, versus the much poorer level that it was at under the previous Liberal government. We have invested in this area and we will continue to do so.

We're coping with these national challenges. But in terms of whether somebody is full-time or a full-time float or casual, those matters are being worked on by the managers, as they should be, Mr. Speaker.

Question re: FASD programs

Mr. Hardy: I have a question for the Minister of Health and Social Services. A few days ago there was a very disturbing report on a local radio station about the plight of nine women and men with fetal alcohol spectrum disorder who have no place to live. This is not a new situation, but it is not something that should ever be allowed to happen in a privileged community like ours.

Why has the minister not addressed this appalling situation affecting people who need and deserve support in dealing with an incurable condition that they inherited at birth?

Hon. Mr. Cathers: Again we have a situation where, unfortunately, this seems to be the season of the year when members feel obliged to ramp up the political rhetoric and pay less attention to the facts of the areas they know the government is working on.

The member knows it's this government that implemented our five-step FASD action plan, that it is this government that has invested in areas previous governments would not, by increasing the resources to groups such as the Fetal Alcohol Syndrome Society Yukon -- the resources to which we more than doubled on an annual basis, now standing at roughly \$400,000. We funded the Options for Independence Society, which assists in support of independent living for people with fetal alcohol spectrum disorder. The member knows we have taken a significant role in investing in areas such as this.

Meconium testing is another area in which the Yukon government was one of the first in the country to act. We have recognized this problem and invested in it significantly.

Mr. Hardy: I'm ashamed of that kind of answer. At least nine people -- and that's just here in Whitehorse -- are living in deplorable conditions because we are failing them. This is not political rhetoric. If political rhetoric is coming from anywhere, it's coming from that member's mouth. One man, for example, is sleeping on a foamie in an old mould-infested garage downtown, with no insulation and no running water. That's reality. He pays for electricity when he can afford it.

What is the minister doing for this man and others like him, who are shut out of the rental market that has no place for them?

Hon. Mr. Cathers: The approach the member is taking is unfortunate. If the member knows of individuals who are facing these types of challenges, I would urge him to have them contact staff of the Department of Health and Social Services in the social services branch, particularly if they are on or in need of social assistance, and if they have issues with housing, they can work either with the officials in my department or with Yukon Housing Corporation. There are avenues available to assist them. I want to stress this again to the member: there are avenues available to assist them. If the member is aware of people who are in this situation, I would encourage him to provide the assistance to them. If these individuals have a challenge being aware of government offices, please, walk them down there or call someone who can come to them and drive them there. The services are there; I urge the member to help these people access them, if indeed he knows of such individuals.

Mr. Hardy: I tell this minister of this department to wake up and smell the coffee. This was on the news. Where has he been? I also thought he has bragged about his door being open. Obviously, it's not open to these people. Outreach workers at the Fetal Alcohol Syndrome Society Yukon have gone so far as to take people into their homes, because there is no place for them. They've tried hotels, motels, apartments and nothing is there. This is not a new problem. One client who does have a place to live is paying so much in rent she only has \$30 left a month for food and everything else she needs to survive. How can we call ourselves a just community, a caring community or even a civilized community when we are allowing this to happen under our affluent noses?

Will the minister make a commitment right now to find decent, affordable accommodation for these people or even respond to the numerous proposals that FASSY has submitted to him time and time again?

Hon. Mr. Cathers: For the member to suggest that I have not responded to proposals from FASSY -- the member knows it was under me as minister that this government more than doubled the Yukon government's assistance to Fetal Alcohol Syndrome Society Yukon. So for the member to make that assertion is ludicrous.

I would also point out again, as I said to the member opposite, if he knows of such individual, put them in contact with the officials who can and will assist them. The member says he heard it on the media, so it's accurate. With all due respect to our friends in the media gallery, the media does not have the best record for getting the story right.

If he knows of these individuals, do the right thing and put them in contact with staff of Health and Social Services or of Yukon Housing Corporation, who will help them. Yukon Housing Corporation has over 500 houses in the social housing inventory, and through social assistance we provide assistance to those who do not have Yukon Housing Corporation housing in accessing accommodation.

Do the right thing; put them in contact with officials who will help them.

Question re: Land development

Mr. McRobb: The Yukon Party's election platform promised a constant two-year supply of residential lots; however, Yukoners know all too well that the Yukon Party government does not live up to its promises and certainly this is no exception.

The shortage of fully serviced lots in the Whitehorse area has failed contractors, workers, Yukoners and people wanting to move to our territory. A number of workers are facing lay-offs as a result of this government's inability to plan for the future. It's also more difficult for people to purchase an existing home, and it's driving up rental costs for those looking for a place to live.

This government has had more than five years but it has failed to deliver lots. Does the Energy, Mines and Resources minister accept responsibility for this problem? What is he doing to assure Yukoners this mistake won't happen again?

Hon. Mr. Lang: As the Yukon government or as the government of the day, we accept the management responsi-

bilities for the lands all through Yukon. We have been working with the municipalities and we have a new memorandum of understanding, a working relationship, with the City of Whitehorse, which puts the city in the lead. We are working in the surrounding areas, whether it is Grizzly Valley, the Burns Road subdivision, or Whitehorse Copper, where there are 52 phased-in lots coming forward. The city is working on the Arkell expansion. We work with the City of Whitehorse on a daily basis and we're going to do more on the land issue.

We have just done that by looking at the Grizzly Valley, McGowan options, Mount Lorne and all of the area surrounding Whitehorse. We're looking at expanding the lot inventory. We're looking at Dawson City and we're looking at the Haines Junction area and working with those municipalities to get land out and an inventory put together. Understand, Mr. Speaker, that when the member opposite talks about a two-year supply, we've had real pressure because of the expanding economy in the territory for lot consumption, and so we have to address that -- and we'll do just that.

Mr. McRobb: Mr. Speaker, this government has cracked under pressure. It has provided no fully-serviced residential lots. Let's turn to that protocol that the minister just mentioned -- it was signed two years ago with the City of Whitehorse. He launched it with fanfare, saying that it was going to be the ultimate solution. Now we know that the minister likes to point his finger, and he'll likely try to blame the city, but he can't have it both ways. It wasn't the city that promised to ensure a constant two-year supply of fully-serviced residential lots in the Whitehorse area -- it was the Yukon Party.

We have now reached a point where there are no government fully-serviced residential lots available for purchase in the Whitehorse area until some time after this summer. In 2005, the Yukon Party received a consultant's report that found that there is a lack of overall clear direction with respect to a Yukon government land disposition. What remedial action has the minister taken with respect to that report?

Hon. Mr. Lang: The Government of Yukon takes our protocol with the city very seriously. We are working with the city to get lots out; we work with them to capitalize their costs and get lots in the hands of the consumers.

The pressure on our lots in the City of Whitehorse is huge. I remind the members opposite that when the Liberals were in government they sold fewer than 10 lots in one year in the City of Whitehorse. Those are facts.

Right now alone, in the Whitehorse Copper subdivision, we are looking at 52 in the first phase, 58 in the second phase, and we need more. We are working with the city to do just that.

Mr. McRobb: All that is too little, too late. Let me quote from the report: "no vision and no strategy to guide the process" and "no overall land management or land disposition policies." That report also found massive amounts of political interference in the process.

This is a serious problem, thanks to the Yukon Party government. Let's refer to the question posed at a recent public meeting by a very high profile Yukon Party supporter and realtor and someone whom the minister has known for a very long time. He did not congratulate this government for doing a won-

derful job with respect to land dispositions. He reaffirmed that there is a problem. Without the availability of these lots, there will be fewer new homes. That stifles people who want to move here; it puts tradespeople out of work and it's a definite setback for the Yukon.

Does the minister have a contingency plan to bring some of these lots on the market in time for this coming season? I'm talking fully serviced residential lots.

Hon. Mr. Lang: Again, the responsibility in our agreement, in the protocol we have with the city, is to work with the city, the city being the lead. We work with the city to get lots out into the hands of the consumer.

Certainly I understand the urgency of it. That's why we were elected government. That's why we will continue working with the Yukon people to maximize their access to land. We are doing that on a daily, weekly, monthly basis. Hopefully, working with the city and the other municipalities in the territory, we can address those issues.

Speaker: The time for Question Period has now elapsed. We will now proceed to Orders of the Day.

ORDERS OF THE DAY

Hon. Mr. Cathers: I move that the Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Speaker: It has been moved by the Government House Leader that the Speaker do now leave the Chair and that the House resolve into Committee of the Whole.

Motion agreed to

Speaker leaves the Chair

COMMITTEE OF THE WHOLE

Chair: I will now call Committee of the Whole to order. The matter before the Committee is Bill No. 52, *Workers' Compensation Act*.

Motion re appearance of witnesses

Hon. Mr. Cathers: I move

THAT Craig Tuton, chair of the Yukon Workers' Compensation Health and Safety Board, and Valerie Royle, president and chief executive officer of the Yukon Workers' Compensation Health and Safety Board, appear as witnesses in Committee of the Whole on Thursday, April 3, 2008 to discuss matters relating to the *Workers' Compensation Act*.

Chair: It has been moved by Mr. Cathers

THAT Craig Tuton, chair of the Yukon Workers' Compensation Health and Safety Board, and Valerie Royle, president and chief executive officer of the Yukon Workers' Compensation Health and Safety Board, appear as witnesses in Committee of the Whole on Thursday, April 3, 2008 to discuss matters relating to the *Workers' Compensation Act*.

Motion agreed to

Chair: Is it the wish of the members to take a brief recess?

All Hon. Members: Agreed.

Chair: We will take a 15-minute break.

Recess

Chair: Order please. Committee of the Whole will now come to order.

Bill No. 52 -- *Workers' Compensation Act*

Chair: The matter before the Committee is Bill No. 52, *Workers' Compensation Act*.

Hon. Mr. Cathers: I would like to begin by introducing and thanking the chair and president and CEO of Yukon Workers' Compensation Health and Safety Board for attending. They are, respectively, Craig Tuton and Valerie Royle. I thank them for their assistance in being here to provide members with a detailed understanding and detailed answers to questions regarding the new *Workers' Compensation Act* that we have tabled here in the Assembly.

Mr. Chair, as you know, this act is a fairly detailed, lengthy and complex piece of legislation, although efforts have been made with the new act to simplify the wording and make it easier to read for the average citizen.

To highlight a few of the key points that have changed as a result of review -- as members are aware, this has been some time in progress and involved a number of components, including the panel sitting down with Yukoners and hearing public input. It involved work jointly among key stakeholders in discussing key policy matters around 88 identified issues. It has involved recommendations and numerous submissions from both organizations and individual members of the public -- both employers and employees -- in providing their perspective on changes to the legislation. I am pleased to be able to table this act. I believe that it represents a significant improvement to Yukon's legislation in this area.

Key points covered in the act include the following: the focus on recovery and return to work; providing costs savings to allow more efficient operations; providing for better and timelier appeal processes; providing for a better and more effective governance role by the board of directors; and, as I indicated, the clarity of the act, both in terms of simple readability and in restructuring some of the order to make it easier for both the average person and lawyers to look through and understand the logical flow in the legislation.

As you will be aware, Mr. Chair, two of the key concerns that are out there right now in the public around the workers' compensation system and around workplaces are the high number of injuries and the high assessment rates that are being faced by employers.

Both of these contain steps within the legislation to assist in addressing these matters with the intent of providing a structure that assists and enables a process that reduces injuries and provides the ability for the Yukon Workers' Compensation Health and Safety Board to assist in early return to work, providing rehabilitative supports in helping someone who is injured get back to work in as timely a manner as possible. That is one part and a key focus. A number of areas within the legislation include changes that are designed to reduce the cost to the system and ultimately should then reduce assessment rates

as they have done in other jurisdictions through similar measures.

This includes the return-to-work portion of the act that focuses on the new priority -- which was not in the previous legislation -- of providing the obligation to re-employ but also the obligation of an injured worker to cooperate and to work to be able to perform their job. There is some onus on both parties and some of that, as members may be aware, is particularly the obligation on employers, which already exists within human rights legislation. This puts in place a balance and reflects successful legislation in areas of Canada, notably Newfoundland and Labrador and Ontario. The legislation is similar to both jurisdictions from where we heavily borrowed.

That change of focus means moving away from simply focusing on maximizing financial payment to injured workers, which was primarily what the previous legislation did.

It sets out the duty of injured workers to mitigate the effects of work-related injuries and, as I indicated for both workers and employers, it sets out the duty to cooperate in early and safe return to work, and this applies to claims within the system from the date of proclamation.

This has been shown in other jurisdictions to result in better recovery for injured workers, reduced duration of claims, decreased economic and productivity costs of workplace injuries and lower claims costs -- and ultimately lower assessment rates, which improve the ability of employers to run a sustainable business and improve their competitiveness and productivity.

The act provides for cost savings by allowing more efficient operations, including areas such as the CPP disability pension, which will now be calculated into long-term benefit payments and will be offset by 50 percent. Third party payments to injured workers, such as insurance payouts from vehicle collisions, will now be calculated differently, allowing the Yukon Workers' Compensation Health and Safety Board to recoup all costs and pay the remainder to the injured worker, and the calculation of permanent impairment awards has been simplified.

The act provides for better and timelier appeal processes, and this includes changes such as the fact that the Yukon Workers' Compensation Health and Safety Board will now be allowed standing at appeal hearings for the purpose of clarifying information, thus allowing for a speedier process. When new information has become available regarding a claim under appeal, the claim will be returned to the decision-maker within Yukon Workers' Compensation Health and Safety Board to review and to reconsider, rather than the previous case -- and current, of course, until passage of this legislation -- under which, once that process was launched, there was no ability to recognize it. In fact, the new information has made it easier, quicker and cheaper to solve by simply returning it to that decision-maker.

The board of directors will now be able to revise appeal rules to improve the process, and appeals will be limited to within 24 months of decision to improve the clarity and reduce the question of how far back appeals can be made. This is simi-

lar to other jurisdictions. In fact, Yukon had by far the longest window for filing an appeal of any Canadian jurisdiction.

Also, as I indicated, the act provides for a better governance role by the board of directors through clarifying the governance role of the board of directors and clarifying the operational role of administration.

Mr. Chair, I think that has covered some of the most important key points of this legislation, and I would invite Members of the Legislative Assembly from all sides to ask questions. Depending on the nature of the question, either I will respond, or Mr. Tuton or Ms. Royle may respond. With that, I will turn the floor over to others.

Chair: Before proceeding to Bill No. 52, I would like to remind all members during general debate, even with witnesses before the Committee, that we direct all questions and answers through the Chair, and wait to be recognized by the Chair, please.

Mr. Fairclough: It's a pleasure to be able to ask a few questions in regard to Bill No. 52, the *Workers' Compensation Act*.

I welcome the witnesses here today and thank them for the briefing that they gave us a couple of days ago. I believe that that answered a lot of our questions and concerns about this proposed act.

The member opposite says to read through this act, but it is not easy unless you are familiar with how the old act was laid out.

It's not a housekeeping bill. It's quite lengthy; it's 89 pages. We got it a couple of days ago. In fairness, I believe the minister could have allowed this to go through the weekend and have more of the public, perhaps, look at this act and diagnose it, read it carefully and perhaps give their comments to the minister, or even to the members of the opposition, those who are interested in this.

I know that a lot of work has gone through with WCB. It has basically been five years in the making. I do have to congratulate those people who have put an effort into this legislation and brought the changes forward -- it's a long time. The way it was explained to me in the briefing was that the chambers took a lead on this for the first couple of years. WCB, basically, took on an observer status to the consultations and amendments. We do appreciate the intent of the amendments and the goals.

I'll just list a couple of them.

Before that, I am interested in hearing from the witnesses, those who gave the briefing, that consensus was reached on many of the issues. Well, I think it was on all of the 88 issues that were brought forward. Consensus was reached between business and labour and Workers' Compensation Health and Safety Board, and I think that it is a fairly major accomplishment. There may have been a couple areas where there were some big compromises made. Perhaps the witnesses or the minister could point out some of those.

The intent and goals of the amendments were to maximize the compensation benefits to injured workers. We understand that. In the past we have often heard a lot of stories from our own constituents about their dealings with WCB over the years

-- if you go back even further, how they may have been injured on the job and basically received nothing, because there is no mechanism in place for them to receive any monies. I go right back to the steamboat days when we talk about how workers have been injured on the job.

The other goal was to minimize the delays in injury recovery and return to work, and to provide a balance of shared responsibility, with new responsibilities to employees, to mitigate loss resulting from injury, to cooperate in a recovery as quickly as possible and return to work as soon as possible.

The onus is on us as lawmakers to ensure the responsibility is fair and balanced, and cost efficient to the WCB system. Legislation needs to ensure that no stakeholder has an inordinate amount of responsibility, influence or authority.

The system is shared by stakeholders and should reflect shared responsibility for the system's outcome, as well as shared responsibility and influence in the decisions that affect the outcomes.

The most significant concern expressed by stakeholders is the cost of WCB. The cost is borne by employers and it is expected that the bulk of the amendments are focused on reducing the cost of the Workers' Compensation Health and Safety Board system, thereby reducing the assessment paid by employers.

So my first question to the minister -- or it may be answered by the witness, or the minister can attempt to answer this question: can he provide an overview of the amendments that will enable cost savings in the Workers' Compensation Health and Safety Board system?

Mr. Tuton: I wonder if it's possible to just begin with a preamble, because I think we went through a significant amount of time to get to where we are today. I think it's important to get a clear understanding of how we collectively were able to reach the position we're at today.

First and foremost, it's important to recognize that the board has a tremendous responsibility. It is represented by two members of the employers group and two from the workers group. There is a neutral alternate chair and an alternate chair.

I have been lucky enough to have served as the chair of this board going on nine years now. What it does is gives you a better understanding of what the system is, what the intent of the system is and what it is that we as a board are mandated to accomplish. It is not easy. One of the things that we cannot deviate from is legislation. We must comply with all legislation. In order to make sure that all of the legislation is both fair to workers and to the employers who pay into the system, we must make sure that the legislation is written in such a manner that we can achieve those results.

It has been said that this process has taken some five years in the making, and yes, that would seem at the outset to be a long amount of time -- and it was. It was challenging and it set challenges not only to our system and to our administration but also to stakeholders. I think that it is important to note that I like to think of the positive aspect of those five years and, from our perspective, what that five-year period has done is enabled us to strengthen the relationships that we had with all of our stakeholders. That is a big issue with us at Workers' Compensa-

tion Health and Safety Board because our mandate is to make sure that for the stakeholders -- whether they be employers or injured workers, or whether they are just workers -- the system that we provide is fair, honest and adequate.

To that end, in maintaining and strengthening those relationships, that period of time has given us that opportunity. The previous member indicated the working together and coming to consensus on the 88 issues, and that only happened after a period of years to which the process had been extended. Some of the stakeholders had indicated that we had to move ahead and that we had to find a resolution to this issue and, for these interests of all concerned, we had to get together.

So really, it was the stakeholders who came up with the initiative to try to collectively formulate a reasonable approach to getting this act to where we see it today.

I think it's important to recognize that it took a tremendous amount of work, as the member previously alluded to. It's not a very simple act; there are a lot of pages and information. In order to understand that, you must read every clause in that act to understand how one relates to the other. That's not an easy task, believe me.

I must say that the stakeholders deserve a tremendous amount of credit -- number one, to show the initiative and the interest to become involved, because let's remember that each one of those stakeholders has another job or another duty to do every day. The effort that was taken by the stakeholders to move ahead with these 88 issues in this act review was done on their own time -- many of them. I commend them and thank them for their involvement. Really, they became much more knowledgeable about the workers' compensation system as did the Yukon public.

If you recall the early stages of this act review, there was public consultation; there was involvement from the public. They were able to bring their issues forward to the panel. Each and every member from the stakeholder group had that opportunity to listen and to evaluate from that where they would like to see the system go.

The number one result of this act review was to make sure that when a worker got injured on the work site -- through no fault of anyone -- they would be adequately compensated, if it were a time loss injury -- but more than that, qualified and necessary medical and rehabilitative treatment would be given to get that worker back to his pre-injury job as quickly and safely as possible. That's what we're here for. We're here to make sure that all those workers, once they're injured, are treated quickly and effectively and returned to the workplace as soon as possible.

Each and every one of the stakeholders had an opportunity to make the panel, as well as the Workers' Compensation Health and Safety Board, aware of what their thoughts were in helping us move this process along. Yes, in some ways five years was a long time, but I like to think of it as five years that were spent well, because of the ability to work with our stakeholders very closely. I can assure you, if you can imagine, there was a point a number of years ago when it would be absolutely ludicrous to think that anyone could get labour and employers working together collectively.

They all thought about achieving the same result, but it was in how we approached getting there that was an issue. I can't speak highly enough of all those stakeholders and the time and commitment. In this process, I know from time to time one or the other or both had to grit their teeth and say there had to be a way that collectively we can move this forward.

Obviously, today is pure proof that that was not only possible, not only achievable, but they did it in the best interests of the workers, the injured workers, the employers and all stakeholders. "All stakeholders" means to reach out beyond to the medical people, the rehab people, much further than just the injured worker. It's a big team.

We have been able to strengthen that team and continue with that approach by using what we call a stakeholder advisory committee to help us move forward in day-to-day issues that the board must deal with in order to develop policy or to change policy. We must do that policy work with the thoughts and good wishes of all our stakeholders and, at the end of the day, hope we can all achieve that.

I wanted to take the opportunity to once again congratulate all those stakeholders and people who worked extremely hard in helping us prepare this document for presentation to the Assembly.

Now, that leads me to the question that the member asked. But I think it was important for you to understand. Now I'll try to explain what are some of the amendments that are going to give significant savings to the workers' compensation system.

I just gather my thoughts because there are a number of them. I want to make sure that I don't forget any. Let's start with this. One of the things we have to make sure is that, at the end of the day, the workers are compensated adequately.

The minister mentioned the CPP as related to the benefits that a worker has. The minister also alluded to the fact that one of the chief mandates in this act review is to return to work.

Presently, under the existing legislation, if it's a longer term disability, over six months -- the worker not only gets compensation due from workers' compensation, but also gets the Canada pension. The Canada pension automatically kicks in after six months.

We have to remember that, if that worker has any dependants, obviously, the dependants of that family automatically get CPP benefits as well.

If you look at that over the period and at the calculations -- without going into actual numbers -- what it means is that, potentially, an injured worker could be receiving up to 140 or so percent of what their pre-injury salary was.

There is really no incentive there. There is none. What would you rather do? Get 140 percent of your salary or go back to work?

That's not to say, by any means, that any workers think that way. But it's very difficult to get that out of one's mind when you think about, at the end of the day, what the benefits are.

The new act is going to offset those CPP benefits. That is a little bit of a technical issue, so what I'm going to do is just end it there and ask Valerie to update you as to what that means in dollars.

Ms. Royle: The Canada Pension Plan disability benefit issue is a multi-million dollar issue for the board. \$111 million is our long-term benefit liability, and many of those workers are in receipt of Canada Pension Plan disability benefits, in addition to their workers' compensation benefits. As you know, workers and employers pay into Canada Pension Plan disability benefits on a cost-shared basis -- evenly 50 percent from workers and 50 percent from employers.

The proposed legislation, section 24 of the new act, looks at offsetting 50 percent of a worker's Canada Pension Plan disability benefits from their workers' compensation benefits. The people to whom this section would apply would be our longer term clients; therefore, that would impact that huge benefit liability amount that we have and would prevent it from getting hugely bigger as time goes on.

One of the other issues when we talk about Canada Pension Plan disability is, as Mr. Tuton noted, that Canada Pension Plan disability also comes with benefits for children of an injured worker, should there be dependants. This act provides no provision for touching any benefits for children of injured workers that they may receive under the Canada Pension Plan disability. Purely what we would look at would be -- if this new legislation is passed -- 50 percent of the worker's Canada Pension Plan disability benefits. That is an important distinction; we would not be looking at any children's benefits, but we would look at Canada Pension Plan disability.

Mr. Tuton: Another one is presently under the old act. There is no time limit for appeals, so those workers, for example, who were injured in the 1970s could still, today, in the 2000s appeal an injury that happened 30 some years ago. Obviously, when you think of it, this wasn't an easy one to be dealt by the stakeholders -- both workers and employers. Once you look at the potential monetary effects of section 52 -- and we were one of two or three across the country that didn't have a time limit for appeals -- it had the potential of adding extreme extra costs to the system.

The board went into this review with open eyes, knowing that it would be best for the system if we had a time limit. But we knew that it may be a difficult issue to have consensus between labour and the employer groups. It soon became apparent to us that both stakeholder groups felt it was an issue that had to be addressed and it was an issue that could save the system over time a good deal of money. That was reduced from infinity -- there was no time limit -- down to 24 months. That in itself will reduce the cost to the system, but more importantly, it's going to reduce the time that the appeal board deals with appeals from year to year.

One of the things that became apparent to us, as I'm sure it is to everyone in the Yukon, is that in these days when the economy of the Yukon is booming -- and it's certainly better than we had before -- it is becoming more and more difficult to attract skilled labour, or even labour in a lot of cases. You're aware of the fact that we do have companies and employers who have to bring in foreign workers. That creates a couple of issues. Obviously one is from the safety and health aspect. The other one is, if you look at the way our legislation is today, prior to any amendments, if a worker got injured today on the

job and that worker were a foreign worker, and the injury wasn't just a one- or two-day time-loss injury, but a longer term disability and the worker chose to rehabilitate back in their home country -- wherever that may be; whether it is the Philippines or Mexico, or wherever we get the foreign workers -- they would be over there at their maximum rate that they were paid here in Yukon, which is on a benefit basis.

In a lot of cases, that's a great deal of money in some of those Third World countries. We would have absolutely no control or way to manage with that worker how we, number one, put them on a rehabilitation program, or number two, get them back to work safely, effectively and quickly. Because of the distance, we simply couldn't be sending our team of workers across the water to make this happen.

So there are two things: section 14 deals with the duty to mitigate injuries, and section 40 deals with the duty to cooperate.

Before we get into that -- and it might be better that I turn the technical things over to Val as she has a much better background -- I just want to mention that one of the things the Yukon Workers' Compensation Health and Safety Board did a number of years ago was develop one of the best rehabilitative policies in the country. We're pretty proud of that. It's so good, in fact, that it has taken us about two years to get that policy implemented because it was a total shift from the way we used to do business.

Let's think about that just for a moment. Getting that injured worker back to work in a safe and healthy manner is not only important to the worker, but it's also important to the system, to the employer and to all those concerned. What we did is develop a team approach so it wasn't simply the worker and WCB; it was more. Back in those days, if the worker didn't agree to go back and try either another job that wasn't equal to his pre-injury job, but something that would enable him to get back into the workforce, we didn't have any teeth.

So what this does is put the duty on all parties so they all work together to find a way to get this worker back to work. It may start at an hour a day; it may start at an hour a week; but as long as we approach this with the intent of getting that worker back feeling like he's part of the system, part of being a provider to his family once again, in whatever small manner it takes, that's how we're going to do it.

That's the focus of this. There are a lot of technical parts to that and I think you should hear that, so I will let Valerie just bring that up.

Ms. Royle: With respect to cost savings, obviously our overriding intent is to help workers recover and return to work. That will involve cost savings because the faster a worker gets back to work, the faster they are off benefits, and less medical is required. The intent is not to save cost, but the result will be cost savings.

When we look at mitigation of injuries, the current legislation does not put the onus on the worker to get better or to assist on his or her recovery. It puts the onus on the board to prove that the worker was unreasonable in doing that.

The discussion with the stakeholders was that the worker has the most personal investment in his or her own recovery.

The duty to mitigate then requires that worker to cooperate in medical treatment and in rehabilitation. The new section on duty to cooperate requires the same thing in return to work. In getting workers back to the workplace faster -- we know they recover quicker; we know they recover better in the long term, and that will reduce cost significantly. Our biggest single cost driver is claims duration.

We have been able through numerous avenues to keep our medical costs fairly under control -- given the fact that we do have more medical than many other jurisdictions because of the number of workers who receive services in the south -- services that just aren't available here on a daily basis in Yukon. However, we can keep that under control.

The length of time a worker is off is what drives the cost of the system. The longer the worker is off, the less chance they'll ever go back to work. It's quite dramatic, at a 90-day point and at a six-month point, how very few workers go back to work ever after those points.

The new legislation is intended to help everybody meet those obligations to reduce claim duration, improve recovery, and that will in fact reduce costs significantly to the system. That's in the millions of dollars a year. Our claims costs on average a year have been \$22 million for the last couple of years, which is extremely high, and it is driven by claim duration.

Those two sections -- sections 14 and 40 -- are designed to focus on return to work and reduce recovery time and improve outcomes for workers.

Chair: I would like to encourage the witnesses to keep their answers to about 20 minutes between the two, and then we'll return to another member of the Committee for further questions.

Mr. Fairclough: I thank you, Mr. Chair, and the witnesses for that answer. I would like to encourage the minister, when he can, to answer the question, because ultimately, Mr. Chair, he is responsible for this act being presented in this House. Should he have problems with it, then we will go over to the witnesses for aid in their answers. I would expect that is how this would be laid out, and so I also encourage the witnesses to follow that.

Mr. Chair, I asked about the cost savings to the workers' compensation system; some of it was laid out. There was a lot of information provided by the witnesses and some of it I am following through with. I do have a question in regard to the CPP and I would like to get back to that. I would like to know whether or not there are any other amendments in this proposed act that look at reducing the WCB costs, other than what has been said here -- whether it is little or not.

The other question -- while the minister is on his feet maybe he could answer this one too -- will there be any additional costs put on the employer as a result of passing this legislation?

Hon. Mr. Cathers: In answer to the Member for Mayo-Tatchun, I just don't think he fully thought it out before he proposed that he'd like to see me on my feet responding to his questions and then see the witnesses respond. I think that it would certainly facilitate the expeditious answering of the

member's questions if we didn't have me stand up and answer them and then have our expert witnesses provide even more detail and reiterate some of the same points. Could we simply allow the technical experts to provide that information, because they have that great level of daily familiarity with this area and can certainly provide the member with the fullest answer to many of his questions?

I think the member was not quite thinking that through. I will, therefore, turn this over to the witnesses for detailed answers to the members' questions, when it is appropriate to do so and, with that, I would invite them to provide further comment.

Mr. Tuton: One of the other areas of cost saving is in -- I believe it was the minister in his preamble who spoke briefly about -- subrogated claims. As you know, the workers' compensation system is a no-fault system and the merited principles would indicate that a worker would be fully compensated as long as the injury occurred in and out of the workplace and that the employer would be protected from lawsuit under the same principle.

What this refers to when we talk about the subrogation of these claims is third party. It may be determined and I think I used an example to the member yesterday. What that means is that if it can be determined that the workplace injury was caused by neglect from a third party -- and I use the example of perhaps a helicopter incident -- that we would have an ability to go and put a lawsuit on the third party, to try to mitigate our liability. Presently, the worker gets 25 percent after subrogation and the legal costs are paid. Sorry. That would be under the current legislation. The cost of that -- medical costs, the rehab costs and all of those costs related would still be borne by the system.

Because of the size of the jurisdiction, that additional cost and, in the case of a long-term disability -- for example, if that injury meant the worker was crippled for life -- those costs would be significant and in the millions of dollars. It wouldn't be fair to expect that employer or industry to cover those costs.

As we get a ruling that says that third party was responsible, or partly responsible, and a negotiated settlement occurred, then it would only seem natural that part of that settlement would go to recover the costs incurred to provide that medical and rehabilitative process.

The exact figures escape me, but I know they don't escape Val.

Ms. Royle: Under the current legislation, the worker would get 25 percent of a subrogated settlement after legal costs are covered, but not after compensation and medical costs are considered. Therefore, the board, the employers, absorb that remainder. The worker continues to get their workers' compensation benefits and 25 percent of the settlement.

Under the new proposed legislation, the worker would get 100 percent of the settlement after all legal, compensation and medical costs are covered. In this way, in some of these cases, they are multi-million-dollar subrogated actions. They don't happen every year but, when they do happen, they are significant. The new change ensures all the system costs are covered and then the worker gets whatever is left, in addition to his or her workers' compensation benefits.

Mr. Fairclough: Again, that was a lot of information put forward. I asked about the additional amendments and what, as a result of these amendments to the act, this new act, the cost would be for the employer. Some of that the witnesses have mentioned.

These amendments are pretty detailed, broad and sweeping. They will change the way in which WCB operates and how decisions are made with respect to claims and length of time for appeals to be filed. Most importantly, it will change the way that an injured worker is treated. It's not to suggest that these claims will have a negative effect on the WCB organization at all, or workers or employers as long as the changes maintain the balance between responsibility and authority. I think that has been brought up to us many times.

If these amendments are adopted, the board will be given the ability to terminate, to reduce or suspend benefits in the event that the worker is uncooperative or has not acted responsibly in his or her recovery. I have a few questions in regard to this. I would like to know who decided what is not responsible or uncooperative. Who decides that? How will the board and the WCB organization protect against abuse of this new authority? Maybe I'll just leave it at that before I ask the next question.

Mr. Tuton: This brings us back to what our mandate, which is to ensure that injured workers -- if they're injured in and out of the course of the workplace -- are provided the medical treatment and the rehabilitative treatment that's required. You bring up a good point in termination and suspension. I want to make it very clear that our intention here is not to try to get a worker back to work early, at any cost. That is certainly not where we want to be headed or even be seen to be headed.

We, as I mentioned, have developed this rehabilitation policy -- which I emphasize was developed using our policy working group and is comprised of members of our stakeholder groups that actually develop the policy through consultation. That development of policy through that policy working group comes back to the board, and the board then determines whether that is the best policy to address that issue. The board of directors is responsible, in the end, for developing policy. It isn't legislated that the policy working group play a role in developing that policy.

It is important to remember that we develop all the policies with our stakeholders. That policy that I refer to -- the rehabilitation policy -- is the one that forms the team that tries to figure out the best approach to get the worker back, obviously, to his pre-injury job. In many cases, and in many injuries, that is not immediately achievable without some more work. What we need to do is get the worker, as I said before, back to work in a meaningful way in any position that they are capable of doing.

Obviously, termination and suspension is a part of the act, but that is something that would only come into effect if all other avenues failed. Remember that the mandate of our system is to ensure that the injured worker receives the best possible treatment and benefits that the system can provide. We try to encourage the return to work, but in some cases the extent of the injury that the worker received does not allow that; how-

ever, there are ways we can work with that injured worker in retraining attempts and methods to try to retrain that worker for work other than the pre-injury job.

We believe that taking a progressive approach to try to make the worker feel that, by assisting him or her to get back into the workplace in any capacity, but only in a capacity within the worker's ability, we achieve that. We absolutely will not push a worker into a position for which they're not capable. In fact, we have just changed our forms, which are filled out by the medical practitioners. They are now called functional ability forms.

We no longer ask the question: how long will the worker be off work? But we ask other questions: can the worker lift more than 10 pounds? Is the worker capable of walking for more than 20 minutes? Is the worker capable of standing? Those are the kinds of questions that are progressive questions and lead to the final result, which is to return to work and not to stay on the system.

Yes, we do have the ability under the proposed legislation to terminate or suspend, but it would only happen if all those steps were not able to be met. Our number one objective is to provide that worker with adequate professional help to return to work.

I hope that answers your question.

Mr. Fairclough: Thanks for that explanation. This is an area that has been raised with us. I hope that is the case. That is the responsibility, after all, and it's more the authority side we're questioning here, that it doesn't simply take over.

We asked who decides who is not reasonable or cooperative, and how the board and the WCB organization will prevent the abuse of this new authority. Some things the witnesses have laid out, but I believe there's more.

Obviously, policy development is going to be a big issue here. I would like to know whether this has been worked on already. How long before the WCB organization expects to have these policies developed? When will they come into effect?

Mr. Tuton: You ask some very good questions.

The board of directors at Yukon Workers' Compensation Health and Safety Board are the ones responsible for developing policy.

As I said, a number of years ago, we recognized how important policies were to the system. I just would like to say again that it was then that we realized that we must provide an opportunity for stakeholders to become involved in that process, to make sure that whatever policies we developed as a board were policies that could reach the outcomes that we as a board of directors saw necessary.

As I said, yes, the board enacts the policy, but rely very heavily on our policy working group, which is made up of stakeholders. It's their recommendations. In fact, I cannot remember -- since coming back to the board -- one single instance when the board did not act on the majority of the recommendations from that policy group to develop policies -- not one.

They have -- through the involvement that they have with us, through the stakeholder group and the policy working group

-- come to have a clear understanding of the importance of policy and how it affects, and may affect, the outcome of that injured worker's process.

The policy will be ready for July 1. We recognized a long time ago that if these amendments to the legislation were to be passed, and if they had an effective date, we had to be prepared to do that.

Currently we are working with that policy working group that I mentioned, to make sure that we are prepared with the policies. As a matter of fact, we have one meeting slated next week.

Again I would just like to say that the commitment that our stakeholders provide us in working on these various committees to help us is very important. At the end of the day, the decision-makers take those recommendations and make those decisions. Only the president and the CEO in very extreme or exceptional cases would be able to go outside of that policy. It would have to be a very exceptional circumstance, and practice would have it that they probably wouldn't make that decision without speaking to the board of directors. I hope that answers your question.

Mr. Fairclough: I thank the witness for that answer, Mr. Chair. In the preamble of the act, the act states that these amendments will improve relations with the board and the stakeholders. Are there specific clauses within this act that address these statements?

Mr. Tuton: So the question was are there particular sections of the act that will talk about relations with the board? I'm just a little confused here.

Mr. Fairclough: In the preamble of the act, it states that the amendments will improve relations with the board and the stakeholders. I'm just asking as to whether in the act there are sections or provisions in there that specifically address these statements.

Mr. Tuton: Prior to the act amendments, the board had a policy that simply dealt with -- prior to making announcements or setting policy, we simply brought in the media and made the media aware of those issues or changes that we were about to make.

Following this it would now ensure stakeholders would be first, so the stakeholders would be involved in understanding where we're headed. We also, on an annual basis, work with stakeholders to provide them a recap of our year during our annual information meeting. That happens once a year. We changed the limitations on when that annual stakeholder meeting was to be and you can search out the process in section 104. I'm just thinking that we did change the process in setting up that annual information meeting. Just bear with me as we search for that. It isn't even policy, but the board really came to understand and respect stakeholders over the last few years and I can't say that enough. We have what we refer to as a stakeholder advisory group. We bring them together on an as-needed basis, but it's at least once a quarter. We provide them with a plan of what our issues are for the year and how they can be involved.

Ms. Royle: There are two significant section changes that establish what Mr. Tuton was talking about with respect to

stakeholder involvement and enshrining that in the legislation. The first one is new section 100(1)(i). Previously board policies didn't require any stakeholder consultation, although it was the practice of the board of directors to consult with stakeholders. The only consultation required under the previous act was that the policy be put into a public newspaper for a period of a couple of weeks. The new section 100(1)(i) says that, "before the adoption of any policy affecting claims for compensation or assessment matters," and assessment matters is a new provision. Before, the board did not have to consult at all with the public or stakeholders on assessment matters, although they did.

The board must "...consult with employers, employer organizations, workers and worker organizations;..." That relationship, which has been the practice of the board, is now enshrined in legislation.

The second section to bring your attention to would be section 104. This looks at the annual information meeting of the board, which is the public accountability to stakeholders of the financial situation of policies of the board. Previously, that was set. The board would set that every year.

Now section 104 enshrines in legislation the role of stakeholders and that process. It says, "Once the annual report is filed under subsection 103(2), the board of directors shall establish a date, convenient to worker and employer organizations, for an annual meeting." So it ensures there is a process in place, that those groups are involved, that the time is convenient for them, and that we have the maximum attendance at those really critical meetings. Those are examples of how that level of relationship, what had been, and is, the policy of the board of directors is truly now enshrined in legislation. It protects that for stakeholders; should the board change, that's now enshrined in legislation.

Mr. Fairclough: Those few sections are noted, and I thank the members for the answers to those questions.

Another concern expressed by stakeholders is a need for a more balanced approach to stakeholders' advocacy and decision-making for both claims and appeals. Specifically, the inclusion of an employer advocate was requested. It was expected that an employer advocate would be established with equal powers of representation, as found with the workers' advocate. How has this issue been addressed in these amendments and, if not, why not?

Hon. Mr. Cathers: Before turning it over to the witnesses for more detailed comments on this, I would point out that the Member for Mayo-Tatchun is suggesting that this was a widely-supported proposal. The member is failing to note that, although this was supported by some, there were others who opposed this type of inclusion. Previously, this type of model was not very effective. It was in place at one point in time on a limited-term project basis and it was not felt to be necessary.

With that, I will turn it over to the witnesses for further comments.

Mr. Fairclough: I thank the minister for that clarification.

In bringing issues to the floor, it may not be 100-percent supported by the public, but if it is brought forward, at least it should be addressed. I would like to hear the witnesses' view on how this issue has been addressed in these amendments.

Mr. Tuton: That is a good question. In order to properly answer that, I have to go back a bit. Back in the early 2000s, the board, on a trial basis, in partnership with the Yukon Chamber of Commerce, provided an employer consultant, whose mandate was very broad. The role was not really defined.

I would like to point out that the workers' advocate is there primary and specifically to deal with the worker's appeal to a decision made by either the Workers' Compensation Health and Safety Board or a decision that was made by the appeal tribunal. It's a very direct mandate.

The cost to the system of that pilot project was in the neighbourhood of \$400,000. When the trial period had elapsed, the board of the day commissioned a study to determine the effect of that position and whether it provided value for the dollar. The results of that, quite frankly, were varied.

The question rather surprises me because, to my knowledge, this has not become an issue in the last few years; at least it hasn't been presented to the board. I don't believe that the issue was presented to the review panel by stakeholders, although I could be wrong. It may have been put on the list of issues by the review panel. I just don't have that information.

However, going back to the day when the decision that the board made was to not continue with this pilot project, for some very good reasons, it was indicated to the employers and the employer groups that we at the board, through our administrative process, would certainly have an ability to provide assistance to them as employers if they wished to help them move through the system. I should say that the numbers of appeals to the system by employers is very minimal.

It was felt that through the process that we have since set up with the Northern Safety Network Yukon -- which is a project in which we initially partnered with the Yukon Contractors Association that we're extremely proud of -- and the prevention and safety fund -- that we contributed up to \$5 million to -- would help to alleviate these issues; and, in fact, it has. The Northern Safety Network Yukon -- which started out as the Yukon Contractors Association on a three-year trial period -- was soon elevated by the board, because of its success and because of the respect that it gained from the employer community, to have it include all employers and, in fact, workers. Today, the Northern Safety Network Yukon has a board of directors that consists of not only members from our employer groups and individual employers but also from the Federation of Labour, which is something that we and the Northern Safety Network and the Yukon contractors are extremely proud of. That particular expertise that Northern Safety Network Yukon offers Yukon employers is certainly a huge step in helping employers understand the system. As I said, we do have the ability at the administrative level, at the board, to provide assistance to employers who request it.

We have been having industry meetings since last fall. One of the things that has come out is having to deal with the issue

that you bring up. The employer can go on-line and fill in a form; there is no place that the employer can actually tick, looking for help or advice in going through the issues that they wish to. So that is one of the things that our administration, after hearing that from an employer group, were going to rectify and have that on-line so that employers can tick that. It'll be flagged by us and somebody will contact that employer and be able to provide the assistance, whether that be an assessment appeal, whether that be a claims appeal, or any other questions that an employer may have to help them through the system. So I hope that answers your question.

Mr. Fairclough: It's interesting. The question was asked because it was raised by a stakeholder. I don't think, from the answers I heard, a whole lot of emphasis has been put on this issue to include it in this new act. The witness has talked about the trial involving the employers' advocate and the amount of money that it costs. It's interesting with the Northern Safety Network Yukon. I'll just leave that for now and move on.

With respect to a balanced approach to decision-making and responsibility for WCB cost, the section on super-assessments is a good example of how enabling legislation may not achieve a balanced approach to cost-sharing. On the basis of performance and ratings with regard to experience and merit, the board can charge extra assessment fees to poor performers, but there are no provisions to charge less for good performers.

Is this simply an oversight or will this deficiency be addressed sometime down the road or before we pass it through this House?

Mr. Tuton: In fact, we always did have the ability to super-assess, so that's nothing new. I say clearly that the process the board has taken is not one of enforcement by any means. If I can just refer back to your previous comment and statement about the employers' consultant or advocate, the process we have used with employers is to help educate them to provide a safer and healthier workplace for workers. That's the progressive way to approach this.

Yes, we do have the ability today to enforce. We do have the ability under the *Occupational Health and Safety Act*, because that's another act we must follow. We do have the ability to enforce under that act, but do we? Very rarely, because it isn't the progressive approach and it isn't the approach that we as a board have chosen to be the correct approach.

Our approach is quite simply to educate employers and workers through our partners in the safety and prevention program. You may have heard just recently that one of our partners, the Federation of Labour, is hosting a conference at the end of this month for young workers. Boy, I can't tell you how much we applaud their efforts to do that. We've taken that approach with both employers and workers to try to change the way we think about these issues.

We must have the ability to deal with our liability collectively. We don't have an opportunity to break that up -- in response to your question of why don't we have a program to honour those who achieve good experience. Let me just talk about that for a moment. We do not have an experience rating system in the Yukon, quite frankly, because we are a small

jurisdiction. Other jurisdictions -- in fact, most have experience rating systems simply because of the size of their jurisdiction. What that means is that each individual employer, rather than an industry, will pay an assessment premium based on the experience that they have over a period of time -- whether that be five years or 10 years.

I can use that example here in Yukon. If we were to go to the system of experience rating, and I use an example -- and I only use this strictly as an example -- but let's use a small office that does secretarial support services. During the course of this person's employment, an employee needed to go down the stairs to put a box of files away in storage. In the process of doing that, the employee slipped on the stairs and broke her back. That is not a short-term disability; that's a long-term disability with tremendous cost attached to it. That employer probably was on an experience rating system and had paid -- because the last five years they didn't have any injuries -- \$1 per \$100. After that injury occurred, and those costs were attached to that employer, they would probably have to go out of business immediately because that cost would be in the millions of dollars -- not in the thousands but in the millions -- and that employer could not deal with that.

So the "we" in our system has to deal with collective liability. There's no other way around it. We must deal collectively. In other words, we must assist those who wouldn't be able to assist when they need it, and accidents are going to occur. We must provide an ability -- an affordable ability -- for those injured workers to be treated and accommodated the best way we can.

When we look at the other side of the coin, about super-assessing, obviously our intent and the direction the board provides is that we must work with every individual employer to ensure that we do and provide what we're capable of to help that employer provide a better and safer workplace for his workers. That's our number one: we wish to educate. We have a system set up in our occupational health and safety department that provides exactly that.

If you do not have the ability in your small business to develop a safety program or to provide training, or to develop those kinds of things, that's where we would come in. So we're going to be progressive again and proactive, and we want to do what we can to assist that employer to get away from being that -- for lack of a better word -- company that has a lot of incidents over a shorter or longer period of time.

Only -- and I repeat, only -- after numerous attempts at working with this individual would we ever see ourselves super-assess that individual. I can give you an example: let's look at Alberta. Everybody likes to look at Alberta because they're busy; they have a lot of people; they have a lot of workers.

Alberta has the ability to super-assess up to 200 percent. Let's think about that for a minute. If your rate is \$14 per \$100, a 200-percent super-assessment will be a significant extra charge to you. We also look at that when you look at comparing base assessment rates from province to province or jurisdiction to jurisdiction. You must remember that in a jurisdiction that has an experience rating system, as most do -- I think

there's only one that doesn't, and that's us -- they have a base rate and that's what you compare to.

What people forget is that, if your experience is not that good, you are not on the base rate -- you are up to 200 percent of that base rate. I hope that answers your question.

Mr. Fairclough: It does answer the question, but it does not appear that there is a provision in there to charge less for good performance. There's nothing in there specifically that addressed that.

I would like to ask one more question and then I am going to turn it over to the third party to ask some questions, and possibly come back and ask more.

In Nova Scotia, the government had specifically excluded chronic pain from coverage in the Martin case and the Supreme Court of Canada ruled that this was a violation of the *Charter*.

This act appears to be doing the same thing with stress.

Did WCB get a legal opinion to determine whether or not this is constitutionally accepted?

Mr. Tuton: I am not going to answer that question from the member. I am going to turn that over to Ms. Royle.

I just want to get back -- I did mentally have a block on your question about what we have available to either super-assess or to award those people who have good experience, and we do.

The legislation now provides for a program that we introduced in January called CHOICES. It is a reward program for those who get a safety program and a few other things. It can provide them either in a monetary way or in any other way. In other words, we can help pay for materials that allow that company to better achieve safety results.

Now I'll turn it over to Ms. Royle to answer the question.

Ms. Royle: We looked at the Martin and Lasseur cases in Nova Scotia with respect to chronic pain. Nova Scotia's *Workers' Compensation Act* at that time treated chronic pain very differently. It was found by the Supreme Court that they treated chronic pain differently from other injuries and basically limited a period of compensation for a worker who was diagnosed with chronic pain. Our act has no such provisions.

With respect to post-traumatic stress, the previous act covers post-traumatic stress and the current act covers post-traumatic stress. What the act says is that mental stress is not a diagnosis, medically. There is no diagnosis for stress under the *Diagnostic and Statistical Manual of Mental Disorders* -- DSM- IV-TR which is the current one used. What the board does have is a policy called adjudicating psychological disorders, which provides for coverage of psychological disorders that are diagnosed by a qualified person and are listed under that DSM IV and have a category and are obviously related to work and arose from the course of employment.

So we did do that review in developing that policy to ensure, because we certainly were aware of the Martin and Lasseur case and the potential *Charter* issues around that. Our policy is solid and we have no discrimination, but this piece of legislation does define that we cover post-traumatic stress and we do cover other psychological conditions. However, mental stress, not being a recognized diagnosis, is not covered.

Mr. Fairclough: What the witnesses are saying is that there was no legal opinion sought to determine whether or not it was constitutionally acceptable to have stress excluded.

Ms. Royle: I'm sorry, I thought I did answer that question: in developing the board policy, we did seek a legal opinion and had a legal opinion on this issue to ensure that we weren't entering into territory that would get the board financially into difficulty, or not cover workers who are entitled to be covered. So, we did that review. Workers' compensation doesn't cover things that aren't a medical diagnosis in general, so we didn't specifically ask that question, but we did review our policy and this wording with respect to whether it would be defensible in a *Charter* challenge, should that happen.

Hon. Mr. Cathers: Another thing that I would point out for the benefit of the of the Member for Mayo-Tatchun is that he should understand that this act was drafted by lawyers, and that includes a clear understanding of the legislation in other jurisdictions. Those who drafted it have that understanding of legislation in other areas and an understanding of case law around these matters.

Some Hon. Member: (Inaudible)

Hon. Mr. Cathers: Well, the member is saying off microphone that it doesn't mean that they get it every...

Some Hon. Member: (Inaudible)

Chair: I'd like to remind members that if they have comments to direct them through the Chair, please. Mr. Cathers, you have the floor.

Hon. Mr. Cathers: I believe that the member was indicating that he had some concern about whether the lawyers get it right. We have to work with legal experts in this and we do critique that. I welcome the member's comments in this area, but I think that as Ms. Royle pointed out, this matter has been reviewed and, based on legal advice, it is believed to be a good policy and fully within the realm of legal obligations.

Mr. Hardy: Just to explain, the reason you won't see me standing up is that I do have an illness. It is not a workplace illness. Well, maybe it is. Maybe we need to get this building tested again. It has been tested many times, I can tell you.

Thank you very much for appearing and thank you for the good work that I think has been done over the years by the board and chairs we've had in the past and the chair who is here now. Welcome to the new president. I don't think we have actually met. Welcome.

I have actually been involved on many levels with workers' compensation, both as an employer and as a labour representative -- so I have been on both sides. I have had employees as well as being a union representative and lobbying on behalf of injured workers many years ago.

However, the NDP is very pleased to see a new act come forward. It has been a long time in coming. We have called upon the Yukon government to modernize this act.

I think the Meredith Principles were brought about in 1910, and they still apply today. From looking at the act, I am very proud of the Yukon Workers' Compensation Health and Safety Board and the employees there because they really attempt to follow the Meredith Principles that are 98 years old, I guess. Of course, the principles are no-fault compensation, col-

lective liability, security of payment, exclusive jurisdiction and independent board. This board has really kept those in mind when making any changes and when developing the act as it has progressed over the many years.

There are five things that immediately jump out in the act and we are very pleased about them. I should qualify my comments. Our critic, Mr. Cardiff, is not able to join us today due to family issues; hopefully he will be here Monday. I believe that we will be discussing this for quite awhile, because it is quite significant to both the employees and the employers. It does deserve a proper airing and discussion in the Legislative Assembly. I am going to do my best to ask some questions and try to fill his shoes, although I don't have the knowledge that he has in this area.

In the preamble, it says: "And whereas the government has confidence in continuing to delegate to the Workers' Compensation Health and Safety Board the trusteeship of the compensation fund to manage it in the best interests of its main stakeholders, namely workers and employers".

We are very much in favour of keeping high-paying jobs in the Yukon. We believe very strongly, and that was expressed in the last few days, in our belief that we should not contract out compensation to another jurisdiction, like Alberta or B.C. It's not in the best interests of Yukon workers and employers, contrary to some opinions in the public at the present time. We stand by that. This is our act; this is our board; this belongs to the Yukon people, and we should maintain control of that. We have fought very hard to put that in place, and it has been a long process.

We also believe that assessment rates, which are a big discussion right now, will go down as injuries decline. They can decline by participation in prevention programs, et cetera. It was really good to hear the chair speak in regard to a progressive approach in trying to deal with the rate of injury, and not necessarily a completely punitive approach.

There is no question that at times a punitive approach does have a place, especially if it can prevent serious accident or even death. The approach the board has obviously adopted, from my perspective, has a longer range chance of success than the other. We need to look at preventive programs and assess their success and their buy-in by employers and employees.

I hope that the WCB can elaborate when they respond to my opening comments on what programs are available right now. Are there costs attached to them? What programs are they looking at? How are they tied in with the labour organizations, such as the Yukon Federation of Labour, which has been mentioned a few times today, as well as the Contractors Association and employers associations?

As a matter of fact, I also want to touch on one other thing: to thank the stakeholder groups, as the witnesses themselves have mentioned many times, for coming together and working on this very serious issue in the workplace. It is wonderful to see people put down their swords and pick up the plowshares and work together to solve the problem.

Often we portray employers and employee organizations as being on opposite ends of an issue. In many cases, when you get them together in the same room, put the problem up on the

wall, put them all on the same side of the table, not across from each other, and look at the problem -- which I think is what this board is trying to do -- I find that there are a lot of common values, a lot of intent to resolve the issue together and not the crossing of swords all the time.

That kind of work is only beneficial for those we are trying to protect and those are of course, the workers, ultimately -- to try to prevent the injuries and deaths that happen on jobs.

There has to be, of course, some give and take on both sides, and we need to recognize that and applaud it at times and even be concerned about it.

I'm going to stop my opening comments and just let you respond to them, and then we can get into some more details.

Hon. Mr. Cathers: Just to begin, before turning it over to the witnesses for more detailed comments, I'd just like to thank the Leader of the Third Party for his comments. The leader, in particular, made reference to the proposal raised by one stakeholder organization of contracting out workers' compensation to another jurisdiction. I believe that the member is aware, but I'd like to clarify for the record, that this was not part of the scope of the review or one of the 88 issues identified in the initial public consultation.

I don't want to diminish the concerns of those who brought that forward. I don't want to diminish their concerns, which I believe are primarily regarding the assessment rates. I want to reaffirm that the issue of assessment rates is one where we share the desire to see those assessment rates go down and a key part of that, as has been mentioned to an extent in debate earlier today, is the need to reduce the cost of claims to the system. A key part of doing so is encouraging early return to work by workers and assisting them with rehabilitation at the earliest possible date.

Again, as has been discussed to an extent already, the issue is largely structural in nature, from our perspective. Of course, as members will be aware, a number of stakeholders had a similar conclusion and felt that focusing on the changes within the existing act was the way to move forward. Therefore, I'm pleased to table what we have here today, and the changes in that area reflect best practices in the country to achieve what we can all agree is a shared outcome: decreasing the cost of claims and decreasing the assessment rates that employers pay over time.

Mr. Tuton: It was interesting to hear the member mention the Meredith Principles and talk about them. I would just like to advise the member that I had the privilege, not too long ago, of reviewing Meredith's documents in ink-and-paper form in Ontario. It was just a matter of months ago. They are well-bound in leather. For those who are as passionate about the workers' compensation system as I am, they would be truly impressed to see Meredith's works. Interestingly enough, not only were the actual principles in ink and paper and leather-bound, but all his notes leading up to drafting the Meredith Principles were kept intact as well. It was a very interesting experience for me.

Now, we do have programs that are available. We have developed them obviously at some cost, but we, as a board, looked at these opportunities not from a cost perspective but in

terms of a return on the investment. As we indicated -- and this goes back many years, when we sat with our stakeholder group of the day and went back to the simple principles -- we can address the issue of rising claims and assessment costs very simply by saying that it is a cost of doing business, and we are going to have to reach out to the only two places we can. We either have to make better investments -- or more returns on our investments -- or we have to get the employers to pay more. Or, collectively, we can look at what is driving those costs.

Obviously, the rising assessment costs were driven simply by the reduction of the subsidy of some \$35 million. The board, over a period of time, subsidized up to 75 percent or 80 percent of all employers' assessment rates.

And just like anybody's own savings account, if you continue to spend out of that account, it will deplete -- and that happened. That provided an opportunity, not only for the employers and the workers of the day, but also to the system to reflect on how we got there and how we can best -- together -- provide a direction to get us out of there.

I can tell you, being privileged enough to serve -- this is going into my ninth year as the chair -- some days were a little rockier than others; however, I still feel very privileged, but I can say that in the early days, our discussions were more about battles and they have turned into objective debate. That objective debate has led into reaching consensus.

I don't think I can remember over the last few years -- sitting with our stakeholder group -- when we weren't able to reach consensus. I also don't remember the board having to make a great number of changes to any of those ideas or issues that were given to us by our stakeholders.

In reaching that consensus, we also had to address the issue. We developed what we called back in those days a prevention health and safety committee, which was brought together. I think we had some 20 members. Our mandate was, "Okay, let's collectively see how we can reduce assessment rates, the numbers of injuries and the cost of claims." In those early days, everybody just looked at each other and said, "We're never going to be able to figure this one out. We just want to continue battling." In the first conversations, labour had a decided view over here; employers had a decided view over there; and there was no in-between.

So, when you sit there as the chair, and you're trying to facilitate through this, you sort of ask, how are we going to get there? But you know what? We did, because like minds think alike. In this system, after many years of being combative, it has totally changed. So we were able to come up with a strategy that saw the Northern Safety Network Yukon program introduced, and that program provides training for the certificate of recognition -- COR -- safety program -- and now there is SECOR, which is a small program, and many other areas that they're moving into.

As well, we put \$5 million into a prevention health and safety fund. Let's talk about that for a minute. We have a number of partners that have accessed those funds, and the whole idea of utilizing those dollars is to improve injury prevention, health and safety on the work site.

We have a number of people involved. The Whitehorse General Hospital is involved through what we call the PARTY program -- the prevent alcohol and risk-related trauma in youth program. We have the Yukon Federation of Labour doing an excellent job on the return-to-work policy. They, along with the Yukon Chamber of Commerce, hosted a conference here in Yukon, which attracted a huge number of delegates. I spoke at the first evening and I was very impressed, not only by the number of delegates but about the cross-section of Yukoners who were there. They are also providing, as I mentioned earlier, a youth symposium on safety at the end of this month, and that is partnered with us through the prevention and safety fund.

We also have the Human Rights Commission, and they are partnered with us providing workshops and preventing harassment and violence in the workplace -- these are issues that I know this Legislative Assembly has dealt with and continues to deal with. Northern Safety Network Yukon is in partnership with the Whitehorse Chamber of Commerce on small and mid-sized programs to deal with our occupational health and safety system. The government's Property Management Agency provides occupational health and safety and a return-to-work program for their custodial workers.

The continuing care branch of the Yukon Health and Social Services department provides training in occupational health and safety and return-to-work programs for their health care workers. These are just some examples and we're working with others. An example of that is Skills Canada, which is entering into their competition either today or tomorrow. They also have safety management consultants available. We responded to the issue about what employers have available to them in the form of consultants: we have consultants, through our partnership and internally, who would help safety management keep up with developing and improving programs in occupational health and safety.

We also have an ability to work with the safety committees with all employers. As I mentioned before, our approach is to be progressive and proactive. We have reassigned our staff. We have not increased our staff, we have reassigned them to help with our return-to-work programs.

As a matter of fact, when we talk about disability management, it's something that has to be an important part of the return to work. We are very proud of the fact that, percentage-wise, the Yukon Workers' Compensation Health and Safety Board has the highest percentage of international certified professionals in disability management. That is a big plus.

It is a difficult system. However, at the end of the day, we must realize that we are here for one reason: to make sure that if a worker becomes injured, in and out of the course of his employment in the workplace, we provide an ability to provide the services to that worker.

Mr. Hardy: Thank you. I think that most people know the NDP's voice with regard to workers and injury is and has always been a very strong one, and it will continue to be that way. We are very encouraged to see labour, workers, and employers working together, because this probably won't be solved by one or the other side; it just won't happen.

There is also a changing climate as well. I can remember working as a young man. I remember very clearly being 15 years old, on top of a mountain -- this was my safety training, by the way -- being on the top of a mountain, standing beside a buggy. For people who don't understand that old term, it is a belly-dump machine. It scoops up from its belly -- it's a huge machine. I remember very quickly being given a rundown on how it operates, the guy getting in with me -- the foreman -- letting loose the brakes, sliding down the mountain, scooping up ore, getting to the bottom, driving over and dumping it -- driving up one trip, and then he said, "You're on your own now." This was Clinton Creek.

And that's the way we did it.

That was my safety training, as well as how to operate a machine. At 15 years of age, I had no idea how big it was or how much it weighed. It was thrilling, but it was also extremely dangerous.

Times have changed; I hope this is not the way people are trained any more or introduced to conditions like that.

You did mention finance. I'll start with that. I do have a multitude of questions all over. I have just been paging through the new *Workers' Compensation Act* and some of my questions will be all over the place. I hope you have patience with that.

Finance, on page 67, I was reading the section here: "(a) the investment of money by the board, in accordance with the board of directors policy, is subject to the *Financial Administration Act*, except section 39 of that Act;"

Could you explain that to me? I don't have the *Financial Administration Act* in front of me.

Mr. Tuton: I don't have it either, but perhaps I could give you an overview of how we deal with our investments. With indulgence, I'm not sure; do we need that?

Some Hon. Member: (Inaudible)

Mr. Tuton: Is that what you're talking about?

Chair: Mr. Hardy, could you repeat that on microphone, please?

Mr. Hardy: The financial policy that the board uses in their investments, as well as what is that exemption of section 39, if you have that in front of you. If not, if you could make information available later on, that's fine too.

Ms. Royle: Conveniently, I now do have it in front of me. Thank you. Section 39 of the *Financial Administration Act* looks at the power to invest, and it lists off where Government of Yukon can invest.

The difference with respect to the board's investment fund is that the board of directors' investment policy determines where the board invests its funds. It does not have to follow this particular section 39, which talks about commercial paper issued by Canada, fixed deposits, securities, et cetera.

The board's investment policy -- which also gets approved by Cabinet -- looks at investments in bonds and equities equally, 50 percent each. It looks at the ratings of those bonds, because our investment strategy is very much long term. Our investments are to protect the benefits that we owe to injured workers from now until they no longer need the system.

So our investments are long-term and they are invested differently than what is here, although they are approved by Cabinet.

Mr. Tuton: I should say that we review our investment policy annually. The process that we use is that we have two money managers. That was a decision the board made. Each of them is not limited, such as one to equities and one to bonds, but has both. We have an ability, if we and the managers so choose, to participate in triple-B bonds. We do have a policy that requires the money managers to inform us if a rating changes from one particular rating to another -- either up or down. There are requirements under our policy that dictate what has to happen next.

As well, we have another firm that oversees the two money managers to ensure that our investments are being handled in an appropriate manner and in the best manner for us to achieve the best results. I say that rather tongue-in-cheek because, last year, anyone who has any investments would know that the return on those investments is less than desirable. We all hope that the same results will improve in the next few months. So, no, there is no change in this section of the legislation to effect either section 39 or any other section.

Chair: Order please. Before continuing, the Committee of the Whole will recess for 15 minutes.

Recess

Chair: Order please. Committee of the Whole will now to come to order. Committee of the Whole is considering Bill No. 52, *Workers' Compensation Act*. We will now continue with general debate.

Mr. Hardy: I have a follow-up question in regard to finance, since finances have been a big part of the legislative debate over the last while. Do we or do we not have any investments in ABCP? What is the policy around that?

Mr. Tuton: The short and simple answer is "no" and "no." No, we don't have any asset-backed commercial paper and it has never been an issue at the board. Some boards across the country have investment policies that allow them to invest in real estate, for example. Ours are strictly long-term investments; we don't have any short-term investments. That isn't to say that we may not consider real estate as an opportunity, but we do not have any short-term investments and we do not have any policy that either restricts us or allows us to deal in short-term investments.

Mr. Hardy: I am going to move off that. I noticed traditional healing on page 28. Could I have a definition of what is meant by traditional healing? Does that mean just First Nation traditional healing or does it mean other alternative healing practices, as used in other countries?

Mr. Tuton: The quick response is that, during my first term as chair of the Workers' Compensation Health and Safety Board in the early or mid-1990s, we had the opportunity of working with the then newly developed First Nations health program at Whitehorse General Hospital. From time to time, there became a necessity to look at alternative treatment. That was one of the methods of alternative treatment.

Our administration worked very closely with the First Nations health program at Whitehorse General Hospital to develop that policy.

Ms. Royle: That section actually hasn't changed from the previous legislation, so our current practice has been looking at traditional First Nation or Inuit nutrition and healing. We haven't had any request, to my knowledge, to look at things from another culture or another country outside of those. However, we may permit that, depending on the situation, so each one of those we would have to look at on a case-by-case basis. Our policy does cover First Nation and Inuit traditional nutrition and healing and anything else we certainly could consider, if requested. But there is no change in this legislation to that, so it would be current practice.

Mr. Hardy: I will be questioning the whole act, not just the amendments, as we don't often get a chance to have you witnesses before us, so it's a wonderful opportunity. In regard to that, the latest statistics in Canada indicate a substantial number of people with ethnic backgrounds. It's definitely on an increase and, of course, they bring their culture and their practices to Canada. From my perspective, it's an enrichment of our country.

One of the biggest areas, of course, is alternative -- I will call it "alternative" because you do have alternative as well as traditional listed in here. My understanding is you are saying there has been no request to have alternative style healing from any ethnic group or any person who may want that treatment?

Ms. Royle: We haven't had any requests from people from outside the country who are working here, who are requesting things like that. However, we do provide treatment options that other jurisdictions may not. We provide chiropractic treatment -- some restrict that; others don't. We also provide for massage therapy and other types of treatments. Anything that is available locally, if there is an efficacy for it and a medical reason for it, we would provide for that.

We have not had any foreign cultural requests but we would consider them on a case-by-case basis, on the merits of their own case. The primary objective of Workers' Compensation Health and Safety Board, of course, is to facilitate healing and recovery. We would need to ensure that such things were safe, that they were considered effective, and that they would actually help the worker. But we certainly could consider those things under our current policy.

Mr. Hardy: On page 30 -- and I just needed clarification on this, because I think I understand it. I just want to make sure I'm not misreading it. There is an employer's obligation to re-employ. In 41(1), it states, "An employer of a worker who has been unable to work as a result of an injury and who, on the date of the work-related injury, had been employed in a continuous employment relationship for at least one year by the employer, shall offer to re-employ the worker in accordance with this section." Which is fine, but then (2) states, "This section does not apply to an employer who regularly employs fewer than 20 workers." Could I get clarification on that?

Hon. Mr. Cathers: Just before turning that over to the witnesses for a more detailed response, what I would like to clarify to the member -- the Leader of the Third Party -- is that

this does not diminish the rights that exist under human rights legislation as far as re-employment obligations and so on, which are currently under that act or are found in human rights cases. What this does is provide a specific tool through the *Workers' Compensation Act*, which provides both the mechanism and the process within the legislation to create that balance in the obligation for an employer to re-employ and for the worker to cooperate. This lays it out.

The reason that size was put in place was following the discussions between stakeholders on the most appropriate balance. It is based on the concept that, for a small business that has fewer than 20 workers, it may be very difficult and create undue hardship to keep a position available for that amount of time. This legislation also does not preclude them, through the whole structure of the assistance in rehabilitation, et cetera, in providing the ability for that person to re-enter that job. Certainly, if they chose not to, in accordance with this legislation, there would be the potential that a failure to re-employ might land them in a case before the Human Rights Commission or potentially through the courts under human rights legislation.

I hope that has provided some clarity to the member. I will turn it over to the witnesses for further comments or clarification.

Ms. Royle: I think the minister answered the question better than I could. I'm not sure if there is any follow-up or anything else that I could answer. Essentially that is the rationale for 20 or more workers, so small businesses don't get unduly hurt by this legislation. Looking at workers in the continuous employment relationship for at least one year establishes a background for that worker, what their employment history is with the employer. That was felt to cover off -- seasonal workers, for example. That is why it says "continuous employment relationship." That way, a worker who works with the same employer season after season would also fall under this obligation.

Mr. Hardy: Yes, that is very clear from both of you, and I appreciate that.

Page 80 -- I'll have to look at it myself -- under "Coercion not to file a claim", it says: "It is an offence under this Act for any person to discourage a worker from making a claim for compensation when the worker has or may have suffered a work-related injury."

The reason this jumped out at me is really because this happens quite a bit in the workforce. It could be a small injury that may be one day, two days or five days, or whatever -- there are some employers who do not want the employee to file a claim with workers' compensation. I speak from many examples that have been given to me over many years. What are the penalties for this? How can we ensure that coercion does not happen?

Mr. Tuton: This is an issue that arose quite early on in the process by one, if not both, of the stakeholder groups in trying to move forward with a lot of these changes to legislation. Yes, there are obviously opportunities and situations that may arise where this particular coercion, or trying to encourage a worker not to file a claim, has happened. Although one of the things that we found -- and this relates back to the sign that

everybody can see as they drive down Fourth Avenue -- since we started to educate both employers and workers that they both have rights is that there are advantages to reporting injuries earlier. One of the things we find is that is happening. When the question was asked about how we can save the system dollars, one of the biggest ways is by early reporting of injury, no matter how small that injury is.

I make reference to the fact that, if a worker simply pulls his back or strains a muscle in the back and the employer says to the worker, "Well, how serious is it? Can you continue with work?" The worker may say, "You know what? Maybe it's not all that serious and maybe I can go back to work." Let's look at the results of that, if it happens. From the employer's perspective, if that worker again tries to lift the same box, aggravates that injury and turns it into more than what it would have originally been, it means he is going to be without that worker -- who is skilled and trained on the job -- for a longer period of time.

The employer, from that perspective, is encouraged to report the injury early. When we report the injuries early, two things can happen. One is we can adjudicate the claim in a timelier manner and start treatment. Then, that simple back strain would simply be that: perhaps one or two days with ice and rest under a doctor's care and back to work -- perhaps back to work in a limited capacity for a period of a week or two weeks.

But if we leave that injury for a longer period of time, by simply not reporting it until a later date, when it becomes more of an issue, then it is going to become a more costly situation. A worker can report an injury for a period after that injury happens. It does not have to be on that day, although that is what we would encourage the worker to do. Once he reports to the doctor, of course, then it becomes official.

So, yes, it can happen. But we found that, by implementing the programs that we have over this period of time, and because of the education that we provide to both workers and employers, the number of injuries that are reported are on the rise, and we fully expected that, because what it means is that in the past those injuries were not being reported, so they were not being looked at earlier. That number reflects that, and we are quite happy about that. We did expect it.

Hon. Mr. Cathers: Just to provide some further clarity to that point -- and I thank Mr. Tuton for those comments, one other area is related to the member's question that I would just like to reflect on, as far as the issue of the concern that a person or an employer may coerce someone not to file a claim.

As everyone knows, in any system, you can never completely remove that possibility. But one of the downsides to the idea of experience rating -- which was discussed earlier this afternoon and has been proposed by some -- is that it has led, in some jurisdictions, to abuses of employers attempting to coerce employees into not filing a claim, or employers attempting to discourage them from doing so, and employers themselves not filing that report of a workplace injury, which they should do.

So that is the downside of experience rating and providing a penalty -- that being an increase to that specific company's rates. The downside of that approach, of course, is that that

creates an increased incentive to break the law or disincentive to comply -- whichever way you want to put that into terms.

So, a key part of what we're attempting to do here, both from a legislative perspective and the board's work, is to try to make it clear to employers and employees that not only is it their legal obligation to report an injury, but in fact it is good sense to do so. The system has resources available to help that employee get back to work and help the employer get them back to work and provide them with whatever supports they need to do their job -- that they're not going to be penalized for following their legal obligations and reporting that injury. Instead, the system is trying to help them to the best extent possible in achieving the shared goal of getting the employee back to work and able to do the job without further injury as a result.

One other area -- just further to those comments. I missed one of my notes. Another part of this is through the increased education approach the board has been taking and trying to work with employers and labour organizations by informing them of these obligations. In fact, I have found in just talking to individuals in conversation -- and the member may have had similar experiences -- that not everyone is aware of the obligations they should be aware of, in terms of the requirement to report an injury within three days. There is the risk that someone may be unintentionally breaking the law through ignorance, or a fear of the system, or a misunderstanding. Providing the information on what their legal obligations are, and that the system is trying to actually help them and not penalize them, is a most effective approach to try to encourage compliance.

Mr. Hardy: I can relate to this -- chronic lower back injury from injuries on construction sites and carrying too much and not reporting it because you need the money and you just keep working. That is the way that you think and it is the way many workers think, especially with the raw kind of work that we do in construction. The kind of rough-and-tumble attitude seems to be very prevalent that you can get over your own injuries. Ten years down the road, it has accumulated and you have serious problems. I have seen that many times with many workers who actually have had to leave their trade at a very young age. This is a shame because we need tradespeople -- just like we need many other areas of workers -- and early intervention would probably have mitigated some of the problems that accumulate in a body over the years.

A few things -- and I know that it was covered earlier -- and that is children working -- or it has been talked about. I just need a couple of answers to a couple of questions -- I just have a few more questions around here and then I'm going to let some more people get into this. In regard to children, does WCB have inspectors in their employ?

Mr. Tuton: We do have inspectors under the occupational health and safety division of our operation.

Mr. Hardy: That's what I thought but I just wanted to make sure that I wasn't going down the wrong road here and it was some other department doing all the inspections.

Do the inspectors work just five days a week or do they have a rotation?

Ms. Royle: Our inspectors do work Monday to Friday; however, they are also on call. So we have people on call 24/7; one of the inspectors is always available.

Mr. Hardy: Okay, many people work through the weekends, whether for the service sector or somewhere else. These stores just don't shut down any more. It's not the days when we were guaranteed to have Sunday off and the town was shut down, so people could do what they wanted on a Sunday. Now, it's almost around the clock. Also, many construction projects are going seven days a week as well. I really believe that there needs to be inspections during the weekend as well. There is no such thing as a five-day workweek any more. I would hope that the board would consider that.

Does the board have anything in regard to children working? If not, what happens if a child gets injured?

Mr. Tuton: I guess the first thing we're talking about is another act. The inspectors and those areas are governed by a different set of legislation, which is the *Occupational Health and Safety Act*. We are also responsible for this act. The inspectors who would inspect the workplaces of those workers, regardless of their ages, would fall under that act, not the *Workers' Compensation Act*.

Mr. Hardy: That's fine, but I still wouldn't mind knowing about it. The board is responsible for it. I know the witnesses are here for the *Workers' Compensation Act*, but they are responsible for the *Occupational Health and Safety Act* as well.

We don't have to belabour this. I can get the information some other time, but can a nine- or 10-year old submit a claim?

Mr. Tuton: Sorry, Mr. Chair. As long as that nine- or 10-year old is a worker, workers are covered. It is no-fault. The definition of a worker is simply that -- a worker. There is no age defined under either our act or the *Occupational Health and Safety Act*. However, we do offer programs. We have passport to safety program, which is a program that is targeted at our youth workers. We have, over the last few years, been working very diligently with the Department of Education to try to move forward to introduce health and safety programs, starting in kindergarten right through to grade 12.

There are some jurisdictions that have that. We do not have it as part of the curriculum. However, we have spent a great deal of time and we are continuing to work with that department, to encourage them to work with us in a partnership to directly develop occupational health and safety programs that will start from K to 12, so that if the situation still exists where employers are having a very difficult time filling the void of lack of workers, or looking to the youth to fill those positions -- specifically in our service-related industries, and in some part, our hospitality industries -- that at the very least, we will be able to provide them an opportunity to become trained or aware of what their rights are as a worker.

We do understand that there are situations out there when these nine- or 10-year-olds don't realize, for example, that if they are burned by emptying a deep fryer with the fat, that they are eligible to report that or that they're freely able to report that to their employer, and have that issue dealt with under the workers' compensation health and safety system.

I know it's not something that we as parents or friends of parents like to hear, but those situations do occur. I think that, collectively, government, employers, workers and the Workers' Compensation Health and Safety Board work with us to help encourage the Department of Education, sooner than later, to develop a program for the curriculum so that we can start educating these youth. The situation of lack of qualified or capable workers in all our industries is becoming more of an issue for all employers every day. We must tackle that in the best way possible to make sure our workers are safe, regardless of their age.

Mr. Hardy: Thank you. I'm just going to wrap up these questions. It's a little off; it's not so much about the amendments or anything. It's for my interest, as well -- that is, school programming and do we have anything, or are you working with the department? You pretty well answered that.

I'm going to swing all the way to the other end, though, and to the concern I have. What is being seen more and more across the country and up here is an aging workforce. I don't mean people who have been in the workforce doing the same job and getting older and close to retirement are staying longer. I mean people who have retired and are now working part-time in many of the stores such as Canadian Tire or Wal-Mart. I heard that almost 55 percent of all employees for Home Depot are over the age of 55.

That, of course, raises some very serious considerations for the board. The chances of a person aged 65 or 70 lifting a box down from up high or slipping, when they are physically not as strong as someone who is 25 or 30 -- the chances of them being injured does increase.

Has the board -- this will be my last question; like I say, it's not so much about the act itself, but really, since we have you in front -- been considering the impact that age can have on the claims that are made and how to approach older workers, the situation of the growing older workforce being part-time?

Mr. Tuton: Some two and a half to three years ago, we made changes to our claim system -- we invested some \$2.5 million to update our system, to provide better information to us and better data, so that we could see not only what types of injuries were occurring but where these injuries were occurring, were they male or female, what age bracket were they occurring in, and the type of injury, and the type of injury toward the age. We were able to better identify those situations at an earlier point, so we could address those. But it's important to recognize that every worker, regardless of their age, has the right to refuse to work if they consider either the work, or the situation, or the workplace, to be unsafe. They have the right to do that.

I guess the only way to make these people aware of that issue is through the education that we try to do through our education consultants in the occupational health and safety division, to make sure that the workers know, number one, what their rights are and, number two, know that the expectations are put back to them to mitigate their responsibility back to the employer. We do that through education.

Mr. Edzerza: I would like to start out by also thanking the officials for being here today. I know that there have been

several years of talking about the need to revise this act. I worked under conditions that were ignored by supervisory staff back in the 1970s. Back then the conditions were actually horrendous in one of the mines that I worked in. I was working as a journeyman welder, and on several occasions I specifically remember asking the superintendent to do something about having fans in the workplace to remove the smoke from the welding that was taking place.

In that shop we had several machines running with no ventilated exhaust. I remember running the arc air whip and I couldn't see the mechanic who was working a distance between here and the other side of this room. Several times I asked to have that corrected and I ended up having to quit my job because I was more concerned for my health.

When I quit my job it took me awhile to find another one, and I wasn't eligible for compensation because I quit my job. In that case, I often thought that the employer should have been the one to pay for my unemployment until I found more work.

I certainly do hope that nowadays things have improved. However, I have to say that I was approached by someone as recently as two years ago who wanted to know if there was anything that could be done about people on road construction who refused to fix leaky exhausts on equipment, for example, or refused to upgrade equipment that was what we would deem to be very unsafe to operate.

Now, I know for a fact that does happen because, again, I know my own experience but don't know too many other people's. But I have been told on different jobs that I had to run that equipment -- "If you don't want to, we'll get somebody else to do it. There are other people who will do it."

I believe it was already mentioned here today in the House that some people would go ahead and do something that was unsafe because there was a chance that you wouldn't get hired again, for one thing, and it was a situation where, if you had car payments or mortgage payments, those far outweighed your health -- at that point in time. So it is good to see that some things in the act are going to start addressing some of those issues.

I heard the chair mention earlier on that Workers' Compensation Health and Safety Board works with the Human Rights Commission to address issues such as harassment on the job. I believe this is a very, very important area with respect to health, because health doesn't refer specifically to breaking your arm or leg. I believe that mental health is probably one of the things you can't repair as easily as you can do an operation on a broken bone.

I have very recently heard complaints about harassment on the job, to the point that the individual had to go to the hospital, because all the blood vessels in one eye had broken and turned the whites of the eye totally red. The doctor diagnosed this as being due to a lot of stress about what was going on in the individual's life. It was brought on by a supervisor constantly harassing this employee to the point where they were trying to find ways to terminate the employee.

When the employee went to the Human Rights Commission, they said that they had no jurisdiction on First Nation lands. My question today: are the Workers' Compensation

Health and Safety Board and Human Rights Commission able to address these issues with regard to First Nation employers?

Hon. Mr. Cathers: Before turning this over to the witnesses for a more detailed response, I would just point out to the member that a number of the questions he is asking about -- safe workplaces, leaky exhausts, et cetera, are examples he gave -- those types of areas are covered under the *Occupational Health and Safety Act* and regulations. Employees within Yukon do have the ability to file a complaint under the *Occupational Health and Safety Act*, which is a more appropriate and effective venue than going the human rights approach. The *Occupational Health and Safety Act* and regulations is the venue that is designed to ensure safe workplaces. Of course, the *Workers' Compensation Act* is focused more on the compensation side, and rehabilitation supports now, with the changes in legislation.

Ms. Royle: To respond to some of those questions -- first of all, the *Workers' Compensation Act* does apply to every worker in the territory, whether First Nation or not. That act provides that level of coverage. On the occupational health and safety side, there are two acts that apply: one is the *Occupational Health and Safety Act*, which we administer. That act applies to most employers; however, it does not apply to First Nation governments. First Nation governments from an occupational health and safety standpoint are covered under the Canada Labour Code, part II. We don't have any authority to administer that, although we do try to work cooperatively with the federal government on administering that piece.

Even though the workers' compensation system would be responsible if there were an injury, from a health and safety perspective, if it were a First Nation government employee, the complaint would actually have to go to Human Resources and Skills Development Canada. Having said that, any of the development corporations of First Nations or any First Nation employers would be covered under the *Occupational Health and Safety Act*. There is a slight distinction if you're talking about a First Nation government, but all workers are covered under the *Workers' Compensation Act*.

Mr. Edzerza: I thank the chair and the minister for those comments; however, I still have a concern here. I believe that a person who works at an office job, for example, can apply through the Workers' Compensation Health and Safety Board for mental stress issues. Maybe I'm wrong, but if someone is being harassed on the job to the point where their mental health is being injured, do they not have a right to then go to a doctor and say that because of their job they are stressed out, unable to work any more, that they are having a nervous breakdown? Who takes over then? Who compensates them because they are unable to work?

Mr. Tuton: Under our act and policies, we compensate for post-traumatic stress. We don't have any ability to compensate for mental stress. However, if you look at one of the examples that you gave, where the individual had an injury to a body part -- regardless of how it was caused in the workplace, and that was the indication that you gave -- that could be presented as a claim and it would be adjudicated on a case-by-case basis, but we do not have an ability to compensate for

mental stress; however, we do have an ability to compensate for post-traumatic stress and psychological disorders.

Mr. Edzerza: I thank you for that response, but I still feel that somebody is being shortchanged here as a worker. I know that this is a very difficult area to address -- and maybe I never had an opportunity to read this whole act because I'm not the critic for this area, but I do think that maybe it's covered in harassment on the job. You mentioned that you are going to work with the Human Rights Commission to try to address an issue like that. It's very hard to determine, probably, to what extent an individual's mental abilities might be damaged and I give you this as a hypothetical example. If you have someone who is a director in management in an office, for example, and the superiors get on that person's case to the point where they can't function any more and they end up not being able to do their supervisory job ever again, is that person eligible to be compensated for becoming almost a disabled person in their management position?

Ms. Royle: As we talked about earlier, the board does have a policy called "adjudicating psychological disorders".

Every case is different, so it's very difficult to address a particular situation without all the information, but if a worker has a clinical diagnosis under *The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* -- DSM-IV -- which is the manual that medical professionals use for mental health issues, and if that diagnosis has been made by either a clinical psychologist or a psychiatrist, and it has been shown to have arisen out of and in the course of the worker's employment, then the board can cover those scenarios.

If it does not meet those criteria, then, while the worker can file a claim, we would not accept it. Having said that, every case is looked at on its own merit so, without a full case to analyze, it's difficult to give that answer.

The worker always has the option in those cases of harassment of filing a complaint with the Human Rights Commission and going that route. We do partner with the Human Rights Commission from an occupational health and safety perspective, because we do feel that prevention is very important. However, from the workers' compensation system, we need to compensate for defined injuries or illnesses that arise out of and in the course of employment.

If a psychological disorder meets this criterion, then we can compensate for it. If it does not, if it's a vague thing like stress -- which is very difficult as it's not a medical diagnosis and it's difficult to determine the source of that stress -- then we don't compensate for that.

Mr. Edzerza: Thank you for that answer.

Now, I have been approached by several people ever since I got involved with territorial politics about the nightmares they had dealing with the Workers' Compensation Health and Safety Board.

Some of the comments to me were that probably the most stressful thing they ever went through in their life was trying to settle claims with the Workers' Compensation Health and Safety Board. I have heard of cases going on for several years, not just one or two but many years, to the point where a person was deceased without ever settling that claim.

I found that this was almost like something we would read in a book of fairy tales. Being the type of person I am, who tries to seek to understand issues before I comment on them, I have not been able to understand how historical injuries can just be debated year after year after year with the compensation board not understanding -- or even trying to understand -- all the mental stress this puts on the injured worker who is just trying to be compensated, something that is probably rightfully theirs.

Like I said, I have had e-mails on my computer just about every day from people who had a lot of difficulty getting the Workers' Compensation Health and Safety Board to pay what these people felt they had coming to them. I don't know the particulars of each and every case and how the Workers' Compensation Health and Safety Board would pay back pay to those people who were injured on a job and never compensated. Some of the ones who have talked to me were people who were injured some time ago, sometimes even in a different province.

Knowing all this, does the minister or the chair of the Workers' Compensation Health and Safety Board think that the revisions to this act could possibly prevent this from happening in the future?

Hon. Mr. Cathers: Without knowing the specifics of what the member is referring to, I can't be sure that my remarks apply to all situations. But from what I understood the member to be asking, he's referring to people who have come forward and indicated they had an injury, and referred to challenges in getting what they feel they had coming to them.

That statement of "what they feel they had coming to them," is where there is a real question around it because, as the member knows, people may have a different perception of what they believe they ought to be entitled to that may not reflect the law. Also, if someone even has an injury, but it can't be demonstrated by the professionals and those who review it that the injury was caused at work, but the individual believes it was, or believes it was contributed to there, that is where questions can arise.

Those decisions are not made in legislation. The framework is there to address such matters. Individuals, if they are not satisfied with the treatment of their claim by the Yukon Workers' Compensation Health and Safety Board administration, have a number of options open to them for appeal, including making use of the appeal tribunal or the workers' advocate office in accessing and understanding the system. Of course, they also have rights, in terms of filing a case before the court, if they don't feel that their rights have been addressed through those avenues.

So there are a number of avenues available for them to have their rights -- or their belief of their rights considered. But, similar to any legal process or any matter and any claim and any perception, there is a process that this all must go through. This is dealt with -- it's all laid out, as the member will see, and the witnesses can clearly explain to him in detail, if he'd like more information about the various areas and avenues and how an appeal process works -- when someone can file an appeal and so on and so forth.

But, to summarize, it is laid out. There is a process.

The individuals to whom he refers do have avenues of appeal if they feel that their rights were not adequately addressed through administration. The act makes some changes regarding those areas but, basically and essentially, if someone does not file an appeal and access the avenues that are open to them, then they will not see the results of the consideration provided by those appeal bodies.

Mr. Tuton: I think that it is important to understand that the adjudicators who review these claims from the start must follow the legislation and policy. The legislation, of course, is set down by government, and the policy is determined by the board through consultation with the stakeholders. That is what the adjudicators must follow.

There is another line of appeal, and that is the very first line of appeal, which is an appeal from the hearing officer's decision, which is at the board level. If that doesn't satisfy the applicant then there is the workers' advocate and the tribunal. However, today there is absolutely no limit on the length of time that has to be taken to present an appeal. But the new legislation, of course, put in 24 months, which all stakeholder parties agree is reasonable.

One of the things that I can say for the record very clearly is that the number of appeals to the WCAT is down drastically. Also, the number of appeals that are presented to the appeal tribunal that are being overturned is also down drastically. What that means to me is that the system is working; it is working extremely well. There are always cracks that somebody falls through where they feel they are not getting the treatment they think they should be getting, but there is an avenue for everyone. The appeal process that we have at WCB is a very generous one.

I hope that answers your question.

Mr. Edzerza: I thank the chair for his answer, but I believe that some of the individuals went through all the processes that were mentioned. At the end of the day, the individual died.

I had a question about two weeks ago from an individual who wants to know -- because she is going to be the executor of the estate of the deceased person -- what happens to her father's claim that he was working on. He had already been offered some amount for compensation, but he thought it wasn't adequate. It didn't fit the years of being unemployed. He refused it. Now that he is deceased, she wants to know if that compensation claim still goes to the estate or if the Workers' Compensation Health and Safety Board was just lucky that he passed away and now they don't have to pay anything.

Mr. Tuton: I'm sorry, but we can't respond to that question from our perspective. We can't deal with individual cases in the public record. I would suggest to the member that, if he has a concern, he should give it to the minister. The minister can, in turn, direct it to the correct people.

We cannot, for obvious reasons, discuss either in public or private, from the board's perspective, any individual cases.

Mr. Edzerza: Thank you, then I will direct my question to the minister. Is it possible that -- it's a very simple ques-

tion the individual asked and the minister could just say yes or no -- she will be able to put in a claim for the estate?

Hon. Mr. Cathers: The problem with the approach of the member -- considering that we're standing in the Legislative Assembly -- is the restrictions placed on the minister and on both the administration and the chair of the Workers' Compensation Health and Safety Board. To get into a commentary, discussion or opinion on a specific case would be inappropriate for me. It would be inappropriate for the chair and it would be inappropriate for the president to do so. If the member wishes to identify his concerns in writing, those can be passed on and particularly -- as the member will know -- if he writes regarding a specific case file, as minister I can pass his request on to the Workers' Compensation Health and Safety Board. I am not involved in that and by law I am not involved in any determinations of the rights or lack of rights or anything that is accorded to a specific case. Any decisions on that file are dealt with at the board or administration level or, depending on where it is, through the various structures of the process, if it is under appeal.

Unfortunately, I know this doesn't answer the member's question and if he had been far more general in nature and hypothetical, it might have been possible for us to answer the policy issues around his question. Because he has been very specific, we're all placed in a situation where it would be highly inappropriate for us to give our response to that very specific question.

Mr. Edzerza: I was really giving an example of what is and isn't inappropriate, which here is for a case to go on for 17 years. That's inappropriate. I don't mind saying on the floor of the Legislature that, in society, that should be unacceptable. The worker has paid their dues. They don't have a choice. They pay and when someone gets injured, I think that the Workers' Compensation Health and Safety Board has a responsibility to address that issue immediately, not at their leisure.

Maybe things are going to change and I certainly hope they do. I don't want to hear cases like this 15 years down the road -- where while the minister was talking on the floor or I was trying to mediate a case with Workers' Compensation Health and Safety Board 10 or 15 years go by and there is still nothing done with it.

I raised that just as more or less a point of interest from more than one call I have had on this issue. Maybe it is one question that the chair can answer: does the chair have any stats on how many historical cases are not settled right now and still need to be addressed?

Hon. Mr. Cathers: I would say to the member that I don't want to minimize his concern. If he has a constituent coming to him and there is a situation here, I appreciate the concerns that may be out there. In the situation here, however, the process is designed to ensure that the rights are considered in accordance with that process. Steps have been taken in recent years under the current board and administration and under previous ones, as well as through processes such as the establishment of the workers' advocate office. There have been other changes in the legislation that have been made, some of which we have discussed here today, regarding simplifying the

process and creating the ability, as I articulated in my introductory remarks, for an appeal process if new information comes to light during the appeal to the tribunal. Then the case can be put back to the decision-maker in administration, which saves time in the process, if the new information has made it very evident that the decision would have been different if that information had been previously known.

Steps have been taken through the current legislation before us to try to achieve the goal of simplifying and expediting the process, but this is a piece of legislation that deals with rights to compensation and entitlements to compensation. There are legal matters around it. In some areas, as the member will know, there are differing opinions on whether or not someone is entitled.

That someone believes that they are entitled to compensation or that they purport to have that belief does not necessarily mean that such is the case in accordance with that legislation. For any and all individuals, if they do not feel that their case has been dealt with appropriately, as laid out by the chair and by me in our references to the appeal process and information provided to the Member for McIntyre-Takhini, those are the avenues that are open to those individuals and they should ensure that they access those avenues, if they have not already done so, if they feel that they have not been fairly and properly treated. I believe that the chair has some further comments on this subject.

Mr. Tuton: My first comment is that it is highly unlikely to start with -- well, I think it is even stronger than that. I don't think it is possible that a case would not have been decided in 17 years -- certainly, not that either one of us knows, regardless of knowing what the case is or what it is about.

Obviously from the workers' compensation point of view, the case was dealt with and a decision had been made. Now "unsettled" has a number of different meanings to a number of different people. I don't know the cases, but it could be something that is in front of an appeal board. I doubt it, for 17 years, but it could be an expectation management. It could be that, yes, the case was adjudicated and yes, there was a decision made, but maybe an individual -- and I'm not suggesting the individual whom the member is suggesting -- wasn't happy with the result. Maybe the Workers' Compensation Health and Safety Board said that worker A is entitled to a settlement or a benefit package of \$800 a week and the worker said, "Well, I expect \$20,000 a week." That is unsettled and it is likely to be unsettled for a long period of time.

But it would definitely have been dealt with by the Workers' Compensation Health and Safety Board system. There is another system we forget about: if it is an appeal, which I highly doubt, it would be handled through the WCAT, which is the Workers' Compensation Appeal Tribunal. It wouldn't be in the hands of the Workers' Compensation Health and Safety Board. So, I hope that helps answer the question.

Mr. Edzerza: Well, I don't think it's any secret on the floor of this Legislature that the e-mails I got were sent to every MLA. So, people probably know -- maybe not every MLA, but certainly a large number of them.

So, anyhow, I just raised that to show a little bit of support that, yes, in fact, there are some very, very slow approaches in dealing with claims. I guess the question I have now is this: will the act speed up the processing of claims?

Hon. Mr. Cathers: As I indicated previously in response to this question from the member, or there are some changes in the act before us to simplify and speed up the process, to an extent. The member's assertion that the story he's bringing forward is evidence or proof that the process is not dealing with these claims in a timely manner -- I'm sorry, I can't concur with him that what has been presented and discussed today is evidence that the story he heard is factual. I obviously don't know the nature of this specific case. Also, obviously, we should not be discussing the nature of this specific case on the floor, as I indicated, due to propriety.

Again, I don't want to reach any conclusions or state that the story he's hearing is not factual. It may not be factual. It is hard to believe, as indicated by the chair, that a case could have taken as long as the member suggests, especially where a case he's aware of took so long without having reached some sort of a decision and without, even through the appeal bodies, having reached some sort of a decision.

Again, because the member is referencing a specific case, we can't delve beyond a very high level of discussion about policy matters that may or may not apply. There are avenues of appeal open to any individual who does not feel that they have been treated appropriately. These ultimately include, if they are not satisfied with the processes laid out in the act, going to court on these matters. These rights are open to each and every person who feels that they may have a case. They include, as the chair indicated, the adjudication officer, the workers' advocate and the appeal tribunal. All of these processes are laid out. If any individual feels that they have not received their due treatment in the process, they should make use of the avenues of appeal and allow those processes to work.

Again, I want to be sensitive to the member's concerns. I know he is bringing them forward with genuine concern, but as the member knows and will be aware from both his previous life and his time as a minister, not all the facts are quite as laid out in the stories one hears in each and every situation. Sometimes individuals bring forward a very interesting or sad story that turns out, upon review, to not necessarily be in accordance with the facts.

I think we should move on to a discussion of policy matters. If the member has specific concerns, again, he can put those in writing. They can then be passed on to officials for consideration and review, but we can't really continue a discussion on this or answer what appear to be detailed questions on specific cases here in the Legislative Assembly.

Mr. Edzerza: I thank the minister for that response. I will move on. I know there have been some concerns raised about publishing the names of those businesses that have a high rate of accidents within their organization. It's hard to understand why there would be an issue with that. I know that, whenever a person is looking for work, the employer has the option of saying, "I want to see your résumé. I want to do a reference check on you. I want to see if you're going to make a

good employee or not." -- before they even hire you. So why doesn't the worker have the same opportunity to say, "You know, I don't know if I want to work for you because your rate of accidents is too high. You don't care about your employees as much as you should."

The issue should flow both ways. I know the NDP has been trying to get some kind of concrete position on this issue, and it appears to fall on deaf ears or it falls on ears that aren't trying to understand what the real issue here is.

It has to be that those who are seeking employment feel that they are not the only ones being targeted here; that the employer has as much responsibility to provide a safe workplace as any employee has to conduct their work habits in a safe way.

Seeing the time, Mr. Chair, I move that we report progress on Bill No. 52, *Workers' Compensation Act*.

Chair: It has been moved by Mr. Edzerza that Committee of the Whole report progress on Bill No. 52, *Workers' Compensation Act*. Do members agree?

Motion agreed to

Chair: Committee of the Whole will excuse the witnesses and I'd like to say thank you on behalf of the Assembly.

Hon. Mr. Cathers: I would also like to thank the witnesses for their comments on the legislation and their assistance.

Witnesses excused

Hon. Mr. Cathers: I move that the Speaker do now resume the Chair.

Chair: It has been moved by Mr. Cathers that the Speaker do now resume the Chair.

Motion agreed to

Speaker resumes the Chair

Speaker: May the House have a report from the Chair of Committee of the Whole?

Chair's report

Mr. Nordick: Pursuant to Committee of the Whole Motion No. 4, witnesses from the Workers' Compensation Health and Safety Board appeared in Committee of the Whole.

Committee of the Whole has directed me to report progress on Bill No. 52, *Workers' Compensation Act*.

Speaker: You have heard the report of the Chair of Committee of the Whole. Are you agreed?

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

The time being 5:30 p.m., this House now stands adjourned until 1:00 p.m. Monday.

The House adjourned at 5:30 p.m.

The following document was filed April 3, 2008:

08-1-50

Conflict of Interest, re Minister responsible for the Yukon Liquor Corporation: letter (dated April 3, 2008) from Mr. Inverarity, MLA for Porter Creek South, to David Jones, Conflict of Interest Commissioner (Inverarity)