

Whitehorse, Yukon
Monday, April 7, 2008 — 1:00 p.m.

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

Prayers

DAILY ROUTINE

Speaker: We will now proceed with the Order Paper. Are there any tributes?

TRIBUTES

In recognition of World Health Day

Mr. Edzerza: I rise on behalf of the Assembly to pay tribute to World Health Day. April 7 is the day of the founding of the World Health Organization. On this day we draw attention to global health issues. This year's theme for World Health Day is international health security. Governments, organizations, and businesses are being urged to invest in health for the building of a safer future. Much has been said about physical illnesses and the connection to the environmental degradation and access to secure and safe drinking water around the world. This does not only apply to developing countries; it has been a problem far too long in hundreds of aboriginal communities in Canada, including the Yukon. One of the key factors in preventive medicine is clear: reliable water. Investing in the necessary infrastructure should be a primary concern. In the long run, around the world, the cost of infrastructure is far less than the expenditures are for illnesses.

Another most important investment in health security is the area of mental health. We are fortunate in Canada in this regard in comparison to many other countries. The very important Kirby Senate report called "Out of the Shadows at Last" was completed two years ago. Its objective was to transform mental health, mental illness and addiction services in Canada. It has many very important recommendations that could be applied both to the developing and the developed world. We look forward to its implementation.

True intervention and real support for all people who are coping with mental illness is not a reality for everyone in our world. Many suffering people are taken away from their communities and their families and are given medication to mask symptoms without changing the illness. The first action should be to reach out and include them with compassion and understanding, giving them emotional support needed to face their problems.

Without embracing human solutions to mental illness, true health security, the theme of this day will not be realized.

Thank you, Mr. Speaker.

Speaker: Are there any further tributes?
 Introduction of visitors.
 Are there any returns or documents for tabling?
 Reports of committees.
 Petitions.
 Are there any bills to be introduced?

Are there any notices of motion?

NOTICES OF MOTION

Mr. Nordick: I give notice of the following motion:
 THAT this House establish an all-party Select Committee on Human Rights;

THAT Hon. Marian Horne be the chair of the committee;

THAT the honourable members Don Inverarity and Steve Cardiff be appointed to the committee;

THAT Bill No. 102, entitled Act to Amend the Human Rights Act, be referred to the committee;

THAT the committee hold hearings for receiving the views and opinions of the Yukon Human Rights Commission, Yukon citizens and interested groups on the legislative amendments to the *Human Rights Act*;

THAT decisions by the committee require unanimous agreement by members of the committee;

THAT the committee report to the Legislative Assembly no later than the 15th day of the next regular sitting of the Legislative Assembly:

(a) its findings, if any, relating to public opinion for legislative changes; and

(b) its recommendations, if any, regarding what form legislation implementing changes recommended by the committee should take;

THAT in the event the Legislative Assembly is not sitting at the time the committee is prepared to report, the chair of the committee forward copies of the report to all Members of the Legislative Assembly, thereafter making the report public, and subsequently present the report to the Legislative Assembly at the next sitting of the Legislative Assembly;

THAT during its review of public opinion on legislative options for amending the *Human Rights Act*, the committee be empowered:

(a) to invite the members of the Yukon Human Rights Commission to appear as witnesses;

(b) to invite officials from the Government of Yukon to appear as witnesses on technical matters;

(c) to engage a technical expert who is not a member of the Legislative Assembly or an employee of the Government of Yukon to act as a facilitator in providing information at the public hearings;

(d) to invite such other persons as it deems necessary to appear as witnesses on technical matters;

(e) to hold public hearings;

(f) to print such papers and evidence as may be ordered by it; and

THAT the Clerk of the Legislative Assembly be responsible for providing the necessary support services to the committee.

Mr. Mitchell: I give notice today of the following motion:

THAT it is the opinion of this House that representatives of all Yukon First Nations be invited to appear as witnesses in Committee of the Whole to provide input relating to the *Child*

and *Family Services Act*, and that this bill not proceed any further until such an invitation has been issued.

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

THAT, as a first step in eliminating the abuse and neglect of animals, this House urges the Minister of Community Services to implement the recommendations of the Kilpatrick report made public in September of 2007 and provide clear parameters around policy, procedure, funding, staffing and logistical support so that the *Animal Protection Act* can function as it was intended.

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

THAT this House urges the Government of Yukon to follow the lead of other Canadian jurisdictions that have taken action to protect consumers by establishing regulations limiting the interest rates and related fees that companies can charge for short-term loans, commonly known as "payday loans."

I give notice of the following motion:

THAT this House urges the Yukon government to recognize the hard work and commitment of community volunteers who are working to establish a food bank in Whitehorse, by providing appropriate financial and other support as required, while also working diligently to develop a comprehensive Yukon anti-poverty strategy to eliminate the root causes of poverty that make food banks necessary.

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: *Liquor Act* amendments

Mr. Inverarity: I have some questions for the minister responsible for the Liquor Corporation. On March 27, I asked the minister about conversations he had with his Cabinet colleagues about changes to our liquor laws. He admitted he spoke about these changes at length with two ministers who owned hotels. He told a local radio station on the same day that those conversations took place in 2004, shortly after he became minister.

Now, on March 31 the minister changed his story. He tried to claim that these conversations took place before he was even elected. I would urge the member to have a listen to the tape where he clearly tells a local reporter the conversations took place shortly after he inherited the portfolio in 2004. Why has the minister changed his story?

Hon. Mr. Fentie: As the Member for Porter Creek South will well know, given the fact that the government's side and the member himself have written the Conflicts Commissioner, the appropriate approach now is to allow the Conflicts Commissioner to conduct his work and table his report.

Mr. Inverarity: My question is for the minister responsible for the Liquor Corporation. I think it's an opportunity for him to clear things up. I want to thank the minister responsible for the corporation for bringing these conversations to

light. He has done the public a great service, and I'm sure he has made himself quite popular with his Cabinet colleagues. We know the Premier is extremely happy with his performance.

On March 27, the minister told a local reporter he spoke about changes to the liquor laws in 2004 with the two ministers who owned hotels. That admission is on tape. Four days later, he told a different version and said the conversations took place before he was elected. The minister has changed his story; why has the minister changed his story?

Hon. Mr. Fentie: The comment the Member for Porter Creek South has just made about who he's directing the question to certainly ignores the fact that the Conflicts Commissioner is looking into this matter. For even the minister or anyone else to comment further is inappropriate.

We're not in any way going to dilute or compromise what the Conflicts Commissioner is doing. The Conflicts Commissioner must look into this matter in all its detail, with all the evidence provided, and table his report. That's what the government side will allow to happen.

Mr. Inverarity: This is about the minister changing his story, not conflicts of interest. When I first raised these questions on March 27, the minister admitted he had talked about changes to the *Liquor Act* with two ministers while they owned hotels. Later the same day, he admitted it again in an interview with a reporter. He was even more specific in this interview. He said the conversations took place in 2004 shortly after he inherited the job of the liquor minister.

Sometime over the next weekend, his story changed. He told Yukoners the conversation took place before he was elected. I don't believe this new version of the events, and I don't think anybody on the other side of the House believes it either.

The minister has changed his story; will the minister admit that what he said the first time was, in fact, the truth?

Hon. Mr. Fentie: Mr. Speaker, the member's assertions here regarding comments made at this point in time are subsidiary to what the Conflicts Commissioner is doing, given the accusations brought forward by the Official Opposition pertaining to conflict of interest. That is exactly what the matter before us is about. It is about the issue of conflict of interest, and the Conflicts Commissioner is doing his job in reviewing all the evidence and all the information made available to him, and will file his report shortly, I am sure. The government side will allow that to happen.

It is inappropriate, Mr. Speaker, to provide any type of comment here until the report is tabled and the findings made clear.

Question re: Land development

Mr. McRobb: The recent lottery of new country residential lots in the Whitehorse Copper subdivision dispensed surveyed land to the market last summer. Last fall I asked the minister about several concerns we heard from purchasers of these lots. The most immediate issue was the improper surveying of the lots, which forced the government to confess to some buyers they would not be getting title to their lots. As a conse-

quence, builders of those lots could not get bank financing to build their new homes.

Last fall the minister told everyone not to worry -- he is on top of it, he said. Since then, four months have elapsed. Why do these survey problems still persist?

Hon. Mr. Lang: The government is addressing the issue with the survey. Certainly the member is correct. The surveys were done incorrectly. The government is working with the individuals who the member opposite has brought forward, and we certainly are getting the titles and the surveys cleared up as quickly as we can to get the land in the hands of the individuals who purchased it.

Mr. McRobb: Mr. Speaker, the fact is that the Yukon Party promised a two-year supply of lots on hand at all times. This minister failed Yukoners on that promise; moreover, he can't even ensure that the few lots that were developed were properly surveyed. This is another clear-cut case of the Yukon Party government being part of the problem instead of the solution. The survey was budgeted at \$150,000, but that cost has risen to nearly \$200,000 -- a waste of some \$50,000. In addition, we're still hearing from people who can't get title to the land they bought. Exactly how much has this mistake cost Yukon taxpayers, and when will the surveying be corrected to allow the granting of title to the purchasers?

Hon. Mr. Lang: The lands branch is working with those individuals to get the land properly surveyed and in the hands of the rightful owners. We're doing that as we speak, and we're doing it as fast as we possibly can, considering the situation that we have on the ground -- winter and all of the things that arise from that. We are working on it, and it should be resolved very quickly.

Mr. McRobb: Mr. Speaker, he didn't tell us how much or when. The Yukon Party promised Yukoners a two-year supply of lots at all times but has failed to live up to that commitment. Perhaps the minister should have done his own job instead of getting involved with changes to the *Liquor Act*. Let us review the consequences: buyers of these lots need a proper survey to get title, which is needed for bank financing before building their homes in compliance with the government's construction timeline. This is a catch-22 situation. This mistake has cost Yukon taxpayers some \$50,000 and counting. This has also caused a delay that has impeded the ability of purchasers to meet the government's own construction timelines. Will the minister allow the buyers of these lots more time, and will he assure us that they won't be charged for any extra cost associated with this mess?

Hon. Mr. Lang: We are certainly concerned about any survey that's done by the government of the territory and also by the overseeing department in the federal government. This was not done well, and this is being addressed as we speak. We'll be moving it forward with the second phase, which will open up another 58 lots in that subdivision, and we'll be working with the individuals who have had this situation arise with their titles. We certainly will be working with these individuals, and we will do whatever it takes to get the proper title in their hands. If there's a time concerning building,

or other issues that we can resolve internally, we'll certainly work with the individuals.

Question re: Whitehorse Correctional Centre renovations

Mr. Cardiff: Last September I toured the Whitehorse Correctional Centre with a member of my staff, as well as the Minister of Justice and some of her senior officials. At that time I was favourably impressed by the department's interim space plan and the interim programming plans that they had for the existing facility. Also during that tour, Mr. Speaker, I was given an assurance that a tender for that renovation work on the facility would be issued within the next month to six weeks and that the work would be completed by the end of the fiscal year. In other words, the work would have been completed about a week ago.

Can the minister explain why that didn't happen?

Hon. Ms. Horne: The interim space plan is identified as an action item in the correctional redevelopment strategic plan. This interim space is very important to this government and is very important to the safety of the workers and the clients at the Correctional Centre. This work is ongoing and it will be completed in due time.

Mr. Cardiff: The minister didn't answer the question about why it wasn't completed when they said it would be. It's just another example of a project that this government can't seem to finish on time. In the meantime, we have inmates and staff who are stuck in a structure that has outlived its usefulness.

Female inmates especially are living day after day in cramped living conditions with limited privacy, limited access to exercise, and little in the way of programs that will help them make a positive change in their lives.

A month or so ago, we learned that three bids were submitted on the renovation project, all of them much higher than the government had set aside for this project. One senior official actually said they knew some time ago that the renovations were going to cost more in the neighbourhood of about \$900,000 instead of the \$500,000 that the minister had allocated in the budget.

Why did the minister lowball this project when her own officials knew that it was going to cost nearly double what was allocated?

Hon. Ms. Horne: We were working toward a completion date of March 31. A number of factors have contributed to this completion date not being met.

The interim management plan is a significant component of the correctional redevelopment strategic plan and essential to preparing for transition into the new Correctional Centre. Inmates and staff at Whitehorse Correctional Centre will benefit from these renovations, both immediately upon completion and in transition into the new facility.

Property Management Agency and the Department of Justice will be working with the contractor to complete the renovations as quickly as possible. The renovations are currently expected to be completed by mid-July 2008.

The Department of Justice worked with Property Management Agency to develop a preliminary estimate for this pro-

ject. Preliminary costs were estimated at \$507,000. In *Supplementary Estimates No. 1*, this amount was transferred from the new Correctional Centre funding in preparation for the renovations. Property Management Agency then worked with local architects through schematic design, producing a class 3 estimate of \$900,000.

Mr. Cardiff: The minister can't complete the project on time — that's the problem. The problem is that the inmates and the people who work there are still in the same conditions they were last September, when this work was promised.

By the time these renovations are done, the government will have invested nearly \$2.5 million in patching up the old Whitehorse Correctional Centre. Who knows whether we'll even see a new corrections centre in this government's mandate?

After all three bids came in at well over a million dollars, the department said it would have another look and try to shave about \$300,000 off the project — in other words, reducing the scope of the project and the benefits that would accrue to the people who work and have to live in that facility. I don't think reducing the scope is a good idea.

Apparently they were discussing various options with the lowest bidder. That's what has been happening. Since there have been —

Speaker: Order. Ask your question, please.

Mr. Cardiff: Why aren't the other two bidders being given a chance to revise their bids based on the new specifications, and why wasn't a new tender issued?

Hon. Ms. Horne: The members opposite hold two opposing positions on this matter. First they complained that any repairs or changes are a waste of money; then they complained that the living conditions are not befitting, and we should do something quickly. However, when we do designate money in this budget, it is criticized, and we are accused of wasting it. It was this government party that said we would not build on the existing site, which was already arranged by the Liberal Party. This government went out and consulted with Yukoners. We consulted and listened to Yukoners. We are building a facility that Yukoners want, with First Nation programming that will be effective for the inmates.

Question re: Government contractor qualifications

Mr. Cardiff: Last February, the Auditor General made some strong statements about the lack of oversight in the Department of Highways and Public Works. Among other things, the Auditor General's report said the department did not conduct the required review of completed projects to evaluate whether or not it had followed appropriate procedures.

Part of the Shakwak highway project includes the reconstruction of the Duke River bridge at kilometre 1768 on the Alaska Highway. Some of that work has already been done, including moving the existing bridge to act as a detour while the new bridge is being built.

Can the minister give his assurance that all the appropriate measures were followed on that phase of the Duke River bridge project?

Hon. Mr. Lang: We certainly have been working with our American partners on the Shakwak project, and we

work in a very positive way with them. We certainly are working toward finalizing the bridge phase of the Shakwak project, which will be ongoing for the next three years.

Mr. Cardiff: The minister did not answer the question. I was asking about procedures on a particular project. For the minister's information, it would appear that the appropriate procedures were not necessarily followed, particularly with respect to the welding involved to relocate the existing bridge.

The Yukon government's specification regarding structural steel for bridges spells out that welding must be done in accordance with the Canadian Standards Association Standard W59. The specifications also state that steel fabrication must be done in a shop certified by the Canadian Welding Bureau by qualified welders who are required to present a certification of qualification to the project engineer.

Can the minister explain why the welding for both the fabrication and erection of the detour bridge were done by a subcontractor who is not certified by the Canadian Welding Bureau?

Hon. Mr. Lang: I would have to take that question under consideration, because I can't answer this on the floor today.

Mr. Cardiff: Well, the minister is responsible for this department, and he should be checking into these matters and be aware of them. I don't want to be alarmist, but we all know that there have been some high profile and deadly bridge collapses in North America recently. That was also part of what was in the Auditor General's report — to ensure that all of our bridges are in good shape. It is recognized that there is a lot of work to do in that area. It is a public safety issue, Mr. Speaker, and it is one that affects everyone who travels our highways and crosses Yukon bridges.

Will the minister give his assurance that all the welding done to date on the Duke River project will be carefully examined by an engineer and that any future work done on the Duke River and Slims River bridges will be done strictly in accordance with the Yukon government's work specification — including using qualified welders and —

Speaker: Thank you. You're done.

Hon. Mr. Lang: Again, this is an operational question, as I said in my last response. I will take that under consideration, but I can't answer an operational question here this afternoon on the floor.

Question re: Land development within City of Whitehorse

Mr. McRobb: Well, let us see if the minister can answer this question on the floor. Mr. Speaker, less than two years ago the Yukon Party government signed a deal with the City of Whitehorse with respect to clarifying the roles and responsibilities for land development within city limits. It is entitled the *Land Development Protocol Agreement 2006*. The Yukon Party government hailed it as a big step forward; however, the Yukon Party's minister is not living up to his end of the deal according to a city councillor who was recently reported as saying, "We can't allow the territorial government to continue directing development within the City of Whitehorse. That is what is happening when we allow them to go ahead and

sell blocks of land like this.” The councillor referred to a recent attempt to rezone land to develop a new trailer park. The development was halted because of the minister’s top-down approach, and it is unfortunate that the proponent was caught in the middle. Why is the minister not living up to this agreement?

Hon. Mr. Lang: In addressing the member opposite, we are living up to the agreement.

Mr. McRobb: That’s not much of an answer. Let’s hear more of what the city officials said: “The problem is that the Yukon government makes deals with the developers and then tells them to go to the city to have it rezoned. It puts the developers in a heck of a situation.”

It seems that the minister is breaking the agreement and it’s his responsibility to fix this mess, and he should apologize to the city. A key commitment of the protocol agreement requires the Yukon government to consult with the city before disposing of raw land within the city. It seems that didn’t happen in this case and the city was once again blindsided by this government. Wasted expenditures of time such as in this case have further delayed the development of much-needed lots in the city.

For the record, will the minister tell this House what other cases exist where he hasn’t lived up to the protocol?

Hon. Mr. Lang: None. We’re following our protocol with the city, working within their official city plan, and we will continue to do it. We signed a protocol agreement with the city and we’re working on that agreement as we speak here today.

Mr. McRobb: This is boiling down to a case of the minister’s word versus the word of a city councillor. You know, it seems there are all kinds of inconsistencies in what the members on that side have said recently — especially regarding certain audio recordings — they contradict themselves.

This protocol was developed as intent to stop backroom land deals. Does anybody forget the Holly Street lands? Or the Fish Lake lot fiasco? Or the forestry reserve on the Mayo Road?

Now there is this one. When will it all end? Many Yukoners would love to get this kind of preference and priority, but they’re told they have to go through the proper hoops and hurdles in process. It seems some people are able to get whatever land they want from the minister.

Will the minister clear the air: for the record, how many cases have there been, aside from these?

Hon. Mr. Lang: We have an agreement with the City of Whitehorse to work with them. The protocol is very clear on how that working relationship will work. The city is the lead. They have the official city plan, and we work with the city on any development inside the City of Whitehorse. We have been doing it in the past, and we will do it in the future.

Hon. Mr. McRobb: Same minister, same question. Let’s hope we get an answer.

The minister promised a two-year supply of residential lots in the City of Whitehorse but didn’t deliver. The Yukon Party government signed a deal to work with the city but then renegeed on that deal. I am glad he cancelled his travel plans to

accommodate the Conflicts Commissioner so he could be with us today. It would be nice if we could get some answers.

Some Hon. Member: (Inaudible)

Point of order

Speaker: On a point of order, Member for Lake Laberge.

Hon. Mr. Cathers: The Member for Kluane is imputing unavowed motives to the Minister of Energy, Mines and Resources. The minister’s reason for cancelling his travel was certainly not what the member stated and the member is imputing unavowed motives pursuant to, I believe, Standing Order 19(h).

Speaker: Member for Kluane, on the point of order.

Mr. McRobb: On the point of order, Mr. Speaker, I would state there is precedence for this type of a reference and it does not contravene the House rules. If the government side wants to change the rules, let’s have a SCREP meeting.

Speaker’s ruling

Speaker: From the Chair’s perspective, there is a point of order. The Hon. Member for Kluane — the implication of your question was in fact that the minister was representing something other than himself in these questions and answers here. I would ask the honourable member just to be careful.

You have the floor.

Mr. McRobb: A recent plan to develop a new mobile home park was recently shot down by the City of Whitehorse. The reason, according to one city councillor, was because of the way it is being done. He was referring to this government’s top-down approach, where it sells land within the city and then tells the developer to try to get it rezoned.

Why did the minister find it necessary to do this end run around the city and this protocol?

Hon. Mr. Lang: This is the same question we’ve had over the last three questions. I remind the member that the City of Whitehorse is the lead of land development inside the city limits. They work within their official city plan, and we work with them on the protocol.

So I remind the member opposite that we’re not the lead on land development in the City of Whitehorse. We work with the city. They’re the lead; and we will continue working with the city.

Mr. McRobb: Well, it’s difficult to reconcile that statement with the events of this case. The city is clearly frustrated with the minister’s approach to this issue. Its officials have publicly expressed those frustrations in recent meetings. They’ve also written to the minister to ensure this recent experience is not repeated. This is not the first time the Yukon Party has made back-door land deals.

In 2006, the minister did the same thing on behalf of a Yukon Party candidate with respect to the Holly Street lands. That application was also denied by the city. This government made several commitments to the city —

Some Hon. Member: (Inaudible)

Unparliamentary language

Speaker: There is a point of order. “Back-door land deals” — that’s an inappropriate and unacceptable term, and the honourable member knows that. Member for Kluane, you have the floor.

Mr. McRobb: The government made several commitments to the city in 2006, but it’s not honouring them. The city is unhappy; potential developers are getting caught in the crossfire and much-needed developments are being delayed or cancelled entirely.

When is the minister going to resolve some of these problems he has created?

Hon. Mr. Lang: The protocol did resolve those issues. The protocol we signed in 2006 clearly defines our responsibilities as government. The city is the lead; they work within their official city plan, and we support those decisions. That’s how the protocol is written, and that’s exactly how it is working.

Mr. McRobb: Well, not according to at least one city councillor. The minister keeps handing out land to developers without giving the city any warning. That’s called blindsiding. He has done it on more than one occasion. It is not fair to the developer who is being set up for failure with the city. It’s not fair to the city, and it’s not fair to other people who would also love an opportunity to acquire land within city limits.

Nobody is happy about the minister’s top-down approach. As a city councillor said recently, we can’t allow the territorial government to continue directing development within the City of Whitehorse.

Will the minister give his assurance that he won’t sign off on any more of these private land developments without working with the city as required in the protocol?

Hon. Mr. Lang: I remind the member opposite the question about how the protocol works and the individual he is quoting is just one person on the city council and also one person in the city government. The protocol does work. It has been in place for a year. It gives clear responsibilities to both governments and we will honour that protocol.

Question re: Yukon Council on the Economy and the Environment

Mr. Hardy: On Wednesday last week, I had the impression of speaking a foreign language when I asked the Environment minister some questions about the Yukon Council on the Economy and the Environment. Perhaps someone has provided translation for the minister by now, and I hope so.

I will ask him the same basic question again. How does the minister expect the council to perform the role it is required by law to perform on behalf of Yukon people when he has allowed it to shrink from 11 members to only four?

Hon. Mr. Fentie: I’m not going to bother taking issue with the statement of allowing it to shrink. A committee made up of members of this House has agreed to make these kinds of appointments, so I would encourage the committee to convene and bring forward some suggested appointments.

Mr. Hardy: If the Yukon Council on the Economy and the Environment isn’t functional, it makes me wonder just

what special interest groups are advising this Cabinet on economic development and environmental issues. The position that expired on March 30 was a nominee from the Yukon Federation of Labour. According to our sources, the federation has not been asked to put forward another nomination. Either someone is asleep at the switch, or the Premier is deliberately allowing the Yukon Council on the Economy and the Environment to fade away into oblivion. But he can’t do that, Mr. Speaker; it’s his job to uphold the *Environment Act* and it’s written in the *Environment Act*. All the hollow boasting he did last week about what he’s doing for the environment can’t let him off the hook if he’s not following the act.

Will the minister make a commitment right now 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 the mandate laid out in the *Environment Act*?

Hon. Mr. Fentie: Of course. So now, I look forward to the members of the committee, as agreed to, bringing forward those appointments. I would encourage all members in this Assembly — whoever they are — to convene as quickly as possible and bring those suggested or recommended appointments forward. That’s the process agreed to by the Leader of the Third Party and all other members in the House. The government side will follow what has been agreed to by this Assembly.

Mr. Hardy: Mr. Speaker, I wish that the Premier would take responsibility for this, as well as being the Environment minister. The chair sits over on his side and he talks to the chair every single day. Why doesn’t he tell the chair to get her act together and move forward?

Last week I tabled the preamble to the *Environment Act* in this House. I wanted to remind the minister and other members opposite of why that act exists. I urge the minister to read that preamble very carefully and take it to heart. Perhaps he should also re-read the Yukon First Nations’ *Umbrella Final Agreement*. One of the major recommendations of the final agreement is renewable resource councils.

Can the minister explain why, according to the boards and committees’ Web site as of two days ago, there are as many as 21 positions on renewable resource councils across the territory that have not been filled, and when will those vacancies be filled?

Hon. Mr. Fentie: Mr. Speaker, when it comes to mandated appointments, such as renewable resource councils, we have an obligation, in part, but so do other orders of government have an obligation to bring names forward.

I can’t speak to whether there are 21 vacancies today or not. The process evolves in a continuing basis. We continue to resource and make appointments to renewable resource councils. They continue to participate and provide input on all of the issues that they are mandated to.

I understand that the Leader of the Third Party has great interest in the environmental side of the ledger, but I want to point out that great progress has been made since the days of the New Democrats’ much-flawed approach to protected areas, and the tremendous advancement that we’re making in protect-

ing the land base in Yukon and protecting our pristine environment.

Today Yukon is well advanced and I think second only to British Columbia when it comes to total land base under protection. Our environment is doing fine under our watch. I urge the committee to convene as quickly as possible and bring forward those recommendations, and we will certainly endeavour to the extent possible to make sure that the council has a full complement of appointees.

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: Thank you, Mr. Speaker. 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

COMMITTEE OF THE WHOLE

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

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 Worker's Compensation Health and Safety Board, appear as witnesses in Committee of the Whole on Monday, April 7, 2008, to discuss matters relating to Bill No. 52, *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 before Committee of the Whole on Monday, April 7, 2008, to discuss matters relating to Bill No. 52, *Workers' Compensation Act*

Motion agreed to

Chair: Do members wish to take a brief recess?

All Hon. Members: Agreed.

Chair: Committee of the Whole will recess for 15 minutes.

Recess

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

Bill No. 52 — *Workers' Compensation Act* — continued

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

Witnesses introduced

Chair: The Chair would also like to welcome Mr. Craig Tuton and Ms. Valerie Royle to the Assembly today as witnesses.

Mr. Edzerza: I would like to start by putting on the record that all the comments I make are not directed personally to any board member; they are more or less directed to a process that is in place.

I would like to just summarize a bit of what was being discussed in the last meeting with regard to this issue.

I talked about historical claims, because I have had many friends and constituents who have had discussions with me over the years about historical claims and how difficult and how mentally stressful it was to continue to try to find justification, and to find some resolve to an injury that has plagued them through most of their lives. They have been unable to do the job that they were doing when they were injured.

Some people have mentioned that the trade that they wanted to replace when they were injured was denied by the board. There were such things as a lot of dispute about what doctor was going to be honoured in the recommendations. There was a lot of discussion around insufficient amounts of financial compensation being offered and how difficult it was to continue an endless debate on trying to resolve an issue that was very apparent — for example, a person with a severely crushed foot or other serious injuries where they felt that they could no longer do their job. They continued to have this debate for years and years and years. I was told by many that it was one of the hardest things that they ever encountered in their life — something they thought should have been the easiest because they paid dues for compensation.

I know I have ever since I had my first job. I have always paid compensation, and I've never had a claim. Maybe I was just lucky, and I think I'm like a lot of other people; I didn't even bother reporting an injury, because I knew it would jeopardize my job and I never put in for a claim. In fact, I was told only approximately three or four years ago that the injury I sustained in 1970 was a crushed vertebra in the lower part of my back. I never reported it. At that time I thought I would probably lose my job, so I didn't say anything. Today I know I probably should have reported that injury, because it's now starting to bother me and I have no record of complaint. So it is important to record all injuries, because you never know what the smallest injury will become down the road.

I went on to talk about the Workers' Compensation Health and Safety Board's role with regard to mental health issues. If I heard correctly, I heard the chair say that they were now working in partnership with the Yukon Human Rights Commission to deal with issues at the workplace that may be due to mental stress — harassment on the job, bullying — those kinds of issues. I know for a fact that those are alive and well in the workplace today. And rightfully so; one should be able to address that issue.

I was very interested in this area after hearing the chair talk about this issue, because I believe my interest includes First Nations — First Nation employment, employers or government, First Nation governments.

When the chair said that they are looking at being able to address these issues in the general public, I automatically assumed that, because First Nations also pay dues for compensation, it would automatically cover First Nation lands, but apparently it does not. It seems to stop at First Nation lands, but off First Nation lands, they have jurisdiction to do it.

I find that rather unfortunate, because I believe we're splitting up people according to their race, and I think that's wrong. Human rights are human rights, whether you're First Nation, or from China, or Japan, or wherever — human rights are human rights. We should get the same privileges everyone else does in the territory.

At the present time, I know the federal government in Ottawa is attempting to repeal a section of the *Human Rights Act* that allows them to have jurisdiction on First Nation lands, and I think that's a good thing. I raised this point today because I would like to have it on record that, first and foremost, this is really a major concern. I would recommend to the chair and the minister that, if there's ever a revision to the *Human Rights Act* in the Yukon Territory, they pay special attention to this particular area, because it's important that all people — every person who works in this territory — are protected from harassment and bullying on the job.

Once the brain, for lack of a better term, is "fried", as is usually stated in many cases when you have an overload in your brain, you end up having a nervous breakdown — that's not something that can be repaired within a matter of days or that you can take a pill for. It is something that stays with a person for many years. It just so happens that I know of such people who have had a nervous breakdown from too much mental and emotional stress. It is a very serious area to attend to with regard to employment, and that is to cover everyone and anyone in the Yukon Territory.

When we ended the debate in the last session, I was at the section where I was talking about when the NDP last year in this House put forward to the minister a proposal that the names of the employers with the worst health and safety record be published as a way of shaming businesses to clean up their act, and warning of prospective employees of the employer's track record around health and safety issues.

Mr. Chair, I know there was some reluctance to do this, but a lot of people I know, including myself, feel that employers have the right to ask a prospective employee for job-related references, to check on their employment history. They have always done that. The employer gets to make a judgement call on that employee as to whether or not they are going to have a job with them.

I feel quite strongly that similar rights should be given to the employee so that they do have some indication of what kind of employer they are going to work for. I went to work in a mine at one time. Had I known before I went to that mine that they had no ventilation for the equipment and for three or four welders who were burning rod in that shop, I would not have taken that job. I can guarantee you that I would not have taken that job. I didn't know the safety standards in that mine. I didn't last there, because I had enough sense and enough respect for my own health that I chose to leave the job.

I think that it is important for a lot of the equipment operators to know that a particular construction company may have a poor track record of doing maintenance on equipment and that safety is at risk. It would be good to know those kinds of things. Then, if you decide to go to work for them, that is a choice that you made in good conscience — not one that you would maybe some day regret many years later if the brakes failed on a piece of equipment and you ended up busted up severely enough that you're alive but never able to do the things that you used to do. It is important and there are a lot of pros and cons for that, I would imagine.

Quite frankly, I don't see anything wrong with saying that a particular company had 3,000 claims in one year. It would make a person be a little bit more inquisitive, and it would give the worker full advantage of knowing what they were getting themselves into.

Out of those things I raised that are summarized today, I only have a couple of questions I'd like to ask of the chair.

The first one is, because the chair said the Workers' Compensation Health and Safety Board is working in partnership with the Yukon Human Rights Commission, does he agree this area may have to be reviewed to ensure double standards do not exist between non-First Nations and First Nations, as they all pay dues to the same cause? It would have made me very happy to see something in the amendments to this act now to cover that.

The second question I had was this: will the board agree to consider naming the employers with the worst health and safety record? It will be very understandable if they can't do that, but it's something I know a large number of people would be interesting in hearing.

Thank you.

Hon. Mr. Cathers: In answer to the Member for McIntyre-Takhini, I appreciate his concerns. I will be somewhat brief in response to some of them, particularly with regard to experience rating, as the Leader of the Third Party and I, as well as the witnesses from Workers' Compensation Health and Safety Board, spent a bit of time discussing this on Thursday afternoon. For the member's reference, it's on pages 2314 and 2315 of the Blues. In fact, I believe it goes on from there, with some discussion on experience rating in particular — that being, simply put, naming employers who have bad safety records. I recognize where the Member for McIntyre-Takhini is coming from and his intention that, from his perspective, as I understand him to be saying it — an employee would then, before taking a job, have an opportunity to review the employer's resumé, much as the employer reviews the employee's.

The downside to it comes into the issue that the Leader of the Third Party and I discussed on Thursday afternoon, regarding his concerns of potential coercion not to file a claim, similar to that laid out — the relevant section of the act is 112. The downside to experience rating is that, in other jurisdictions, in some cases it has led to abuses whereby some employers, because they will be negatively impacted if they have a bad safety record, will attempt to coerce employees into not filing a claim where there's a downside to that employer to fulfill their obli-

gation in reporting a workplace injury or any problem that occurs, as they're obligated to do.

I don't dispute where the member is coming from in the fact that I think it's a good theory. I appreciate his intention and, all things being equal, it would be wonderful if everyone had that opportunity, if there were issues to review the number of claims that occurred and the number of problems. However, as I indicated, it does lead to a problem whereby there is then a significant disincentive — a penalty — following your obligations as an employer and reporting a workplace injury, and to employees who are then sometimes put under pressure not to make that claim.

That comes to the crux of that issue, but I do appreciate the member's concerns. I hope that has provided some clarity. For the other questions he asked, I would refer them to the witnesses for a response.

Mr. Tuton: In the actual statement that the minister started out with, I think there are some areas in there that we must, for the record, comment on.

One, in the workers' compensation system here in Yukon, as it is across the country, the only source of income or revenue that the board has — and I would assume that the member was speaking, when he spoke of himself, as an employer, because we do not have the ability, today, yesterday or in the future, to have workers pay into the system. Workers are provided the services of workers' compensation by the employers paying the assessment dues — and only the employers.

When we talk a little bit about the relationship with First Nations, the *Workers' Compensation Act* covers all workers. It covers all workers equally — as a worker is defined in the definition section of the act.

The difference is when you start looking at occupational health and safety. This, once again, is another set of regulations. All First Nation governments, workers, employees and First Nation development corporations — as was indicated on Thursday — the Canada Labour Code. That is where their occupational health and safety rules are.

I am not sure of what the question was, as it related to the Yukon human rights and the relationship of the board, but what is happening is that we are talking with the Human Rights Commission around the areas of workplace harassment and violence in the workplace. That is an ongoing dialogue.

Now let's talk about the first question that was raised regarding bad employers. Of course, that leads to, "What is a bad employer?" It is very hard to interpret and are we creating something here that we really shouldn't be?

As I indicated earlier on Thursday when I spoke about what our mandate was and where it was we wanted to go, you will recall that I said that we wanted to be proactive and we wanted to use the tools we had available to us to educate — for lack of a better word — or to raise the awareness of health and safety concerns in the workplace.

In fact if you think about it for a moment, we do name employers that perhaps step out of line when it comes to safety. We do that, quite honestly, through our *Occupational Health and Safety Act*. When an employer has broken the law and something has happened because of an unsafe workplace, we

can levy penalties and fines. When those penalties and fines are levied, it is public. In fact, from that perspective, it is made public and if there is, by cause of the employer, a workplace that poses imminent danger to the workers or anyone around it, the *Occupational Health and Safety Act* provides us the power to shut the job or the workplace down. That happens from time to time and, when that happens, obviously it is public.

Workers have the same rights as employers do. The worker has the right to ask the employer or their prospective employer any pertinent questions regarding their philosophy of safety or what their safety policies are. When contractors or subcontractors are going to work for contractors, these questions are asked all the time.

Do you have a safety manual? What is your safety policy? Workers have that right as well. And now, we see COR certification, SECOR certification, and CHOICES, which are new programs we have introduced. When a prospective employee is looking for work, then they can simply ask that prospective employer if they have either COR, SECOR, CHOICES or Passport to Safety, or if they have safety and prevention policies, or if they promote healthy and safe work practices.

There are a number of different ways to do that, although one of the ones that we have chosen not to move forward with at this time is identifying workers — and I mean, how do you do that? Is it more than one accident? Is it more than one injury? Is it more than five? Is it more than 10? The way that we do it is, when those flags pop up at the board, that means we have to do a better job of educating that employer in all of those different matters.

There is a system in place that allows us — believe me, there are a few that we need to go back to more than once. If it means continually going back, then we go back into the enforcement mode, for which we have authority under the *Occupational Health and Safety Act*. Once either fines or prosecutions are levied then obviously that becomes public.

I hope that answers the member's concerns.

Mr. Fairclough: I do have a couple more questions for our witnesses today. One of them is in regard to the old age security, the CPP clawback. The current practice is to reduce WCB compensation when CPP and disability benefits are also collected.

The compensation is reduced by 50 percent of the CPP benefits, and the current practice is being proposed in these amendments. Is that correct? Are we actually doing that without having legislation enabling us to do it?

Ms. Royle: No, that is not the current practice. That will be a new thing entered into under this particular legislation. We currently do not consider Canada Pension Plan disability benefits whatsoever in determining an injured worker's compensation benefits.

Mr. Fairclough: That's disability benefits, is that correct?

Ms. Royle: That's correct. We don't consider Canada Pension Plan disability benefits in calculating benefits. When we look at somebody who may be on the Canada Pension Plan — which happens very rarely because, when people are receiving Canada Pension Plan they have a limited ability to work

when they're in receipt of those benefits, but it could happen. We don't touch Canada Pension Plan benefits either.

Mr. Fairclough: That takes care of my other question.

I'd like to just give an example or look at a recent event regarding a worker who has been living with his partner. I know the witnesses raised this particular case the last time they were here in this House. This person has been living with his partner for a number of months and, under this proposed act, it does not recognize that spouse's loss. We're hoping to see something that would allow the board of directors, by policy, to establish that a spouse's relationship doesn't always appear evident after 12 months. Perhaps the board could determine the matter on merit, on a case-by-case basis.

Also in going along with this question, if the witnesses can tell us why and how the 12 months came to be and why we don't follow others that are out there, like family law, et cetera, that does not look at the 12-month period?

Ms. Royle: The 12 months for common-law relationship has been in our legislation for a number of years, and it's also very similar to the federal requirement that in order for a common-law relationship to be established, there has to be a 12-month communal relationship with an individual. So, essentially, it's the standard for determining common-law relationships. Obviously, there is some standard needed so that people who have a very brief relationship wouldn't be entitled to benefits, and 12 months is felt to be equitable on a national level. That's what we currently have in our legislation; that is what is continued to be proposed in the new legislation.

Mr. Fairclough: In the act, it doesn't specifically say what the age should be for retirement. Why was age 65 not used? Is it to follow the changing number of the federal government?

Ms. Royle: Yes. In fact, we see retirement ages changing across the country. Having a very fixed age — being age 65 in the legislation — we felt it would be better to have a tie to the federal retirement age and then, if things change, our act would be very flexible and modern to allow those changes to happen as we see retirement age change in other jurisdictions. If it changes federally, we will follow that.

Mr. Fairclough: Now, CPP disability is only payable when an individual is considered totally disabled. While the board maintains the authority to make their own determination of the worker's level of disability, would the board be able to take the 50 percent of benefits the worker is receiving for total disability, and still determine that the worker is fit to be earning some income in a deemed job?

Ms. Royle: Obviously, there is a significant amount of board policy that will be needed around this particular section, the new proposed section 24, to look at situations like that.

If a person is deemed totally disabled by the Canada Pension Plan, that will be a consideration for us. Although we do have different policies and different legislation to follow, it would certainly be a strong indicator. We would address that issue in policy to ensure there is an equitable arrangement for that.

Mr. Fairclough: I believe that you can't have it both ways. Section 41 — what happens when an employer brings a

worker back under this program into a position or division that is closing or seasonal in nature? The worker is on the job for two months and then shut-down occurs, and the worker didn't get to go because of his injury, but rather was let go because his injury caused him to take a job that had a known short expectancy.

Ms. Royle: I am not 100-percent sure of the scenario the member is describing, so if I could paraphrase? A worker is injured; they are able to return to work; the employer returns them to work — in their pre-injury job or in a different job? No, in a different job that would have to be comparable in nature and in earnings. Subsequently, the employer lets that person go because the area is being shut down — it is seasonal. In that case, the employer would not have met their obligation under this section of the legislation. The employer has to put the worker back to their pre-injury status in a comparable or alternative job. If that worker's pre-injury job was subject to seasonality or due for a layoff, then that worker would be laid off the same as any other worker, regardless of their injury.

So the principle is "no better off, no worse off" as a result of the workplace injury. But an employer who chooses a comparable job and puts the worker in a different area that then gets shut down, and the worker would have not been there but for their injury, then that wouldn't meet the obligation.

Mr. Cardiff: I'm happy today to be here to discuss with the minister and the witnesses the new workers' compensation legislation. I would like to recognize the amount of work that did go into this and the number of years of consultation and the work by all of the stakeholders to come to where we are today. I think that where we are today is a lot further along than where we came from.

I don't want to be lengthy in my questions. I have some questions, and I apologize if some of these questions are repeats from last Thursday. I did read with great interest the transcripts from last Thursday, late into the evening and Friday morning. I felt that there were a lot of good questions and the answers provided were very thorough. My apologies if there is a repeat of some information here today.

For me, one of the highlights is what was just being discussed: the return-to-work legislation. If the witnesses could maybe highlight what the process is going to be and the way that they see the board's participation in the return-to-work process, to ensure that the workers who are returning to those jobs find the jobs acceptable to them, that they are able to do the jobs, and that this works together for the benefit of both the worker and the employer.

It is just how you see it working. This is basically what I would like to hear from the witnesses or the minister.

Mr. Tuton: This is one of these questions that needs to be broken into two parts.

The first part, I can deal with. The second part, which is more of a technical nature, I will turn over to Ms. Royle.

Let me start by saying that the return-to-work program is a very important shift in the way that we view our workers' compensation system. In the past, we spent all our time treating the injured worker's injury, obviously with the goal at the end of the line to have that worker return to work earlier and safer.

However, there has not been the legislation to provide for certainty on both parts.

I think we spoke briefly about this on Thursday. There are a couple of components. We need to sort of adjudicate, on a quicker basis, injuries that occur in the workplace. Once we have adjudicated those, we need to start the medical treatment and any rehabilitative treatment earlier.

As part of that, we recognize that workers do not get injured in the workplace with their goal being to stay on workers' compensation for the rest of their life. Being able to perform their daily work schedule for their families to bring in what the family is accustomed to — that is really where they want to be. It is incumbent upon us to help make that happen as quickly as possible.

We can't just do that by saying, "Okay, we think your back is healed up enough, so tomorrow we're going to put you back to work."

Prior to this legislation, we developed a rehabilitation policy, and we are recognized across the country as being one of the leaders in this policy. It forms a team approach so that it's not just between the worker and the case worker, but it's a number of people involved. Val can speak to you about the technicalities around that.

If we can accomplish this simple task of reducing the duration of the claim by actively trying to either get this worker back to his pre-injury job or, if that's something that's going to take a great period of time, if we can get them back to something at his or her employer's workplace, so they actually have a meaningful, ongoing relationship — not only with the employer, but also with their co-workers and with their family. That's really the key here: to make that happen as soon as possible. If we can do that and reduce the duration of those injuries merely by a few days per claim, the cost savings or benefits to the system are going to be huge. But more than that, the benefit to the worker is going to be even more because, through a modern approach to rehab, we can get that worker back to the workplace. It may not initially be back to his pre-injury job, but at least it will be back to the workplace and doing something. As I said, there is a technical part to that and with the Chair's permission, I would ask Ms. Royle to elaborate.

Ms. Royle: There are three sections under the return-to-work legislation. The first one is section 40, which looks at the duty to cooperate. This is the piece that would happen when an injured worker has incurred a work-related injury and is still recovering from that injury. What would happen under this legislation is the worker would visit the physician. Then the physician would fill out what is called a "functional abilities form" which looks at what the worker can or cannot do from a physical perspective.

That form then goes back to the workplace because, quite frankly, the people who know the work best are the worker and the employer; together they can work out a plan. As Mr. Tuton said, obviously the board will be involved with that plan as part of the case team, to make sure that it is safe for the worker and that it meets their functional abilities. If it is that way, then the employer must offer that work and the worker must accept that work.

In most cases that is very straightforward once you get the functional ability information. For small employers, we expect that we will be more involved because small employers don't have these things happen very often so they'd have less experience in dealing with them; whereas, there are larger employers with a confirmed return-to-work program under our CHOICES program who would have the in-house expertise, so the board would play an oversight role in those ones. What we've said is this is not a self-reliant system, rather it is a shared-responsibility system so that the board is not using this legislation to say, "Okay, employer and worker, you work it out together." We will still be there at the table as part of that team to make sure that it is appropriate for the worker and safe for them and their co-workers.

So all of that happens while the worker is recovering. We would also look at how benefits are paid during that period of time. If the worker has gone back to work, is the employer paying, is the board paying or is there a combination of both? We will develop a policy to set guidelines for when those things happen.

Section 42, as I mentioned, is a functional ability piece for physicians and section 41 is the return-to-work process, which happens once the worker has either recovered or has medically plateaued. In those cases, the employer is obligated to return that worker to their pre-injury job, a comparable job or to a suitable job depending on their level of physical ability at the end of the process. The board will be very heavily involved in those types of situations. Most of the time it isn't an issue. In the past, workers go back to work with their pre-injury employer and that is the end of the story. There are cases where that doesn't happen, and this legislation protects those workers so that, in an easier process, that would be adjudicated by the board, and they would return to their pre-injury job.

Mr. Cardiff: I thank the witnesses for that explanation; it is really helpful. I congratulate the board, the stakeholders, the workers, and the employers for this because I honestly believe that as someone who has worked in an industry where there is a high injury rate, and where people do get injured on the job, this is definitely a step forward.

There was a question earlier about the Canada Pension Plan benefits and the clawback. I am wondering whether you may know, or if you have this figure: how many injured workers do we have currently who collect CPP and workers' compensation as well? Do we have those figures?

Ms. Royle: We don't have those figures because under the current act we have no reason to know about the workers' CPP disability benefits, so we don't collect that information. We obviously will have to under the new legislation.

Mr. Cardiff: One of the other changes in the act is that it creates a limit on appeals. I am wondering if you could explain who is going to be affected by the change limiting the appeal period, and what was the rationale behind that?

Ms. Royle: The limit on appeals would affect all appeals regarding claims for compensation. That includes any decisions that were made on or after the effective date of this legislation, which would have two years from the date of that decision to appeal. As well, any decisions made prior to the

date of this legislation would have two years from the date of the legislation to appeal.

We have developed communication strategies around that to ensure that the workers who need to know that there now is a limit will know. It will be on all decision letters as well.

The rationale — currently, there is no appeal limit. That certainly makes things very difficult with respect to claims management; there is no finality to issues. With respect to hearing appeals that are 10, 20 and, in some cases, 30 years old, we often require lawyers to go back and interpret old legislation, so it is certainly very expensive. It is also very difficult for the board's actuaries to help us to determine how much money we need from a benefit liability perspective, because it is always changing, as an old claim now comes forward.

Of all jurisdictions in Canada, the last two without an appeal limit are Yukon and Northwest Territories/Nunavut. Northwest Territories/Nunavut, effective April 1, will also have an appeal limit. Then Yukon would join them in July. It makes sense from an administrative perspective.

It also makes sense from the workers' perspective in that issues need to be dealt with early. If there is an issue, for example, about a worker receiving physiotherapy and their entitlement to that, if they wait too long, and do not appeal, the opportunity for effective physiotherapy is gone, because the earlier you get physiotherapy, the better chance you will have that it will be effective.

By putting in an appeal limit, it forces everyone to deal with issues in a more timely manner to facilitate a worker's return to work and recovery.

Mr. Cardiff: Just a little further on this one — I am aware of appeals that date back quite some time. I am just wondering, will that close the door for those people who have had ongoing appeals and concerns with how they are being treated and how their claims are being acted upon? Some of these, as you stated, go back 20 or 30 years.

I am wondering if this will basically draw the line in the sand for those people, and whether they will be able to have any further recourse.

Ms. Royle: What the legislation said is for any decisions that have been made before the date of this legislation, those workers will have a full two years to start the appeal process if they already haven't. If there is already an appeal process in place, this legislation won't affect that. It provides that appeal process to go forward.

Essentially a worker would have two years from the date the adjudicator made the decision or the date of the legislation, if it's an old issue. Then after the hearing officer decision, they would have another two years to file to the Workers' Compensation Appeal Tribunal. After the tribunal decision, they would have another two years, if there was a Supreme Court issue.

In fact, the process could still operate over six years, but there's nothing saying, for anybody who is currently on claim, their decisions have no appeal time; they still have two years. We will ensure that everybody who is currently on the system in receipt of benefits receives a letter advising them they do have two years to start an appeal process for any old issues.

Hon. Mr. Cathers: Just to provide a bit more clarity for the Member for Mount Lorne, what this matter is specifically referring to is that, right now, the status quo is that, since the inception of a workers' compensation system in the Yukon, any decision that ever occurred can be appealed — there's no time limit on it. That level of uncertainty — because when they're back dated, the costs have escalated — is bad for the system. Anything that threatens the structure of the system is, of course, both bad for employers and employees. The appeal limit is common in other jurisdictions and it is simply about providing clarity.

As Ms. Royle indicated, there would still be a two-year time period for those who have not filed an appeal of any of these past decisions. Then, from that day forward, the appeal would have to be filed within 24 months.

Mr. Cardiff: While we've got the minister on his feet, I do have a question for him. I don't know whether this question was asked last Thursday or not. I will read the fifth paragraph of the preamble. "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, mainly the workers and the employers;"

I am just wondering whether or not the minister is taking that statement in the preamble to be a guarantee to Yukoners that we won't see any contracting out of our workers' compensation system to Alberta or B.C. Has that issue been put to rest finally?

Hon. Mr. Cathers: I can't speak for any stakeholder group or any member of the public who might choose to make any issue regarding workers' compensation legislation an issue, when they might choose to do so, and when they might choose to stop doing so. As the member is aware, one employer stakeholder group expressed the position that the government should consider contracting out administration of workers' compensation and occupational health and safety to another jurisdiction, specifically to Alberta or B.C.

As the Member for Mount Lorne is aware, this is not an issue that was part of the scope of the act review. It was not one of the 88 issues identified. As I expressed previously in debate, I appreciate the concerns that that stakeholder group has in bringing forward their suggestion; however, the report that they had commissioned on this we did not believe was full enough in the scope of its review. It primarily focused on comparing assessment rates to assessment rates. We share their desire to see assessment rates decrease for employers; however, the structure of the review would follow the process that we had initiated.

Second, we believed that the primary issues related to the cost of the system or structure of the act in nature and that changes were necessary within Yukon legislation to bring about a situation that lays the groundwork for assessment rates going down in future. Some of the steps taken through that are reducing some of the risks to the system, reducing some of the areas particularly with regard to the return-to-work legislation, and reducing that time that worker spent on compensation.

As the chair has said on a number of occasions, if we could reduce the length of time spent on the system by every injured worker by one day, it would save the system millions. Certainly return-to-work legislation will not see each and every injury reduced by a day, but it will see some reduced by significantly more than that. Return-to-work legislation — that portion of the bill — is a key part of following best practices in other jurisdictions, ensuring and facilitating early recovery and return to work and getting the injured workers rehabilitated and back into the system at the earliest possible date. Through measures such as these and changes to others such as CPP disability offset, to name but a couple, there are a number of areas throughout the bill where these steps have been taken.

Another part in reducing risks to the system is, because return-to-work legislation lays an obligation upon both the employer to reemploy and provide suitable work, if possible, and the employee to cooperate, it creates the situation whereby it eliminates a potential risk to the system of foreign workers or temporary foreign workers coming in, getting injured, and going to another jurisdiction outside of Canada, and our having no ability to monitor their return to work, to monitor their health and safety, their ability to work, and the requirement to pay benefits long-term.

Under the new legislation, this could create the situation where, if they were in Yukon and it was clear that they were attempting to access a Yukon job but were not able to do so due to their physical situation, then the system would continue to cover it. That is another example of reducing a potential risk to the system that could cost millions of dollars if we were exposed to it. So these are a number of the areas that have been taken within the proposed new legislation.

Again, I want to emphasize for the record that we share the concerns brought forward by the stakeholder organization — the Whitehorse Chamber of Commerce — and their concerns about assessment rates. We share their desire to see those rates go down. We believe the legislation that has been tabled contains a number of important measures that ultimately should see reduced claims costs and reduced assessment rates, as well as reduced time on the compensation system through improved return to work and early recovery of injured workers.

So in answer to the member's question that he put simply as, does it put the issue of potentially contracting out WCB to another jurisdiction? From our perspective, yes, it does. I cannot speak for that stakeholder organization or others who may wish to continue proposing this for the next 30 years, for all we can guess. This was not an issue identified in the review and we are not considering contracting the administration of WCB out to another jurisdiction. The act itself contains a provision for being reviewed five years down the road and, at that point in time, it will be in the hands of the Legislative Assembly of the day to make whatever determinations it wishes to make.

Clearly and simply, we do not believe that the suggestion of contracting out the administration of Workers' Compensation Health and Safety Board and Occupational Health and Safety Board to another jurisdiction is the solution to the challenge of employer assessment rates, and that is why the act is as it is today.

Mr. Cardiff: I thank the minister for that answer. All I was looking for was the last part, but I appreciate the overview. I agree; if you want to reduce assessments, you need to reduce injuries and costs of claims. It's something we've heard the chair and the president tell us on many occasions, and that's why they're with us today as expert witnesses.

The minister actually answered one of the next questions, I believe, which was how the changes in this act will help to bring down those assessment rates. Could the witnesses expand on the information the minister provided about bringing down assessment rates? I would be happy to hear their thoughts on that.

I'd like to know how the changes to this proposed act will actually reduce work-related injuries. Are there provisions in here that strengthen the legislation, that require employers to do more, that require employees to pay more attention? I know there's a shared responsibility there. I'm wondering if they could provide us with a little bit of an overview in that respect.

Mr. Tuton: There are many ways we're looking at helping employers, because we at WCB are the same as government; we're the same as all the stakeholders, which include workers as well as the employers. We all share in one vision, and that's to be able to provide adequate compensation for our workers who are injured in the workplace, and to provide the employers the lowest possible assessment rates.

We would like nothing better than to be able to reduce the assessment rates for every employer and every industry next year. In fact, this year a number of industry groups have had up to a 14-percent reduction in their assessment rates. We base our projections over a 10-year period, so if the cost of the system has been coming down over 10 years, either gradually or quickly, that is seen as we go through the rate-setting process every fall.

CHOICES is one way that employers are going to see immediate savings, if they sign on. Most of what the member refers to falls under the other act that we administer, which is the *Occupational Health and Safety Act*.

We have been very outgoing in moving forward in whatever way we can to encourage both the workers and the employers to help create a safer and healthier workplace. We have done that, as indicated previously, through the Northern Safety Network Yukon, which used to be the Yukon Contractors Association. They are there now helping all employers develop safety programs, whether that is COR or SECOR, or any other programs that they offer through partnerships with not only the Workers' Compensation Health and Safety Board but with other stakeholder groups as well.

We also set up the prevention fund to the tune of \$5 million in which we have partnered with some 10 Yukon partners to provide training and other programs that will help us get there.

So, really, when you talk about if the legislation will do it, no, the legislation doesn't do it itself, but it's safe to say not only our policies but everything we consider in our day-to-day business and normal operations over at Workers' Compensation Health and Board now focus more heavily on the prevention and safety component.

As I've said, if you look at the *Workers' Compensation Act*, it's fairly specifically meant to deal with a worker once they become injured. On the other hand, the *Occupational Health and Safety Act* is there to ensure the prevention and safe workplaces, and all those kinds of things. Because nowadays most jurisdictions across Canada are charged with the responsibility of both acts, it allows us to better intermingle and to better work toward the same goals from both pieces of legislation. And we do that.

Quite frankly, we have our stakeholder advisory group, but we also have a prevention and safety group that is made up of stakeholders, and we deal with all ways we can collectively make the workplace safer.

As I indicated earlier, it's really a shift in culture; it's a shift in the way we think about how we must go about our day-to-day business. I think I said earlier that, back in the day when assessment rates were subsidized — highly, in some cases — employers were happy because their rates were low and WCB was there to do what they were there to do. Workers weren't happy that they were injured but, if they did get injured on the job, they were happy we had a system in place that provided them adequate compensation and medical and rehab coverage.

As we said, we have to take that a step further, which is this return-to-work component. It's the biggest, single most important component in the legislation.

I don't think that we can say enough that early and safe return to work is the key. The awareness is being raised by starting this fall to have industry meetings. By industries, what I mean is that in Yukon — and this may be a good piece of information for the members: in Yukon, we have some 2,800 employers, and of those 2,800 employers, there are roughly 15,000 workers. Out of the 2,800 employers, we break those into 52 different industry classifications, and each one of those industry classifications has three basic rates.

Having said that, we've been meeting with those industry groups — and the reason, quite frankly, that we started to have these industry meetings is because of those high assessment rates — the employers felt they were high assessment rates. Really, now that we're fully into these meetings, what we're finding is that more and more employers want to talk, not about the assessment rates, but about how we can create a workplace that is going to help bring down those assessment rates — so, how collectively can we do that?

That is part of what I was saying earlier: we're not focusing as much on the enforcement of both the *Occupational Health and Safety Act* and the *Workers' Compensation Act* as much as we are on education of both of those acts. In fact, we have in our occupational health and safety division, education consultants who are there for one reason and one reason only, and that is to help our employers better understand what a safe and healthy workplace means to the worker and what it can mean in potential savings to the employer. Hopefully, that answers your question.

Mr. Cardiff: I'd like to thank the chair for that. I agree, I think the return-to-work portion of the legislation is definitely an important part of the new legislation and it is go-

ing to be of benefit to both workers and employers in bringing down those assessment rates.

It's interesting to note, the chair was mentioning how they meet with stakeholders to talk about assessments and they end up talking about how to make workplaces safer. I think that in itself is a milestone that we all need to take note of, because that is a shift from my 30 years of working in the workplace. I think it also speaks well to why — one of the previous questions I asked of the minister was about the proposed contracting out. We would never, ever get that kind of service by contracting out our workers' compensation system to any other jurisdiction; you couldn't possibly do that unless you had it located here in the Yukon. You wouldn't get that level of cooperation or that level of attention paid to any employer group, let alone any employer in the Yukon. I've heard from several employers how pleased they are with the workers' compensation system, the board, the administration and how responsive they are.

I believe there was a question already asked about the super-assessments portion — I don't recall exactly which section it was in. I know there is an allowance for what has been called a super-assessment for employers who continually fail to provide safe workplaces and who have bad safety records. I would like to know if there is a cap on those assessments or is the sky the limit for what is provided in this new legislation?

Mr. Tuton: We have always had the ability to super-assess, and it used to be 133 percent. Let's look at the rationale around the word "super-assessment". Alberta, for example, has the ability to super-assess up to 200 percent. If you are already at the top end of your industry scale, a 200-percent super-assessment could be huge.

Again, the ability for us to super-assess — incidentally, we would have to develop the policy around that super-assessment before we can come out with an actual number. But, really, if you look at all of this legislation where the road leads to the end of the tunnel, so to speak, into a super-assessment, it is going to be a heck of a process to get there. As I stated in my earlier comments, really, that means we are going to work with these employers to help them whatever way we can, whether that be with the Northern Safety Network or whether it be with the Federation of Labour and the training that they provide around return to work. We are going to be able to provide them all of these ways and means of getting that extra ability to make themselves safe.

Part of this process that we are going through now, as I indicated, in the industry — back a few years ago, we did not have an ability to provide data to employers easily. We could, but our administration costs would rise so much by putting somebody in a room for two months to try to get all of this data out and put it into some kind of readable form, that it would be cost prohibitive.

Since we moved forward a couple of years ago on our new claims system, we have been able to provide data and information to employers. As a matter of fact, part of these industry meetings that we are going through now are able to show not only industry groups, but individual employers, what their own experience is as far as claims go. We have had on a number of occasions an employer who comes to a meeting and says, as

everyone does, “I don’t know why my rates are so high; I’ve never had an accident in 10 years.” And then you break out the data sheet and they look there and look a little foolish and say “Hmmm, that’s mine?”

We weren’t able to collect that data readily and easily a few years ago, but now we are. Now we can actually flag those employers who we need to so that we can have our educational consultants in occupational health and safety deal with those on a proactive basis sooner rather than later to try and identify with them. Now we can actually say in the year of 2007 you had, let’s say, five injuries, and all of those injuries were upper trunk related, which are usually caused by the same thing. We can now tell them most of the injuries were caused by contact with equipment or materials. All of these kinds of things — we can go back.

As a matter of fact, at one of our recent ones, which was very well attended, it was pointed out that with the purchase of a pair of safety glasses — 90 percent of the injuries that occurred in that industry over a year would have been prevented if they had safety glasses. We made the point that if you sign up to CHOICES, we will buy the safety glasses as part of your reward, so that it doesn’t cost you anything.

Those are the kinds of things that happen. When we talk about that culture change, this is how it occurs. We can now show every individual the number of injuries; we can even tell them if it’s male or female or break it down into age category; the type of injury, and how it is really caused — whether it’s in contact with equipment or machinery or those kinds of things. In some of the industries it’s boggling, where you would think, for example — I want to be careful about naming them, but in some of the industries that you would think the cause of injury would be really easy to pick up, it turns out in most cases not to be the case. For example, if it were transportation, you would think that most injuries occur in transportation when in fact they don’t.

So, all of these kinds of things will go a long way. If we get to super-assessing, there will probably be a lot of things between now and the super-assessment. If I can, just to add to super-assessing — because part of super-assessment can also talk about megaprojects — in the past, we haven’t been able to deal with them and I guess we really haven’t had any. For example, employers today are still paying for injuries that happened back in the days of Anvil mining and those kinds of things.

So what we want to make sure is, on a going-forward basis, if we are fortunate enough to have a pipeline project or a railroad project or another project that is considered to be mega, we now have a policy in place that can deal with that and will ensure the employers of Yukon today that they will not be affected by any injuries that occur on a megaproject. If it were a super-assessment, to use that word, during this megaproject, then any Yukon companies that are registered under the workers’ compensation system would still fall under their own assessment and not the super-assessment.

Mr. Cardiff: It is amazing and I’m pleased to hear that the information flowing between the board and the employers

is helpful to both the board and to the employers and, ultimately, will make workplaces safer.

This is a question that may have been asked earlier, and I know that I asked it last fall. I’m just wondering if there has been any change as it relates to super-assessment — and we had this conversation last fall — the idea of reporting employers who may be eligible for super-assessment, I guess — if they are not cooperative with the board and the administration of the board, then reporting those names.

The way I would put it, I guess, is employers have a right to check your job references and employment references. They can look back and see where people were employed; they can call for references and whatnot. The way I view it is it’s an opportunity for prospective employees working in industry to check out their employer to see if they have had a history of providing a safe workplace.

I don’t want to belabour the point. I know I raised it last fall when the chair and the president were in the House. This would give the minister an opportunity — and I believe I asked him this question before too. I would like to hear one more time the rationale for not reporting employers with bad safety records.

Hon. Mr. Cathers: I will be fairly brief in the reply. As those listening will have noted, this will be the third time I’ve answered this question. I understand the concern, in answer to the puzzled look from the member. Both the Leader of the Third Party and the Member for McIntyre-Takhini asked this question. I did give a response. The most lengthy one would be in Thursday’s Blues. I recognize the member did not necessarily have the opportunity to hear all parts of that debate, but the sections would be pages 2314 and 2315 of the Blues from April 3, and I believe it continued a little beyond that.

Basically and simply put, the issue around experience rating and disclosing, reporting employers with safety violations — as has been previously noted in debate — there is certainly the ability at the extreme end of the spectrum right now. If there are charges filed under the *Occupational Health and Safety Act* or regulations, those are disclosed. Those who have broken the law or the regulations are in fact disclosed now. The potential downside to experience ratings comes into an area around section 112 of the act. The Leader of the Third Party and I had some discussion around that. Also, there were comments from the chair of the board in that debate, as well as from the present CEO.

The concern lies around the potential coercion of employees not to report an injury and/or the failure of an employer to report a workplace incident. The potential downside to experience rating has been that, in some jurisdictions where this occurs, it leads to an increased number of abuses where an employer does not wish to have an injury reported, in that it can have a negative impact upon their reputation, their ability to recruit, et cetera and, therefore, in some cases — of course, not in all cases — this leads to an employer choosing not to report that incident and applying subtle or direct coercion to employees to prevent them from making that report. That is basically the crux of why — while recognizing the member’s suggestion and the theory behind it — we think that theory has in fact of-

ten led to unintended consequences that are worse — the benefit received is outweighed by the negative impact.

Based on the approach that has been increasingly taken, the government and the administration of the board are trying to encourage all employers and employees to recognize the importance of reporting a workplace injury, recognize their legal obligation to report it, and recognize that the board and administration are trying to help them rather than penalize. It is felt that moving forward with experience rating would quite likely have unintended negative consequences.

Again, if I may bridge back to the issue of the return-to-work program and recovery and the options provided under that, we are trying to encourage the employers and employees to see the administration and board as more of a partner than a “cop”, if I can put it in simplistic terms. Hopefully, through the efforts taken by administration and by the board in increasing awareness and education, we will see increased reporting and cooperation, rather than moving forward with initiatives that might lead employers to attempt to find ways to avoid reporting.

I hope that has answered the member’s question. Again, as the chair of the board noted earlier, there is certainly the opportunity for employees, potential employees, subcontractors and others to interview an employer in a business about their safety record, and to ask for information about their safety program prior to developing a relationship with them. I recognize that is not a perfect situation; I hope I have made the situation clear to the Member for Mount Lorne and adequately explained the concerns around moving with the proposed experience rating.

Mr. Tuton: The only thing that I would like to add to the minister’s comments deal around that issue of who is a bad employer or how you determine that — and I don’t think “bad employer” is the right word. So is one of the employers that would need to be named an employer that has 20 injuries in a year, but each one of those injuries is only \$30 — in other words, one doctor trip — or is it one employer that has one injury in a year, but it’s a serious injury that causes millions of dollars to the system? It’s a difficult thing to try to judge.

I think that the best way is to remain proactive with each employer, to try to help them find a way to better their safety and health practices on the work site, so that with our help, and with all of the other help that we can get, hopefully the issue of naming those people will be a non-issue because they will all be creating a safer and healthier workplace.

Mr. Cardiff: I thank the minister and the chair of the board for those answers.

I understand what’s being said, I just don’t agree totally with it. The minister says that section 112, “Coercion not to file a claim,” makes it an offence, so if there are employers who are coercing employees not to file a claim, they are also breaking the law.

If you think that, because they may get reported, there will be more incidents of employers coercing their employees not to file a claim, I would urge the board and the government to uphold the law and especially section 112 of the new act.

It is not about making employers look bad. I understand what the chair is saying about 30 claims at \$30 or one claim at

a million dollars. That is something that I believe needs to be discussed. I don’t see where it is allowed for in the bill, in this piece of legislation. I don’t know if it could be allowed for through a policy. It possibly could be allowed for through a policy and that would involve a proactive discussion that we’ve heard about with employers and other stakeholders, and maybe that is the direction. Maybe we need to hear from employees what their concerns are about working in unsafe workplaces.

One of the other comments, I guess, that I heard was that the board is not focusing as much on enforcement but is trying to be more proactive and educational. I think that is great. There was a fairly public piece of education done awhile back and, as far as I know, it is still an ongoing issue. I haven’t heard what the final outcome of that was, but it was basically where the board took an employer to court for having an unsafe workplace that resulted in the death of one of their employees. I’m just wondering if there is anything in this new act that enhances your ability or affects your ability to do that.

The reason that I’m asking that question is that it seemed, at that particular point in time, there had actually been two or three tragic incidents in the workplace. There was one involving another exploration firm — I believe that it involved a helicopter — and there was also another incident involving a government employee, I believe. Neither of those employers was treated the same way.

I’m curious if there is something in the old legislation that prevented that from being dealt with and is there anything in here that will ensure that all these incidents are treated the same? I think there were clearly some breaches of either the *Workers’ Compensation Act* or of the *Occupational Health and Safety Act* in all those incidents and yet we only heard about one court action resulting from those incidents. I’m just curious whether or not there is anything in this new legislation that addresses that concern?

Hon. Mr. Cathers: The Member for Mount Lorne is referring to charges and instances filed under the *Occupational Health and Safety Act* — a different piece of legislation — and of course the specifics of those we can’t discuss. Once they’re put into the purview of the courts, those matters are obviously — by long-standing practice and tradition within the Westminster parliamentary system — not discussed in the Legislative Assembly Chambers. For the member’s clarity, it is the *Occupational Health and Safety Act* he’s referring to and not the new legislation.

I’d like to return to the member’s questions and comments around the area of experience rating and the issue of section 112 — potential coercion of an employee not to report a claim. I would just note that my comments earlier were referring to experiences in other jurisdictions. The member is correct. Section 112 of the act makes it very clear that it is an offence for someone to coerce an employee into not reporting an incident, but the experience in other jurisdictions has shown that breaking the law and being caught at it can be two different things sometimes.

There is in general terms, I would suggest to the member, a danger for us as legislators in penalizing someone for following the law. The danger becomes that they may attempt to

avoid it. You want to avoid the negative consequences for being a good corporate or public citizen, and comply with that legislation.

I hope that has adequately answered the question for the member.

Mr. Tuton: I think the *Occupational Health and Safety Act* today clearly allows the latitude and the leeway for our inspectors to deal with those kinds of cases. I think when you deal with those cases, regardless of what they are, they are all different. We must be very clear that all employers must be treated equitably and not necessarily equally just because of that. The *Occupational Health and Safety Act*, at least today, gives us an adequate ability to enforce that act on employers.

Mr. Cardiff: For the minister's benefit, I wasn't suggesting that we discuss the details of the case that is before the courts. The question was whether there is anything in the new legislation that provides — there is a focus more on working together but, at the same time, we still need to recognize that violations or anything to do with workplace safety need to be addressed. If the law is broken then action needs to be taken, and consequences need to be rendered. The point that I was trying to make — I wanted to know whether there was something that hindered the board from acting in the other two cases where there were clear violations of the law, of safety requirements.

So I wasn't asking, for the minister's benefit, to discuss any of the details of any of the cases. I have some other questions. I don't know if there is anything more that either of the witnesses could add to that, because the question is totally answered — for me anyway. I feel a little confused, I guess, as do other members of the public. One employer was singled out for court action and the other two employers — one of them being the Government of Yukon — didn't seem to have their feet held to the fire on this issue and yet there were clearly unsafe practices at work there that resulted in a tragic death on a work site. The other one was just as tragic, but there were procedures that weren't followed, and I just don't understand why one case is treated differently from the others. Is it a requirement of legislation or why is that?

Ms. Royle: I can't overemphasize how important it is that every case that we look at is treated on its own merits. That is not only under the *Workers' Compensation Act* but also under the *Occupational Health and Safety Act*. I won't get into the details of any of the cases that were referred to, but each one was different and the violations were different. The board has the ability, through the *Occupational Health and Safety Act* and through procedures that we have developed internally to look at what level of punishment — for lack of a better term — would be appropriate in a particular case.

It really and truly depends on the circumstances of the cases.

Those cases that you referred to are three very different circumstances. Each one ended in a tragic death for a worker but came about through different elements of occupational health and safety and different circumstances. One employer is not singled out over another. Each case is evaluated and determined on its own merits.

The *Workers' Compensation Act* does not address that. The *Occupational Health and Safety Act* does, and it does give the flexibility for the board to make those decisions on a case-by-case basis as to what the infraction was and what the appropriate penalty would be.

Mr. Cardiff: I thank the president for that explanation.

I have a couple of questions around the maximum wage rate. First of all, can the witnesses explain how the maximum wage rate of \$74,100 was determined?

Ms. Royle: In order to do that, I do need to refer to the current legislation as to how the maximum is calculated. It is calculated very specifically in the legislation. It looks at a formula that, essentially, is trying to estimate the gross wages of 70 percent of Yukon workers.

The idea is that \$74,100 represents the 90th percentile of wages earned in the Yukon. It does that through quite a convoluted formula, which I am trying to find, as we speak, to discuss. It goes on for a couple of pages.

From 1998 to 2003, the maximum wage rate represents 90 percent of the Yukon workers' earnings. For each year after 2003, so since then, it's an amount equal to the product of the maximum wage rate for 2003 and the quotient obtained when the average wage for the year is divided by the average wage for 2003, rounded to the nearest multiple of \$100.

So that formula has been applied every year since 2003 — to result in the \$74,100 that's in effect for 2008. Clearly, that was not an easy formula to bring about. To get that 90th percentile, we used data that we purchase from Statistics Canada that I can't disclose to you, because it is proprietary. Although I did ask Statistics Canada if we could do that, they refused because they sell it, so it is a big problem that we can't even share the formulas with the public or to anybody who asks because of the proprietary nature of Statistics Canada data we use.

Mr. Cardiff: That means I may not get an answer to the next question. Turn to the second to the last page of the new act. In section 127, there's a maximum wage rate set for workers who suffer work-related injury between July 31, 1973, and December 31, 1982. That maximum wage rate is set at \$56,000, and that becomes effective almost a year from now on January 1, 2009. I'm wondering why that maximum wage rate is almost \$20,000 less. This would only apply to persons who have had an ongoing disability, or are disabled in some way from a work-related injury sometime during that considerable length of time. They're faced with the same cost of living today as those workers who have their benefits based on \$74,000 as the maximum wage rate. I'm trying to figure out why it's less. I'm assuming it's based on statistics that Statistics Canada isn't going to release. What is the rationale for it being less and what is the rationale for it not being effective until January 1, 2009?

Ms. Royle: The maximum wage rate for people injured between 1972 and 1993 was determined by predecessor legislation, so the formula is not referenced in this legislation, and I don't have it with me. It was based at the time on the assessments that the employers of the day were paying and it was relative to the average compensation rate of the workers injured in the year prior. Over time, that formula became unworkable

because there became fewer and fewer workers who were still in the system.

This change, up to \$56,000, represents the cost-of-living increase from that old maximum, to bring it up to date to January 1, 2009, in one fell swoop. It had been set by previous legislation and, based on cost-of-living allowances over time, this is how the \$56,000 was determined.

Mr. Cardiff: It seems strange to me that we would pay benefits — we are basically creating two classes of injured workers. I understand the assessments that were paid then are supposed to cover the cost of all those claims, but what we are creating at this juncture — in my mind, anyway — is two classes of workers.

Just for my benefit, does the witness know — and if she doesn't know, can we get the information — how many injured workers are still on the books who were injured between 1973 and 1982? If she doesn't have it now, could she provide it by a legislative return?

Ms. Royle: No, I don't have that information available with me today, but we could certainly get it.

Mr. Cardiff: There are a couple of other questions that I suppose could be dealt with in lines but, in going through the legislation, there were some areas where there appeared to be typographical errors or numbering done out of sequence. I don't know if the minister can provide this information as to whether or not there will be any amendments made as we go through the bill line by line.

Hon. Mr. Cathers: If the member could be a little bit more specific in his concern, we could give him a better answer on that — is there a specific section?

Mr. Cardiff: On page 87, under "Transitional" — the section we were just talking about, actually — 127(1)(d) it says, "section 19 of this Act shall apply to indexing of the worker's wage rate determined after January 1, 2002;". If you look at section 19, it talks about the balance of probabilities and it says that, "Despite anything contained in this Act, when the disputed possibilities are evenly balanced on an issue, the issue shall be resolved in favour of the worker or the dependent of the deceased worker." As well, in section 127(1)(e), it references section 19. That was one that was brought to my attention.

Ms. Royle: Those do need to change; those are incorrect section references that, through multiple readings of this, we obviously didn't pick up. We will ensure those amendments are brought forward.

Mr. Cardiff: That was my question for minister: whether we would be amending this piece of legislation on the floor of the Legislature to address these issues, or if they would have to be brought back at a later date. Will we be dealing with those as we go through line-by-line debate, or not?

Hon. Mr. Cathers: In reference to the member's question, there is reference there. I thank him for pointing out his concern. One other typographical error has come to our attention after tabling for which we intend to bring forward a correction in line-by-line debate which, of course, is the opportunity in the Assembly to make those amendments.

Mr. Cardiff: At this time, I don't think I have any further questions. I would like to thank the witnesses for appearing here today and all those stakeholders who did a tremendous amount of work in coming up with this document. I will probably have a few questions when we go through it clause by clause.

Mr. Mitchell: I am not going to spend a great deal of time today, because most of the questions I had were asked by the critics for the two parties and by other MLAs, and they have been answered.

I want to go on the record to say, first of all, that I want to commend the stakeholders — both workers and employers — who put so much effort into the research and consultation that eventually led to this new act. I particularly want to commend the Workers' Compensation Health and Safety Board. The president and the chair are here today, but I want to commend all the employees who have worked and continue to work on behalf of injured workers and on behalf of employers.

I particularly do want to say how pleased I am with the emphasis on Vocational rehabilitation and return to work in sections 39, 40 and 41 of this new act.

I don't have near the experience with workers' compensation that either of the witnesses have, although I did spend some period of time serving as an alternate chair of the board, but one thing that really struck me in my time there was just how much the outcome of injured workers was affected by the ability to gain rehabilitative assistance in a timely manner, early return to work and that sense of productivity that comes from returning to work — in at least some capacity if not fully in the previous capacity. I think that, looking back over many years before my time on the board, just as a member of the public, a number of individuals publicly demonstrated over the years. There were a number of high-profile cases and appeals

I think in many — if not most — of those cases, had this emphasis previously been in place, we might have had better outcomes. In fact, I'm certain we would have. I am glad to see those sections.

I am also glad to see section 52 on the limitation for appeal periods respecting a decision referred to in sections 15, 53, 54 and 59 limited to 24 months, because I think there have to be some limits on these as well. I think that those are very good things.

I also want to say it's nice to see an act that appears to be written in the two official languages, English and French, because sometimes I think some of the predecessor legislation was written in Latin or Greek and then translated, in terms of the difficulty for anybody, including employees of the board or board members, to understand it.

Having said that, I do have a couple of questions. One is regarding policy work. This is a new act; there are changes in it — for example, the changes in compensation for loss of earnings referred to in sections 20(1) and (2), or the new areas in section 24 regarding the Canada Pension Plan and Quebec Pension Plan disability benefits. Has the board identified the particular policies or a large number of policies that will need to be revisited and perhaps redrafted as a result of changes in this act? Is that a significant undertaking and is it an undertaking

that the board is already planning for so that it can be done in a timely manner?

Mr. Tuton: Thank you for that question because it is very significant, obviously. I had stated earlier that we already have in place what we call a policy working group, which is made up of stakeholders as well as board members. From time to time, they deal with all our policies, prior to the board putting those policies into place. So the commitment is going to be significant, not only from the board's perspective but also from our stakeholders through the policy working group.

We started working and talking with the stakeholders quite some time ago about potential policy changes that would come as a result of the new legislation — if in fact it was to be passed. So, yes, the board is prepared to spend whatever time it takes to come forward with these policies. The policy working group has committed to work with us on a very aggressive schedule because, if the act takes effect July 1, 2008, we must have those policies in place to make sure that the act can be moved ahead. So, it's very aggressive; it is very significant, but yes, we do have the support and the buy-in of all our stakeholders, as well as the board, to move forward in a timely manner.

Chair: Committee of the Whole will recess for 15 minutes.

All Hon. Members: Agreed.

Recess

Chair: Committee of the Whole has now come to order.

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

Mr. Mitchell: When we last left off, I think we were referring to the requirement to review and perhaps update existing policies. I believe that the chair had made reference to the good work of the stakeholder working group which, as I recall, has existed for some time. Nevertheless, there have been times when some of the policies have been very controversial and it has taken a great deal of back and forth.

I will just leave off on that and hope that it will move along expeditiously.

I was going to ask some questions about section 127, the transitional measures. The Member for Mount Lorne asked some questions about it.

Having previously served on the board, I do understand the principle behind why we have so many different standards, so to speak, because of the fact that people are captured by the act under which their injury occurred and by the assessment premiums that were paid at the time, based on the projection of the cost of injury to workers.

Nevertheless, this has been very controversial over the years among injured workers. I guess I would ask: is this how it is done in all other jurisdictions? In other words, do other jurisdictions universally run into these same difficulties, where you have workers coexisting with similar injuries but which occurred years, if not decades, apart, therefore receiving very

different compensation? Or is there any alternative method of resolving this?

Ms. Royle: Generally workers' compensation acts apply to the person when they are injured and that act then carries on, with the principle being that the assessments that were levied match the benefits that are paid out under the specific legislation. If you were to change benefits significantly into the future, then obviously you haven't collected the assessments to match them.

Usually what jurisdictions have is that a worker who is injured is under the legislation under which they are injured unless something is specified in future legislation. So often-times you do see specific sections that may apply to all workers, but the general rule is that the legislation that applied when you were injured is the legislation that governs your claim.

Things obviously changed dramatically from 1972 to today and different legislation applies. There were old pension provisions, for example, that workers under old legislation receive and continue to receive, but workers under the new legislation aren't entitled to a lifelong pension system. It works both ways, depending on which benefit you're speaking of.

Mr. Mitchell: I thank the witness for the explanation. What it boils down to is that, unless we don't change the act for a good many years, in the year 2100, we'll still have that situation where people are at least perceived to be being treated differently — as the Member for Mount Lorne has pointed out — based on when they were injured, although I do understand the principle involved.

I would like to ask a question or two about section 94, which makes reference to the *Financial Administration Act*. I know that the Workers' Compensation Health and Safety Board did not find themselves on the hook for any frozen investments from asset-backed commercial paper, unlike the Government of Yukon. However, I do understand that their previous policy allowed for investments into asset-backed commercial paper up to a certain percentage — I am not certain, I think that might have been up to 15 percent. I'm not certain exactly what the percentage was, but it was permissible; it simply hadn't been used.

Section 94 says 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, which is the very section that refers to permissible investments under the FAA.

Does the board know, from any discussions that the president or the chair may have had with government, as to whether the new policy — because it's not a change to the act, but rather, I believe, an investment policy that the government has made — would supersede the board's investment policy, or would the Workers' Compensation Health and Safety Board remain allowed to invest in asset-backed commercial paper and indeed, other investment vehicles that the Government of Yukon is not allowed to invest in, in the future?

Mr. Tuton: My understanding is that the policy document that we have — policy FN-16 — is the compensation fund investment policy and would supersede anything. As I stated earlier, we presently do not invest in any of that. We

invest in the long term; we don't invest for the short term. Obviously, that's not to say we don't use short-term investments because, like anybody else, we run into cash flow situations that require us to perhaps sell some. But we're really investing in the long term, because we have to match our long-term liability, which is why we invest.

So, no, I don't recall — in my coming-on nine years — any conversations at the board that led to looking at that. We may have talked from time to time about the opportunities around, for example, real estate that would give us another option, rather than equities and bonds. But, no, our portfolio — which is managed, as we said, by money managers — does not have any indirect exposure to non-bank — at this time or any time in the future that is foreseen.

Mr. Mitchell: Just to clarify, it would be permissible; it simply doesn't happen to be among any of the investment vehicles that you currently are exposed to. That's what I think I have heard. My past review of the policy would say that it is permissible. I am just wondering whether the board may wish to revisit their investment policy in light of what has happened in the marketplace, to see whether there are other changes they may wish to make to the investment policy.

Mr. Chair, you made reference to it not having been a great year for investments for a variety of reasons. The sudden strengthening of the Canadian dollar has affected U.S. dollar investments, for example. I just wonder if there is any intent to revisit the investment policy to try to ensure that it yields stable results over most years.

Mr. Tuton: You are quite correct that the act does allow us that flexibility if we so chose to use that. We do, on a regular basis, review our financial policies. In fact, our money managers visit us at least two or three times a year. During each one of those visits, we discuss what the future holds. The board may see fit to review the policy to change it but, as I said earlier, it's not something that we have ever discussed. Quite frankly, because of our investment policies, it's highly unlikely that we would.

Mr. Mitchell: I'm glad to hear that the board is paying careful attention to the vagaries of the financial marketplace, even if the policies permit a certain variety of investments. I do understand that the board, because of the longevity of their liabilities, is largely invested in longer term vehicles — mind you, the Yukon government's investment is now a longer term vehicle as well. I'll leave that alone.

I noticed that there was some reference to the new claims system in one of your responses earlier and I did hear you say that a number of the employers are pleased or interested in the information that they are able to retain as a result of it. I find that encouraging because I do recall — some time ago — that employers were not universally behind spending the money to put this in place. I think that it is only through knowing where you have been that you can know where you need to go. Too often the board, in years past, didn't have that information available to it, so I'm glad to hear that is working well.

I do have a question. At the very end of the act, under review, it says that the minister may conduct a comprehensive review of this act in 2013, including a review of the effect of

retirement on entitlement. Sometimes these acts have provision for “shall” and this one says “may,” which means that the minister also may not. So, in effect, there is actually nothing within this legislation that triggers or forces it to trigger being reviewed again in any particular period of time.

I'm wondering if the minister might want to respond as to why it says “may” rather than “shall” this time around. I know that the *Education Act* and previous workers' compensation acts have been worded differently than that and have obliged the government to, in some fixed period of time, have a second sober look at the legislation to see if it is still meeting the needs.

Hon. Mr. Cathers: The legislation still clearly places that expectation upon the government, that the act would be reviewed in five years' time.

Mr. Mitchell: With all due respect, Mr. Chair, I'm not sure it does clearly place that obligation because, as we've all come to know, in reviewing legislation there is a vast difference between “may” and “shall”. The minister of the day may view this section as requiring it, but it may not; whereas, if it says “shall”, it would. Again, I will ask the minister whether this word was chosen intentionally and, if so, why.

Hon. Mr. Cathers: I think to answer the member's question again, as I indicated, it makes it clear the obligation and expectation to begin a review of the act — yes, the word “may” versus the word “shall” does leave some discretion; however, to place a statutory requirement to begin a review does not itself place any obligation for any specific changes or the proposal of any changes. Therefore, the outcomes of such a review are subject to the debate of the day, the desire of the public and, of course, the will of the duly elected government of the day acting out its mandate. So this is really quite a minor issue here.

Certainly five years from now when the legislation reaches that date, I am sure that, should the government of the day not initiate a review, the opposition of the day will call for one to be initiated, and there will no doubt be significant public discussion on that topic. However, in terms of discretion where it does come to light, it does provide the opportunity — if five years down the road it is quite clear from stakeholders on both sides that they do not wish the act to be revised, it provides the ability for government to listen to the stakeholders and say, “Well, the stakeholders are telling us they don't want us to initiate a review; therefore, we will not.”

Mr. Mitchell: Thank you, Mr. Chair. I'll accept that explanation, and I guess we'll all see, some years hence, what does occur.

In section 98, regarding the board of directors, I notice in subsection 5 the wording for making appointments — now it says, “The minister” — in this case, it's not “may” but “shall” — “(a) shall appoint employer representatives to the board of directors from at least three names of qualified persons provided by employers and employer organizations.” It's similar wording for the worker representatives.

I don't have the predecessor to this act in front of me, but I think there was some question — I believe in the past the wording was different. It indicated “shall seek input” or something

to that effect, and this is very clear. So I don't really have a question; rather, I think that's a positive in the act — there shouldn't be a whole lot of dispute in the future — that these names need to come forward from the two stakeholders. I think that's a positive.

I'm wondering — I know there was some debate in the past because of two possibly contradictory sections within the act regarding either the ability, or the lack thereof, of the chair to vote on an issue. Now here it's quite clear that it says, "shall appoint no fewer than four and no more than six voting members". And elsewhere it makes reference to the appointment of a chair and an alternate chair.

Does this wording now clarify that once and for all? Or, is this still something that boards of the day may have to discuss, debate and interpret?

Mr. Tuton: I think it does. I think what's important here is that in our role as governors, we must be clear that the chair is appointed as a neutral chair. By providing the chair an opportunity to vote, it may be perceived, at the very best, to be not in a neutral capacity.

I think it is pretty clear and, from our board's perspective, the question is asked and answered. The chair and the alternate chair of the present board are very clear on that and a lot of this, quite frankly, comes out of the strategic planning that the board went through here a year or two ago. Our stakeholders, for example, are quite happy with that explanation and with the way that it is in the legislation.

Mr. Mitchell: I, too, think that it is a positive. The clarity is not only positive but also the fact, in and of itself, of the neutrality. To be clear, if ever there was a vote within the board on a policy and that vote were to be two to two — in the case of a four-person board — or three to three, then the measure would at least at that point be considered defeated and the board would go back to trying to find some other compromise to get to a majority vote?

Hon. Mr. Cathers: I think the answer to that is evident. A vote in any body typically requires a majority to pass, so if there is a tie, then there is a tie vote. Presumably that would go to the situation whereby further work could be necessary to reach a compromise position, if in fact a decision on that topic was necessary.

Mr. Mitchell: I just wanted to hear it said for the record so that there wouldn't be confusion later.

I think the rest of the questions I have can be addressed in line-by-line. I just want to thank the witnesses for their appearance today, as well as last Thursday. I know from having previously visited the president's former jurisdiction in St. John's, Newfoundland, when I was with the Workers' Compensation Board, she was quite highly regarded, and I think that Yukon is very lucky to have gained her expertise here. I guess that I'm quite fortunate that she felt that Copperbelt was as lovely a place to live as Newfoundland — as does, apparently, the chair.

In any case, one thing I would like to just state for the record, having been both an employer and a worker at various stages of my employment career, is that I know, for employers, the assessments can seem at times to be onerous, as we have heard expressed.

I don't, for one, think that there is any genuine savings by contracting out, which has been suggested. I think that the vast majority of the service that is provided here will still have to be provided at the local level, in terms of occupational health and safety inspections on that side, and in terms of meeting to have claims first heard and adjudicated and all the preventive work that is done — and I think it's best done here.

I would say that, yes, the administrative cost may seem high proportionately, but that is not dissimilar to what we have in running a first-class hospital or a Department of Education, or anything else in a jurisdiction of 32,000 people. We don't get the efficiencies of scale but, perhaps, they are more than offset by the effectiveness of the intimacy of the relationships that we hold in terms of local knowledge and ability to deal with it.

So I want to thank all the employees of the Workers' Compensation Health and Safety Board, as represented by the president and the chair, for the work they do. I will leave it to line-by-line. Thank you.

Hon. Ms. Horne: I have a couple of questions here. In your opinion, are the legislative changes proposed in keeping with the Meredith Principles, the founding principles behind Canada's corporate system?

Mr. Tuton: Thank you for that question. Absolutely — as I indicated earlier on Thursday, I had the opportunity a bit over a year ago to have a look at the original Meredith documents.

I indicated, regarding both the actual document as it was presented and the written working papers of Mr. Meredith, it is amazing that over all of these years that those principles and guidelines have been maintained by workers' compensation systems across the country.

Basically, to put it in a nutshell, what it really means is that the worker is provided a no-fault insurance, when and if that worker becomes injured in the workplace, and in return for that, the employer is immune from civil suits around that. Those are very important. We guarantee that it is no-fault and, as I indicated earlier, even if you look at it in the simplest of forms, if an employer has either neglected to pay his assessments, has forgotten to pay his assessments, or has just refused to pay his assessments, and a worker working for that employer became injured, that wouldn't have any place in the issue. The worker would be covered under the section that says we cover and guarantee no-fault insurance for all workers. The issue of collecting on the assessment premiums would be totally separate and a side issue.

Yes, the changes to this act clearly reflect the Meredith Principles and adhere to them strictly.

Hon. Ms. Horne: Thank you for that reply.

I have one more question. Given that there has been a historical compromise between the needs of injured workers and the collective responsibility of employers, how do you see these proposed amendments balancing the needs of workers and employers?

Ms. Royle: The historical compromise is obviously the key cornerstone of the Meredith Principles. We look at what is balanced in the act. The focus on injured worker recov-

ery and return to work are certainly good things for injured workers. The duty to cooperate where employers have to now cooperate and return to work, and even the duty to mitigate — which is a duty of the employees themselves to help return them to function and to work — is a benefit for employees. It certainly will reduce disability associated with long-term claims. Those are very positive things.

I think when we look at the balance on the employers' side, the system changes that are being proposed will reduce claim duration, which reduces claim cost, which can lead to assessment rate decreases — which obviously for employers is very important. With these changes, I think the system is more balanced than it would be under the current act. It really promotes recovery and return to work, which is good for Yukon and it's good for Yukon workplaces where labour is in shortage. The best workers that an employer has are the workers they already have. To return those people back to work would certainly be beneficial for them. There are a lot of changes in the act that affect both parties, but in a very positive way.

Hon. Mr. Hart: I would also like to congratulate the Workers' Compensation Health and Safety Board and all their stakeholders for their being able to work in a collaborative manner on all these amendments. I would like you to pass that on to all of those who were involved.

I just have a couple of quick questions, if I could. I would like to know what impact you think the amendments will have on the workers' compensation long-term strategy. In addition, I would like to know if there would be any additional administrative — shall we call it workload or anticipated work — that is going to be incurred by workers' compensation, by keeping it current with the federal *Old Age Security Act*.

Mr. Tuton: There is obviously going to be some additional workload that will have to be shared among the staff to help us get to where we are. I mean, it was indicated clearly that we have to develop a policy and it is not going to require us, though, to bring more staff on. We're just going to have to redirect resources to make sure that we meet that deadline of July 1, 2008. In our strategic planning we outline our goals that talk about our future challenges, and that reflects on how the legislative environment can affect these.

The goals that we have form the basis of the work that we are getting prepared to carry on for the next five years. Some of those are the four strategic goals. Obviously, the first one would be to achieve corporate excellence — that's number one. We want to make sure that we achieve that corporate excellence. We want to be able to comply and meet the requirements for legislation, obviously. Most importantly, we want to implement the best practices in the service delivery of our return-to-work portion of the legislation.

The fourth and final, and probably the most overall important to the board, is that statement that we continue to use, as we discuss where we head, and that is to promote that culture of wellness for Yukon workers and employers. That is really important. If we could just accomplish that, promoting a culture of wellness, then we're going to go an awful long way in working to reach all of the other goals that I just mentioned above.

Hon. Ms. Taylor: I would like to add my sentiments as well. I would like to thank the witnesses for making time available in their busy schedules for this important review.

This has been an act that has been in the works for some years. I can very much appreciate the level of work, time and effort that has gone into the compilation of this particular piece of legislation by hundreds and thousands of individuals throughout the territory. It has been a very interesting discussion and debate that has taken place here during the last number of days. It has been very informative from my own personal sake so I thank you very much.

I just have a couple of observations and questions. One really pertains to the fact that there has been a lot of discussion about net impacts or benefits pertaining to assessment rates. I can certainly appreciate that, whether it's return-to-work provisions or whether it's limiting appeal times and so forth. But in terms of just going on further from what has been elaborated on today, we get down to the administration costs. Certainly I know that in previous years, administration costs have been reviewed by the Auditor General of Canada, as well as actuarial firms, as I understand.

I just wanted to have some idea as to where we are in terms of administration costs, when you look at other jurisdictions in the country. This has been a question that has been raised with me as the respective MLA in the area, and by employers from time to time. That is an information piece.

Of course, we know what steps this legislation will be addressing to look at assessment rates. But, in terms of administration costs, what benefits accrue as a result of this legislation?

I also wanted to ask about the process for reviewing budgets for workers' compensation for the board. In particular, how are stakeholders involved? I know in the legislation before us, I think it is section 100 that talks about how the members of the board of directors shall consider and approve operating and capital budgets of the board. What are the timeframes and how are stakeholders involved in the public discussion on confirmation of the budgets and in deciding what stays in and out?

Likewise, just for reviewing policies, procedures, budgeting practices — I know there was some discussion over the last few days about new provisions about the obligation to consult. I think that is again in the same section; section 101(i) in particular talks about the adoption of any policy affecting claims for compensation or assessment matters. There is now obviously the obligation to consult with employers, organizations, workers, and so forth.

I just wanted to know if that entails obligation to also consult on budgets, policies, procedures and those kinds of things. Those were a couple of observations and some points I wanted to raise on behalf of my constituents.

Thank you very much for your time.

Mr. Tuton: Mr. Chair, this is one of these questions that, with your indulgence, we'll use as a two-part question. Obviously, there's the technical side of it but, from the board's perspective, I mentioned a little bit earlier that we came up with a new strategic plan a couple of years ago. That strategic plan was developed by the board through a great deal of feedback

and consultation with our stakeholders on a regular basis. Obviously, the strategic plan is a document that we use to move forward over a period of five years. It is actually confirmed annually at our annual information meeting, because our books are obviously open to the public. We meet with stakeholders annually to lay out what our plan is.

Also flowing from that strategic plan, obviously, is the business plan. That business plan clearly defines where we expect to be headed over the next five years and what the president and CEO is going to be accountable for. That's all part of that.

The budget is obviously tied to that and, at the end of the day, the board of directors will finalize the budget. The process generally takes two to three months. Two months — I guess when I said “two to three months,” Val jokingly said, “When did that happen?” It's closer to three months. It's a really tight schedule that the board looks at. And, believe me, one of the things — we do look at economies of saving, and our administrative costs, for example, have not been increased in the budget for the last three years. And that's important, because it is a question we not only get from here, but also from various employer groups.

From the board's perspective that will give you an indication, and Ms. Royle can provide you an administrative point of view.

Ms. Royle: As Mr. Tuton explained, our budget process is built up from our business plan, so we don't start with a budget; we start with our plan and build from there, with the proviso that I've been given in the last three years that I have a zero increase in that budget, ideally to be able to bring it down over the longer term in line with our business plan.

With respect to those administrative costs in our budget, the office of the Auditor General did a special examination in 2002. One of the comments that they made with respect to administration costs was that the actuary was asked to do a review; the actuary concluded that the total costs of administration appeared to be consistent with those of other boards, given our relative size.

In response to stakeholder issues, the board had that done again in 2005 to make it current. Again, the operating costs are in line with other boards' administrative expenses relative to our size. Clearly, as noted, we don't have all the economies of scale of a larger board; we do offer all of the services of the largest boards in the country but we do it with a much smaller workforce and a smaller budget. We do monitor that and we are working to keep our administrative costs under control, but we also want to make sure that we achieve the business plan and the long-term results.

With respect to policy consultation, the changes in section 100 of the proposed act confirm what the board's current practice is and enshrines it in legislation. The board looks to stakeholders and talks to the stakeholder advisory committee, as well as other stakeholder organizations that may or may not participate on that, to ask what policies they feel need to be looked at in the current year. From that administration, we also look at which policies we feel may need to be changed. We

also review all of the appeal tribunal decisions to determine if they indicated any policy issues.

From those three sources, the board then develops the policy priority list for the coming year, and stakeholders have a lot of input in that. We review those policies with stakeholders and they essentially receive an education session first on the issue, where we look at what is happening in other jurisdictions across Canada and we look at what the implications are for various options, and then they come back to discuss the options. So they have an opportunity to go back to their various constituencies, whether that be workers or employers, to have a chat about the proposed changes; then they come together to create consensus on the policies, which then go to the board of directors.

Stakeholders have input on what policies are put on the table for discussion. They also have input into what the policy changes are, and now that process is essentially enshrined in the legislation; whereas the current act only requires the board to put the policy change in the newspaper, and see who responds. That has not been effective. We get very few responses. But through the stakeholder process, we have tremendous involvement with various, committed stakeholders who come back time after time to discuss policies. The more of this you are involved in, the easier it is to comment on policy. They all interact; policies don't stand alone; the act acts as a holistic document, and the policies act interchangeably as well. It is important to have that, and we're very confident in enshrining that in legislation because it is a process that works.

That's all of the issues, Mr. Chair.

Hon. Mr. Lang: I would like to join with the House in thanking the people who came into the House to review this new process.

My question is very short, and I think it is very important. How do you see this new act encouraging workers and employers working together? That is an important part of any act. How do you as the chair and the CEO see that unfolding with this new act?

Ms. Royle: There are a number of things. One, just to talk about the policy piece — I am not going to go through that again, but that is a huge piece — it's having workers and employers work together at the corporate level, at the board level. At the individual level in the workplace, the duty to cooperate in this act really requires workers to communicate with their employers, and employers to communicate with workers after there has been an injury.

What we have seen historically is that, when a worker is injured and they are removed from the workplace, there isn't much contact. There is very little cooperation, very little communication, and very little working together. The board and the worker try to work on the worker's recovery, and the employer goes off and hires a replacement worker, and then is surprised by the cost of the claim and their assessment rate.

The whole focus of the duty to cooperate is that employers must communicate with their workers and, conversely, workers must communicate with their employers, and all of them must communicate with the board.

There are tremendous changes in here to force what should be happening anyway, which is communication with injured workers, but it doesn't. So the legislation really encourages them working together.

I think that one of the other residual things that come out of early and safe return to work is, often, that the accommodation for the injured worker can then become a prevention mechanism for other workers. A worker who is injured with a repetitive strain injury comes back, working together with the employer, and they discover that the way the work is done was causing this repetitive strain injury. Then that accommodation can be given to all the employees, so that they prevent future injuries.

It really has spin-off effects into all aspects of the workplace. We really do see working together — employers, workers, the board and health care providers — as a key theme of this legislation.

Hon. Mr. Lang: Of course, we have had the conjecture on the street about the pros and cons of the Workers' Compensation Health and Safety Board taking a look at Alberta and British Columbia and the work under their workers' compensation boards. I know it's something that is just conversation out there, but what's the advantage of this home-grown workers' compensation board from the board's point of view?

Mr. Tuton: That question has been sort of floated around and answered by other people, but thank you for the opportunity.

I guess you kind of look at it the same way you would devolution. Once you are able to look after your own affairs, then you gain ownership and there is an opportunity then to deal better with issues that are more local in nature.

We have to remember that each jurisdiction is governed by its own piece of legislation, and legislation differs from jurisdiction to jurisdiction across the country.

For example, the way maximum wage rates, benefits, and all of those kinds of things are done is on an individual basis. Because we're a smaller jurisdiction and in control of our own destinies, so to speak, we have the ability to become more involved in legislation that deals with our injured workers and our employers.

We have a better ability to provide an opportunity for stakeholders, for example, to become involved in the writing of policy. Rather than the board just developing policy on its own and implementing that policy without any input, that's made better because of the small size of the jurisdiction.

One of the other things we have an ability for here — we can get treatment an awful lot easier because we don't have a lot of those facilities here, and we have to reach out to our partners — and we partner with all jurisdictions across the country to help us provide those methods of treatment.

So we do work very closely with every jurisdiction. We meet with the Association of Workers' Compensation Boards of Canada regularly, and we network, both on a national level as well as from east to west. So we in the west just hosted the western heads of delegation — the chairs, presidents and CEOs from Manitoba west. We just hosted that a month ago. And that's an opportunity for us to have dialogue around what we

have in common and things that work in other jurisdictions that may work in ours.

As well, when we look at the Northwest Territories and Nunavut, we obviously have a very close relationship with them because of size and location. We have met with them to discuss areas of commonality, and we will be meeting with them this summer again, as a matter of fact, to discuss those kinds of things.

The advantages far outweigh the disadvantages. One of the things about this small jurisdiction is when we need change in whatever area, it can happen a lot quicker because our stakeholders are readily available. In some cases they are just down the street, so we can pull those things together really quickly.

I think the biggest thing is that we've gained ownership of our system. The clients, who are the injured workers, have instant access to our services and to our location. For example, if you are injured in Watson Lake or Dawson City, it is not a long journey to get to our main office here in Whitehorse. From that perspective I think that our board would never like to see it change. Everything is available here. We provide a tremendous service to our injured workers. We also provide a tremendous service to our stakeholders.

Obviously, all jurisdictions are different in the way they do their business, but when we go to meetings across the country and tell them that we have meetings with our stakeholders on a regular basis, not to tell them what we have done, but to explain to them the direction in which we want to head and if they are on board prior to making any decisions — they look at us funny and ask, "You do that?" It is those relationships you are able to build because of the smallness in the size of our jurisdiction. Those, in a nutshell, are the really positive issues that I see.

Chair: Is there any further general debate? Seeing none, we will proceed clause by clause through Bill No. 52.

On Clause 1

Clause 1 agreed to

On Clause 2

Clause 2 agreed to

On Clause 3

Mr. Fairclough: Assuming we are into definitions, I just have one short comment here: the average weekly earnings are what "the board of directors considers fair and just, as established by policy". Now, determining "fair and just" is not in the sole jurisdiction of the board. Are any others involved in the development of this policy?

Ms. Royle: Yes, all of the board's policies that affect claims for compensation or assessments — and this certainly would be a big one that affects claims for compensation in setting the compensation rate — falls under section 100 and has stakeholder involvement now required by this new act.

Clause 3 agreed to

On Clause 4

Mr. Fairclough: Under 4(1), "A worker ... is entitled to compensation unless the ... injury is attributable to conduct deliberately undertaken for the purpose of receiving compensation."

How will this determination be made, who will make it and can it be appealed?

Ms. Royle: That clause is an existing one that we currently do use from time to time, very rarely. It is determined by decision-makers at the board. It is appealable. It would have to be a very clear case because it is a no-fault system. So it's somebody who — this is an example from another jurisdiction — a worker called up and asked how much a finger is worth and, in the afternoon, came in with the finger in a baggie.

It would be those types of very clear-cut — and unfortunately I didn't make that up. Those are the types of clear-cut things where, if someone deliberately tried to hurt themselves, then they wouldn't be compensated, obviously. That's existing work that we do.

Clause 4 agreed to

On Clause 5

Mr. Mitchell: Under "Optional coverage" 5(2): "Despite any other provision in this Act, the board may, on the application of a sole proprietor or partner and subject to any conditions that it may establish, deem the applicant to be their own worker."

Are there specific policies that define how that is done?

Ms. Royle: Yes, there are several policies that deal with section 5. Basically, it's what we call optional coverage, and there are specific policies that guideline minimum amounts that can be purchased, and maximum amounts, and time limits for purchase of this type of coverage.

Clause 5 agreed to

On Clause 6

Mr. Cardiff: I have a question regarding — this was something that came up — I guess it would be section 6(1)(a) specifically. It's not so much related to this specific clause, but it's about my understanding of how benefits were paid to volunteers who were injured in their capacity as volunteers.

I guess the issue was whether or not the earnings — I just need some clarity on this — it's not just their earnings as a volunteer that are considered as their earnings when calculating their compensation, but are their earnings, when they're in their substantive position — when they're not in that volunteer position — are they also considered for the purpose of determining the level of compensation? I had a concern raised with me — I guess it would be about 18 months ago now — on that specific issue.

Ms. Royle: Section 6(3) deals specifically with that. So, if a worker is a volunteer, the worker's pre-injury earnings are either half of the maximum, or their pre-injury earnings from their other employment, whichever is the greater.

So, they would receive — we would consider their other earnings, but it would have to be from income that would be covered under the act. And if that were greater than half the maximum, they would get that; otherwise, they would be entitled to 75 percent of half of the maximum wage rate.

Mr. Cardiff: This may actually go back to the previous question. It is my understanding that they were actually a subcontractor and they were contracting. They were employed, but they were a contractor. It is my understanding that their employer was paying their assessments, but because they were

paid as a subcontractor there was some issue that those earnings weren't considered. Is that how that would work?

Ms. Royle: I am not familiar with the specific situation that you are talking about, and without all the facts I wouldn't want to comment on that. We would consider other earnings as long as they are compensable earnings under the act as defined in the definition of section 3. They would be included.

Mr. Mitchell: I would just like some clarification under "designation of workers by government," because it is prescriptive; it defines classes of workers who are deemed to be workers by government.

I am wondering, to use the example of last year's volunteers in the flooding scenario — I don't believe there was ever, during the time that the work was being done, a designation by the Commissioner in Executive Council that it was a disaster. Would (j) have covered that? "...persons who, with the consent of the Yukon Government, perform services on behalf of the government as volunteers." Some of the volunteering was being done in the government highways yard, but some of the volunteering was being done on-site. How would this work? Would people be covered based on their substantive positions? Could the witness just clarify?

Ms. Royle: Yes, the Government of Yukon did cover the volunteers in that emergency under subsection (j) with the consent of the government. Again, depending on if the person had no income and were injured, they would be compensated based on half of the maximum. If they did have income that was compensable under the act, then we would consider that for the purposes of determining their compensation rate. So subsection (j) under the proposed legislation was the section that those volunteers were covered under.

Mr. Fairclough: Under the same section 6(3), was this section designed to establish a minimum compensation rate?

Ms. Royle: It establishes a minimum compensation rate only for volunteers under this particular section. There is a minimum compensation level for workers in general but, for volunteers, it ensures that people who have no income at the time could be compensated, because then they could never go get a job if they were injured to that extent. So it protects volunteers with low or no income.

Clause 6 agreed to

On Clause 7

Mr. Cardiff: I'm just wondering, because I believe that some of this section is new. I'm just curious about what instances there are where we cover workers who are working outside of Canada. I understand cross-jurisdictional where we may have workers from Yukon working in other jurisdictions, but if you're working for a contractor, then you may be doing work in the Northwest Territories, B.C. or possibly Alberta. Is it where the employers are doing work outside of Canada?

Ms. Royle: This section covers a variety of situations. Essentially what it allows is that, if a Yukon employer is operating in the Yukon and they have workers who are operating in the Yukon, and then, as part of that employment, they send them outside the Yukon — whether that is outside Canada, and Yukon employers are operating internationally, in many cases

— then we can provide coverage for those workers for up to 12 months with provision for an extension.

So these would be Yukon workers working in the Yukon and, as an extension of their Yukon employment, they are sent Outside to do similar work. What is really important about this section is, if the jurisdiction where they are going has workers' compensation laws which require coverage in that jurisdiction, then in the place where the work is being done, their legislation would supersede Yukon legislation. That is the situation that section 7 would cover.

Mr. Cardiff: My question is, how often would this section be used? Most other jurisdictions do have compensation laws if you are working within Canada and, I believe, in the United States. Am I correct there?

Ms. Royle: Within Canada and the United States — we have agreements with every other jurisdiction in Canada for cross-jurisdictional work. We have that from a workers' compensation perspective.

Outside Canada and the U.S., it is more likely than not there are no workers' compensation systems, except in developed countries like Australia and New Zealand. England, for example, does not have a workers' compensation regime. We would be able to cover those workers to make sure that Yukon employees of Yukon companies are protected in those scenarios.

Yukon workers going outside the United States or Canada happens on a daily basis. Yukon workers going outside internationally doesn't happen every day, but it certainly happens regularly and more so all the time. As Yukon employers are bidding on jobs and increasing their competitiveness internationally, we do certainly see those cases where we do provide that coverage to make sure the workers are protected.

Clause 7 agreed to

On Clause 8

Clause 8 agreed to

On Clause 9

Clause 9 agreed to

On Clause 10

Clause 10 agreed to

On Clause 11

Mr. Fairclough: Clause 11(1)(a) says: "provide reasonable information and advice free of charge to the worker about filing a claim for compensation". I would like to know whether or not the medical community agreed to this.

Ms. Royle: This is a section of the current act. We meet regularly with the Yukon Medical Association; we have an agreement with them with respect to payment and how that works. Through those negotiation processes they are in compliance with the legislation. I am afraid I was not here when it was put in place to say whether they agree with it or not, but certainly they absolutely comply and we don't have any issues with this section.

Clause 11 agreed to

On Clause 12

Mr. Fairclough: I only have one question on this one too — it's 12(2): "If permission for the autopsy is refused, the board may, despite any other provision of this Act, deem that

no compensation is payable in respect of the death." What is the intent of this clause and what does it fix?

Ms. Royle: The circumstance where we may use this clause is when we are trying to determine whether or not the death was work related, so obviously there would be a question of that.

In many fatalities it's very clear that it was work related, but on occasion there could be a question of whether or not the worker committed suicide. In those cases, an autopsy may be required, and the family may not want to have an autopsy. In those cases, we can't determine whether or not the death was work related, and therefore no compensation is payable.

It is a "may" clause, so the board does have discretion to deal with exceptional circumstances. There may be religious issues involved in an autopsy, for example, which we would have to consider. That is why the clause obviously gives discretion to the board to deal with those exceptional circumstances. Pretty much everything around section 12 is exceptional. It very rarely happens, but we have had situations trying to determine whether or not a death was a suicide or a work-related injury.

Clause 12 agreed to

On Clause 13

Clause 13 agreed to

On Clause 14

Mr. Cardiff: I believe this is a new piece for this legislation. I'm wondering if the president or the chair could expand on it a little bit. I think it's good; I think it puts the onus on the worker, and I believe this is something that is long overdue. I'm wondering if someone could give us a little bit of the history of where this came from and the rationale behind it?

Ms. Royle: This section replaces the former section 8, where the onus was on the board to prove that the worker was unreasonable in their recovery efforts. That's a very different standard than a worker taking reasonable steps. The duty to mitigate is a standard in all other jurisdictions from a workers' compensation perspective. It's also a basic principle of insurance that you have to try to mitigate your loss to the greatest extent possible. You can't sit back, have a tree fall on your house, and then let it rain without even trying to mitigate that.

So it is really based on the principle of the onus being on the individual to help themselves in the first instance. We're obviously very pleased with this proposed section.

The other change in it is the ability to terminate. Currently, we have the ability to suspend or reduce compensation to a worker. The new section expands that to include the ability to terminate. We discussed on Thursday that there would be a policy developed around that. What we want the worker to do is to cooperate and get better, and return to work. There are situations, however, where reducing or suspending termination just doesn't seem to have that effect, and there are those rare situations where termination may be required.

We look at this as a very positive section, despite the addition of the word "terminate", but there are those situations where unfortunately, as a last resort, that is maybe where we have to go.

Mr. Cardiff: I would like to thank the president for that. I think that this is a step forward, and I think that it is progressive. I look forward to seeing the policies developed around this. I would just like to thank the witnesses for their explanation.

Thank you.

Witnesses excused

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

Chair: Mr. Cathers has moved that we report progress on Bill No. 52, *Workers' Compensation Act*.

Motion agreed to

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

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

Motion agreed to

Speaker resumes the Chair

Speaker: I will now call the House to order.

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. 5, witnesses from Workers' Compensation Health and Safety Board appeared in Committee of the Whole as witnesses.

Also, Mr. Speaker, Committee of the Whole has considered Bill No. 52, entitled *Workers' Compensation Act*, and has directed me to report progress.

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

Some Hon. Members: Agreed.

Speaker: I declare the report carried.

Hon. Mr. Cathers: Mr. Speaker, I move that the House do now adjourn.

Speaker: It has been moved by the Government House Leader that the House do now adjourn.

Motion agreed to

Speaker: This House now stands adjourned until 1:00 p.m. tomorrow

The House adjourned at 5:30 p.m.