Third Session - Thirty-Seventh Legislature

of the

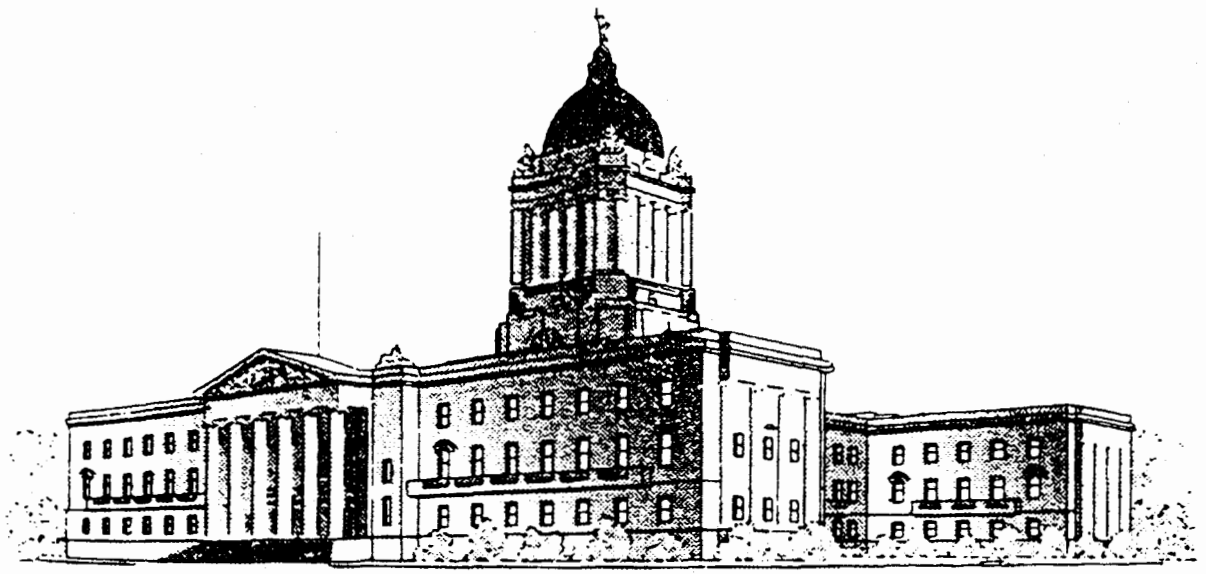
Legislative Assembly of Manitoba

Standing Committee

on

Industrial Relations

Chairperson
Mr. Daryl Reid
Constituency of Transcona



Vol. LII No. 3 - 3 p.m., Thursday, August 8, 2002

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON INDUSTRIAL RELATIONS

Thursday, August 8, 2002

TIME – 3 p.m.

LOCATION – Winnipeg, Manitoba

CHAIRPERSON – Mr. Daryl Reid (Transcona)

VICE-CHAIRPERSON – Ms. Bonnie Korzeniowski (St. James)

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Ashton, Hon. Mses. Barrett, McGifford, Hon. Mr. Robinson

Ms. Korzeniowski, Messrs. Penner (Steinbach), Pitura, Reid, Schuler

Substitutions:

Mrs. Smith for Mrs. Dacquay
Mr. Struthers for Mr. Ashton at 8:10 p.m.
Mr. Schellenberg for Mr. Jennissen

APPEARING:

Mr. Stuart Murray, Leader of the Official Opposition
Hon. Jon Gerrard, MLA, River Heights

WITNESSES:

Mr. Pete Walker, Private Citizen
Ms. Shelly Wiseman, Canadian Federation of Independent Business
Mr. Harry Mesman, Local 832, United Food and Commercial Workers
Ms. Diana Ludnick, MFL Occupational Health Centre. Paul
Mr Labossière, Manitoba Employers Council
Mr. Loren Remillard, Winnipeg Chamber of Commerce
Mr. Graham Starmer, President, Manitoba Chambers of Commerce
Ms. Ellen Olfert, Workers of Tomorrow Health and Safety Campaign
Mr. Wayne Bergen, Local 500, Canadian Union of Public Employees
Mr. Ed Hubert, Mining Association of Manitoba
Mr. George Fraser, Executive Director, Manitoba Home Builders Association
Mr. Jim Carr, Business Council of Manitoba
Mr. David Martens, Manitoba Building and Construction Trades Council

WRITTEN SUBMISSIONS:

Mr. Marcel Hacault, Manitoba Pork Council
Mr. Jim Carr, Business Council of Manitoba
Mr. Ed Hubert, Mining Association of Manitoba Inc.
Mr. Graham Starmer, Manitoba Chambers of Commerce
Ms. Shelly Wiseman, Canadian Federation of Independent Business
Mr. Loren Remillard, Winnipeg Chamber of Commerce
Mr. Paul Labossière, Manitoba Employers Council

MATTERS UNDER DISCUSSION:

Bill 27–The Safer Workplaces Act (Workplace Safety and Health Act Amended)

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Mr. Chairperson: Good afternoon, ladies and gentlemen. Will the Standing Committee on Industrial Relations please come to order?

The first order of business is the election of a Vice-Chairperson. Are there any nominations for the position of Vice-Chairperson?

Hon. Diane McGifford (Minister of Advanced Education): Mr. Chair, I would like to nominate Ms. Korzeniowski.

Mr. Chairperson: Ms. Korzeniowski has been nominated. Are there any further nominations?

Ms. Korzeniowski has been elected Vice-Chairperson.

Committee Substitutions

Mr. Ron Schuler (Springfield): With leave of the committee, I would like to make the following membership substitution, effective immediately, for the Standing Committee on Industrial Relations: Mrs. Smith (Fort Garry) for Mrs. Dacquay (Seine River).

Mr. Chairperson: Is there leave of the committee to substitute the honourable Member for Fort Garry (Mrs. Smith) for the honourable Member for Seine River (Mrs. Dacquay)? *[Agreed]*

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This afternoon, the committee will be considering Bill 27, The Safer Workplaces Act (Workplace Safety and Health Act Amended). This bill was previously referred to the Standing Committee on Municipal Affairs this morning, but has been transferred to this committee for its consideration.

At this morning's meeting, the following items were agreed to. It was agreed to set the time limits of 15 minutes for presentations and 5 minutes for questions and answers. It was agreed to hear from out-of-town presenters first. Out-of-town presenters are noted with an asterisk on the list of presenters. It was agreed that names would be dropped to the bottom of the list after being called once. Names would then be dropped from the list entirely after having been called a second time.

Before we get started with presentations, I would note for the committee that there are four presenters registered to speak to both Bill 27 and Bill 39. Bill 39 is being considered in Room 255 just down the hall from this committee room. Ms. Shelly Wiseman is No. 2 on our list, Mr. Dave Angus No. 7 on our new list, Mr. George Fraser No. 11 on our new list, and Mr. Jim Baker No. 13 on our new list. The Clerks of our committee will be in contact with each other during the meetings and, if the committee is agreeable, I may interrupt proceedings to notify one of these presenters that they are being called to present in the other room.

As a courtesy to persons waiting to give a presentation, did the committee wish to indicate how late it is willing to sit this afternoon?

Hon. Becky Barrett (Minister of Labour and Immigration): I believe, due to the fact that we have several committees going at once, that we will be able to deal with the matters before us until 6:30. Then if the committee has not completed its work, we will resume at 7:30 p.m.

* (15:10)

Mr. Chairperson: Is the committee agreeable with that? *[Agreed]* We will continue with public presentations, then. The first presenter I would like to call is Mr. Pete Walker. Mr. Walker, if you would please come forward. Do you have a prepared text, Mr. Walker?

Mr. Pete Walker (Private Citizen): Yes, I do, Mr. Reid.

Mr. Chairperson: Thank you, sir. You may proceed whenever you are ready.

Mr. Walker: It is with pleasure that I am able to provide an insider's perspective on the prevention of injuries in the workplace and to this committee's deliberations on Bill 27. It has been my pleasure to be active in the Manitoba health and safety movement for over 20 years.

Prior to becoming a full-time representative of the Manitoba Federation of Labour, I worked as a steel fabricator at CN Rail's Transcona shops at the Symington yards. During that time, I have been active as a joint committee member and as a health and safety educator for the Canadian Auto Workers.

Information on the state of injuries, illnesses and deaths has been and will be presented by others during these committee hearings. I will echo the need for positive action and provide comments on improvements that will allow for effective health and safety where there is little or no co-operative activity.

In 1999, the MFL conducted a study on the effectiveness of joint workplace health and

safety committees, what makes them effective, and can those elements be applied to other workplaces. We were able to identify 19 elements that fall into three categories: pro-activity, legislative compliance, and positive environment, which create an effective joint committee. We also identified that these elements could be used in other workplaces that were willing to embrace good health and safety practice.

One positive finding was that the majority of surveyed unionized workplaces that have joint committees are doing good work. The activities they are involved in contribute to the workers' safety and health. A substantial number of joint committees are working very hard, but do not seem to be able to find solutions to all their problems. Of the remainder, most are in workplaces that have little or no management support, no compliance with basic legislative requirements, and no training to do their job properly.

Even though we had information about what makes a committee effective, we were still experiencing high injury rates in Manitoba. It was easy to identify where those injuries were happening, but it was difficult to force those employers who did not support committees or compliance to requirements to begin to reduce their accidents and injuries. It became clear to us that in order to develop a workplace safety culture, legislative change with a more efficient method for dealing with non-compliance issues would be required.

In 2001, four young workers, a 19-year old, a 17-year old and two 16-year olds were among those who lost their lives as a result of workplace accidents. This provided the catalyst for Manitobans to come forward and provide their opinions on what will make workplaces safer. I had the pleasure of being on the review committee on improving workplace safety and health that heard overwhelmingly positive input for improving the conditions in workplaces and supportive of prevention efforts. There was a definite response that the problems, even though serious, could be fixed and people were willing to try.

There is a genuine desire for a culture shift. The cornerstone recommendation in the report of the review committee acknowledges that. I am pleased to see the bill before you today reflects that commitment to safer and healthier communities within the workplaces intended by our report.

Bill 27 makes many provisions to develop a culture of safety where all workers, regardless of age and abilities, status or position, will be provided with a safe place in which to work. The bill stipulates that workers will be given training and skills before they begin working or prior to operating new machinery or processes. The bill requires that workers be supervised against unknown and unrecognized hazards. The bill obligates workers to work within the framework of a formal health and safety program where their individual roles and responsibilities are understood and defined. Most importantly, workers will be allowed to participate in making workplaces safer without loss of pay whenever they exercise their right to refuse to be injured or prevent injuries to others.

The bill makes improvements in the effectiveness of joint committees in the workplace. Duties and responsibilities are being clarified and expanded to include active participation on inspections, investigations and dangerous occurrences. The bill requires joint committees to make recommendations and have those recommendations acted upon. Joint committees, even in multisite or complex workplaces, will be able to rectify and resolve hazardous situations that individual workers have identified.

The bill establishes clarification of many sections of the act that will greatly improve the abilities of committees to understand and apply regulations and establish formal programs to deal with all the issues they will be confronted with. The bill addresses issues such as violence, harassment and protection of pregnant or nursing mothers. The bill also provides clarity to the responsibilities of contractors, suppliers and owners when issues of health and safety are in question.

Finally, those who refuse to provide protection for their workers will be held accountable for disobeying the laws. The bill provides for a more efficient system to deal with

employers whose contempt for the law has led to the high rates of injury to workers, and, in particular, young and new workers.

Administrative penalties for non-compliance of improvement orders will increase the effectiveness of safety and health officers and is a positive move to restore balance to the judicial system. While the bill addresses many significant improvements, there are two issues that will require an additional amendment. They deal with training and effective fines. From my experiences in the education of workers, we have found there needs to be a validation of understanding as well as proficiency. While many believe the provision of training will solve many problems, if that training is not understood, it will do little more than give a false security.

There currently exists no definition of "training" and what qualifies as "being trained." We expect that a person is able to confirm comprehension and proficiency. Comprehension means being able to show they understand what has been explained to them. Proficiency means a worker can demonstrate a sustained ability to perform a set of actions and understands why they need to be performed.

As the bill is silent on a specific time for training prior to commencement of work, this must be addressed with an amendment to define "training" and "being trained." It is encouraging to see the bill adopt the most logical method of dealing with non-compliance of improvement orders, the administrative penalty system. Moving to an administrative penalty system can achieve the balance of enforcement and promotion.

Fines need to be set within parameters that discourage lengthy and costly appeals, but still encourage the employer to establish sound health and safety principles and practices and must be complementary to those established in the health and safety act.

Fines need to be of a range broad enough to be reflective of the seriousness of the violation and to recognize when a violator is reluctant to obey an improvement order. The suggested ceiling of $5,000 does not adequately deal with the variety and severity of violations. If employers are reluctant to implement an improvement order, low fines do not provide the needed incentive.

Increasing the range of administrative penalties from $5,000 to $50,000 will provide greater encouragement for compliance, act as an alternative for the current onerous prosecution process and avoid the burden of a formal court process and appearance. This will also ease the workload of the safety and health officers, prosecutors and courts to go after more serious violations and workplace fatalities.

I would like to conclude by saying that pieces of a puzzle are usually incomprehensible when viewed individually. We must view Bill 27 as a whole to understand the safety culture that will be possible with these positive changes. Workplaces that are in the majority, good workplaces with caring employers, will notice no change to what they do and how they do it with Bill 27.

Let me restate the fact that many workplaces already have a good safety culture. They actively support the work of the committee from the very top executive position to the new person on their first day of work.

Let me tell you in particular of one such workplace in Winnipeg, Sonoco Flexible Packaging. They print plastic labels in a variety of colours to go on food containers, and they also print and make these cookie bags that you see in stores. On January 2 of this year, after their Christmas break, they had a day-long safety day with no production taking place. They brought in all their staff from three shifts onto the day shift and had them rotate through a series of six workshops on a variety of 10 different safety topics. The workers were all paid as if it was a normal workday for them and even had their lunch provided. Sonoco wants to have no injuries, and for that to happen, they recognize the need for everyone to participate.

Their commitment to meeting the goal was to have a safety theme day called "First Day Back." The joint committee selected the topics presented and the management looked after the support work and co-ordination activities. It was

truly a positive experience for all involved, including ourselves. The presentation I did was received quite well, but what really impressed me the most was when the plant manager came into the session, listened attentively and supported what the message was.

This is not an isolated event, as I believe there are more employers who genuinely care about their workers and have the right attitudes to take positive steps to prevent injury. Indeed, I was also at the City of Winnipeg Safety Day doing much the same thing, even though they have a lot more than 200 workers to get the message to.

This is all part of the safety culture, and we just need to move into the workplaces that do not take their responsibility seriously. The changes in Bill 27 will provide that opportunity to reduce injuries and prevent fatalities, especially to workers and young workers in particular.

* (15:20)

Mr. Chairperson: Thank you very much, Mr. Walker, for your presentation. Are there any questions from members of the committee?

Ms. Barrett: No questions. Just thank you very much for your very well-thought-up presentation, particularly the example of a good workplace with a very positive safety culture. Thank you very much.

Mr. Chairperson: Any other questions? Thank you, Mr. Walker, for coming out this afternoon to make your presentation.

Mr. Walker: Could I respond to the minister?

Mr. Chairperson: Yes, you may.

Mr. Walker: Thank you. It is great to be here and be able to present on this bill that was introduced some time ago. It is also a good thing because it is summer. I am on vacation and that is why I am wearing the tie, you see. When I work, I do not wear the tie, but for this, I figure, well, I am on vacation, I will wear the tie. Normally, you would not see me in a tie.

Nonetheless, it is a very serious issue. It is a very important issue. I thank the minister for getting it to this point.

Mr. Chairperson: Thank you, Mr. Walker.

The next presenter is Ms. Shelly Wiseman. Ms. Wiseman, good afternoon. Do you have a text for your presentation?

Ms. Shelly Wiseman (Canadian Federation of Independent Business): I do, but I promise I will not read the whole thing. I would request that it all be published.

Mr. Chairperson: It will be circulated, yes. You may proceed whenever you are ready.

Ms. Wiseman: Thanks. I certainly thank you–

Mr. Chairperson: Hold on one second please.

Mr. Schuler: Just for clarification, I think Shelly was asking that the entire thing be added into Hansard.

Ms. Wiseman: Yes.

Mr. Chairperson: If that is the will of the committee to include the entire text of the presentation? *[Agreed]* Yes, it will be included.

You may proceed.

Ms. Wiseman: Thanks. I believe I know most of you. My name is Shelly Wiseman. I represent the Canadian Federation of Independent Business. We have 102 000 members across Canada and 4700 in Manitoba. Having said that, I would also like to state for the record that the CFIB is a part of the Manitoba Employers Council. I do believe they will be presenting today. We fully support the recommendations they will be putting forward. I will simply speak to some additional ones right now.

The CFIB supports many of the concepts brought forward in the proposed amendments, but is cautious of others. The Federation notes that our members' concerns are not limited to what has been proposed in the amendments, but what has been left to interpretation. The following comments will highlight areas of support and opposition.

To begin, the CFIB is extremely disappointed the Government has strayed away from the consensus recommendations of the

review committee report. The Government has gone beyond the scope of the recommendations and has broken its own promise to build a safety culture in Manitoba. Such a departure sends the message that government is not interested in the views of employers.

In our original presentation, CFIB emphasized the importance of making the legislation workable and understandable to both workers and employers. Unfortunately, many of the amendments create greater confusion and uncertainty. Complex and difficult legislation only serves to frustrate employers. I will provide some examples later on.

The CFIB is extremely concerned with the lack of accountability placed on workers. The act fails to provide any meaningful repercussions in the event a worker knowingly and willingly fails to follow safety procedures. Given the importance of safety and penalties imposed on employers, it is incumbent on government to ensure workers face a proportionate burden should they choose not to follow the act, to violate the act.

I will move on to employers' duties. The CFIB cautions this section fails to recognize the risks involved in completing various forms of employment and differing levels of supervision that may be required. Of particular concern is the proposed amendment referring to the employers' duties, which states: Without limiting the generality of an employer's duty under subsection (1), every employer shall ensure that all of the employer's workers are supervised by a person who is familiar with this act and the regulations that apply to the work performed at the workplace.

The legislation must recognize employers performing entry-level duties, such as, an accounting firm, and those in a labour-intensive factory require different levels of supervision. Therefore, the CFIB recommends the Government include a provision on risk assessment in this section.

On wages and benefits during training, the current legislation regarding wages and benefits falls under the jurisdiction of employment standards legislation. Amendments requiring employers to pay full wages and benefits during training may be confusing to employers. Amendments governing pay and benefits during any form of training are best suited in one piece of legislation. Furthermore, there is some confusion over what exactly the training wage would be. We recommend that be specified as reduced training wages, as is a common practice in many jurisdictions.

With the Workplace Safety and Health program, the CFIB is concerned with the amendment requiring that all workplaces where 20 or more workers of that employer are regularly employed, to prepare a written health and safety plan. Such a plan, at a minimum, would include a hazard assessment plan, an emergency preparedness plan. It would also require formal Workplace Safety and Health committee hazard elimination control measures, require worksite inspections, qualifications and training for workers and incident investigations.

The CFIB is concerned that the proposed amendments may not serve to encourage employers to make their workplaces safer and may actually weaken the Manitoba employers' commitment to promoting safety in the workplace, for the following reasons:

First, it may be viewed as yet another government-imposed paper exercise with which the employer must comply. This is particularly the case in small business where some of these may not apply when you only have three or four employees. Developing this type of formal plan would not best suit that type of workplace.

Second of all, it does not consider the level of risk involved where there are 20 or more employees.

Thirdly, the explanatory notes identify a sense of reasonableness in the legislation, but this reasonableness is not prescribed in the actual writing of the legislation.

So CFIB urges the committee to take the concerns of small business into consideration when reviewing the proposed amendments. We are all striving for the same goal and would like consideration to be given to small business and those with low risk when the health and safety programs committee is considered.

With respect to improvement orders, the federation supports the changes which strike out "on the third day prior" and substitutes "within seven days after." On improvement orders, this makes good sense. But we do raise concern with the proposed amendments involving stop-work orders and payments of employees. The proposed legislation states that while a work order is in effect, any worker who is directly affected by the order is entitled to the same wages he or she would have received had the worker continued to work. However, the legislation fails to provide for instances when the employee has caused the stop order to be issued. CFIB urges government to provide a remedy for this potential situation by providing an exception in the event a stop-work order is in place due to an employee's failure to follow safety procedures. We do not want government to implement a system that would create the potential for paid vacations by misusing safety legislation.

In addition, CFIB cautions that the legislation fails to consider the economic impact of long-term or permanent closures of work sites due to stop-work orders. As some improvement orders may take longer periods to rectify, it could cause the business to shut down for a lengthy period of time, or permanently. So this should be considered in that piece of legislation.

With respect to appeals, CFIB supports the time extension to appeal a decision of a safety and health officer for improvement orders, stop-work orders, discriminatory actions or right to refuse dangerous work, in addition to streamlining the process.

With respect to decisions of appeals, CFIB questions the impact of the Labour Board's authority to utilize The Labour Relations Act to remedy unfair labour practices. The Federation is extremely uncomfortable linking Workplace Safety and Health violations with this piece of legislation.

* (15:30)

With respect to workplace safety and health committees and representatives, the existing act provides for an exception: The Governor-in-Council may designate an individual business office or retail store or classes of business or retail stores or similar workplaces where a safety and health committee is not required to be established until the number of workers exceeds 50. Again, this is provided for, discussed in the explanatory notes that this will carry on in the new legislation. But we fail to see that and would like to see that exemption be provided as well.

Discriminatory Action. CFIB opposes the proposed changes which would grant Workplace Safety and Health officers the authority to deal with incidents in which an employee alleges that an employer or union has discriminated against that worker for exercising a right or duty under the act. CFIB fears that officers may spend more time dealing with labour related issues and less time on safety. So the issue is still important; it is just a matter of who should be dealing with it. Safety officers are designated to deal with safety, not these types of issues.

Lastly, we urge the Government to impose consequences for employees who file false complaints with the Labour Board or Workplace Safety and Health officers. The proposed legislation reads: If a safety and health officer decides that no discriminatory action was taken against a worker for a reason described in section 42, the officer shall inform the worker in writing for these reasons. While employees should have every right to file legitimate complaints, provisions need to be in place for workers who would choose to abuse the process.

With respect to right to refuse work, CFIB recommends government include a provision that exempts certain workers from the right to refuse work if it is a normal condition of employment. Examples, of course, would be firefighters or police officers. What we recommend is these types of workers have appropriate training to assist them when they deal with particularly dangerous work situations.

Power of director to obtain information. CFIB is concerned with the wording of the following: The director may, by order, require an employer to do the following at the employer's expense: (a) have tests conducted by a technically qualified person specified by the director; (b) give the director a report or

assessment prepared by that person, and to do so in the manner and within the time frame specified by the order. CFIB fears that the wording in part (a) may be subject to misinterpretation or abuse. The statement "specified by the director" needs to be clarified. It is unclear whether the director will set the criteria and the standards or designate the person. We believe that they should set a criteria, a set of qualification standards that the employer could choose from.

Administrative penalties have certainly been something that CFIB has been outspoken on. CFIB challenges government to provide information that the use of administrative penalties reduces the number of workplace accidents. In addition, we request government provide documentation outlining the type of improvement orders that have not been fulfilled and their link to accidents. We also note that administrative penalties were not recommended in the consensus review committee.

In addition, CFIB fears the use of administrative penalties may become a core revenue source for Workplace Safety and Health. The federation fears officers may be pressured to meet quotas or may receive incentives for writing fines. The use of administrative penalties may be abused by officers, which will come at extreme cost to employers. Also, CFIB feels funding education programs through the use of administrative penalties sends a poor message to all Manitobans, as the funding would decrease if compliance improves.

Lastly, CFIB notes that few jurisdictions in Canada utilize administrative penalties. British Columbia is currently reviewing their utility and Ontario limits the use of administrative penalties. It is important to note that Saskatchewan has resisted the use of administrative penalties, despite attempts by unions to have them introduced.

Lastly, offences and penalties. CFIB opposes the use of additional penalties to fund public education. The proposed legislation reads: When a person is convicted of an offence under the act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, order the offender to pay the minister, in accordance with the regulations, an amount for the purpose of educating the public in the safe conduct of the activity in relation to which the offence was committed. Such a penalty may be required in addition to any other penalty that may be imposed under this Act.

CFIB notes the review committee did not recommend additional penalties be imposed to fund public education, but a portion of the existing penalty be used for this purpose. CFIB supports the review committee's recommendation and urges Government to remove the additional penalty. Again, linking education funding to workplace safety and health offences sends a negative message to Manitobans.

In conclusion, CFIB has been pleased to present our members' views on this important issue. As stated previously, CFIB's safety is a top priority for our membership and for our organization. However, it is our position that the proposed amendments go beyond the scope of the review committee's recommendations. In addition, we fear that Workplace Safety and Health officers have been granted far too much discretion in interpreting this legislation. It is also the Federation's position that the legislation does not provide consequences for workers who abuse it, and given that safety is everyone's responsibility, CFIB feels government should ensure all parties understand the legislation and are accountable if they misuse it.

I thank you for the opportunity to speak this afternoon.

Mr. Chairperson: Thank you, Ms. Wiseman, for your presentation. Questions for the presenter?

Ms. Barrett: Just, again, thank you very much. It has been enjoyable to talk with CFIB about this and other issues, and I look forward to continuing to do that.

Mr. Chairperson: Did you wish to respond, Ms. Wiseman?

Ms. Wiseman: Thank you. I appreciate being a part of the process.

Mr. Chairperson: Thank you.

Mr. Schuler: Shelly, on page 1, you talk about CFIB as extremely disappointed the Government strayed away from the consensus recommendations of the review committee report, and you go on to say: "Such a departure sends the message that government is not interested in the views of employers and is fulfilling a pre-arranged agenda." I understand that education was a big part of that consensus report. Do you feel that that is seriously lacking in the bill as it stands currently?

Ms. Wiseman: Certainly, there is a lack of the education component. There is some discussion in terms of penalties being used towards that, fines; but in terms of providing any type of education for employers, for employees, the Government has not initiated anything in this bill, whatsoever, on that.

Mr. Stuart Murray (Leader of the Official Opposition): Thank you very much for the presentation. It is exhaustive in its scope and so there has obviously been a lot of thought go into it. Knowing that you were part of the MEC organization that was making recommendations to the Government, would you say that the current legislation, 27 as it stands, and knowing that Manitoba is a place where there is a lot of small business that has expressed concerns, I think, surveys in the past about whether they want to remain in this province. Would you say that Bill 27 is something that will promote small business in Manitoba, as it sits?

Ms. Wiseman: I guess I could say a few things on that. First of all, I do not believe that this legislation looks or addresses the needs of small business in terms of safety. I cannot see how this bill will improve safety in a small work environment.

What we need to do is deal with the small employers, help educate them and provide them with additional information. What this does is pass a number of regulations in a very prescriptive type legislation that will serve to frustrate small business employers, telling them they have to know this bill inside and outside when most of it will not apply to them. It becomes a paper exercise, too, which frustrates them and adds to the list of reasons that they may consider leaving the province or expand outside of the province. There is no evidence that anything in the bill–well, there are some good things in the bill that will benefit–but the majority of it does not serve the small business community.

* (15:40)

Mr. Chairperson: Thank you, Ms. Wiseman, for your presentation this afternoon.

For the information of the committee members, a submission has been received on Bill 27 from the Manitoba Pork Council. Is it the will of the committee to include the text in the Hansard? *[Agreed]*

The next presenter on our list is Ms. Iris Taylor. Is Ms. Taylor in the audience today? No. The name will be dropped to the bottom of the list.

The next presenter is Mr. Harry Mesman. Mr. Mesman, will you please come forward.

Good afternoon, sir. Do you have a presentation to the committee?

Mr. Harry Mesman (Local 832, United Food and Commercial Workers): I do not have a written presentation, I am making a verbal one, but I do have a copy of our presentation to the public hearings on workplace injury prevention that I will be referencing and will distribute for that reason.

Mr. Chairperson: Please proceed, sir.

Mr. Mesman: I am here representing United Food and Commercial Workers Local 832. It is a local that there is probably not a town of any size in this province that does not have UFCW members in it. We are arguably the most diverse local in North America and have workers in just about any sector you can think of, and, as a result, have seen a whole variety of injuries, from physical to mental and all those in between.

I personally over the years, as a worker at Canada Packers for many years back in the seventies, as a union representative, as a worker

advisor for the province, as a member of the Workers Compensation Appeal Commission and a member of the board of directors of the Workers Compensation Board and the health and safety representative of the Federation of Labour for some years, have seen the devastating effects that workplace injury and illness have on workers and on their families and the ripple effects it has on the economy, for that matter, but, obviously, it is the human impact that most affects me.

I am sure if there is one–maybe I should not assume. A wise mentor told me never to do that. I suspect the one commonality on this committee is the desire for brevity on the part of presenters after the session you have been through. I will try to do that. Brevity is not–oh, that is a pun–my long suit. I have already been far too long telling you I am going to try to be brief. I am incurable.

It is, as I say, a verbal presentation, but largely taken from the handed-out presentation that you have got that we have made.

We obviously support the changes to the act. We are in concurrence with the presentation of the Manitoba Federation of Labour and the recommendations they make therein. We are very much supportive of all the new health and safety initiatives, particularly those aimed at young workers. I talked about seeing the impact and seeing people's lives turned upside down as a result of going to work and trying to earn a living. Of course, it is the most compelling when it happens to young individuals, particularly the fatalities that we see and have seen very, very recently. It is chilling. It makes us all realize that something needs to be done. We may not fully agree on what that something is, but we know that we are not doing enough when these statistics keep coming at us. Manitoba is among the worst, unfortunately, federally, in that statistical picture.

The problem is that I expect limited impact, frankly, from these changes. Yes, as I say, we approve of them. We do think that the Government has not gone far enough and are hopeful in future sessions they will go beyond the changes here. Part of the reason I do not think they are going to have great impact is the limitations of the internal responsibility system, which is what drives the legislation to begin with. I will excerpt from that presentation I handed out on page 1 why we think this system is limited.

It is clear from the public discussion paper that the Government put out at that time that the Government understands that we are far short of reaching the goal of a safe and healthy workplace for Manitobans. Certainly, that is the case for far too many of the workplaces where our members are employed. The primary reason for this shortcoming is that the theory underpinning all of our health and safety legislation, namely, that those who manage or work directly with hazards are in the best position to develop solutions to control them, can only be practically effected when there is real commitment from senior management. This is something that, I think, is inarguable no matter how good of a system we put in, although I would suggest that if some of the changes I am going to recommend were implemented, it would make a significant difference.

No matter what we do, if there is not that real commitment from upper management, we see it in the companies, health and safety program is not going to work nearly as well as it should. When that commitment is lacking, the whole system falls apart. That is why the role of the Government is so important in enacting sound legislation and providing meaningful enforcement of that legislation. That is always going to remain a vital cog in injury prevention.

After participating in province-wide hearings on enforcement in 1996, I put it this way. I am quoting myself here: Many studies have noted that a successful health and safety program requires commitment from upper management. This is true only because the IRS, the internal responsibility system, confirms the traditional power relationship in the workplace. It does so while, at the same time, pretending that this relationship, particularly in the health and safety arena, is non-confrontational. I have heard it over and over again from employers that at health and safety committee meetings, you can take off your union hats and we take off our management hats; it is a level playing field. Frankly, that is hogwash, as far as I am concerned.

Conventional wisdom recognizes that for efforts to be truly joint, a level playing field must exist between the parties. When it comes to joint health and safety committees, this equality is assumed to lie in the common interest of having a safe and healthy workplace, but we think this is, on the whole, a false assumption of the primary reason why the whole system only succeeds when the employer wants it to or is forced to.

The case has been made many times, and tragically proven in just as many, that the investment that workers make in their jobs, mainly their health and their very lives, is not equal to the financial investment of the employer. To equate the surrendering of human life to production and to capital accumulation is, frankly, morally reprehensible.

In any event, much of the financial investment is also borne by the worker in the form of payment for social welfare costs such as unemployment insurance and health care premiums. That is too far of a side road to go down, but I would suggest that changes made to Workers Compensation in the past decade have led to a greater transfer of those costs onto the general public. Clearly, as long as the internal responsibility system assumes a level playing field and common purpose, where neither exists, the impact of the system of the damage done to workers will be minimal. In fact, the internal responsibility system often guarantees minimal and sometimes even negative impact.

So, when there is statistical improvement in, to use a real Manitoba example, reported lost time injuries, such improvement can be attributed to decreased and shifting unemployment, combined with suppressed reporting and not necessarily to meaningful and successful efforts of the Joint Safety and Health committees. These efforts rarely exist because they are thwarted by the very assumptions the internal responsibility system is founded on. They will succeed, we believe, only when power is given to the representatives whose interest are not blinded by greed and who are incurring the actual risks, the workers. Therefore, we make the recommendations on page 12 of our presentation to the public hearings, a number of regulatory ways that this balance of power can be shifted.

One is to give the committee actual functional authority, make it mandatory to implement the recommendations of the committee. Two is to require specific time lines for all the committee recommendations with a maximum time line of 21 days. Obviously, these are appealable and there may be exceptions to some if the whole recommendation, for example, to entirely change the ventilation system, in all likelihood, cannot be effected in 21 days. The idea is to commit to it and to start the process within that time period.

Another is to provide, by way of the Safety and Health Committee, for worker input to the company health and safety policy. That is happening in some places and I do not want to tar all employers with the same brush. There are those who are doing, if not a perfect job, and which one of us does, but are making a considerable effort. I have seen, and I have no idea why this is so difficult for many employers to see, that these sorts of efforts actually improve the bottom line considerably, this kind of healthy workplace created through taking health and safety seriously.

Another recommendation is to provide the union with access to all employer and government health and safety information. A lot of roadblocks get put in the way to getting that access on occasion. Providing for a worker majority on the joint committees, this obviously would be highly controversial, but we believe that the worker is the one that takes the risks and it is the worker that should determine the best way to address those risks. Again, those recommendations can be appealable. Workers are not going to make recommendations that are going to put themselves out of work either, incidentally.

We would also suggest that time be provided for the worker representatives to the committee to conduct a pre-meeting to prepare for that Joint Safety and Health Committee. We would like to see it spelled out clearly, the right of the committee to conduct inspections and investigate accidents. I think that is being clarified more by this upcoming legislation. We believe that committees should be authorized to shut down equipment or processes that are deemed unsafe. We believe that no one should

be permitted to do work that has been refused as unsafe until the refusal has been resolved.

We would like to see wage continuance assured. Again, this is being addressed by the current legislation for those who exercise their right to refuse. There should be appeals of an inspector's decision to not write up an order. Inspectors' decisions can be appealed, but the decision to do nothing in the current legislation is not appealable or at least it is not clearly spelled out that it is.

Training, a big, big problem in this province. It is not being done as thoroughly and effectively as it should. Labour, certainly, has a role to play and can improve their role in this also. We concede that, but we need to get together at the table and figure out a way to make this training happen. There are committee members who have been on the committee for a year or longer and still have not had the training required by legislation. Sometimes, especially currently, that is because they simply cannot get into the courses that the Province puts on. Those are often filled up the day that they are announced. I suppose inspectors have already slotted people that they know are really in need of training into these courses. So we would suggest that a workers' health and safety centre funded by the Workers Compensation Board be established to train all committee members.

* (15:50)

Failing the provision of real power to the workers, then we would hope to see measures taken that would communicate to employers in the language they understand most, the language of the dollar. We would have hoped for penalty assessments. I heard the previous presenter object to the extremely limited penalty assessment that is being proposed by this legislation. This is a penalty assessment that says, if you do not obey an order, an improvement order that has been issued by the province, and after appealing it there is–I believe the Manitoba Federation of Labour presentation references it could take some 70 days before all these appeals have been exhausted. After that, then, there will be a penalty in place.

I find it very difficult to believe that anybody would find this objectionable. We not only want to see this sort of penalty assessment in place, we think it should be improved, all of the recommendations of the Federation of Labour. We would also like to see a much more thorough penalty assessment in place that would make it truly costly to violate, more costly at least to violate than to observe the law. I am not sure if that is the case. In fact, I know that is not the case at the moment. We think an inspector should be able to go into a workplace if there are violations that the employer knows or has every reason to know. In that workplace, there would be a list of violations that are automatic, no different than the traffic violations. It is automatic; you get a ticket. It would be the same for this. If that saw does not have a guard on it, boom, there is an automatic ticket in the workplace. That is the kind of penalty assessment system that we think would have a genuine impact and make a difference for those employers that are breaking the law. Obviously, the ones that are adhering to the law have nothing to fear of something like this.

I did hear in the presentation from the CFIB about penalizing employees. I heard it several times, as a matter of fact. For one, workers can and have been prosecuted under the current legislation, I have to point out. For another, under a penalty assessment system, we would be vehemently opposed to that sort of thing. We believe that places workers in triple jeopardy in the sense that they can already be disciplined by the employer for a violation of health and safety rules, and should be, frankly. Of course, they are already been injured, I might point out. They are the ones that are suffering from the accident regardless of whether it is caused by the unsafe action of a worker or not. So, to add on to that yet another penalty, I think, is unjust.

The current maximum penalty we would recommend again, along with the Federation of Labour, that be greatly increased, and we would also like to see at least a doubling of the inspectorate. Both of these would help to provide two final ingredients for compliance with any legislation, and that is a likelihood of apprehension and a meaningful penalty if you are apprehended at the present time, although we see that changing somewhat in recent years, but, on the whole, employees did not have to concern themselves a whole lot with being caught, if you

like, and even if they were caught, the penalties were such that they amounted to little more than a slap on the wrist. This is not a climate that is going to lead people who are not interested in complying with the law in doing so. *[interjection]* I get the signal.

During the public review process, we sought regulation in two specific areas of great concern to our members, workplace violence. We greatly appreciate this bill is attempting to address that, but we greatly lament that it is not addressing the other matter of terrific concern to our members, and that is an ergonomics regulation. I may not have time to read all this, given the signal, but, on page 13, there is our position on why there needs to be an ergonomic regulation. We note that the problems caused by poor ergonomics were pointed out as long ago as the 1600s. We think some 300 years later, it does not seem unreasonable to ask a regulation be put in place to ensure that these problems are finally addressed, and the cost to society from these things. You know the stats from Workers Comp. These are the primary costs that they are incurring right now, repetitive strain injuries and the like. We need to see some regulation. We see some hopeful signs that this may occur, and we strongly urge you to get on with it.

The human side of the equation really comes through in these injuries, and we go through that a little bit. It is later on, too, long after they are off compensation that they cannot pick up their grandchildren, they cannot even brush their hair, and so on. It is something that very, very, very much needs to be addressed.

I have largely focussed this morning on what is missing from the proposed legislation. I want to make it clear, again, that we are very supportive of what is there. We urge you to pass these amendments unanimously. Everyone, including, whether they realize it or not, business, employers, will benefit from you doing so. I was reading my current novel at lunch and saw an excerpt in there that maybe does not apply thoroughly to this, but I could not resist it. It just seemed to jump out. This book takes place in India, and one of the protagonists says there must be a lot of duplication in our country's laws. Every time there are elections, they talk of passing the same laws. Someone should remind them that they need to apply the laws. That is in the enforcement angle. The response to that is, for politicians, passing laws is like passing water. It all ends down the drain. I would strongly urge you to not pass water, this legislation, down the drain and follow it up with real enforcement and real action.

Thank you very much.

Mr. Chairperson: Thank you, Mr. Mesman, for your presentation this afternoon. Questions for the presenter.

Ms. Barrett: I particularly like the end of your presentation. Thank you for your presentation and for all the work you have done on this process. I am sure it will continue in monitoring the health and safety of Manitoba workers. One bit of information for you. We have stated publicly that there will be an ergonomics regulation. So we are committed to that as part of the regulatory review process. Thank you very much.

Mr. Mesman: Thank you.

Mr. Chairperson: Are there questions for the presenter? No. Thank you, Mr. Mesman, for coming out this afternoon.

The next presenter on the list is Diana Ludnick. Is Ms. Ludnick in the audience? Please come forward.

Good afternoon. Do you have a presentation for the committee members?

Ms. Diana Ludnick (MFL Occupational Health Centre): Yes, I do. Can you hear me?

Mr. Chairperson: Yes. If you want to turn your microphone up just a little bit, please. Thank you. We will distribute. You may proceed when you are ready.

Ms. Ludnick: My name is Diana Ludnick. I am one of the nurses at the Occupational Health Centre. I am presenting on behalf of Carol Loveridge, who is the executive director, but is unable to attend today.

You may or may not know about the centre. The Occupational Centre has been around for

almost 20 years. We are a community health centre. We specialize in workplace health and safety. We are funded by the Winnipeg Regional Health Authority, and we are governed by a volunteer board of directors that represent workers throughout Manitoba.

We provide a variety of services, educational services, in particular, working with Workplace Health and Safety committees. We have physicians on staff and people can refer themselves or be referred by their physician. So it is from this kind of background that we give you this backdrop of information.

There are handouts there. The first cover sheet is just really my informal notes. Please, do not take them verbatim. They will be sort of spoken to about generally as I do this presentation. What is key in the enclosures that you have are the two documents that we presented at the public hearings, so that is why that is enclosed there for you.

I want to start off by saying that the staff at the Occupational Health Centre really value and commend the inclusion of, not only our centre's recommendations because many of the recommendations that we did make previously have shown up on the paper, but other recommendations that we did not have an opportunity to submit but valued at the time. We are glad that others have submitted and have been honoured.

Three things, though, that we want to highlight are the fact that we really do value and commend the inclusion, and these three things are expanding the duties of the Workplace, Safety and Health committees. We really believe this should strengthen their effectiveness to ensure the safety, health and well-being of workers in Manitoba. We really believe the requirement for the formal health and safety program in each workplace really should be a pivotal piece to nurture a culture of accountability within these committees.

I really speak that from my heart. As I said, we work closely with Workplace, Health and Safety committees, and we know when they take strides to develop a program that looks at important issues for the workplace, they can go a long way. We feel this kind of program should also provide a meaningful way to integrate new regulations, such as the proposed violence regulation into the workplace, as well.

Thirdly, we believe that the competency-based training for workers before they begin working and when they change jobs is critical. However, we would like to mention this, that if training is to be effective, then it needs to be understood by all workers. Therefore, legislation should also include the requirement that training be provided in those languages that are most readily understood by workers in that workplace, and we really strive to do that as part of our work. I think the value of that cannot be underscored.

There are things that Bill 27 does not stipulate. One of them is, although you have stated that there is an intent for an ergonomics regulation and that it has been stated publicly, I would just like to spend a couple of minutes to underscore how much we really value that this talk actually becomes walk in the workplace. So what I would like to do is just bring a little bit of a human face to the information that has already presented in the public hearings, and so I will not go into that information in detail.

* (16:00)

We would like to comment that work should not hurt, but for many workers it does. Workers often do highly repetitive, fast-paced work in awkward positions, and this eventually results in injuries for many of them. These injuries comprise more than half of the Workers Compensation claims in Manitoba. Ergonomics examines ways to adjust the work to fit the worker more, so that the worker is more likely to avoid preventable injuries. Now, the meat-packing sector is probably one of the most vivid illustrations, but it is by no means the only situation where the body wears out very quickly with the demands of the work.

Our centre went to one of the meat-packing plants, and it really spoke strongly to me. There were five workers there that were between the ages of 19 and 25. They were as able-bodied as any men and women that you could find, and within two years, they all had repetitive strain

injuries and were receiving compensation for it. So there were no other people on that whole assembly line, which were about 40, that were willing to take on this task on the hog-head skinning line, which is the most difficult task because they are just no longer willing, knowing the hazards involved, to take on the work, even though it was the highest-paid job on the assembly line.

I just want to sort of underscore the economic issues in this way. Investing resources up front in an ergonomics program is in the best interests of all Manitobans, in the long run. If we limit ourselves only to the short-sightedness of the business bottom line, then, eventually, the costs will catch up with us in some way. Later, most of the health, social and financial burdens of these injuries are more likely to be unjustly carried by the worker, their families and communities, rather than at the source of the problem.

Can I have some water, please?

The second area that I wanted to talk about is stress in the workplace. There are many that co-workers described to us as the walking wounded. Unlike ergonomics, sometimes their pain is not so easily noticed or acknowledged, but, I think, it is important to realize that stress is today's most pervasive job related health risk. That is stated in many documents, most recently the Industrial Safety and Hygiene, in their 17th annual white paper.

So, just to put a little human face on this, because you already have the recommendations that we have proposed on this to the public hearings, our centre has gone out to a number of workplaces to talk about stress-related issues. In one small workplace, when one of the managers was invited to explore ways to reduce workplace stress, the response was: What is the problem? They are not jumping out of the windows, yet.

I think that really sometimes underscores the mentality that is in some workplaces. Thank goodness it is not in most workplaces, but it is out there. I think we need to be careful for the workers that are the most vulnerable. Work-related suicides do happen, and we are aware of that, but also, I think, it is important to take a look at the fact that workers are probably dying in our midst from overwork in some of our workplaces.

In our international frenzy to embrace Japanese work practices, to maximize efficiency, these same workplaces have often not been nearly as open to weigh the emerging consequences of karoshi. Are all of you familiar with the term "karoshi" It is a Japanese term for death from overwork. Last week, I saw a document, and it said they actually had 3000 documented cases last year. So I think we really need to take a look at this whole issue of workload and what it means in terms of our workplaces.

In our own work at the centre, we went to a small workplace in the health sector in Manitoba. It struck us that in the course of conversation, the workers volunteered that one-third of them were taking prescribed antidepressants as they cared for some of the most vulnerable members of our community. I think this common use of antidepressants to help workers deal with overwork should be an alert. More than just trusting employers to do the right thing, more is needed. Failure to include and make a meaningful effort to deal with stress in the workplace will seriously limit any attempts that you make to modernize legislation to be relevant for today's workers.

Many things contribute to stress in the workplace, but, certainly, work design and accumulated fatigue are two factors, and they have been documented very well. We believe that regulations can make a difference. Twenty years ago, some people thought it was not possible to have effective regulations to minimize exposure to harmful workplace chemicals–hard to believe that now. WHMIS regulations were introduced. They have helped to protect workers. Ergonomics and reducing workplace stress are now two of the most common requested topics for information and services at our centre.

We believe that this closely reflects the most urgent and the most prevalent concerns in our workplaces today. So the centre urges you to introduce regulations to deal with these issues. Thank you very, very much.

Mr. Chairperson: Thank you, Ms. Ludnick, for your presentation this afternoon. Questions for the presenter?

Ms. Barrett: Again, thank you very much for giving a different kind of a perspective. I think everyone in the Legislature, I know, would certainly not want to fall prey to karoshi although at three in the morning sometimes– seriously, thank you very much. I appreciate the work you have done in the Occupational Health Centre over the last 20 years.

Ms. Ludnick: You are welcome. Thank you for the work that you have done in revising the act. Thank you very, very much.

Mr. Chairperson: Thank you, Ms. Ludnick.

The next presenter on our list is Mr. Paul Labossière. Is he in the audience this afternoon? Mr. Labossière, please come forward. Do you have a written presentation for the committee?

Mr. Paul Labossière (Manitoba Employers Council): Yes, I do.

Mr. Chairperson: The Clerk will distribute it to the members of the committee. When you are ready, please proceed, sir.

Mr. Labossière: Thank you for giving me the opportunity to appear here before you. We are also going to ask that, if possible, the submission be entered into Hansard, because we feel that this is probably, as will unfold with the presentations, the most comprehensive gathering together of business ever in Manitoba on one issue and presenting their views united together. We wanted to make sure that that is known.

The presentation is from Manitoba Employers Council, was done jointly with the ETF. The Manitoba Employers Council is the largest collective of individual employers and employer associations in Manitoba. The names that you have in front of you are those which are normal registered members. The Alliance of Manufacturers and Exporters Canada, the Canadian Council of Grocery Distributors, Canadian Federation of Independent Business, the City of Winnipeg, Construction Labour Relations Association of Manitoba, Keystone Agricultural Producers, the Manitoba Association of School Trustees, Manitoba Chamber of Commerce, Manitoba Fashion Institute, the Manitoba Home Builders Association, the Manitoba Hotel Association, the Manitoba Motor Dealers Association, the Manitoba Restaurant and Foodservices Association, the Manitoba Trucking Association, The Mining Association of Manitoba Inc., Winnipeg Chamber of Commerce and The Winnipeg Construction Association.

Besides those names, who are listed members, there were also a number of other organizations, very important ones, which also took part in the discussions and the putting together of this paper, and our dealings with the minister in advance. These others include, and some of them are, I would like to name them because, I think, it is very important to see how much business all feels together on this issue. Some of the others were Canada Post, The Manitoba Electrical Association, Heavy Equipment Association, The Manitoba Broadcasters, the roofing contractors, the University of Winnipeg, the University of Manitoba, and the Winnipeg Regional Health Authority.

The minister stated to us in writing that it is the Government's responsibility to articulate and enforce reasonable practical standards that support effective prevention initiatives. What we would like to say is that the review committee basically said the same thing. They said that what they wanted to put forward was a culture of safety through education and training. This you heard earlier from the union representatives. But what did we get? What we actually got was a whole bunch of punishment. If we look at this bill and the changes to this bill, the approach that was taken instead of the one that was suggested by the review committee, ends up being one where it is like taking people on welfare who may have taken a few extra dollars here or there, and saying. okay, we are going to cut you off for a while and you will never do this again. It is not exactly the proper way to approach this, we feel.

So the following outlines the position of the MEC and ETF, with respect to Bill 27, The Safer Workplaces Act.

First, the review panel on making workplaces safer prepared a report for

government after substantial public consultation. The employer community, as a whole, has endorsed the recommendations of the consensus report of the Review Panel, in particular the target of a 25% reduction in lost time workplace injuries. Regardless of any legislative impetus, the business community is committed to reducing workplace injuries.

* (16:10)

The Government's response to the Review Panel report recognized the tripartite process and the consensus recommendations. Bill 27 incorporates the consensus recommendations appropriate for statutory inclusion.

However, it goes way beyond that. Bill 27 has the potential of adding both confusion and additional cost to employers. Many of the proposed amendments have no explanation as to why there were added. They did not originate from the Public Hearings Review Committee document. Basically, what we are saying is the idea is very good to do this, to review the health and safety of the province, but the legislation is badly written legislation.

The MEC has undertaken a very detailed assessment of which new provisions are based out of the recommendations of the consensus document. The following amendments that are of greatest concern, that were not derived from the recommendations of the review committee, include (and some of these you have heard about already):

The first one is pay during stop-work orders. Of the four jurisdictions that do provide pay during a stop-work order, two limit it; the federal government limits it to a shift and B.C. limits it to the day of the stoppage and three working days thereafter.

There is, we understand, a proposed amendment that, if it has been tabled or has not been tabled yet, but we do not believe that it changes very little. There is concern that the provision for pay during a stop-work order is not limited. This would be particularly problematic if the business ceased operation or decided to permanently discontinue the activity that was the subject of the stop-work order. The latter scenario could, and, in fact, has, occurred where the expense involved in complying with a stop-work order outweighed the value that the work activity generated for the employer's business.

So, we create a scenario that could have people being paid into a long period of time when there is absolutely no work going on. There is also another concern that this kind of thing, because of other things in the act, could lead to disruptions during bargaining issues, where these kinds of things are used as bargaining ploys. There is a little too much left strictly to the minister here, and we feel that there should be some things put in place.

This issue would be remedied by adopting the limitations contained in either the federal or the B.C. legislation. We would endorse the three-day limitation as the most reasonable solution.

Refusal to work ties into there. As there are two issues in relation to this refusal to work, the grounds for such refusal, in particular, the absence of a clause related to dangerous situations that are normally connected to employment, and the repercussions of bad-faith refusal to work–this is where my concern came in earlier about the disruption during bargaining issues.

Also, we feel there should be wording that is put into there that recognizes danger associated with employment. As indicated, most jurisdictions recognize this qualification. We are talking about policemen, and firemen and all those sorts of things. As well, there is a concern that there should be some type of repercussion if the right to refuse is exercised in bad faith. However, the repercussion cannot be such that a worker, who wishes to refuse to work because of a bona fide belief that there is a dangerous situation, declines to do so because of a fear of what will happen if it is shown that he or she is wrong. We do not want people intimidated in any way. We just want to make sure that it is not used wrongly. Therefore, there should be high standards to meet in order to justify retribution against an employee that refuses to work due to safety issues.

So, obviously, some proper definition of what a dangerous situation is has to be involved in here.

Some suggested amendments, some of them are there, just basically where the refusal puts the life, health or safety of another person directly in danger. They may not refuse to work in that particular case or where the danger referred to is inherent in the work of the employee, as I just mentioned, or where it is determined that the employee's refusal was not based on reasonable grounds, that employee shall not be entitled to wages or benefits.

Finally, we note that although section 43(4) authorizes remedial action, it does not authorize the person required to inspect the workplace to order the employee back to work if no danger is found.

I am going to skip, then, to the next issue because what we have in between is just some suggestions as to a way of dealing with that.

Discriminatory action in section 42(2) and 42.1(1). The basis for the concerns in relation to Bill 27 are echoed in Alan Winter's recent review of B.C. legislation: During my meeting with representatives of the WCB's Prevention Division, it was reinforced that the discriminatory action provisions fall outside of the expertise, culture and realm of the prevention officers. The officers' involvement in discriminatory action complaints was described as difficult, time consuming, out of scope and very deeply involved in labour relations. Simply stated, the Prevention Division believes it is being drawn into the labour relations issues of the parties through the guise of occupational health and safety.

The minister is pursuing a number of reforms that will place many new or expanded duties, duties that predominantly involve safety issues, upon the shoulders of our health officers. It is troubling that, on top of these increased demands, these officers may receive the additional burden of an issue that is predominantly a labour issue and only marginally a safety issue for which they have no training or expertise. Indeed, adding such a burden could undoubtedly be counter-productive as it would diminish the officers' ability to focus on other reforms. Of course, the ultimate irony is there are already labour standards staff at the Employment Standards Branch and the Labour Board who have experience in dealing with issues of discrimination.

The Workplace Safety and Health Review Committee in its consensus report recommended that safety and health officers investigate complaints of discriminatory action and offer resolution. There is, of course, a great difference between offering a resolution and imposing one.

We would suggest that section 42(1) be removed in its entirety. Alternatively, it would be acceptable to amend it to provide for an investigative and mediative role for the safety and health officer while retaining the current role of the Labour Board as the adjudicator.

* (16:20)

Power of the director to obtain information; we do understand that there is, again, a supposed amendment to cover some of this, but we are still very concerned about it. One cause for concern is whether the reform seeks to give the director the power to order a specific person or simply the type of person that should undertake this testing. Certainly, it is worded so as to suggest a specific person can be designated by the director. This is in marked contrast to the wording of the other jurisdictions.

The other thing that concerns us are the costs involved here. Down at 54.1(f), there are words: at the expense of the employer. What we are saying is it appears the decision under section 46.1 is not appealable. This seems to be in stark contrast to every other jurisdiction that allows such orders to be appealed, and needs to be changed. It would seem unfair to require an employer to pay for testing if he or she is not in violation of the act and the testing does not reveal either a violation of the act or any type of safety concern. Again, this is left to some extent to the minister.

As well, there may be some dispute as to the degree or sophistication of the testing that is necessary. Alternatively, the testing may confirm some but not all of the director's concern. Therefore, it would seem that some degree of flexibility should be appropriate in ultimately apportioning any costs associated with the tests. So we are suggesting that it be changed to state

basically that the director, at the expense of the department, order the employer to do the testing, and if the director is of the opinion that the order was necessary as a result of a violation of a provision of the act or the regulations, or the report or assessment reveals a risk to health or safety, the director may then order the employer to reimburse the department for those costs. We think that would make a lot more sense.

Also, we feel any person directly affected by an order or decision of the director may appeal or should be able to appeal to the board. This amendment deletes the reference that restricts appeals to appeals under section 37 and thereby opens a decision under 46.1 to appeal.

Further, a schedule should be attached to the regulations setting out the specific individuals or organizations that are acceptable to the director. This list should be prepared in consultation with the advisory committee.

I am going to skip over additional penalties because apparently my time is running. I would like to go to administrative penalties so we have time to get that in. The major comment we have with this is, where did this come from? The review committee did not recommend these. They basically said they looked at them, but they did not in any of their recommendations recommend these administrative penalties.

As was said before, while extensive reviews are under way in B.C., to date, the two bills that have been introduced do not seem to address these. It is understood that more bills will be forthcoming which will remove them in B.C. As well, it has been suggested that Saskatchewan looked at and then abandoned the idea of AMPs. We also know that in B.C., the mining sector, they were reviewed in committee and dropped. They were not put into the act.

A number of concerns have been raised. It has been suggested the Government has not provided any substantiation to the claim that there is a 30% non-compliance rate for improvement orders. This figure came out; it was thrown with a spin into the press and made it very difficult for any of us to have a proper discussion about it. This is troubling and ties in with a general theme that there needs to be a better analysis as to what exactly is wrong with the system. For example, where does the 30% number come from? Are we sure they do not involve matters under appeal? Why have they not been complied with, confusion over wording, dispute as to merit of order? Have these instances of non-compliance led to injury? We do not know that.

To put this in a broader scope, an analysis has to be done as to the injuries that did occur to figure out what the problems with the system are. How many accidents involved orders that were not followed up? How many accidents involved workplaces that have not been inspected? How many accidents involved workplaces with health committees?

The review committee did acknowledge that something had to be done to improve compliance, but it was not able to recommend a specific solution. While the Government has picked AMPs as the solution in this regard, it has not articulated why this solution was picked from among the four that were mentioned as being reviewed.

The minister has recently presented a letter to MEC that indicates there was a connection between safety and health compliance in injury prevention. With the greatest respect, this misses the point. The key issue is whether AMPs will enhance compliance and whether the type of compliance, if any, the AMPs would enhance would lead to improvements in safety or health. We are not aware of any evidence anywhere that AMPs improve workplace safety. We believe they should be deleted, and we have a suggestion.

Obviously, my time is wrapped up. There were quite a few other things in there in regard to appeals, payment to the health committees, et cetera. I just want to conclude by saying the Manitoba employer community has both stated its commitment to workplace safety and reacted accordingly. Employers welcome the 25% reduction target and will work toward achieving the goal quickly. Many of the proposed amendments in Bill 27, however, are not likely to assist in achieving the objectives and, in fact, may prove to be obstacles by diverting energy and resources into non-productive disputes.

Further, many of the recommendations in the consensus report which are reflected in the proposed legislation involve increased burdens and costs to employers. The employer community has accepted these increased costs where they have been identified as furthering the objectives of reducing workplace injuries. Nevertheless, there is a cost involved and that cost is likely to be very significant. Accordingly, it is appropriate to avoid costs that are not supported by an identifiable objective or a demonstrated need.

Mr. Chairperson: Thank you very much, Mr. Labossière, for your presentation. Questions for the presenter?

Ms. Barrett: Just, again, a comment that we have enjoyed the process of working with the Employers Council, raising some very interesting issues and concerns and look forward to working with you as we all agree we need to meet that target as quickly as we can to ensure safe, productive workplaces.

Mr. Labossière: We do want to thank you, Minister, for the opportunities we did have to meet with you, for our representatives and also for the letters and the correspondence back and forth. We felt it was very productive and very constructive. We still would like you to see our point of view a little stronger through there and would have hoped that this would have continued on a little longer before we got to this position, but, hopefully, the committee will decide to take a long look at these proposals.

Mr. Schuler: Just recently, Paul, you wrote a letter to the minister and she responded. Did you feel the minister acknowledged the concerns you raised, considering you had set out a fairly exhaustive letter to her with concerns laid out very clearly?

Mr. Labossière: We appreciated that she took the time to respond to us in some detail. I think there was a recognition of some of the minor and some of the wording problems that were reflecting onto other acts and things. Overall, the concern was that it appeared her mind was made up as to what she was going to go ahead with and dismissed some of those very serious concerns we had.

Again, I would like to reiterate the concerns are not with the fact that the act is being upgraded or that it is going to involve a lot of money and a lot of time from employers; it is the confusion in the writing that is there.

I will give you a very simple example of what I mean. We are now going to have a situation where everybody is going to have to have workplace health committees in more cases than previously and plans for each location. On the surface, it is a very good idea, but there are situations where it could lead to some real confusion. In a large building here in the downtown area, we could have 15 different committees in that building, each having to meet, and the people who are actually running the building not having a committee, and no one really then having the authority to do a whole lot about anything. Those are the kinds of things we are concerned about in terms of we thought there had to be a lot more discussion to get to making these things workable and practical, not just sort of an exercise in paperwork.

Mr. Schuler: Paul, thank you very much for your presentation. We appreciate it and we know the kind of work you have put on, on behalf of the employers of this province. We certainly appreciate what you have done in regard to this legislation and other pieces of legislation. Thanks again for your presentation.

Mr. Murray: Thank you very much for your presentation. I understand there was almost an extraordinary opportunity to bring stakeholders together to work through a number of issues and that there were recommendations that came out of that.

I take it from your submission that a number of those recommendations you all had agreement on were either altered, changed or there were additions to that. When you responded or made your concerns known that there was an agreement in principle on all those issues with all the stakeholders and yet it was changed. I guess my question is, how did the minister respond to your question as to why there were changes made after there was unanimous agreement?

Mr. Labossière: As we stated, we really have not got a really complete answer as we asked for

in a paper. We were given some answers that she went outside the department, went outside the review committee's structure, and they took other things into account. We have asked the question, for example, which I brought up at the end, the question regarding the 30 percent and the study. In other words, we felt that we should know what really was the problem. What was causing it? What did it cause, and then you take steps to correct it and not just take a big gun and kind of try to hammer everything from a distance, but we have never been able to get those figures.

It is just the same with the figures between all of the departments, in terms of injuries are different all the time, because they have different methodologies–Workplace Health and Safety, the minister's office, the Workers Comp. All the figures do not jibe together, so that is where you have to sit down and do something together and come to consensus on it on what makes sense, as the review committee did.

* (16:30)

We endorse very much the things the review committee said because it came in terms of that culture that came forward. As we said, the concern with us is that, again, the writing in a lot of these cases is so loose, there is a serious problem with it. We believe it is going to cause a lot of trouble later on. The second thing is that the culture that was proposed is not the culture that is presented. It is totally, totally different. So where that came from we really do not know.

Mr. Murray: Well, thank you for that and, again, I would like to echo the comments of my colleague from Springfield to say thank you for the hard work you have put into this. We hope there are ways to continue to look at improving this. We just appreciate your time, effort and energy because we know you are doing it on the basis of ensuring that we provide a better place for our workers, and that is your goal as well as the goal of the stakeholders. So, thank you very much.

Mr. Chairperson: Thank you very much, Mr. Labossière. Do you have another comment?

Mr. Labossière: Thank you. I just wanted to thank the committee for taking the time to hear me.

Mr. Chairperson: Thank you for coming out this afternoon.

The next presenter on the list is Mr. Dave Angus. Is Mr. Angus in the audience? *[interjection]* Okay. Your name, sir, for the record?

Mr. Loren Remillard (Winnipeg Chamber of Commerce): Loren Remillard, from the Winnipeg Chamber of Commerce.

Mr. Chairperson: Is there leave of the committee members to allow Mr. Remillard to present on behalf of Mr. Angus?

Mr. Remillard: I will be brief.

Point of Order

Mr. Schuler: Just a point of order. The previous presenter asked that his presentation be made part of Hansard, and there was no agreement. Could we just call for consensus?

Mr. Chairperson: Thank you for the reminder, Mr. Schuler. Is it the will of the committee to include the report presented by the Manitoba Employers Council into the Hansard? *[Agreed]* Thank you, Mr. Schuler, for the reminder.

You may proceed, sir, when you are ready.

* * *

Mr. Remillard: Thank you, Mr. Chairman and members of the committee, for the opportunity to present the Winnipeg Chamber of Commerce's perspective on the changes, Bill 27.

In the interests of brevity, because I believe Mr. Labossière did an excellent job in raising the salient points as it relates to Bill 27, I will not get into the actual detail. Our submission does cover off many of the points. It is almost verbatim as to what the Manitoba Employers Council/ETF submission was, so I will spare you the gruesome details.

For the Winnipeg Chamber of Commerce, in addition to our submission, really, we were looking to raise two points as we see it relates to Bill 27. The first being that through the process that was established by the minister and the advisory panel, what ultimately came out was a consensus report in which all the stakeholders, and I think that is what is important, all the stakeholders, because it is not just businesses' responsibility to create a safer workplace. It is everyone's responsibility to create a safer workplace, and hence why the word "consensus" and that process was so critical to ultimately achieving a goal that everyone embraces.

Ultimately, ideally, you do not want any workplace injuries, but we need to set a target and put into place processes that will help us to achieve that. So we were pleased when the consensus report came out. We thought it was a really good stepping stone towards actually achieving the desired goal, which the business community embraced as soon as it was set. Very much early on saying, yes, this is an important goal we need to achieve. However, with Bill 27 there is significant concern that does deviate significantly from the consensus report. The report was really built on a partnership between those key community stakeholders. It was built on a partnership that was to create an environment of collaboration and joint responsibility. Again, I cannot emphasize the point enough, both as a representative of the Winnipeg Chamber of Commerce but as an employee myself, that we all have a responsibility to create a workplace.

If the onus is purely on business, you will not succeed. If the onus is purely on the employee, you will not succeed. Bill 27, in a number of areas that were pointed out in the MEC/ETF submission as well as the Winnipeg Chamber submission, is punitive and points fingers unfortunately and that is not constructive to achieving that 25% goal.

I will raise one area in particular, and that is the AMPs. If this were to go into legislation and be enacted, Manitoba would be the only province to have AMPs. I know B.C. does have it, but we are also of the understanding they are looking at eliminating AMPs. So we have to ask ourselves, why are we doing this? Other provinces have taken a look at this and said that it will not achieve the goal. It is punitive. It points fingers. Why are we embracing this as a means to achieve a desirable goal?

Those issues really lead into the second issue, and that is really the business climate in Manitoba. Definitely, safer workplaces is critically important. No one is going to deny that. We embrace the goal. But we also have to understand what message we are sending to the business community here, the ones that are looking to start up, looking to expand, but, as well, those companies that are outside the province looking to this province to say: Should I set up a business there? Unfortunately, given that some of our concerns as it relates to the punitive measures in Bill 27, we do not believe that it is sending a positive message out there to the business community, that this is a great place to do business and create a safe workplace for your employees.

So, ultimately, those were the two points that I wanted to raise in addition to the submission, the fact that we had a consensus report, and that we have seen significant deviation from that consensus report, which does call into question, sometimes, the process when that happens. You have a process where you go into it believing that there will be a fair process, and once the report is realized, especially a consensus report, that will be the basis for legislation.

Secondly, I think we do have to pay attention to the business climate and what messages we are sending out there to local business, as well as those looking to become local business. Thank you very much.

Mr. Chairperson: Thank you very much, Mr. Remillard, for your presentation. Questions for the presenter.

Mr. Schuler: Thank you very much for your presentation. We have had several presenters come forward and say they were going to be brief and then use 17 of their 15 minutes, so we appreciate the brevity.

You, again, referenced the Workplace Safety and Health public consultations, and you referenced the point that it calls into question the process. I would go further, and I am allowed to do that. I would call it the betrayal, basically, of all those people who participated in the process

because that is, in fact, what this legislation is. I would go so far as to say this is, rather than a safety bill, it is a bad-for-business bill. Unfortunately, that is what we have in front of us. When we go line by line, certainly, we will be encouraging the Government and try to get them back on track to where this process was when it began. It was much heralded, and, anyway, we will deal with that later on.

The Government is talking about the 25% workplace injury reduction target, and they are basing all of that on this bill. Is that reasonable? Is that something that can happen? We know it should. We should see that reduction, but is there enough in here because, for instance, there is no education component to this which is what the consensus report talked about? Is there enough in this bill to even realize the 25% reduction?

Mr. Remillard: Mr. Chairman, first and foremost, the 25 goal can be achieved. Business believes that you do not always have to use legislation to achieve those goals to begin with. That is where education comes into play. The very idea that legislation will drive this 25% goal–and I am not just speaking about Bill 27, but just legislation, period, the underlying premise there is that business will not react unless they are pushed to react, and that fails to recognize very much that employers–it is in their best interests to make sure they have a safe workplace because, if all your employees are off because they are injured, you are not producing, you are not out there making a product and services. So, ultimately, business will, you know what, 25 percent, business will try to achieve that goal and will go beyond because it is in their best interest to do so; it is in their employees' best interest to do so. Business does not need to be legislated to, say, make a safer workplace. It is in their best interest to do so.

Mr. Schuler: Does it not come strange that other than one province in Canada have no AMPs, and Manitoba still has the highest rate of injury, that maybe we should be looking at something else to try to bring down our injury? I mean, we have all kinds of provinces that have far less injuries than we do in this province, and they have done it without AMPs. Perhaps there is a better way of doing this. The Government should have gone with the consensus report and focussed on the positives of education and not the punishment where this bill seems to focussing on. Rather, you punish business to get your 25 percent, rather than the positive of going on education. But is it not strange that most provinces do not have it, yet have lower injury rates than Manitoba?

* (16:40)

Mr. Remillard: Mr. Chairman, first and foremost, I will answer that in two parts. It is very misleading to say we have the highest injury rate to begin with, because there has been significant concern over the statistics that were the basis for the process for the consultations and so forth, and we raised them with the minister and departmental staff that we had some concerns over the workplace injury statistics.

Secondly, in terms of the AMPs, there has been no evidence brought forward to support the notion that AMPs will help you achieve the goal. So, of course, we have significant concerns, because it is punitive in nature, yet there is no evidence to suggest that it will help us achieve that goal.

I think the fact that other provinces, nine out of the other ten provinces, either do not have it or the one that does is looking to get rid of it, should give us great reason to pause in terms of the consensus report, because I know one of the responses back is, well, AMPS was mentioned in the consensus report. I think we need to be very clear on that, though. It was mentioned as an option for further study. It was not saying, go to AMPs. It was put on the table, along with a number of other options, to achieve that goal. Again, there is no evidence to support that AMPs is the best option to go there. I would maybe go a little bit further, say, there is probably more evidence to suggest that it will not do that because other provinces have not adopted it. So that just gives me reason to pause and question the effectiveness of this approach.

Mr. Murray: Thank you very much for your presentation. You are an employer and you also are involved in the chamber and I guess my question to you is: What do you think the membership of the chamber's reaction would be

if there is no change with respect to AMPs in this legislation moving forward?

Mr. Remillard: The reaction, again, and that speaks to the business climate issue that I had raised. There have been significant changes in legislation and other areas. I know, I am going to raise the words Bill 44. There have been other pieces of legislation that have contributed to some concern within the business community about the climate that is being created here in Manitoba. Does Bill 27 make for a better business climate in Manitoba? I do not think it goes a great deal to help strengthen the case for business expansion here in the province. That answers your question?

Mr. Murray: I think, during the process, that when you get a consensus, again, and I made the comment that I think it is extraordinary when you bring a group together to get a consensus. I will just pose the same question to you. When the consensus was reached and then you found that there were other changes, or did you, in fact, contact the minister? If you did, can you just maybe explain what her response was?

Mr. Remillard: We did, as soon as the consensus report came out, we started a dialogue with the minister. I would like to extend thanks to the minister; she was very receptive to meeting with us and hearing our concerns. We do still continue to have concerns with the bill, concerns that have been expressed in our submission, but–I am sorry, again, can you repeat the question, I just lost my train of thought.

Mr. Murray: Just wondered if you had got in touch with the minister and if you were satisfied with her response as to why the changes were made after a consensus was reached with the stakeholders?

Mr. Remillard: I know we have received correspondence from the minister reacting to our concerns. We still await confirmation of any potential changes in the form of an amendment. So to the extent that we are pleased with her response, I will have to wait to see what the amendments are, if they do come forward. At this point, I am dealing with legislation as it has been presented originally. So I would love to be able to comment on a host of amendments starting with AMPs right through to the rest of our submission and I would be more than happy to come back and say I was very pleased with the minister's response at that point.

Mr. Chairperson: Thank you, Mr. Remillard, for your presentation this afternoon.

Next presenter on the list is Mr. Graham Starmer, in the audience. Please come forward sir. Good afternoon Mr. Starmer.

Mr. Graham Starmer (President, Manitoba Chambers of Commerce): Good afternoon.

Mr. Chairperson: Do you have a written presentation for the committee members?

Mr. Starmer: Yes. It is very thick.

Mr. Chairperson: You may proceed when you are ready, sir, as the assistant distributes to the committee members.

Mr. Starmer: My name is Graham Starmer. I am the president of the Manitoba Chambers of Commerce. The Manitoba Chambers of Commerce is pleased to have this opportunity to present to the Law Amendments review committee in relation to Bill 27.

It should be stated at this juncture that the MCC, like many other representatives of management or labour, has had the privilege and ongoing discussions with the honourable Becky Barrett, Minister of Labour and Immigration, Mr. Farrell, deputy minister, and Mr. Parr, assistant deputy minister in relation to Bill 27. We commend the Government for its willingness to discuss these issues.

Oh, before I go on, could I respectfully request that this entire presentation be placed into Hansard?

Mr. Chairperson: Is it the will of the committee that the text of this presentation appear in Hansard? *[Agreed]*

Mr. Starmer: We commend the Government for its willingness to discuss these issues. We share the minister's hope that the process of consultation that our Government has embarked

upon, a process that culminates in these committee hearings, will lead to legislation that effectively enhances the health and safety of our workers without unnecessarily hampering the economic viability of the workplace.

The MCC is proud to be a member of the Manitoba Employers Council as well as the Employers Task Force on Workplace Safety and Health and Workers Compensation, ETF. We understand that these organizations, as they have done, have made joint submissions today and outline the specific proposals in relation to items of Bill 27 that have caused employers the greatest concerns. As a member of both MEC/ETF, the Manitoba Chamber of Commerce was actively involved in the drafting of that submission, and we heartily endorse its recommendations.

We will leave it to MEC to outline the specifics of the reforms that are being suggested to Bill 27. To avoid repetition, the remainder of our submission will focus on what we regard as the big picture, the environment in which the final form of Bill 27 will need to operate if the goal of enhancing the safety of our workplace is to be achieved. However, make no mistake, the MEC regards the reform suggested by the joint submission of MEC/ETF as crucial in ensuring that Bill 27 does effectively enhance the health and safety of our workers without unnecessarily hampering the economic viability of our workplace. I do make mention there, one of the members used a term which I am going to use, and that is "death by a thousand cuts." We certainly do not want business hampered unnecessarily by a process which will stop the viability of our businesses flourishing.

Of course, to be truly effective, Bill 27 cannot occur in isolation to other broader efforts to enhance workplace health and safety. In recognizing this, Minister Barrett has pursued a comprehensive strategy to improve workplace health and safety that has included a number of well-publicized initiatives.

We applaud the minister for all these initiatives. However, if Bill 27, in whatever form it ultimately takes, is to be effective, there are two more elements to that vision that must be put into place. One is a commitment to enhancing the effectiveness of the offices and a genuine commitment to empowering Manitobans' understanding of workplace health and safety issues. It is trite to say that the safety and health officers play a key role in the enforcement of the legislation in relation to workplace health and safety.

* (16:50)

Many of the minister's recent reforms enhance the role of officers within this system. Thus, now more than ever, officers will be required to assume a myriad of roles ranging from that of investigator, to advocate, to mediator, to advisor, to enforcer. It is crucial that officers possess the wide array of competencies that are required for each of these roles. For this reason, it is imperative that the minister enhance a commitment to enhancing the effectiveness of these officers. Specifically, officers must be trained in communicating both verbally and in writing, for example, improvement orders. We have heard a lot of suggestions that some of these improvement orders are incorrectly written or not processed properly or not enforced.

In a way, it is easy to understand and both inspires and empowers the ability of both employers and employees to enhance workplace health and safety. There should be a requirement that all officers be registered as a Canadian registered safety professional. This should be mandated for all new officers. For current officers, a reasonable time frame should be given in which to receive this certification. Further, a manual of protocol for the officers should be developed. This manual should be made visible to the public including placement in Workplace Safety and Health Web sites.

The MCC has been calling for a genuine commitment to empowering Manitobans' understanding of workplace health and safety since the minister announced her vision for improving workplace health and safety. It cannot be denied that the minister has engaged in extensive consultations and has made a considerable amount of information available. While we applaud these efforts, with the greatest respect, some have not empowered the discussion of these issues in any way that is necessary.

I draw your attention to excerpts from our submission to Workplace Health and Safety

Committee that is outlined on page 4 of our submission here. For example, it is not good enough to simply say safety committees need more power. Provide the research to show that these committees are currently ineffective, explain why they are ineffective, explain how this ineffectiveness is leading to injuries or risk of injuries, and then pursue solutions that are effective while, at the same time, minimizing the encroachment upon the autonomy of our employers. Do this and you will build bridges rather than alienate.

Use the incredible resources that Manitoba has to get the type of in-depth analysis that is needed. Tap into the research of the Workplace Safety and Health Division and the WCB. Tap into the benefits of many committees that have been created to address these very issues included in the advisory council. Tell Manitobans where the problems are. Identify the initiatives that are working and those that are not, and identify why.

While our submission to the review committee approached this issue from the perspective of a natural reluctance of employers to relinquish autonomy over their workplaces without a justifiable reason for doing so, from a broader perspective, it simply makes sense that, if you wish to pursue reforms that will be both effective and embraced by key stakeholders, you must provide a meaningful analysis of why these reforms are necessary. In short, if you want to engage in a meaningful improvement of workplace health and safety, you need to provide a meaningful analysis of what is working and why, and what is not working and why.

As another example, in justifying administrative penalties, the Government has indicated that 30 percent of improvement orders are not complied with. However, despite repeated requests, we have not been told where this 30 percent comes from. For example, are we sure they do not involve matters under appeal? We have not received any information as to why specifically these orders have not been complied with. Was there confusion over the wording, or is there a dispute as to the merit of the order? Were these appealed? If they were appealed, where did they go? We have not been provided with any information that suggests that these instances of non-compliance led to injury. It has been suggested by one member that we are killing an ant with a sledgehammer.

Certainly, this information should be available. On page 30 of the Labour and Immigration Annual Report 2000-2001, the Workplace Health and Safety Division confirms that one of its core business activities is evaluating the effectiveness of our safety and health and public safety activities to ensure that programs are delivering services in an effective and efficient manner.

Minister Barrett is quoted as saying during the legislative proceedings of April 26, 2001: A new Advisory Council on Workplace Health and Safety has been appointed. The new council will consider, examine and review a number of crucial workplace issues. These will include violence in the workplace, safety and health enforcement, safety concerns among youth workers, safety in the farming community and threshold limit values, which are guidelines to limit exposure to health hazards.

Why is the advisory council not used to undertake and disseminate the information that is needed to effectively assess what is specifically right and what is specifically wrong in the workplace?

Unless there is a genuine commitment to empower Manitobans' understanding of workplace health and safety issues, there is a serious risk that any reforms to the system will simply go through the motions and, to paraphrase William Shakespeare, are full of sound and fury while signifying nothing. Consider and regard the commitment to–*[interjection]* You used it. Thank you.

The question we must ask ourselves over a five-year period is not did we meet the arbitrary target of 25 percent, but, rather, have we, as Manitobans, as government, as employers and employees, done everything we reasonably can to prevent workplace injuries? Unless we answer that question, reaching any arbitrary target means nothing.

Worse still, setting an arbitrary target is counterproductive, for it diverts attention away

from the discussion about what we should be doing in enhancing workplace health and safety and onto the debate of whether the target has actually been met. You will see a quote there from the final report on the Royal Commission on Workers Compensation in B.C. Basically, what that says in a nutshell is that straightforward injury rate changes are affected by so many changes that they are not a good, effective way of making a measurement.

The notion that injury rates are unreliable indicators of program effectiveness is not new. In 1981, the Economic Council of Canada report entitled Occupational Health and Safety: Issues and Alternatives stated that injury statistics are influenced by many factors, and users are cautioned accordingly. New injuries and wage loss injuries will be responsive to shifts in the composition of the workforce, shifts in the structure of industry, worker attitudes toward reporting injuries, compensation board policies on what constitutes a compensable injury, appeal times and the business cycle, and, as we have had in numerous occasions during the discussions with the minister and the department, they are well aware of these changes. They know that these changes are continuously occurring. So 25 percent is really just an arbitrary target. We need to get down to the nitty gritty of working and improving our workplace.

I quote Mr. Rob Hilliard in his submission. Why not? One of the issues not raised in the discussion paper is the clarity of the legislation. Both employers and workers are constantly misinterpreting the content and intention of the act. Most employers in Manitoba are not even aware of their responsibilities until they have an accident and subsequent visit from an inspector. Legislation is often difficult to understand, and, because managers and workers must play an integral role in any successful workplace health and safety system, efforts should be made to make the legislation as user friendly as possible, and I do mention user friendly. Administrative penalties–

In its report, the review committee states: While it is now up to the Government to take a leadership role, we will only succeed if all Manitobans commit themselves to implementing the recommendations in this report. However, it is a mistake to fail to see that these two issues, a government's leadership and the commitment to its public, are inextricably intertwined, for, by definition, true leadership points the way by informing and inspiring its citizens to follow.

* (17:00)

Manitoba is at the crossroads of workplace health and safety. Our Government has committed to a broad and sweeping vision for improvement. Both labour and management have come together in a committee that is unanimous in its recommendations. We have a community of employers that have embraced most of the suggestions in Bill 27, have suggested improvements and have indicated a commitment to work with government and labour to continue to improve the safety of our employees.

The door is open; the opportunity is upon us. It is now up to the Government to lead by undertaking a specific and in-depth analysis, and I keep coming back to that analysis, on the truly meaningful level that will show how we, employers, employees, government and the system of the workplace health and safety, have failed those who have been injured or, more importantly, how we can prevent such tragedies from occurring again.

I thank the committee for listening to my presentation.

Mr. Chairperson: Thank you, Mr. Starmer, for your presentation this afternoon. Questions for the presenter.

Ms. Barrett: Thank you, Mr. Starmer, and, obviously, you have done a lot of research and the group has put together some interesting ideas. We have been talking about a number of them. I very briefly would like to say I appreciate the last two paragraphs of your presentation. We do have a vision. We have to implement it, and we have to work together to implement it. So I appreciate that. I know we will not always agree on everything, but I think the process has been excellent so far and look forward to working with your group, in the future, on this.

Mr. Chairperson: Mr. Starmer, did you wish to respond?

Mr. Starmer: Thank you, Minister.

Mr. Schuler: On page 7, Graham, of your presentation–and I have to be careful how I say this. I will actually agree with the minister. The last couple of paragraphs are excellent, in which you state both labour and management have come together in a committee that was unanimous in its recommendations, unfortunately, recommendations that the minister did not follow. It goes on to say we have a community of employers that have embraced most of the suggested changes in Bill 27, have suggested improvements.

My question to you is: Why has the Government and, in particular, this minister rejected those recommendations?

Mr. Starmer: Perhaps I could provide that, somewhere between the report being published and the submissions of which we have not been privy to occurred, some of these changes have suddenly come into play, which has caused the business community the most concern. We do not know what they were or where they originated. That is why we have a concern. I mean, if they came out in the public hearing, we did not totally hear them. There was a unanimous report which we supported as a business community, and that is the way we thought the minister was going to proceed. We did know that there was going to be some fine tuning to try to accomplish the culture that is suggested by the report to try to make this a friendly, progressive process, but, unfortunately, it hit the rocks soon after there were other submissions, which we were not privy to, made.

Mr. Gerrard: Yes. I would like to ask you a question about page 5 of the report, the paragraph which talks about that 30 percent of improvement orders are not complied with. You have indicated that, despite many requests, you have not been able to obtain this information. That is a rather shocking display of inactivity by the Government, to make these sorts of statements but not to be able to back them up or provide you the information. Could you expand a little bit on this?

Mr. Starmer: Certainly. As you know, we have been in this process for a good number of months, and one of the first things that we analyzed was, if we were going to go some sort of administrative penalty system, why would that be required? The 30 percent surfaced is a number at that point in time, and we asked basically where that 30 percent was. Were these 30% improvement orders that were screwed up and thrown away? What was the origin of these 30 percent? We were concerned about why the 30 percent did not go to the next stage, which is provided in the current legislation, and go to court. But we will not be able to provide an answer of which of these 30 percent went to the courts. So we were sort of in the dark of what this 30 percent was, and we really are still in the dark as far as the capturing of this information.

Mr. Murray: Mr. Starmer, thank you for your presentation. Again, it is always impressive when somebody does research, brings forward what I believe is a very compelling argument because I think that is what this process should be, and when those thoughts come forward, certainly we would hope and expect that the minister and the Government would listen to those submissions as you come forward.

In your capacity as executive director of the Manitoba Chamber, you obviously deal with your counterparts throughout Canada, the Canadian Chamber of Commerce. The fact that it has been well documented that Manitoba is likely to be the only province across Canada that would have AMPs, could you just comment as to why you believe the minister is so bent on enforcing something that only will exist in Manitoba?

Mr. Starmer: I cannot answer for the minister, but I can say that we have examined all the jurisdictions across the country. We have examined B.C. We are given to understand by the Chamber of Commerce in B.C. that the AMPs prove to be ineffective in B.C., and they are going to be withdrawn. We have no indications that they have ever been successful. Québec has some process which is quite elongated and that is having problems. Again, like I mentioned, we have no indications that, in any way, AMPs are improving health and safety.

AMPs are a disciplinary process. You only use that type of disciplinary process when all

other avenues have been exhausted, and, as far as we know, that has not been the case, as was mentioned by the previous questioner. Thirty percent of those improvement orders, we do not know why they were not enforced. We do not know why they did not go to court. If these people within the business world have not followed the improvement orders, then they deserve to go to court through that process, as outlined within legislation. They do not need an independent bureaucrat making a decision on providing an administrative penalty to an employer.

Mr. Murray: I just, again, would like to emphasize that I think, when you have an organization such as yours that goes out and does research, I want to applaud you. I know that the Chair will probably caution me for not asking a question, but I make a statement to say that I think it is imperative. It adds to the frustration when you are asking for 30 percent, some clarification as to that, when it is not provided, and yet you are prepared to go out and do the research. I share your frustration with that.

Mr. Starmer: Perhaps I can say the mission of the Chamber of Commerce in Manitoba is to try to see that Manitoba moves ahead, that it is competitive, and that we provide every opportunity for the development of businesses and new businesses coming to Manitoba. When we keep providing pieces of legislation that seem detrimental to an outsider looking at Manitoba as a potential place to come, and I think it was eloquently said by the Winnipeg Chamber of Commerce, they have second thoughts when there are all these small pieces of legislation that are termed, in some ways, unfriendly to business. So, when we get all these pieces stacking up, businesses decide to go elsewhere.

Mr. Chairperson: Thank you, Mr. Starmer. Time has expired for questions and answers. Thank you for your presentation this afternoon. The next presenter on the list is Ms. Ellen Olfert. Ms. Olfert will you please come forward? Do you have a written presentation for the committee members?

Ms. Ellen Olfert (Workers of Tomorrow Health and Safety Campaign): Yes, I do.

Mr. Chairperson: The page will distribute, if you do not mind, and then you may proceed when you are ready.

* (17:10)

Ms. Olfert: This is not really conducive to a short person, nor are the chairs we are sitting on, ergonomically speaking, of course. As the co-ordinator of the Workers of Tomorrow Campaign, and I want to add here that I am also here as a mother, and I am also here as a small-business owner. I do not think you can divorce one from the other. All of those experiences bear in what my presentation will have. I welcome this opportunity to speak with you regarding Bill 27, an act to amend The Workplace Safety and Health Act.

For those of you who do not know, the Workers of Tomorrow Health and Safety Campaign is a joint initiative of the Manitoba Federation of Labour and the Winnipeg Boys and Girls Club and is funded by the Workers Compensation Board of Manitoba. We have been in operation since March 1997. We are a program that goes out and speaks in a classroom setting with young workers just entering into the workforce and who are relatively new in the workforce. We were developed in direct response and concern to the high number of young workers getting hurt and killed at work. As I am speaking, I would really like all of you, especially all of you who are parents, to think of your own children, to think of those young individuals who have excitement and energy and individuality going out into the workforce. Those are the young people that we are speaking with, and those are the young workers that this presentation addresses.

The Workers of Tomorrow Campaign is currently comprised of two full-time staff, one temporary staff and over 120 volunteer speakers who are based throughout Manitoba. Members of our speakers' bureau have extensive health and safety experience and expertise, and we also have young workers who have, themselves, been injured at work. We have also recently been joined by two mothers who have lost their children to workplace deaths, one of whom you heard this morning.

The Workers of Tomorrow Campaign is unique across Canada. We are a grassroots

organization with volunteers from business, labour and government, all tied together by a commitment to do what we can to change the workplace safety culture in Manitoba and provide young workers with tools to keep them safe at work. Since March 1997, we have spoken with and presented to over 25 000 young workers. We speak with them about how to recognize hazards in their workplaces, how to prevent workplace injuries, illnesses and death. We talk to them about WHMIS, working with chemicals. We talk to them about their health and safety rights as Manitoba workers. We talk to them about reporting a workplace injury.

We have long recognized the weaknesses of the current Workplace Safety and Health Act, particularly as it pertains to young workers. In my presentation to the review committee, which I have attached for your information, I outlined in depth some of those concerns. We commend this Government for its action to implement changes to The Workplace Safety and Health Act that are reflected in Bill 27. It is blatantly obvious that the current act, which has not been changed in 25 years, has been inadequate in terms of providing workplace protection to Manitoba workers. Whether the reason be unclear language or legislative direction, many Manitoba workplaces are failing to provide safe and healthy work environments for workers. This has led to the dubious distinction of Manitoba having the worst workplace safety culture across Canada.

On the whole, Bill 27 goes a long way towards rectifying those current inadequacies. Improvements, wording: Throughout Bill 27, there has been a move to clarify the wording in the act. This is particularly important because employers and workers should be able to look at the act as it may pertain to them and get clear direction. We know the difference it makes when wording is changed from "may" to "shall."

Expanding the duties of employers pertaining to health and safety: When talking with students, we have discovered that, in many cases, their employers were not aware of their workplace safety responsibilities. We have had feedback from teachers where students have taken the information they learned at our presentations to their employer, and those employers enacted changes. Employers have the ultimate responsibility. It is their duty. It is their responsibility. Expanding their duties is a necessity.

We have discovered that a high number of young workers are employed by small- and medium-sized businesses, and, in the majority of cases, the employer has as little knowledge and understanding of workplace safety as their employees. Most employers have good and strong relationships with their employees and do not want anyone injured. It is a matter of employers being knowledgeable regarding workplace safety and health. This amendment to the act would solidify that.

I just want to do a quick sidebar here that the information that is recorded in the presentation, our speakers have received as we are talking to students in schools, they are telling us that they did not know about that information and that their employers did not know. I think that is a subject of concern.

We have sat in meetings and heard an employer say that injuries are simply a cost of doing business. I have been really glad to hear the different presentations from the business community today that have reiterated that safety is their bottom line as well. They want to make changes. So I am assuming that the person that made that statement was somebody that is not part of that thinking. While statements like that make my blood run cold, I do not believe most employers are that blasé about the safety of others.

Expansion of duties of supervisors: In many cases where young workers are employed, the employer is the supervisor. When there is a supervisor, it is imperative that that person have a specific education in training and workplace safety, and can properly convey that training to workers. I just want to give you a quick example. In the first year that we were doing presentations, we spoke to a classroom of students, and a young woman told us about a situation where she was working at a fast food restaurant. Her supervisor had, it was a slow period, they asked her to go up and clean the vent over top of the grill. Did not want to turn off the grill because they were expecting a late rush crowd, and wanted to put a small step

ladder on top of the grill. She tried to say no four times to the supervisor, and the person kept brow beating and brow beating her. She did not know she had the right to say no. So finally, just because she gave up, she went up on the ladder, and what she thought would happen did. In order to reach the vent, she had to stand on the top of the ladder, which is also against safety and health regulations, and she slipped off the top of the ladder, fell onto the hot grill, burned herself and wrenched her back. Instead of reporting it to Workplace Safety, for example, which she did not really know that she could do, she quit. So that is an example that has hit us time after time after time, of supervisors themselves not knowing what their responsibilities are in terms of safety and health.

Expanding and clarifying the duties of joint health and safety committees is another major step in working towards a better workplace safety culture in Manitoba. Joint health and safety committees provide the failsafe in workplaces. With employer, supervisor and workers active in health and safety, a workplace can become a safe place in which to work. A trained joint safety and health committee with the ability to conduct regular safety inspections, make recommendations and investigate accidents, would ensure that nothing is overlooked.

One concern with this amendment is that it does not go far enough. By that I mean that many workers do not work in companies large enough for joint health and safety committees, and would fall outside of the legislative necessity to have a formulated safety and health plan. That is a concern of mine.

Mandatory training for workers before a worker begins working and when there is a change of jobs or when a worker changes areas of a workplace is an extremely important amendment. We have had students tell us that they have not had any safety and health training yet because they are still on their probationary period on the job, and that nobody gets trained until after probation is over. Statistics tell us that the high numbers of injuries and fatalities for young workers happened within the first three months of employment. This amendment would go a long way to rectifying that inadequacy.

A written workplace safety and health program is very important. I wish this requirement would also be in place for smaller workplaces. But this amendment is an important first step. While there are some of the larger employers who provide very comprehensive workplace safety and health programs to new employees, many others feel it is adequate to sit a young worker down in front of a video or two. This amendment allows for consistency of training and understanding.

* (17:20)

The amendment calling for a review of the act every five years is extremely important. Changes are occurring in the workplace and with the workforce at an ever-increasing pace. Legislation needs to keep up with those changes. The amendment to clarify the right to refuse unsafe work is very important. We know from our experience with young workers that most of them do not even know they have the right in the first place, and most of those students indicate they would be reticent to use it unless all else failed. When all of the other amendments are being actively employed in the workplace, there will be fewer incidences where a work refusal would be necessary. However, this right is the one that could stand between a person living and dying, and it needs to be written clearly and understood by all involved. If faced with an unsafe situation, with these amendments now a worker can be temporarily reassigned or paid in lieu until the situation is rectified. Again, the result is a safer workplace.

The amendment allowing for administrative penalties is a welcome addition, and I have heard the discussion about administrative penalties. But I have also sat in Cindy Skanderberg's kitchen and listened to her story, and that is where I am coming from.

As stated earlier, most employers when knowledgeable about their safety and health responsibilities, have no problems in doing what is necessary to keep their employees safe. However, for those who are less than forthright in living up to their responsibilities, the imposition of the administrative penalty will most certainly be an encouragement towards a safer workplace. I have only one problem with this amendment and that is that the penalty is not large enough to be an inducement to safety. Again I do not want this penalty to be simply a cost of doing business. I have seen too much of

the pain that people are living with as a result of a workplace injury or the death of a worker.

Concerns: Bill 27 is a major improvement to existing legislation regarding workplace safety and health. I recognize and commend all of the work that has gone into the development of the amendments and believe that they will move Manitoba towards having a much safer workplace culture. However, there are areas that I strongly feel have to be addressed. I recognize that amending the regulations is not part and parcel of Bill 27, but a situation that I raised strongly in my presentation of the review committee, and I would like to raise it here, as well, is the need to strengthen the working alone regulation.

Young workers are particularly affected by this regulation. The current regulation, as it stands, is not strong enough, is not written clearly enough and is not enforced. I have spoken with hundreds of young workers who are employed in the hospitality industry, pumping gas, working as security guards, working in the service industry, retail industry, I could go on and on, who are working alone with absolutely no plan in place for their employer to keep them safe. While in Bill 27 there has been an amendment to develop a regulation establishing policies and procedures to prevent violence, I feel it must go hand in hand with a strengthened working alone regulation.

Directors' Liability: Further to my comments regarding administrative penalties, if a company and its directors do not respect the safety and health of their workers, there must be a strong incentive to make them do so.

Mandatory Inquests: With Bill 27 and the movement towards a safer work culture in Manitoba, the number of workplace fatalities will lessen and hopefully cease. However, in the event of a workplace fatality, we must all be prepared to examine the reasons and determine or learn what must be done so that it never happens again. That can only be done when there has been a comprehensive and public investigative process that a mandatory inquest would provide. The human cost is too large not to learn from our mistakes.

I know it has been put forward that the amendments focus on punishment. I would just like to raise a scepter that I have gone over the amendments at length, and I do not really recognize punishment, but I recognize responsibilities. When responsibilities are abrogated, it needs to have enforcement. Right now, if we are talking about punishment, I want you to think again of the presentation that Cindy Skanderberg made. I want you to think again of the young workers that are out there who are dealing with loss of limbs, who are dealing with loss of activities, who have been brain injured and so on, and their punishment for simply doing their job.

Once again, I would like to commend all of those involved with the development of Bill 27, an act to amend The Workplace Safety and Health Act. It is a giant step in the right direction. A and as the co-ordinator of the Workers of Tomorrow Health and Safety Campaign and as the mother of two young workers, I would urge the committee to move quickly towards enacting Bill 27 as legislation.

Mr. Chairperson: Thank you, Ms. Olfert, for your presentation this afternoon. Questions for the presenter?

Ms. Barrett: Thank you for your presentation. You provide a unique perspective, working as you have for a number of years with young workers who have faced first hand the problems at a variety of workplaces. Just one other comment, I like very much your distinction between responsibility and punishment, so thank you very much.

Mr. Chairperson: Ms. Olfert, did you wish to comment?

Ms. Olfert: Thank you.

Mr. Schuler: Ellen, thank you very much for your presentation. We certainly appreciate the things that you have mentioned in here and the tone, in particular. I mean, clearly, you are there in the workplace.

I guess I have one concern. We have heard it now mentioned on different occasions. We have to be careful that we do not talk down our province. There is a quote on page 2: This has led to the dubious distinction of Manitoba

having the worst workplace safety culture across Canada. Could I just ask you how does one quantify that? We have heard a lot of people talking about this 30 percent number that has all of a sudden appeared magically in the sky, and everybody is sort of espousing it without any proof or any basis of 30 percent.

In fact, it is sort of one of the big lies, you know, the 30 percent has no basis to it. How does one get the worst workplace safety culture across Canada? How do you quantify that?

Ms. Olfert: Mr. Schuler, I am really glad that you raised that question. First of all, in the job that we do, I am as aware of statistics and have done researches as have other organizations and respect those statistics. I recognize that the statistics that are available in Manitoba are largely Workers Compensation Board statistics, so I have been looking at those statistics, but I also speak with young workers in the workplace. We ask them a number of questions when we go in to do our presentation because our presentation is extremely interactive. We do not talk down to them. We make our presentation relative to them and we ask a few questions. First of all: How many of them are working at the present time? How many of them have ever had any health and safety training on their jobs? Generally, between half and three-quarters of the student body in a classroom are employed in one way or another.

When we ask the question about health and safety training, that number dwindles to pretty much none. We also ask the question: How many of them have ever been hurt on the job? On average, at least three students per classroom that we are seeing as we are going out across Manitoba report that they have already been injured at work.

When we ask them the next question: Have you reported those injuries? They say, they did not know they could. They did not know that they should, or they were afraid. They did not want their employer to know that they had been hurt because they did not want to appear clumsy, and all of that kind of stuff. Again, that is the culture of young workers. So I have based my statement there, not only on the statistics that I have seen, but also on what I have heard young workers telling me themselves.

* (17:30)

Mr. Schuler: I just want to tell you that I am really impressed that unions in our province are spending money on safety, on training. We have heard a lot of union individuals coming forward and talking about the amount of students that they have spoken to. I wish I would have liked to have seen Bill 27 build on some of the wonderful things that you are doing.

Ms. Olfert: Thank you.

Mr. Schuler: I just do not see this bill actually even recognizing that. I am disappointed in the bill, but I am encouraged by the kinds of things that I hear, you know where you take–make sure I have that number right, one would not want to quote things on the record wrong–120 volunteer speakers based throughout the province. You know that is impressive. My compliments as one MLA and, certainly, speaking for this side of the House. We certainly appreciate what you are doing out there. I think that is one of the approaches that has to be taken. My compliments to you and your organization and the others that are doing this.

Mr. Chairperson: Ms. Olfert, did you wish to comment?

Ms. Olfert: Thank you very much for your comments. I appreciate them very much. It should be noted first of all that the Workers of Tomorrow campaign is way more inclusive than just the Manitoba Federation of Labour, although they are a major player. We have employers who are involved with the Workers of Tomorrow campaign. We have parents involved and, as I said, young injured workers. Our philosophy is that everybody needs to be involved with that.

I know that part of our presentation to the review committee, for example, really was pushing–and it has been one of our mandates ever since we started–that workplace education be incorporated as part of the curriculum in the schools. However, that cannot stand by itself. It has to be done in co-operation with the employers providing the job specific safety training in their workplaces. So, if you are going to do one, you have to do the other. It cannot not go together. If we can do our jobs from

kindergarten on up and have young people being as aware of safety as they are of recycling, for example, and then that is reinforced when they go into the workplace, then we have a safe culture.

Mr. Chairperson: Thank you, Ms. Olfert, for your presentation this afternoon.

Ms. Olfert: Thank you.

Mr. Chairperson: The next presenter on the list is Mr. Wayne Bergen. Is Mr. Bergen in the audience?

Please come forward, sir. Do you have a written presentation for committee members?

Mr. Wayne Bergen (Local 500, Canadian Union of Public Employees): Yes, I do.

Mr. Chairperson: The page will distribute, and you may proceed when you are ready.

Mr. Bergen: Thank you very much for the privilege of speaking to you today. I am here on behalf of the men and women of Canadian Union of Public Employees, Local 500. Local 500 members work in a wide variety of settings, including municipal parks workers, people who fix our water and sewer pipes, health care facilities, animal care workers and a wide variety of other settings. We would like to firstly express our distinct pleasure at the tabling of Bill 27, and applaud the Government for its recognition to improve the health and safety of workers in Manitoba.

We are very pleased to see many of the proposed amendments to the act, especially the attention paid to increasing the education and training which we feel is contained in many portions of the bill, particularly in the requirement for the workplace safety and health programs. This goes a long way in defining the roles and responsibilities, and will establish some good habits that will have a major impact on safety culture. There is a lot of education and training that is embodied in developing those programs, so we are very pleased to see those in the bill.

Madam Vice-Chairperson in the Chair

Doing these programs, working together to identify hazards and develop safe work procedures and identifying training needs and, also, the conducting of regular workplace inspections will help create an environment where safety is always a primary concern. Also, this is a huge opportunity for health and safety committees to become more active participants in solving health and safety issues in the workplace, defining processes that allow them to function as they were intended to function. This process will greatly raise the level of awareness of health and safety. This particular piece of the bill has a potential to be the cornerstone of Manitoba's health and safety legislation.

Addressing supervisor responsibilities for safety and health is a very positive step. If supervisors are going to be able to do their job competently and protect the health and safety of their workers, they have to be trained and made aware of what those hazards are. Proper training will go a long way to ensuring that supervisors are competent, and, also, they are aware of their responsibilities under the act. Many supervisors are still unaware of their responsibilities to protect their workers' health and safety.

The 30-day requirement to respond to committees' concerns is a very positive amendment to the act. This answers a long-standing problem that many committee members have faced over the years. Issues would sit on the minutes for extended periods of time with little or no action being taken. The result was ineffective committees, low committee morale, because they were not getting their issues addressed and they were not confident about resolving health and safety issues in their workplaces. This amendment is a very positive development and should allow committees to be more effective in addressing issues and achieving results. So these proposed amendments to the act are a positive step, but we still believe improvements can be made.

On ergonomics–and I know the minister has responded that there is something in the works on ergonomics, so I will not harp along on that too much. But we know that voluntary compliance has not worked. Application has been inconsistent on good ergonomics in the workplace, and a sound ergonomics program is

an essential element of a strong health and safety program.

On mandatory inquest, we still believe that there should be mandatory inquests for workplace desks. This would enable the Health and Safety division to make proper comparisons and reports to ensure that the hazards that contributed to the fatality are addressed, make sure that appropriate action is taken so that the same thing does not happen again.

On enforcement of the act, a proper enforcement policy is key to ensure that the intent of the legislation is carried out. If there is no serious consequence to not adhering to the health and safety legislation, then the chance for compliance is going to be greatly limited. The proposed administrative fine ceiling of $5,000 is far too low. It may lead employers to look for alternatives to compliance. It may be seen as the cost of doing business. An administrative fine ceiling of $50,000 would achieve this and be far more effective in dealing with the problem employers. Good employers have nothing to fear from this type of fine. It is the problem employers that we are looking to deal with.

Proper enforcement must protect and support the rights of workers to a safe workplace, and the reality in our workplace should be very clear. If you are in non-compliance, you will be caught. Part of the problem over the past number of years is that the chance for getting caught being in non-compliance was very low. Hence, we had many employers that had no concerns about being in compliance because the chance of getting caught was very small. If we change the environment, it will encourage a more proactive approach to health and safety, and development of a safety-first attitude.

In closing, Madam Chairperson, I just want to say on behalf of the members of Local 500 how pleased we are that the Government is tabling this bill, because it is significant. Workers and employers share a common interest here. Good health and safety legislation that is properly enforced will have a very positive impact on Manitoba workplaces. It does go a long way to demonstrating to our workers that their health and safety will not be taken for granted.

Thank you all for your time.

Madam Vice-Chairperson: Thank you.

* (17:40)

Ms. Barrett: Thank you very much for your comments. We are taking all of the presentations, and as we work through the regulatory review process and continue to monitor the legislation, we will take all of this into account. But I think your closing is really telling where you say that workers and employers share a common interest. I think that has been said all the way through the presentations. There may be some discussion about the bill has not gone far enough, or too far, but I am very hopeful that because there seems to be that thread of commonality, we all will be able to work together.

I thank you for actually stating that in your presentation, along with the rest of your comments. Thank you.

Mrs. Joy Smith (Fort Garry): I too want to thank you very much for your presentation. It was very thorough and very thoughtful. I too like that comment, you know, we work together as a team and that is the way things will work out, but you took the time today to come out to express your opinions, and I truly thank you for this very thorough presentation.

Mr. Bergen: I just want to say thank you to you and to the minister and to everybody for hearing me today. I believe that this is a very positive first step, and I hope that you support the bill. Thank you.

Madam Vice-Chairperson: Thank you very much.

We will now call on Mr. Ed. Hubert.

Mr. Ed Hubert (Mining Association of Manitoba): Thank you very much. Actually, the name is pronounced Hubert.

Madam Vice-Chairperson: Hubert. Mr. Hubert, do you have copies of your presentation?

Mr. Hubert: Yes, I do.

Madam Vice-Chairperson: You may proceed when you are ready.

Mr. Hubert: First of all, committee members, thank you very for giving me the opportunity to present. Seeing Minister Ashton here, it would put me offside not to share something about the history of Manitoba and our heritage.

I am here representing the Mining Association of Manitoba Inc. and the mining industry. Within the field of safety and prevention, mining plays a very significant and, sometimes, overlooked role. Back in the 1930s, my memory is not what it used to be, we produced an engineering graduate from the University of Manitoba, someone by the name of Neil George. It is important that Neil George be given proper respect for what happened in the field of safety. He was actually noted as the first person to look at lost-time injuries and safety statistics in any meaningful way and come up with safety systems. He is also the only Manitoban who is currently a member or registered in the Canadian Mining Hall of Fame. His work on mine safety, which started in his career as a resident in Manitoba, led the world in safety systems, not just mining, but all safety systems from there.

First of all, I would like to say that as member of the Manitoba Employers Council and ETF, we support the earlier submissions, and, in the sake of brevity, my presentation will not be followed in its entirety. I would ask, though, following an earlier statement, if it could be introduced into the record with the will of the committee.

Some Honourable Members: Agreed.

Mr. Hubert: Thank you very much.

Mr. Schuler: The presenter asked if the complete report could be made part of Hansard. Could we ask if there is consensus for that?

Madam Vice-Chairperson: Is it agreed that the whole printed text will be put into Hansard? *[Agreed]*

Mr. Hubert: First of all, I would like to commend the Government in working with the stakeholders that 62 recommendations did come forward that addressed the whole focus of safety culture. I agree with my friend, Pete Walker, from MFL, who was a member earlier talking about the importance of fostering a safety culture. Within the mining industry, we recognize that.

Our concerns, very much like MEC, are in areas that have popped up in the bill that have not spoken to it. Certainly, we are not speaking in terms of cost control. We are talking about in terms of straight confusion, and if I could go through it with some clarification:

Stop-work order with pay. Certainly, there has been discussion with the MEC and others where some amendments were tabled. I do not know what the status of those amendments are, and I will leave that to look at, the way it is where it is open-ended. Our concern is on the business climate issue that Mr. Remillard spoke earlier of. A lot of these issues that are tabled here have a perverse effect. They do not speak directly to the mining industry in Manitoba, but they speak volumes to New York, London, Paris, other places that we are trying to attract and bring into Manitoba for the benefit of northerners, mining and development. It is not the issue of dealing with the mines themselves; it is the message some of this legislation shows in terms of lack of clarity.

One area, I think, that is worth talking about is safety statistics. I mentioned Neil George's work earlier. Depending on how you look at safety statistics and what data base you have, you have various stories as to what is the safety record in Manitoba. I think the report of the review committee came to the conclusion that we better have better metrics, we had better be able to understand what is going on there, and workers of Manitoba and employers have a right, responsibility and need to know where they are so they can be benchmarked.

I said that looking at statistics and how we count things are critical. The WCB contains statistics for purposes of insurance. Less than 70 percent of all workplaces in Manitoba are covered by WCB, not 100 percent. It varies from province to province. Each jurisdiction has different amounts of coverage that are there.

Unless you are talking 100 to 100 so that you can have an apples to apples comparison, it is very difficult to know. I think the important message is that everyone supports the principle that we have to get better. Fifteen percent was not acceptable, 25 percent. I know my membership said that ultimately, in the long run, we should be talking zero percent, zero accident rate. That has to be the goal. It is not saying what is acceptable as the cost of doing business. We have to develop systems and processes that are inclusive to get there. This bill does not deal with that in some of the current amendments. We do have to get our act around how we count things.

I mentioned about the WCB statistics based on that 70 percent, based on those sectors that are represented. We may well be very high, but what does that include? That also includes Manitobans working for diamond drill companies outside of the province. It may include people who are working for a firm where their home residence is here, something happened in another jurisdiction. You have to take a look at the entirety of the statistics. Up until 1999, workplace safety and health did look at statistics on an adjusted consistent basis. At that time, we were ranked about fourth or fifth. I do not think we should be chasing statistics. I think we do have to be chasing safety systems. That was the important message that Neil George talked about, and we want to continue.

I would like to talk about the AMPs issue. I think there is a lot of misunderstanding there, and I am not referring specifically in my document, although we support the MEC position on that. AMPs causes some concern because we see value in working with the Workplace Safety and Health committees into incidents. A couple of years ago we had an incident involving an improvement order. It was not a stop-work order. It was an improvement order on a detailed issue, and it was agreed with the Workplace Safety and Health committees and with the Mines Inspection Branch that further work needed to be done. We had to do full risk assessments. We had to talk to all the Workplace Safety and Health committees.

We are a remote business. We live in northern Manitoba. We work in northern Manitoba. It took roughly two and a half years to conduct that study, when people were available to come up with the conclusions. Our concern would be with the AMPs, that that specific one dealt with an improvement order that impacted on 350-plus pieces of equipment. You times 350 times 5000, even though the firms are operating within a lost-time injury rate certainly in the lowest, I believe maybe the lowest in Canada, for hard-rock mining, and you end up in a situation where potentially you are saying there is $1.5 million to $2 million of potential AMPs, we know that there is reasonability here.

Our problem is we have to report back to shareholders with the stock market and disclosure. You have this liability overhanging you, and when you start talking about the potential risk, no matter how small it is, that there is $2 million because you are doing the right thing of doing a risk assessment, undertaking the evaluation of what is wrong, something has to be fixed, knowing that it has to through tripartite process involving labour, involving government, involving management to review it, something that takes time, you have got that exposure on that risk. That is why the mine industry is quite concerned about the AMPs. It is not in terms of working together. It is not in terms of dealing with it. Would it not be simple enough to look at it in terms of whether or not there is a guard on a saw? In cases like that, and there is an obvious violation, the safety and health inspector has to do the right thing and take whatever action is needed. If charges need to be laid and they have to go that way, so be it. We will support that. It is the more complex part of safety systems than the requirement of doing the full-risk assessment.

* (17:50)

Power to obtain information: We would like to know that there are currently other laws in Manitoba, including The professional engineers act and the safety bodies such as CSRP and other organizations that represent the public interest of Manitoba. Hopefully, the role that these people play and the important function that they do for Manitobans in safety and health get recognized and put in here where it is not dealing with the specifics of the director making a discretionary action but actually recognizing that legislation and those bodies that help serve the public interest are recognized and put into legislation.

I know the minister had been talking about some proposed amendments. Not having had the opportunity to review them, certainly we hope that she does look at that.

I would probably like to close and say, really, this is a business climate issue, and would it be that these were simply businesses here and small businesses dealing with it, it is one thing, but these are large corporations that, once they undertake the risk, they do not want to be in double jeopardy where they actually have a liability, no matter how remote, on the books in a system that comes back against the business climate and our reputation. We would rather say: How are you working, how are you improving in terms of putting information out? I certainly was very impressed by some of the other earlier presentations.

One thing I would like to ask the Government and this committee to give very strong consideration to is the role of educating, not just young workers but all Manitobans. I note that some of the submissions we are talking about are parents. I am a father with two young daughters, a seven-year-old and a twelve-year-old. I would like to see the school system look at something that helps educate them and prepares them to be citizens of Manitoba. It is not just a question of looking at workers. It not just taking specifics. It is for the whole of Manitoba.

Thank you very much.

Ms. Barrett: Thank you for your presentation. We will be dealing with the specifics, et cetera. We are committed, as a government, to working with all the stakeholders, business, workers, the education system, everybody, to promote Manitoba as a good and safe place to do business. We are interested in the kinds of things that can promote that.

I particularly liked your comments about, not statistics, but safety systems. I think the mining industry, as a whole, is to be commended for the work that it has done in this regard, as you have stated in your written presentation and also in the work that you have done to act as a leader and role model for how regulations can be changed and how that process can be addressed.

Thank you for your comments, and we look forward to continuing to work with you as we do what we all want to do.

Mr. Hubert: Thank you, minister.

Madam Vice-Chairperson: Any further questions?

Mr. Schuler: I guess it is a bit of an insult when you hear the minister talking about further consultation that she is not going to listen to. I read your report, and it brings me a lot of hope when I read that, for 2001, members of your association posted a collective time loss injury rate of 1.1. This is amongst the lowest, if not the lowest, lost-time injury rate of any mining province in Canada.

Mr. Chairperson in the Chair.

It was great to see that a lot of the unions are taking 120 volunteers and going into schools. There are positive things that are happening. Unfortunately, those positive things do not seem to be supported, nor do they seem to be furthered with Bill 27. It seems to be a punishment bill rather than a "promote education and try to get people to buy into safer workplaces" kind of position.

You know that there was a letter written to the minister and you saw the response back. Does this bring you concern when the minister talks about further consultations?

Mr. Hubert: I think the goal has to be for all Manitobans. We represent just one small part to that. We have found the value is inclusive and working together. We never stop learning. I think some earlier comments about CRSP, safety professionals and the registration process, certainly, some of the unions that I work with on a day-to-day basis, I am very impressed with the professionalism, commitment and the training these people have undertaken in safety. My member firms do not accept the generalists. You have to be a safety professional to work in the mining sector. Safety is not the old days where you had a safety office, and he was somehow supposed to work with the rest of them. It has to be an inclusive process and continuous improve-

ment. You do not do it that way. It is not an add on.

In the same spirit, I would hope that we could get back to a process that dealt with it. Two things that follow to your question. One is the role of the advisory council. Currently, the workplace safety and health has an advisory council. I think it served Manitoba well to have representation from the technical society, public interests and government, employers and labour working together to review things. The Workplace Safety and Health Act, by and large, has been reviewed. To what extent? Certainly your comments, and certainly they are valid from my friends from labour, that maybe it has not been reviewed as thoroughly, but how is this role of the advisory council going to continue? The second one that relates to that is what is the role and intent of having a tripartite inclusive process rather than coming up with something that, gee, if we do this with AMPs, instead of having a safety culture with workplace safety and health, you end up having a process where you have time limits imposed as opposed to dealing with the whole issue of undertaking thorough and competent risk assessment. I have never known my friends on the other side with labour to be quiet if we are not doing our job in terms of doing the right stuff. They are going to cry foul quickly.

Mr. Murray: Ed, thank you for your presentation. Again, I want to just compliment you and your association on taking this issue, obviously, very seriously. Before this bill was even discussed, I think your industry is one that has focussed on the safety in the workplace. I think that the fact that you have taken time to come and make a presentation, a very thoughtful presentation that was well-researched and put out, and I commend you on that.

I guess I would ask for your thoughts as to a process that sees a business the size of the industry that you represent coming in to work with a series of stakeholders to try to come to some consensus, which is, at the best of times, difficult, but, yet, one that was achieved, and, then, finding that you are looking at legislation that is quite dramatically different than when a consensus was reached.

I wonder if you could share your comments with us, sort of how you felt when you realized that the legislation, or the proposed legislation, was changed with respect to the consensus that was reached with all the stakeholders.

Mr. Hubert: There are two parts to that question. The first part is, it is a bit like being in a horse race. You are sitting there and you fall off the horse; your partner has fallen off the horse and there is a bear coming at you. The bears, they look at you and ask how are you going to run this race. You are looking at putting on running shoes. You are not going to outrun the bear. The person says, I do not have to outrun the bear; I only have to outrun you. That is the context. It is not the firms themselves. That is the difficult part. It is how the international financial community views what you are doing.

If you have a bad safety record, you will be downgraded as a bad risk for investment, just as if you have a bad environmental, and, certainly, if you have a poor culture dealing with First Nation indigenous people. These are things that this sustainable development accounting has prompted. So bad performance is not acceptable as an option as a cost to business. However, they also rate governments and they take a look at legislation.

To be honest, on the large scheme of things, what Ed Hubert says probably is not that important, or even the little Mining Association of Manitoba. What they do do is look at legislation. They will not ask me, they will not ask my members how they feel, and they will not, certainly, ask government, or anyone else. But they will review the legislation in isolation. They do that as a course of due diligence. So, when you are going to get lending an application for international investment, it will impact on you. It is outside of the control of the firm itself. It becomes something that, collectively, we have to work with, the Government, the communities and this body, and we hope that some wisdom prevails.

* (18:00)

Mrs. Smith: I heard your presentation the other night when you were presenting on another bill, and I notice, today, you present in the very same way, very thoroughly, very concise and very

common sense. I have to commend you for that. Some ideas that you put on record today are very insightful. I do not think they are offensive to either side of the House, because it does make sense and we all know it when we hear it. So, thank you very much.

Mr. Chairperson: Mr. Hubert, did you wish to comment?

Mr. Hubert: No, just thank you very much. What we are asking all parties here to consider is to deal with some of the chaos factor that is present in the MEC applications. We are looking for something that is clear, fair and workable.

Mr. Chairperson: Thank you, Mr. Hubert, for your presentation this afternoon.

Mr. Hubert: Thank you.

Mr. Chairperson: The next presenter on the list is Mr. George Fraser. Is Mr. Fraser here, please?

Do you have a written presentation, sir?

Mr. George Fraser (Executive Director, Manitoba Home Builders Association): No, I do not, Mr. Chairman. I am going to make a verbal presentation.

Mr. Chairperson: Please proceed when you are ready.

Mr. Fraser: Thank you very much. I serve as the executive director of the Manitoba Home Builders Association, and I would just like to add a little context as we head into our comments. The home building industry on the new home side represents $500-million of activity in this province every year. It is exceeded by another portion of our membership who are involved in renovation, with their impact on the economy being $600 million-plus. Both sides of the house-building industry are facing significant increases in activity during this period of time, in excess of 25 percent, and 2.6 person years of employment are created in this province for every new unit that is built. We will have an estimated 3000 starts in the province of Manitoba this year. You can also expect 2.6 person years of employment on the renovation side for every $150,000 of activity.

We would like to say, to begin, Madam Minister, in particular, that we are members of the Manitoba Employers Council and very supportive of the presentations that you have heard prior to us. We are also supportive of the contents of the advisory committee report which includes the target of a 25% reduction in the injury rate. However, we, too, have difficulty, and I personally have had difficulty determining exactly what the accident rate is on the residential side of the construction industry. The residential side, if you are looking for the figures I just gave you, represents roughly, in permit value, about 40 percent of the overall construction that would occur, commercial and residential.

The residential industry environment is entrepreneurial. It is complex. It is dynamic, and it operates right across this country on a subcontract and a sub-subcontract basis. It faces significant seasonal demands, and it is driven by the market. As I mentioned earlier, the market is very strong. In Manitoba, it is predominantly small business.

When we had an opportunity to review the plan to participate with our colleagues at MAC, from our perspective and certainly from my personal perspective, we expected to see a plan. We were busy within our own industry preparing for what we thought would be a plan, and particularly a plan that had some implementation deadlines, a plan that had an industry relationship because, Madam Minister, I stand here to say, too, that there is no question that the residential construction industry has a lot of work to do on the safety side.

As I indicated earlier, because of the nature and particularly because there has not been a strong formal working relationship with Workplace Safety and Health and the industry for, it is probably estimated to be, in excess of 20 years, all of the focus has been on the commercial side. So, when we were going through this process, our industry established a workplace safety and health committee from an industry perspective. We met with Mr. Garry Hildebrand of Workplace Safety and Health, and we began to hold informational sessions with our committee and with our industry, who we have

informed that they are going to have to change the culture in which they operate.

We had formal informational meetings with our members. Unfortunately, we are still optimistic. We are moving along in a positive session, but, just as one example, we had an informational session on a Thursday evening, and, on the following morning, representatives of Workplace Safety and Health were on sites and were shutting down our residential sites. We had previously had discussion that, for us to move from point A to point B on even some very minor things, we needed a plan, we needed some time and we needed education. So our industry has some concerns on the punitive side. We are indicating to you here at this point that we recognize we have some work to do.

I am here today also as a person who worked with the Roofing Contractors Association of British Columbia during the period of time when administrative penalties were introduced in that province. There was a lot of concern. There was a lot of work that was done on an industry-by-industry basis. The example I will give to you for the roofing industry in British Columbia as one of the key concerns was fall protection, fall from heights. There was a very extensive approach to that, industry, government, department working together.

Yes, there were administrative penalties, and, yes, they were much more significant than the penalties that you are presenting in this legislation, but at least there was a date, and there was a plan to get to that date. The punitive nature of the legislation, and you may consider at least holding back those penalties until you have an opportunity to meet with the various industries because we are all at different levels, before that is introduced. We had approximately a year in British Columbia to work on fall protection.

Following that time, yes, some of the companies did face punitive charges. What it did from that perspective is something that could happen here with those penalties being fairly excessive, some of them $20,000, $25,000 penalties, it simply put the businesses out of business. That is exactly what happened.

So the other thing that I do want to emphasize here, too, is that, not only is there education on the industry side, and it was mentioned by some of my colleagues here too, on the officers side, on the administrative side, there has to be education, too. There has to be a clear understanding. In fact, Workplace Safety and Health officials that we have met with have made comments to me that they, too, would like to understand the residential sector better. They would like to work with us. It may just have been circumstance, what we were involved in or what we experienced, but, under regulatory environments, for example, when I left British Columbia three years ago there was a big controversy over heat stress, heat stress particularly in the construction site and especially on roofs. The shutdown was 31 degrees centigrade. Now, it may very well be that you work under 31 degrees centigrade temperatures in here, and indeed you might be shut down, but again it got very scientific. It got to discussions about the type of measurements that were used to determine what the heat stress levels were. Prior to that, decades of common sense had prevailed, and people did roofing as was required.

* (18:10)

So the other thing that came out of administrative penalties, of course, was a call from the industry side, from the employer side, for employee fines, because the other big dilemma is, with some employees, you can do all the education you can in the world, and they will not follow direction. So the employer who was found to be in that situation was going through a very exhaustive appeal process, and there was no provision to bring the employee under some sort of guidance or under a response to the educational provision. So that is where the rub came in the British Columbia situation.

Just some brief comments my colleagues have made, comments about stop-work orders and some limitation on that. Madam Minister, I know I have read your correspondence, and I have read the correspondence from the MAC side. But some limitation has to be there because there is concern out in the workplace, and specifically in the residential side, where we have this, there really is not a definition of employee within the residential side because of the working relationship. I would say, no matter where your philosophical opinions lie with

respect to construction work on the residential side, that is not going to change. I do not think there is enough will and capacity to make that change in the culture of how residential housing is conducted. So you are going to have a lot of confusion with respect to stop-work orders on the residential side.

So, just in summary then, Madam Minister, I would urge you to create a plan. I would urge it be on an industry-by-industry basis, and I would also emphasize and support everyone here who has discussed the education and training component. I agree with Paul Moist and his comments this morning from CUPE, that the safety provisions have to begin as education in the public school system. I agree. I think that is very important. We have recently established, in co-operation with Education and Training, the Construction Training Institute, and we work with Construction Safety Services from the Winnipeg Construction side to, hopefully, meet the goals that we are going to have to set ourselves and, hopefully, in co-operation with the department as we move ahead, but it cannot happen overnight. I think that is what has to be achieved. I would sense that officers are going to have a big problem with that, interpreting exactly when they need to be enforcing. If they are there as teachers and support, because they can play a role from that perspective and not in a punitive fashion, I think we may achieve something, but that takes an overall philosophy and it takes an overall plan to get to that point. The punitive approach is not a good starting point. Thank you.

Mr. Chairperson: Thank you very much, Mr. Fraser, for your presentation. Questions for the presenter.

Ms. Barrett: Thank you, Mr. Fraser. I know we have a brief amount of time for comments and questions. So I acknowledge your concerns about having to work together with the inspectors and making sure that things happen in an effective way. We are working and do want to have the process be collegial wherever possible. The goal is safer workplaces. You acknowledge that the residential area has some work to do. We need to acknowledge that and start working with you from where you are. So it is a balancing, and sometimes the balance is not achieved as effectively as possible. So I acknowledge that.

We are looking to work with all of the various associations in all the various organizations and different kinds of workplaces. You talk about the 31 degrees centigrade in B.C. We are going to have a regulatory review process, and we are looking to have the regulations be enforceable, understandable and accessible, which means they have to be flexible.

So, not to be specific about any particular regulation, but that is a very good example of how you have to have a regulation that is going to work, and you have to have the working together of various components to make those things happen. I appreciate your concerns. We are going to begin to address those in the specific instance that you referenced. I am very pleased to see that you are joining with everyone else in what seems to be a theme here about the need for education. So, thank you very much. I learned some stuff from your presentation.

Mr. Chairperson: Mr. Fraser, did you wish to comment?

Mr. Fraser: Well, just very briefly, again. The heat stress issue is an indication of a stop-work situation that can be debated infinitely, scientifically. The employer, based on your legislation, as an example, would still have to keep paying their employees, or indirectly. We still do not know. There is no clarity on indirect relationships, contractual, because there is no definition that, I think, will stick on the residential side.

Mr. Murray: Thank you, Mr. Fraser, for your presentation. Your comments, I think, are very appropriate. I particularly wanted to ask you about your experience with AMPs. You did spend time in British Columbia so you have had some experience with the legislation that included AMPs, as opposed to what is being proposed in Manitoba. I believe, if I heard you correctly, you do not believe that AMPs are a positive reinforcement to get to the goal of better workplace safety and health, but you perceive them to be punitive. Is that correct?

Mr. Fraser: They certainly got the attention of the employers. There is no question about that,

but, as I said, the repercussions were, again, in an industry that has small business as its main component; you lost a lot of small businesses. That was the first impact.

In British Columbia, the main comparison was with the province of Alberta because Alberta was, like Manitoba, drawing a lot of employees from British Columbia, particularly in recent years under the economic circumstances that prevail in British Columbia.

The Alberta model, which was less punitive and more educationally focussed, more partnership focussed between industry and workplace safety and health, or, in both cases, the Workers Comp side, and the training side of the industry, too, companies and their safety programs proved to be more positive with respect to results, I would say, especially from a perception perspective. You had people working together to achieve safety goals.

The other is confrontational, and, ultimately, led to a lot of appeals and a lot of discussions over things like the scientific basis of heat-stress calculations on a roof when you are trying to do a roofing job. That is were all the energies went. That is unfortunate, in my opinion.

Mr. Schuler: George, thank you very much for your presentation. It would have been nice if it would have been written. I took some notes down, and I like, in particular, your comment that what your industry was looking for, you were looking for a plan and not for punishment. I like how you laid out the three points: a plan, time and education. It seems to be a theme that has come out, a theme that, I think, came out when industry and labour got together. It seems to be the only one who did not get it was the Government.

You talk about the small business and a lot of the small business owners in your area. Margins are tight, and we have heard others talk about that. No, not $5000, we should do a minimum of $50,000. What kind of a chill does that send through your industry when they hear that kind of talk that a small business that does trim, or whatever, in a home could be facing up to $50,000 penalties? Is that a problem?

Mr. Fraser: As I said, I think $5,000 is a chill. If there were any higher adjustments to that or if you hit the ultimate level, I would sense that the small business owner, particularly the sub or the sub-sub-contractor, would go out of business. That would be their response. That is at a time, by the way, when we have a high demand for labour within our industry, and where we have the province of Alberta contractors here in this province, as I speak, recruiting workers, prepared to pay them. The new home industry is a piecework industry, and they are prepared to pay a higher piece rate if those workers will come to Alberta to build Alberta's housing under a similar demand situation.

So it is very highly competitive, and a $5,000 penalty, and an additional increase in piecework, and a different environment in Alberta. For an approach to safety, they may make a decision to move to that province because they are mobile, and they have the skill, and they can do it.

* (18:20)

Mr. Chairperson: Thank you, Mr. Fraser, for your time and for your presentation this afternoon.

Mr. Fraser: Thank you.

Mr. Chairperson: The next presenter on the list is Mr. Jim Baker. Is Mr. Baker in the audience? No. Then Mr. Baker's name will be dropped to the bottom of the list. The next presenter on the list is Mr. Jim Carr. Welcome, Mr. Carr. Do you have a written presentation for the committee members?

Mr. Jim Carr (Business Council of Manitoba): Mr. Chairman, could I ask that you print the written brief into the record, please?

Mr. Chairperson: Is it the will of the committee that the presentation be entered into Hansard? *[Agreed]*

Mr. Carr: I will not speak to the written presentation. The minister shows it is weighty. I hope she also believes that it has substance. There can be a difference between the two.

I cannot help but feel the pleasure of being in this building again on this side of the microphone and remember so fondly those Augusts of years past, even August 8, when the

windows were open and the mosquitoes were flying in, and it was sweltering. Hansard cannot record the look on all of the faces of the legislators here working overtime through the dinner hour on the last day of the session. I suppose one could ask if this is the way to run a railroad. One could ask is this the way to make law. I think the answer to that question might be no.

Could I further offer the possibility that maybe now is the time for leaders of both parties to consider a legislative calendar so that you can be enjoying the canoe routes and the wonderful recreational opportunities in Manitoba, rather than making law at a time when very few are paying attention. So, for what it is worth, there is a gratuitous piece of advice, not from the Business Council but from a former legislator. One, I suppose, also could ask perhaps, with one's tongue in one's cheek, is this a safe place to work, given all that we have said. I suppose it is, but it would be much healthier if it were more rational.

The Business Council of Manitoba is a group of 55 chief executive officers of Manitoba's leading companies. Every one of them lives in Manitoba and is the leader of a multinational, a national or provincial company with a head office here. So, collectively, they have an interest in the well-being of those of us who call Manitoba home. I speak on their behalf, not so much to the detail clause by clause of this legislation, though we are concerned about them, and I would say in that regard that we embrace the recommendations of MEC, and they are appended within, too, our brief to indicate to you that the CEOs of the Business Council, upon reviewing the legislation, agree with the consensus of all business organizations in Manitoba, large, small and medium, that there is a set of amendments that would make this a stronger bill.

Let me also say that safety is everybody's business, and there is not a single chief executive officer of one of the companies of the Business Council of Manitoba who does not believe that an unsafe workplace is bad business. It is bad for shareholders. It is bad for owners. It is bad for managers. It is bad for employees and their families. It is in everyone's interest to achieve as close as we can to a zero percent accident rate in Manitoba.

The question that we have to pose, though, is will this bill get us closer to that zero percent than other bills might, and does this bill collectively, within all of those clauses, put us at a competitive disadvantage? These are the other jurisdictions. Our conclusion is, yes, it does, and, no, it does not take us closer to safer work places, and that ought to be the objective of all of us.

What went wrong? There was a review committee that was set up that had upon it members who represented the interests of the employer community and of labour unions, the workforce and the community at large. They produced a consensus report of, I think, some 62 recommendations. It is very odd in this province, even in the post-modern age, when one could say that ideology is dead in political life, to have the consensus among a group that was as disparate as that one was.

Yet, in the wake of that consensus report that was widely applauded by business and labour, you are now hearing representation from literally every business organization in the province lined up against major provisions of this bill. So we have to, therefore, pose the question: What went wrong in that consultation process? What happened between the time that consensus was achieved and the bill was tabled so that this historic consensus was allowed to break down? The answer, I think, was that the consensus was not accepted in the context of the bill itself. If it would have been, this would have been a much shorter set of public hearings, and we would have produced a bill that would have taken us closer to the goal of the safer workforce.

The business council is interested in competitiveness in its broadest sense. When we talk about competitiveness, we mean the capacity to deliver public services to Manitobans. Let us boast we have the finest higher education system in Canada. That access to health care services is better here than anywhere else, that our environment is cleaner than it is in Alberta and British Columbia, Ontario and Québec. Let us be on the leading edge of those advances,

where we operate for the public good, with a sense of the collective interest of all of us.

With that objective in mind, we pose the question: Have we achieved a bill here that makes us more competitive than we were before this bill was introduced? The answer, Mr. Chairman, I am afraid, is, no, we have not.

If we could be convinced that the provisions within this bill would make the workplace safer than it is now, that if the imposition of administrative monetary penalties would create a safer workforce than we have now, then I am sure the employer community would then be in a position to do a rational cost-benefit analysis with having that objective of a safer workforce squarely in view, but where is the evidence? We have not heard in questions asked today or in consultations before today that that evidence exists and can be used to make the case that those provisions in the act will create the common objective. If the minister or other members of the committee can produce that evidence, then I think that the reaction of the business community, and I speak only for the Business Council, would be more favourably disposed to the bill.

The reason that this clause gives us pause is because it would make Manitoba the second province in Canada to have embedded in such legislation these penalties. On competitiveness issues, where the movement of capital is as fluid as it is today, the movement of goods and services and people, and those who are looking to invest compare business climates from one jurisdiction to another, they have to ask the question: Does this put us at a disadvantage, and does this put us at a disadvantage for a good reason? It is the good reason that eludes us. If there is one, we would very much like to hear it.

Where do we go from here? I am not going to repeat what is thoroughly covered in our brief, except to remind the minister and other members of the committee that the Business Council offered to meet with representatives of labour to try to achieve a consensus around those provisions of the bill that were not either specifically treated by the committee or were treated in a way that was offside the consensus. Regrettably, our offer was not accepted, but let me repeat it. That is to say that, if the Business Council is asked by the minister to work with other interested groups to make this a better piece of legislation, while putting aside those areas that were not part of the consensus that was achieved earlier, we would agree to do that happily and with enthusiasm.

Let me conclude by saying that safety is everybody's business. It is in the interests of the employer community, and the Business Council dedicates its effort to make the safest possible workplace for Manitobans. It is our employees. It is our families. It is our community.

Mr. Chairperson: Thank you very much, Mr. Carr, for your presentation. Questions for the presenter.

Ms. Barrett: Just a comment. Thank you very much for your presentation. I am sure that the Business Council will work, as all the other presenters have said today, with the Government and the education system and other stakeholders to ensure that we have safe and healthy and productive Manitoba workplaces.

Mr. Chairperson: Mr. Carr, did you wish to comment?

* (18:30)

Mr. Carr: No. Just to add that we have worked co-operatively with this minister on other files. The Business Council and this Government have worked to make Manitoba a preferred place for immigrants who come to this province. We have co-operated with this minister before. The Business Council is a non-partisan group of leaders. We work with political parties from all stripes and all levels of government. We have no partisan interest. We have the public interest in view. We will take you up on the offer to work collectively to achieve that shared objective.

Mr. Murray: Mr. Carr, thank you very much for your presentation. Again, I commend, because I know the seriousness of which the Business Council would look at this issue and how well researched and thoughtful the discussion would be, and, indeed, you reflect that in your comments. I would like to and I want to go back to, perhaps, one of your earlier comments. That is, as a former legislator in this process, could you just share your thoughts with the committee as to somebody who has sat

around a table much like this, when you reach a consensus with various stakeholders, and sometimes that is a very challenging issue to do, but, when you do reach a consensus and then you discover after the fact that there are numerous issues that are not part of that consensus that are addendums and added on, I wonder if you could just make comments as a former legislator, how does that help to provide a process where you then will reach out at some other time to work towards a consensus?

Mr. Carr: Well, I would answer that making some basic assumptions. The first would be that everybody acts in good faith. I have no reason to believe that anyone in this room does not act in good faith. I do not, for a moment, question that the minister wants to produce the best bill she can, and she believes that it will produce the safest workplace that a bill can produce. I start with that assumption. In political life, you do not always achieve a consensus. Honest men and women will disagree. You disagree every day. The capacity to persuade the other side that they are wrong, however, is the power of argument and the use of evidence, of research material. Every once in a while a rhetorical flourish, I suppose, does not hurt, but where this consensus breaks down for me and for the Business Council, is that we are not convinced that the minister has shown a better way to get to a safer workplace.

The goal may be consensus, but often it will not be achieved. It will not be achieved because we all come at issues from a different perspective, and we all have different constituencies, but I do not think there is anything inherent in the process that ought to tell us that we should stop trying to achieve consensus. I understand that a consensus will break down. I want to be persuaded that the minister's way is better than my way. Maybe she will succeed; maybe she will not. In this case, we are not convinced that the way she has chosen is the best way to proceed.

Mr. Chairperson: Thank you, Mr. Carr, for your presentation this evening.

Mr. Schuler: First of all, I want to apologize for all the conversations that seem to be taking place, not just at this table, but at the back of room. I did not want to interrupt what you were saying. I think it is important we extend the courtesy of keeping conversations down for other presenters. Mr. Chairperson, perhaps even those in the back of the room, if they want to have a conversation, they could take it into the hallway. Maybe you would like to call those to order because, really, it was very distracting, and I appreciated what Jim had to say. Then, I would like to pose a question.

Mr. Chairperson: Thank you, Mr. Schuler, for that point. I will get to you in a moment.

Mr. Carr, I would like to apologize. We are in, as you have indicated here, the process of some procedural matters with this committee, and we were attempting to clarify those to allow this committee to continue its work, so I apologize for that disruption. If there are any members in the back of this room who wish to have conversations, the committee members would appreciate if the conversations can be carried on outside of the hallway. I would thank the members for their indulgence in that.

Mr. Schuler, you may continue with your question.

Mr. Schuler: Thank you, Jim. I really appreciated the presentation, very reasoned, and we had some really good presentations from the other side from Labour that talked about education, the kinds of things they were doing, and also very impressive. The quote that I find a little bit rattling is: Does this put us at a disadvantage for a good reason? You answered that question. You said no.

Again, I want to go back to that. We had a consensus. We knew where we were going, and, yet, that consensus was ignored. We continue to hear that we are going to have more meetings and we are going to look for more consensus. Does this not give business a point to pause and have some concern? I mean, you actually get to a point of consensus and it is ignored, but there is always this glimmer, this promise, that we will ask for more consensus later on. Is that not a concern for business and those you represent?

Mr. Carr: Business, as any other interest group in a community, looks for good public policy. Good public policy for us would result in a bill that we believe would be in the interests of the workplace to be as safe as it can be without

unreasonably disadvantaging Manitoba vis à vis its competitive position with other provinces. If the argument can be made that this bill makes us more competitive because we will gain the reputation of having the safest workplace in Canada, and, therefore, we will attract people, we will attract capital, we will attract investment, that would be pretty compelling. But that is where the logic of the argument escapes it. So, having not been convinced that that objective will be reached, it places us in a competitive disadvantage if it were to be passed the way it reads now, if we are to become the only province or only one of two provinces that has a punitive system that is not proven to be effective, vis à vis the objective. Entrepreneurs make decisions for a wide variety of reasons. It is a basket of factors. It has to do with regulation, taxation, quality of public services, quality of cultural richness, cultural life in a community, all of these things matter. This legislation will add another component to that basket, we believe, not a positive one.

Mr. Chairperson: Thank you, Mr. Carr, for your presentation here this evening.

The next presenter on the list is Mr. David Martens. Do you have a written presentation for committee members, sir?

Mr. David Martens (Manitoba Building and Construction Trades Council): I do not.

Mr. Chairperson: Then you may proceed when you are ready.

Mr. Martens: I just brought a few notes. Thank you, Mr. Chairman and committee members for hearing our presentation. My name is David Martin. I am the executive director of the Manitoba Building and Construction Trades Council. I would like to just read to you a brief introduction of our council to the committee members of our group that was presented to the safety review committee back in December.

The Manitoba Building and Construction Trades Council consists of 16 affiliated craft unions and represents over 5000 construction workers within the province of Manitoba. The Manitoba Building and Construction Trades Council has served the interests of craft workers in this province for over 90 years, promoting fair wages, improving members' working conditions, promoting member education and training programs and supporting our members' goals in having a safe and healthy workplace.

Our members' workplaces include major industrial sites such as mines, chemical plants, hydro dams, bridges, commercial and institutional sites including hospitals, healthcare facilities, colleges, schools, etc., and also residentials, high rises, housing developments and senior homes. Although a large portion of our work represents new construction, a significant amount of our work also involves renovation, repairs and maintenance jobs.

The majority of our employers are small to medium size constructions firms, less than 40 employees, based primarily in Winnipeg. A portion of our work is provided by out of province contractors temporarily performing work in our province. The nature of work for Manitoba construction workers is one of diversity and location, diversity of employers, working conditions and environment. This reality requires a distinct set of skills and an informed awareness of the environment they work in to ensure they are able to perform their work in a safe and efficient manner. That concludes the introduction.

The other culture of our industry in respect to construction in Manitoba is the sense of fair play and fairness. The construction worker and the construction employer in the industrial, commercial and the residential sectors looks for fairness, looks for rules and looks for fair competition. We believe, from our side, from the employee's side that our employers, all, many, most, are top quality employers who are concerned about the safety of workers.

* (18:40)

We also recognize, however, that competition affects our safety and we know that the construction industry draws inexperienced first time contractors ready to take a chance at construction work to try to make a buck. Typically we see those types of contractors who do not have the skills, the experience or even the will to proceed with a safe workplace and to be concerned about workers' safety. It is for that reason we think that legislation, such as the one

proposed by this Government, will assist our industry and our workers in providing safe workplaces and fairness in competition.

I want to speak a little bit about a story that Mr. Fraser told in regard to the roofing industry in B.C. As it happens, I sit on an a national committee of the roofing industry across Canada and I know some of those very employers who he has talked about in British Columbia. I also have a fairly good knowledge about the safety programs that they have developed. I would suggest to Mr. Fraser, and I would suggest to the committee members, much of what was developed in B.C. in respect of safety regulations and the safety programs that the B.C. Roofing Association developed, was a result of legislation that created penalties for those people who refused to follow the rules.

Mr. Fraser suggested that some of those industry people left the industry and got out of business. I say, hurrah. If they are not prepared to provide a safe workplace for workers, if they are not prepared to play by the same rules as all the other construction roofing contractors want to play by, then good riddance to you. So I do not find that as being a detraction to business. I think it is a positive step and I have to say, in respect to the Government's amendments towards penalties for repeat offenders, it is a minor step in that regard. Quite frankly, I share other labour leaders' views in this regard, that the Government has not gone far enough. I would have much preferred to see legislation similar to what B.C. had, that really chastised and brought to justice those contractors who refused time after time to comply with safety regulations.

I also want to commend the Government's action in respect of their initiatives in this bill reflecting training. Back in December of this year in our presentation, we focused on two issues primarily when we made our presentation to the Task Force. One was on enforcement and the other one was on training. We believe that the training of workers, both new workers on a job site, workers who exist on a job site and those who we have potential to attract to our industry, is paramount to having a safe workplace. We commend all actions the Government has taken in trying to enforce, encourage and generally provide a safe workplace to training initiatives that is tabled in this particular bill.

We see that the bill also has some amendments in regard to responsibilities for owners, prime contractors, contractors, supervisors, those types of things. I think those are positive steps, although, perhaps, they are just words at this point in time, and, without some real enforcement of the Health and Safety Act, we have yet to see the results of those types of changes.

I want to use another analogy with the roofing industry in respect to a province like ours. We went for 25 years without any serious amendments to the safety and health regulation. Back some two years ago, or perhaps a few more years than that, the roofing industry came to me as a labour leader in that particular sector and asked for some consideration to the present regulations that existed in this province. Our response was: Let us discuss it, and let us collectively, collaboratively find a solution that will work for both the employers and our members in regard to safe practices on the roof. Unfortunately, we were left in the meeting room without the partnership of the employers.

Perhaps, had there been legislation that required a penalty or an encouragement or a motivator that would cause those employers to sit down and collectively, collaboratively discuss safer ways to do business, we would have had that type of regulation. We would have had that type of system in place. Ironically, or sadly, it was not more than a year and a half later that a member of mine died falling off a roof in this province. I recall sitting in front of the advisory board of Manitoba at that particular meeting and we were discussing why we need tougher regulation for the roofing industry. The comments that came forth from the other side were to the effect that people fall from time to time, and we just have to live with that.

I do not think we were satisfied with that, and I quite frankly do not think the majority of employees who we represent and who we work with are satisfied with that kind of answer. I do believe if we could improve on the penalties that are in this bill, if there was one single issue that we would like to see in the construction sector,

is stricter enforcement and greater penalties, then we encourage the Government to do that.

Thank you, Mr. Chairman, and thank you to the committee.

Mr. Chairperson: Thank you very much, Mr. Martens, for your presentation. Questions for the presenter?

Ms. Barrett: Thank you very much for your presentation, and I appreciate your comments about the necessity to work together. No program or policy or even legislation is going to work if people do not acknowledge the importance of it, so I appreciate that. Also, some of your insights into the industry that you represent. Thank you.

Mr. Chairperson: Thank you very much, Mr. Martin, for your presentation this evening. That concludes the list of presenters that I have before me this evening, outside of the two names that were dropped to the bottom of the list. I will call those two names and see if they are in the audience this evening. Ms. Iris Taylor? No. Ms. Taylor's name will be struck from the list. The next name is Mr. Jim Baker. Is Mr. Baker in the audience? Seeing that Mr. Baker is not here, his name has been called twice now, his name will be struck from the list as well.

That concludes the list of presenters that I have before me this evening. Are there any other persons in attendance who wish to make a presentation? Seeing none, this committee will recess until the Private Bills Committee has completed the business before it. This committee is now in recess.

The committee recessed at 6:46 p.m.

The committee resumed at 8:10 p.m.

* (18:10)

Mr. Chairperson: Will the Committee on Industrial Relations please come to order?

Committee Substitutions

Ms. Bonnie Korzeniowski (St. James): With leave of the committee, I would like to make the following membership substitutions, effective immediately, for the Standing Committee on Industrial Relations: Dauphin-Roblin (Mr. Struthers) for Thompson (Mr. Ashton); and Rossmere (Mr. Schellenberg) for Flin Flon (Mr. Jennissen).

Mr. Chairperson: Is there leave of the committee to substitute the honourable Member for Dauphin-Roblin (Mr. Struthers) for the honourable Member for Thompson (Mr. Ashton) and the honourable Member for Rossmere (Mr. Schellenberg) for the honourable Member for Flin Flon (Mr. Jennissen)? *[Agreed]*

We will now proceed to clause by clause of Bill 27. Does the Minister responsible for Bill 27 have an opening statement?

Ms. Barrett: No, Mr. Chair.

Mr. Chairperson: We thank the minister. Does the critic from the Official Opposition have an opening statement?

Mr. Schuler: No.

Mr. Chairperson: Thank you, Mr. Schuler.

During consideration of a bill, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is an agreement from the committee, the Chair will call clauses in blocks that conform to pages, with the understanding that we will stop at any particular clause or clauses where members may have comments, questions or amendments to propose. Is that agreed?

Mr. Schuler: For the first section, I was ready to raise my hand.

Mr. Chairperson: Okay. Thank you, Mr. Schuler. The committee agrees to proceed by pages.

Clause 1 to clause 3.

Mr. Schuler: I move

THAT clause 3(b) of the Bill be amended by adding the following–

Mr. Chairperson: Mr. Schuler, hold on, please. With the indulgence of the committee, we will

pass clauses 1 and 2, and then we will move on to your amendment to clause 3(b).

Clause 1–pass; clause 2–pass. Clause 3.

Mr. Schuler: I move

THAT clause 3(b) of the Bill be amended by adding the following definition before the definition "Board":

"aggrieved person" means an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer, or union at a workplace, who is directly affected by an order or decision; ("personne lésée")

Mr. Chairperson: It has been moved by Mr. Schuler–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order. Debate.

Mr. Schuler: To the minister, we have heard a lot of discussion in the last hours of various presenters. One of the things that they were asking for is that the bill be made a little bit clearer, that definitions be cleaned up a little bit more, that how processes are supposed to be worked and how the whole process is supposed to function, they felt that there was a little bit too much confusion. What we are looking at is trying to make it very clear at what it is that we are talking about in the bill. This is basically one of those pieces that makes it very clear who an aggrieved person is, and we think it is very appropriate.

Ms. Barrett: One of the problems with definitions, one of the challenges with definitions and with any piece of legislation is the balance between clarification and limitation, and, unfortunately, we are of the opinion that this is not a clarification but a limitation and that you want to ensure that people who have standing or who might want to participate in the process, an appeal process, or the process of the bill, any of the elements of the bill, that it can be as flexible as possible. So, unfortunately, we will not be supporting this amendment.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it. The motion is accordingly defeated.

* * *

Mr. Chairperson: Clause 3–pass; clauses 4 to 6–pass. Clauses 7(1) to 7(2).

Mr. Schuler: I have two amendments in 7(2).

Mr. Chairperson: Clause 7(1)–pass.

Mr. Schuler: I move

THAT subsection 7(2) of the bill be amended by striking out the proposed subsection 4(6).

Mr. Chairperson: The amendment is in order.

It has been moved by Mr. Schuler–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Schuler: The reason for this particular amendment, the feeling of a lot of presenters and the feeling, certainly, of myself, is that this particular clause moves into the realm of–it is not really a health issue. It has more to do with labour relations. The kind of thing that we are starting to deal with, it is covered off in other areas. We feel it is better left with labour relations and not come under the safety bill. It just confuses it, and we believe that it is

probably best. I take it everybody on the committee does have a copy of the bill.

It says: A worker is entitled to the same wages and benefits for any time spent in training that he or she would be entitled to had the worker been performing his or her regular work duties during that time. Again, one of the presenters even mentioned to the minister that where is the argument that this would have anything to do with safety. This is really a labour relations issue.

Ms. Barrett: Mr. Chair, we heard time and time again from presenters across the spectrum today during the public hearing process, and the committee heard time and time again during its 19 public hearings and several written presentations, that training of workers was essential to providing for a safe and healthy workplace. No one disagrees with that. I cannot believe the member would think that anyone disagreed with that concept, that a trained worker is a healthy and a safe worker. A worker who does not know what their rights and their responsibilities are is not going to be a healthy and a safe worker. The workplace is, therefore, not going to be healthy and safe.

This section that the member wants to eliminate entirely would say that a worker, while they are being trained to do health and safety, trained in the areas of health and safety, should not be paid for that time. This is in the benefit and for the best interests of workers and the employers and a safe and healthy workplace. We are absolutely not prepared to support this amendment and feel that it goes in complete contradiction to what the establishment, that we all agree we need, of a culture of safety and health in the workplace. I am surprised that the member is bringing this amendment forward. We will not be supporting it.

Mr. Schuler: Well, again, the minister loves to confuse and blur a lot of issues. The consensus report talked about education, and nowhere in the bill does it deal with education. The minister talks about consulting and sits at the end of her table and, after having literally trashed the consensus report, tells individuals that after this bill is passed, which basically trashed the consensus report, that she is going to look for consensus after this again.

No, minister, you are wrong on that point. Training is definitely an issue that nobody has anything, that anybody has a problem with. But when you start talking about the kinds of wages that they are entitled to, I mean, does this just apply to safety training? Can the minister then clarify for the record that should this go into dispute? Should it go to the Labour Board? Is this only dealing with safety training, or is this for training for, if somebody goes to the Dale Carnegie course, or if this is for whatever other training that is involved? That is not quite what can be taken out of here. I think that when we start talking about training, there are a lot of aspects to training, and, certainly, we are all for it.

* (20:20)

However, the feeling coming from a lot of quarters in the province is that this is on a slippery slope, and if the minister feels that strongly about it, bring it up in The Labour Relations Act, bring it on that side of the legislation, but not in a safety bill. I do not think anybody has an issue there. I think this has to do with the fact that this is supposed to be a safety bill.

Ms. Barrett: I am glad the member ended his comments by saying this is supposed to be a health and safety bill. The training that is talked about in here, as we are talking about in sections 4(4), 4(5) and 4(6), deals with health and safety training. This is the workplace safety and health amendment act. The member talks about this being a labour relations issue.

Two-thirds, or somewhere between, approximately two-thirds of the labour force in the province of Manitoba is not covered by The Labour Relations Act. The Labour Relations Act deals with the relationship between employees, employers and unions. It does not deal with the majority of the workplaces. The Workplace Safety and Health Act deals with every single workplace in the province of Manitoba where there is an employee/employer relationship. Everything that deals with workplace, safety and health in the province of Manitoba's workplaces is the purview of The Workplace Safety and Health Act.

Training is a huge component in the report. It is talked about on page after page about the importance of training. What we are saying here is, yes, it is an important component of workplace safety and health, and employees should be paid while they are being trained because it is the fair thing to do. It is to the employer's best interests to have a safe and healthy and productive workforce. That means training. It is not a labour relations issue; it is a workplace safety and health issue. It is training for workplace safety and health.

Mr. Schuler: See, and I find that unbelievable. The minister sits and imposes more and more responsibility on business, and the minister walks away from any of her responsibilities. You had a consensus report in front of you that talked about all kinds of education, that talked about that being part of the component, and, yet, you make business take more of it on. I mean, where is the partnership that government is supposed to have with business? Where is the partnership that we should have between government, labour and business? The minister and this Government walk away from that. They wash their hands of it and say, it is only one side that has to pay for everything and anything. I think that is shameful, frankly. The Government should pony up with a little bit better of an idea than, again, it just being the businesses' responsibility.

Business stood here and said, yes. They accept the fact that there has got to be an education process and there has got to be a training process, but it cannot all just be on the backs of business. It is unfortunate the minister cannot see that. Minister, I am sorry, this is not what the consensus report was talking about. I think the consensus report talked about a far greater, far broader concept than going this route. Yes, it does talk about training. But where are the other components? Where is the rest of it that is enshrined in here? There is nothing else. All that this basically is, is that, again, the onus is on business to pay for everything. There are no partners involved in this. It is, again, government coming down on business. That is what we are trying to say with this, is that this does not belong as part of safety. If the minister is talking about a whole education component, then there should be an education component, and this should be part of it. But then, all of it should have been enshrined in legislation, or none of it should have been enshrined.

Mr. Chairperson: Shall the amendment pass?

An Honourable Member: No.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed to the amendment, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

* * *

Mr. Chairperson: Clause 7(2).

Mr. Schuler: I move

THAT the proposed subclause 4.1(a)(iii), as set out in subsection 7(2) of the Bill, be amended by striking out "or provided".

Mr. Chairperson: The amendment is in order. It has been moved by Mr. Schuler–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense.

Mr. Schuler: What we have done if members would look at the bill, it is page 5, is ensure that a worker under his or her supervision uses all devices and wears all clothing and personal protective equipment designated or provided by the employer or required to be used or worn by this act or the regulations.

Our concern is, again, that the minister has left this a very fuzzy area. The example is whether it is steel-toed boots or parkas or anything else. That is something that is–it is

often a negotiated item between an employer and an employee, and where this states designated or provided by the employer, that then puts the onus–if somebody does not show up with their safety equipment, that means, either you send the person home or you provide the safety equipment. In fact, we believe it is a lot clearer if there is a designation for safety equipment. We all accept that. That is very important that it be required to be worn by this act of regulation. We all know that when we go into plants, if we do not wear glasses, we have to wear safety glasses. We just think it is a small amendment. It just clarifies the issue for all of those involved.

Ms. Barrett: I think the member may be missing something in his interpretation of this part of the legislation that has led him to this amendment, which we will not be supporting. The title of the section is duties of supervisors. This is a clarification of the duties of the supervisors. In the current legislation, the employer–we are talking elsewhere about supervisors need to have some kind of clearly-defined roles as well–is required to provide and maintain a workplace, necessary equipment. Already in the legislation, the employer is required to provide necessary equipment. In some cases, the employees provide their own equipment. This is not a new onus on an employer or supervisor. This is coming under, this is paralleling the role of the employer to, say, that the supervisor is. What the member is saying by eliminating the words "or provided" is that, if an employer provides a hard hat, then it is his responsibility to ensure that the hard hat is worn and to discipline, as the employer or supervisor has the authority to do, an employee who does not follow that.

If the employer has designated that the employee shall provide him or herself with the hard hat, then he does not have a responsibility to ensure, according to what this member's amendment would say. He or she does not have any responsibility to ensure that that safety equipment is used, has no, then, authority, one could say, logically extending this amendment. The supervisor would then have no authority to say to the employee, I am disciplining you because you did not wear your hard hat because it was the hard hat that was provided for by the employer or supervisor. He or she could only discipline for a hard hat that was not worn if it was designated. It is an amendment that makes no sense. It is an amendment that clarifies something that is already in the act.

Mr. Schuler: I have no idea what you had for supper. Get with the program. You are concocting all kinds of things here. It nowhere comes close to saying anything. If one goes back to the legislation: Ensure that a worker under his or her supervision uses all devices and wears all clothing and personal protective equipment designated by the employer, or required to be used or worn by this act or the regulations.

* (20:30)

It by no means covers any of the things or creates the confusion that seems to be in the minister's mind. Again, this is another one of those that will put it into legislation that, now, all of those things that are either designated by the employer or required to be worn by the act or by regulation will now be provided by the employer. The minister can quote out of whatever she wants, which was very vague. This now makes it very specific. I take it the minister will be voting against this because this bill is not about safety.

This is becoming very clear. It is a sham. It is all about negotiations. It is about all kinds of other things, but it is not about safety, and that is appalling after everything we have heard in the last day.

Ms. Barrett: On a point of further clarification. There are instances where employers provide and require safety equipment above and beyond what is required in The Workplace Safety and Health Act and/or its regulations. This simply parallels the portion of the act which talks about the responsibilities of the employers already in the act. This parallels it and says that supervisors also have a responsibility to ensure that the safety equipment that is either designated to be worn or provided–which is the case in many workplaces–by the employer is used or worn or activated. So it is simply saying that, in those instances where the employer provides safety equipment, it is the responsibility to ensure that the safety equipment is used.

Mr. Schuler: So can the minister tell the committee, in regards to this section, should the employee not wear any of the protective equipment. What then? Does, then, the supervisor have the right to deny entry to the workplace, or deny the individual that right to employment?

Ms. Barrett: The employer has the right to take every step that he or she believes is important or essential to operate their workplace efficiently, effectively and healthily and safely. So, if a worker is not wearing the equipment or not using the equipment or not participating in safe actions, the employer and supervisor have the right to require that of the employee, and disciplinary action can be taken if an employee does not follow the prescribed activities.

There is, as well, in the legislation itself under section 5, not Bill 27, but the Workplace Safety and Health itself, a clause that lists six general duties of workers. The first general duty of the worker is, and I quote: Take reasonable care to protect his safety and health and the safety and health of other persons who may be affected by his acts or omissions at work. That is the first general duty of a worker under this piece of legislation. You work safe.

One of the things that a supervisor has as part of his or her responsibilities is to ensure that those workers work safe, because there are times where it does not happen. We all know that is the case. So a supervisor has those responsibilities as, ultimately, does the employer. This section clarifies and states very clearly that parallel to the responsibilities of the employer to ensure that workers work safely is the responsibility of the supervisors to do the same thing.

It is, as again I have stated, the responsibility of the worker to do that as well. If the worker does not and the supervisor is doing his or her job, they will tell them to work safely, and if the worker continues not to work safely, there are remedies that can be laid by the supervisor and the employer.

If I may, section (b) under the general duties of workers: Every worker shall at all times, at all times, when the nature of his work requires, use all devices and wear all articles of clothing and personal protective equipment designated and provided for his protection by his employer, or required to be used and worn by him by the regulations.

So it is very, very clear what the responsibilities and duties of the workers are. This is saying supervisors have responsibilities to ensure that that happens too.

Mr. Schuler: I will warn the minister, as we warned the minister on Bill 44 and Bill 18, this is disastrous legislation because it says to middle management I will wait till the minister finishes her private conversation.

Basically, what it says to middle management is, not just is it your responsibility that the employees are wearing protective clothing, it is also your responsibility to provide it, and that, again, is moving into a real touchy area. I would point out to the minister that the problem is, if you read it: Ensure that a worker under his or her supervision uses all devices and wears all clothing and personal protective equipment designated–it does not say, designated or provided by the employer–are required to be used or worn by this act.

I think we are on a slippery slope and, clearly, we could disagree on this for some time, but I will leave it at that.

* (20:40)

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the amendment passing, please signify by saying yea.

An Honourable Member: Yea.

Mr. Chairperson: All those opposed, signify by please saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Clause 7(2)–pass; clauses 8 to 11–pass; clause 12–pass; clauses 13 to 18–pass; clauses 19 to 22–pass.

Mr. Schuler: I have a motion for section 22.

Mr. Chairperson: The indulgence of the committee. Clauses 19 to 21–pass. Clause 22–

Mr. Schuler: I move,

THAT section 22 of the Bill be amended by adding the following after the proposed subsection 18(1):

Regulation development
18(1.1) Except in circumstances considered by the minister to be of an emergency nature, in the formulation or substantive review of regulations under clauses (1)(a), (c) and (d), the minister shall, in the interest of creating industry-specific standards and practices,

(a) provide opportunity for public consultation and seek advice and recommendations regarding the proposed regulations or amendments; and

(b) consult with appropriate departments and agencies of government.

Mr. Chairperson: The motion is in order. It has been moved by Mr. Schuler that section 22–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Schuler: What we are looking at here is to encourage consultations before regulations are made. Right now, as it stands, regulations can occur without consultations, and, for example, if we are looking specifically at farm regulations, what would happen is they would now have to consult with the appropriate departments and agencies. It just makes it a little bit clearer on the whole regulation side.

Ms. Barrett: I would like to ask the question of the member: Why is he referencing only three out of the approximately twenty subsections of 18(1)? Why is he picking only three to discuss in this amendment? The regulation 18(1) that he is adding after has from (a) to (s) subclauses, and he is only picking three of those to be the subject of his amendment. I am asking for clarification as to why those three clauses are picked, rather than the rest of the clauses under the regulation-making section.

Mr. Schuler: That is a very good question on the part of the minister. I have to work this one through. I think the reason why we went with this is, in respect to sections (a), (c) and (d), it has a lot to do in those areas, specifically, with agriculture, and it gets more into specific areas rather than just general.

We felt that there should be, at least, some protection that when regulations are made–and I think we are dealing with a lot here insofar as farms are concerned–that the appropriate departments, agencies, should be consulted. We want to be very careful when we get into those kinds of regulations, how we deal with our agricultural community, and that regulations not come forward without having the benefit of consulting various departments and agencies. That was, basically, the thrust of this, especially when it comes to specific areas.

Ms. Barrett: I would suggest that this amendment is not necessary because the Government, even if it were clearly understood by the Government side, which it is not–the explanation has not been very clear, but we have committed publicly that we will look at every regulation that is currently in the legislation and every regulation that will need to be put in as a result of this bill. We will look at it in consultation with all affected parties. We have made that commitment and it is only good sense that when you make a regulation, you do it with the best kind of information at hand, and that people who work in workplaces that are affected by that regulation, whether they be workers or employers or supervisors or whatever, have the best knowledge about what a regulation should look like and how it can best be implemented and framed. So, I think, we have actually crafted a very strong amendment here, and I do not believe that this amendment by the member is necessary at all.

Mr. Schuler: If one looks at sections (a), (c) and (d), they tend to deal with areas involving ergonomics. As well, (a) talks about respecting standards and practices to be established and maintained by employers to provide self-employed persons, prime contractors, contractors, owners and suppliers, protecting the safety and health of any person at a workplace; (c) lays out imposing requirements respecting conditions at workplaces, including such matters as the structural conditions, the stability of premises, available exits and premises cleanliness, temperature, lighting, ventilation, overcrowding, noise, vibrations, ionizing and other radiations, dusts, fumes and, indeed, prescribing minimum standards of welfare. Facilities at workplaces includes the supply of water, sanitary conveniences, facilities for washing, bathing, changing, storing personal property, breaks and refreshments.

The minister talks about the commitment she made. I am wondering if that is the commitment she made before Bill 27 when she asked for input, and then absolutely turned her back on it. She has yet to give an answer to any presenter, to this committee, to anybody, why it is that she turned her back, basically stabbed all of those individuals in the back who came forward. There really is not a lot of faith in the minister. There is not a lot of trust emanating towards the minister's words that she will consult and, secondly, if she will even listen. That is a real concern on behalf of a lot of individuals. I think, to the minister, the fact that she makes all kinds of commitments, they sound hollow when those are compared to what she actually does.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in support of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Clause 22–pass; clause 23–pass; clauses 24 to 31(1)–pass. Shall clause 31(2) pass?

Mr. Schuler: I move

THAT subsection 31(2) of the Bill be amended by replacing the proposed subsection 36(6) with the following:

Workers must be paid
36(6) If a stop work order is issued, the employer

(a) must pay any worker who is directly affected by the order

(i) the amount the worker would have earned, or

(ii) if that amount cannot be readily determined, the amount the worker would have been likely to earn for the day on which the order came into effect and for the next three working days during which the order is in effect; and

(b) may re-assign the worker to reasonable alternate work while the order is in effect.

Mr. Chairperson: It has been moved by Mr. Schuler–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: On this particular issue, even when we had the briefing with the minister, we did raise a concern about: Is this finite? Is this infinite? Where does it end? I know the minister has been lobbied on this, and she has had a lot of discussions, whether it is the MEC or other organizations. There has to be some kind of an end.

I am, frankly, quite surprised that the minister has not brought an amendment forward herself. If she has one, we are certainly intrigued

to see it, but there has to be some kind of a time frame on this. Three days is quite appropriate, and we certainly recommend to the committee that they support this amendment.

Ms. Barrett: Mr. Chair, I do have an amendment that I think more effectively addresses the concerns that were raised by individuals and groups in consultation. So we will be voting against this amendment and bringing our own in on this particular section.

Mr. Frank Pitura (Morris): Mr. Chairman, I am just wondering, if the minister could share the amendment with us at this time, then there is a possibility that we will withdraw our amendment and proceed on with the business of the clause by clause, but we would like to have the assurance from the minister as to what the amendment is prior to us not proceeding or withdrawing our amendment.

* (20:50)

Mr. Chairperson: It is my understanding that this committee can only deal with one amendment at a time, and we have an amendment currently before us.

Ms. Barrett: I am wondering if it is the will of the committee to take a two-minute break at this point.

Mr. Chairperson: Is it the will of the committee to take two minutes? *[Agreed]* The committee will recess for two minutes.

The committee recessed at 8:51 p.m.

The committee resumed at 8:55 p.m.

Mr. Chairperson: Will the Committee on Industrial Relations please come back to order?

Mr. Schuler: I think it is very important, and, again, I would advise this committee this is a mistake if you do not put some kind of time frame on when that comes to an end. I think three working days is reasonable. Certainly if the minister wanted a friendly amendment, I mean, whether it is three days or six days, but there has to be some kind of finite end to it, at which time it is over. I would caution the minister on this one. I think this one leaves far too much up in the air, and it is not in the best interests of our business community to have this kind of legislation on the books. So those would be my comments.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Ms. Barrett: I move

THAT the proposed subsection 36(6), as set out in subsection 31(2) of the Bill, be amended by striking out clause (a) and substituting the following:

> (a) any worker who is directly affected by the order is entitled to the same wages and benefits that he or she would have received had the stop work order not been issued; and

Mr. Chairperson: It has been moved by the Minister of Labour–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Ms. Barrett: This amendment and one other that I will be bringing forward when this amendment has been dealt with clarify the intent of this provision, which is to ensure that workers

are not penalized when enforcement action is taken to protect them from the imminent risk of serious injury, which is what the definition of a stop-work order is, but not to entitle them to pay in benefits they would not otherwise have been entitled to receive. So it is to ensure that the workers receive what they would have been entitled to, but not anything more.

Mr. Chairperson: Amendment–pass.

Ms. Barrett: I move

THAT subsection 31(2) of the Bill be amended by adding the following after the proposed subsection 36(6):

If alternate work not available
36(7) If the employer provides satisfactory evidence to the director that alternate work is not available, the director may order that clause 6(a) does not apply for any period that the director specifies in the order, but until the director makes an order the employer is required to provide a worker with all wages and benefits under that clause.

Appeal
36(8) A person affected by an order of the director under subsection (7) may appeal it to the Board. In that case, section 39 applies with necessary changes.

Mr. Chairperson: It has been moved by the Minister of Labour–

An Honourable Member: Dispense.

Mr. Chairperson: The amendment is in order.

* (21:00)

Ms. Barrett: This is a companion to the earlier amendment that we passed clarifying the stop-work order. This is following the section that says in Bill 27 that the employer may reassign the worker to alternate work. We listened to some concerns by employer groups that sometimes there would not be alternate work available or that there might be some other financial situation that could occur as a result of the stop-work order. So we are saying, in this first 36(7), that if alternate work is not available, the employer may make application to the director to not have clause 6(a) apply, but, in the time between the time that the stop-work order was issued and the time that the director makes a decision on any application by an employer under this section 36(7), employees would continue to be paid their wages.

Then, in the appeal process, again, this states that either side, an employer or an employee, can appeal to the Labour Board a ruling or an action or a decision by the director.

Mr. Schuler: Again, to the minister, this is bad legislation. It leaves an awful lot out there. The director gets involved, and then a person can appeal it to the board. I do not suppose the minister has worked out the time lag that is involved in this. The stop-work order is there for a good reason. It means the business is not complying. Frankly, I think the punishment should be that they cannot proceed until, if it is a machine shop, they put safety guards on, but, if it takes two weeks to bring those in from wherever, that the employer then has to pay all their employees, it is a double punishment, and I do not understand why that is necessarily the case. I think there has to be some kind of an end to it or, in the case of a business, it might decide that the equipment is too old and that, in fact, they have come to the end of the run of the business, and they are going to shut down. That leaves it very murky on how does one terminate an employee. So the business is sold off, it goes bankrupt, and they are still obligated to pay those employees that have been affected. It is not that clear, and I still think, again, to the minister, there should be a finite amount of days applied to this to make it very easy for business to understand.

Ms. Barrett: It is important that we read these amendments in their entirety. They were done separately because of the requirements of the Legislature. Basically, this is saying we recognize that a stop-work order is a critical thing. It needs to be dealt with expeditiously. It can have a very major impact on an employer's ability to function. We recognize, in the second amendment that I have just put forward, that part of it that says an employer can make application to a director to vary the first part, which is you shall pay the employees the money to which they are entitled. This only happens if there is

not alternate work available. So, first, you pay your employees; second, you try and find them alternate work. If you cannot, you are still obligated to pay the employee the money that they were entitled to if the stop-work order had not been issued, because an employee should not be penalized for an unsafe workplace.

The employer, on the other hand, in this amendment we are dealing with now, has access to the director to say this is unattainable. I cannot operate this way. The director can vary the decision there. So we are trying to provide a balance there so the employee does not lose and the employer has an appeal process if they feel there is no alternate work available and they feel they cannot deal with it financially.

Mr. Schuler: So all the power rides with the director? The director can then override the work stop order. That is putting an awful lot of onus on the director.

Ms. Barrett: An earlier amendment that we passed gave the director the power to vary any or all of the regulations in the legislation. This gives an avenue of appeal to the employer to say to the director: I have no alternate work available. Please vary the order. Please order that clause 6(a) not apply in this situation. Clause 6(a) is the one that says the worker shall be paid while the stop-work order is in effect. This provides an avenue of appeal for the employer.

Mr. Schuler: Perhaps the minister could tell us again how this is about safety and not about punishing business. Where is anything positive in this? We agree with the stop-work order if there is not a safety guard on a table saw. A stop-work order can be put on that you have to get the guard for the table saw. Again, you are punishing the business twice by, one, stopping the business, which is actually the hammer that is held. That is where the punishment is. The second one is that you have to pay all your employees while you are waiting for the safety guard, or you can go and beg, please, please, to the director. That is not public policy. That is punishment. That by no means makes good public policy.

The minister knows she is wrong. There should be a clause in here, whether it is after three days or whatever, that the employee gets paid for that amount of days and then either the business is insolvent or whatever. It should not mean that the business has to crawl to the director on hands and knees and beg: Please do not bankrupt me while I am waiting for the safety equipment. Please do not make me go bankrupt. I thought we had a little bit more of a positive attitude. I would like to know where this attitude comes from. It is appalling. We are talking about human beings. We are talking about lives. A lot of these businesses are sometimes marginal in nature. I understand there is a stop-work order. There is a certain couple of days where the employee should be entitled to pay. No, you do not want to punish the employee, but why are you punishing the business twice?

This amendment does not come close to it. What is unfortunate is we face individuals who have never run a business. Frankly, my heart goes out to those individuals who sit and wait for Canada Post or UPS to deliver their safety equipment. In the meantime, they are paying all these wages or they crawl to the director. That is not positive safety legislation. That is pure punishment legislation.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of the amendment passing, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed please signify, by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: Amendment–pass; clause 31(2) as amended–pass. Clause 32.

Ms. Barrett: I recognize that the Member from Springfield has one or more amendments in this quite long section. I have one amendment but it

deals with the very last element of this section, so I would suggest that we do the amendments that the Member from Springfield has first in this section.

* (21:10)

Mr. Schuler: I move

THAT the proposed subsection 37(3), as set out in section 32 of the bill be amended by adding "The director must give written reasons for a decision not to hold a hearing." *at the end.*

Mr. Chairperson: It has been moved by Mr. Schuler–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The motion is in order.

Mr. Schuler: Again, basically what we are asking for here is that the director give in writing the reason why a hearing was refused, and it is just that it is not done verbally, messages get lost on voice mail, whatever, that something be done in writing.

Ms. Barrett: Just very briefly. This would add another level of bureaucracy and delay the decision of the director. So we would not be in favour of this.

Mr. Schuler: This would add another level of bureaucracy. If the minister would read her own legislation. I mean, as it is you are asking the director to do all kinds of stuff and all we are asking–

Again, this is typical. This minister has been consistent in the last three years. It is all about punishing business. You do not give them anything in writing, so there is nothing that they can appeal with. They have no idea what the reasons are. Then the minister wonders why there is such a bitterness towards the Government when it comes to legislation. The minister does not even have the–

I will wait until the minister finishes with her staff.

Mr. Chairperson: Mr. Schuler.

Mr. Schuler: I am just wondering if the minister is done. I understand the minister needs some coaching by her staff. I am willing to wait before I make my remarks. She needs some couching from her staff. That is fine. I appreciate that, but I will wait.

Mr. Chair, can I ask if the minister is done and then I can make my comments.

Mr. Chairperson: I do not believe, Mr. Schuler, that it is within the prerogative of the Chair to give directions to members of the committee. I am a servant of the committee.

Mr. Schuler: I think it is shameful that that little courtesy, that little bit would not even be extended to business, that they could not even get it in writing. That is amazing that we have gone so low. We have gone to such depth that we will not even extend the courtesy to put it in writing because the minister does not want to create another level of bureaucracy.

The minister finds it funny. She takes great pleasure in punishing business. That is disgraceful. You have to wonder, what are you supposed to think as a business person? You do not even get the courtesy of it in writing. That is going to cause a whole bureaucracy to be built to write one letter? That is really disgraceful, that is despicable by the way. I cannot believe that we stoop that low.

There are all kinds of places in here where the employee gets it in writing and so they should. Why cannot the same courtesy be extended to business and something be put in writing there as well? It is not creating another bureaucracy if it is done for the employee, and we all agree with that. What is wrong with that? Just writing one simple letter to business stating the reasons why, and the minister is not magnanimous enough, is not big enough to extend that courtesy.

Well, there you have it. And then the minister wonders why the business community comes forward every time and shows great concern in regard to the minister's words and how they do not believe the minister because it is this kind of stuff; talks about consensus, I would like to work with you, I am your friend, I

am everything to everybody, but cannot even extend the courtesy of a letter. That is just awful.

Ms. Barrett: I think the member is missing what is the really substantive part of this whole appeal section here on appeals for the director. Section 37(5) says: The director must make a decision about the appeal and give written reasons. So the director has to give reasons for his or her decision in writing. The director is not required to hold a hearing before deciding an appeal, but he/she is required to issue written reasons after making a decision. The hearing process as is, has always been the case and continues to be the case here. The hearing process takes place at the Labour Board which is the appropriate place for the hearing, but the employer or the employee who makes an appeal to the director will get an answer and a decision in writing with reasons.

Mr. Schuler: I want to be very clear on this. 37(3) says: the director is not required to hold a hearing before deciding an appeal; 37(5) says: the director must make a decision about the appeal and give written reasons within a reasonable time after receiving the appeal notice, unless the appeal has been referred to the board. What we are saying is that here, again, the director is not required to hold a hearing before deciding an appeal. What we are saying is that if a hearing is denied by the director,I am not talking about the appeal now, the director is not required to hold a hearing before deciding an appeal, that the director send a letter stating clearly and give written reasons for the decision not to hold a hearing.

I would not confuse those two issues and I would go on to say that I believe it follows due process. You make information a lot more easily available and I think it is an important step both for the worker and for the employer that things like this be done in writing.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Mr. Schuler: I move

THAT section 32 of the Bill, be amended by adding the following after the proposed subsection 38(1):

Reasons
38(1.1) The director must give written reasons for a decision to refer an appeal to the Board under subsection (1).

Mr. Chairperson: It has been moved by Mr. Schuler that–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: Again, what we are asking for here is that documentation be given. These are very trying times for business and for employees. It can be very stressful and we are asking that the director document in writing the reasons for his/her decision.

Ms. Barrett: We would be prepared to accept this amendment.

Mr. Chairperson: Amendment–pass.

Mr. Schuler: I move

THAT section 32 of the bill be amended by striking out the proposed subsection 40(5).

Mr. Chairperson: It has been moved by Mr. Schuler–

An Honourable Member: Dispense.

* (21:20)

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: The piece of legislation that we are dealing with is 40(5), and it reads: More than one committee in a workplace. The director may issue a written order requiring an employer or prime contractor to establish more than one committee for a workplace. The order may provide for the composition, practice and procedure of those committees.

First of all, there was nothing in the consensus report that dealt with multiple committees. The feeling was that it is unnecessary complexity. It adds a lot of confusion, and I would say that it actually dilutes what we are trying to do. You are better off having one committee that you work on, you make one committee very effective. You empower a group of individuals to take on issues, to make it committees, who is on what committee, and I am sure all of us have been involved with committees and then starts the politics of that. I think it is a lot cleaner, it is a lot smoother, and I am not too sure even a business, even labour would like to see multiple committees in a workplace. I think this is probably a reasonable motion. It is not the end all, the be all of the bill, but again it does deal with the complexity and makes it a lot simpler.

Ms. Barrett: Mr. Chair, the purpose of sections 40(5), 40(6) and 40(7) are designed actually to recognize the complexity and the variety of the modern workplace. So, taken as a group of three, the one that the member is talking about now is the more than one committee in a workplace. The next one says that there could be, turning it around, one committee for more than one workplace, and the third is what the director has to look at in determining whether there should be either one committee in more than one workplace or more than one committee in a workplace.

I will just give the member one example: Hudson Bay Mining and Smelting in Flin Flon, a very complex operation. On their volition without recourse to the legislation, they have established eight committees, eight health and safety committees recognizing the complexity, the different elements that go into the mining operation at Hudson Bay. Most mining operations have at least two committees in their one workplace site, because the hazards are different, the skills are different, the information that you need to share is different. So that is why we feel that it actually is going to simplify and make easier.

The whole issue of functioning health and safety committees is to enable the–this does not mean it will happen in all cases. But in instances like the mining industry, the director can say you should have the authority, you should establish more than one Workplace, Safety and Health committee at this worksite. So it is not designed to complicate. It is designed actually to streamline and make better and more functioning the health and safety committees at complex worksites.

Mr. Schuler: The minister reflected that the director writing a letter to business would create a complete new level of bureaucracy. I cannot imagine what the minister thinks about the director walking in and creating all kinds of committees. I mean, that is something that should be worked out at the business. That is something that should be worked out with labour and management, with the employees. For a director to walk in, I am not comfortable with that, but that is a philosophical difference, and we will leave it at that.

Mr. Chairperson: Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes

Voice Vote

Mr. Chairperson: All those in favour of the amendment passing, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Mr. Schuler: I move

THAT the proposed subsection 40(11), as set out in section 32 of the bill, be amended by adding

"as a committee member" *after* "regulations" *wherever it occurs.*

Mr. Chairperson: It has been moved by Mr. Schuler–

THAT the proposed subsection–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: All that we are doing is clarifying that the time that has been taken off is for committee work. So in other words, if you read the amendment, a member of a committee is entitled to take time off from his or her regular work duties in order to carry out his or her duties under this act. In the regulations the member shall be paid by his or her employer at the member's regular premium pay as applicable for all times spent carrying out his or her duties under this act and the regulations, and then of course our amendment to that, and basically as a committee member. It just tightens it up that little bit more. It is very clear to each and every person that the work that you are getting paid for is as a committee member.

Ms. Barrett: Yes. This is a very interesting situation, because, as I mentioned at the beginning of this section, I had an amendment. Normally the standard procedure is that the minister goes first with his or her amendments, and, of course, not knowing what the amendments were from the Opposition, nor did the Opposition know what amendments were coming from the Government, if any, had standard operating procedure been followed this would have been virtually the same amendment that I have, slightly different wording that we had, so the Opposition would have been supporting our amendment.

I want to put it on the record that we had listened to the concerns that were raised by the business community that this was unclear. It needed clarification that the remuneration would be the time for the duties as a committee member. I kind of like our wording a little better, but it is the same. It is virtually the same. It has the same impact.

Mr. Chairperson: Is it the will of the committee to recess for two minutes? *[Agreed]*

The committee will recess for two minutes.

The committee recessed at 9:29 p.m.

The committee resumed at 9:30 p.m.

* (21:30)

Mr. Chairperson: Please come to order.

Mr. Schuler: I am at this point and time prepared to withdraw my motion.

Mr. Chairperson: It requires unanimous consent to withdraw the amendment. Is there unanimous consent of the committee to withdraw the amendment? *[Agreed]* The amendment is accordingly withdrawn.

Ms. Barrett: I move

THAT the proposed subsection 40(11), as set out in section 32 of the Bill, be amended by striking out "his or her duties" *wherever it occurs and substituting* "his or her duties as a committee member".

Mr. Chairperson: It has been moved by the honourable Ms. Barrett–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Ms. Barrett: For those who might be perusing Hansard at a later date and wondering what has happened here, I thank the honourable Member for Springfield for withdrawing his amendment and allowing my, the Government's, amendment to come forward. It says the intent of the amendments are exactly the same, but the reason that we are dealing with the Government's amendment is that the Government has another amendment dealing with a similar situation. Legislative Counsel informs us that it is better to have the same consistent language. So I appreciate and thank the honourable member for

his willingness to withdraw. I think we have agreed that we agree on this amendment.

Mr. Chairperson: Amendment–pass; clause 32 as amended–pass; clause 33(1)–pass.

Ms. Barrett: I move

THAT the proposed subsection 41(6), as set out in subsection 33(2) of the Bill, be amended by striking out "his or her duties" *wherever it occurs and substituting* "his or her duties as a representative".

Mr. Chairperson: It has been moved by the honourable Ms. Barrett–

THAT the proposed subsection 41(6)–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Ms. Barrett: This is the same amendment as we just passed before for committee members, but this amendment talks about representatives who are undertaking their duties under the act. So it is a parallel clarification that a representative gets paid only for the time that he or she spends carrying out duties under this act. It is the same clarification as the member and I have agreed to in the earlier amendment.

Mr. Chairperson: Amendment–pass; clause 32(2) as amended–pass.

Mr. Schuler: I have several amendments at this time. Unfortunately, when this takes place, the first amendments actually become clarified later on, but we will start with No. 1. I move

THAT the part before clause (a) of the proposed subsection 42.1(2), as set out in section 34 of the Bill, be amended by striking out "shall make an order requiring the employer or union to do one or more of the following:" *and substituting* "may assist the parties in attempting to resolve the matter and may make recommendations about the resolution, including, but not limited to, recommending that the employer or union do one or more of the following:".

Mr. Chairperson: It has been moved by Mr. Schuler

That the part before clause (a)–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: Thank you very much. This particular section, what we are looking at here is first of all making the legislation much more similar to what is present in other provinces. It also lays out the process a little bit clearer. I think we have heard a lot of discussion in regards to process and how the various steps go and we feel that this makes it a little bit clearer. Basically what we are doing in this instance, if you look at 42.1(2), it is in the second last sentence where we take "the officer shall" out and the rest of it should be very self-explanatory.

What it does is it makes the director more of a mediator, an investigator and less of an arbitrator. In the next amendment, we deal with more where the role of the board then fits into this.

Ms. Barrett: This section of Bill 27 gives the health and safety officer the authority to make an order requiring the employer union to do one of the four things that are listed in 42.1(2) for health and safety reasons. If the officer says that the employer or union has taken discriminatory action, i.e., has laid off, fired, put on leave, or done something other negative to the worker, the health and safety officer can only make a determination of a discriminatory action for health and safety reasons. They are not there to adjudicate or to determine any other just cause or any other element. It is simply for health and safety reasons and they are the ones on the scene. They are the ones who have the skill and the training to be able to do that.

* (21:40)

As well, if you take out the authority for the officer to issue an order in effect, which the officer has the authority to do in many other areas in health and safety. If you take away the authority of the officer to issue an order under this section and only give them mediating function or a recommendation function, you

weaken the support and the strength of workers' safety, which is a critical element to the internal responsibility system. You have to have a balance for the internal responsibility system to work. It does not always work, but if it is going to work both parties, all parties to the system have to have a balance of power. They both have to have an equal playing field.

If this amendment were to pass, which it is not going to, it would seriously weaken the principle of the internal responsibility system. For that reason alone, we will not be supporting the amendment.

Mr. Chairperson: Shall the amendment pass?

Mr. Schuler: This was one of the Employers Council requests in that they felt that the officer should be more of an investigative role and that it should actually be the board that acts in this situation. The feeling is that the officer has too much power. Too much power is bestowed upon an officer with this particular amendment the way it is right now, and that is why we felt that "shall" should be taken out and proceed as we had recommended.

Again, we are now down to a philosophical difference on where power should lie, and I do not suspect that by debating this all evening it would change either position. So we will go to the vote.

Mr. Chairperson: Is the committee ready for the question? Shall the amendment as proposed pass?

Some Honourable Members: Pass.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Mr. Schuler: I move

THAT section 34 of the Bill be amended by replacing the proposed subsection 42.1(3) with the following:

Officer to give reasons
42.1(3) When a safety and health officer makes a decision as to whether a discriminatory action was taken against a worker for a reason described in section 42, the officer must promptly inform the interested parties in writing of the reasons for that decision.

Application to Board
42.1(3.1) The worker may at any time after referring a matter to a safety and health officer apply in writing to the Board for a determination as to whether or not a discriminatory action was taken contrary this section.

Right to be heard
42.1(3.2) Upon receipt of an application under subsection (3.1), the Board shall hold a hearing and give an opportunity to all interested parties to be heard, to present evidence and to make representations.

Order of Board
42.1(3.3) If the Board decides that an employer or union has taken discriminatory action against a worker for a reason described in section 42, it may make an order requiring the employer or union to do one or more of the following:

(a) stop the discriminatory action;

(b) reinstate the worker to his or her former employment on the same terms and conditions on which the worker was formerly employed;

(c) pay the worker any wages the worker would have earned had he or she not been wrongfully discriminated against and compensate the worker for loss of any benefits;

(d) remove any reprimand or other reference to the matter from any employment records the employer maintains about the worker.

Application of Labour Relations Act
42.1(3.4) Subsection 143(11) of The Labour Relations Act applies, with necessary changes, with respect to an order under subsection (3.3).

Mr. Chairperson: It has been moved by Mr. Schuler–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: Again, we talked about the Employers Council and the minister has, I am sure, seen most of this text once or twice before. The feeling is that one lays out the process and it makes it much more similar to other provinces. From the feelings of the business community, it makes it a little less anti-business. It softens up a little bit, and more to where the consensus report was. Again, I suspect on this particular issue we will have a divergence of opinion between the minister and I.

Ms. Barrett: The member is correct. This follows on the earlier motion and for the same reasons we are not going to be supporting this amendment either.

Mr. Chairperson: Is the committee ready for the question? Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Pass.

Voice Vote

Mr. Chairperson: Those in favour of the amendment, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: Those opposed to the amendment, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The motion is accordingly defeated.

Mr. Schuler: I would like to move

THAT section 34 of the Bill be amended by replacing the proposed subsection 43(3) to 43(6) with the following:

Other workers not to be assigned
43(3) When a worker has refused to work or do particular work under subsection (1), the employer shall not request or assign another worker to do the work unless the other worker has been advised by the first worker, or by a safety and health officer, of the first worker's refusal and the reasons for it.

Limitation on refusal
43(4) A worker may not refuse to work or to do particular work at a workplace if

(a) the refusal puts the life, health or safety of another person directly in danger; or

(b) the danger in respect of which the refusal is made is inherent in the work of the worker.

Inspecting the workplace
43(5) If the employer does not remedy the dangerous condition immediately, the person who receives the report of refusal to work, or a person designated by that person, shall immediately inspect the workplace in the presence of the worker and one of the following persons:

(a) if there is a committee under section 40, the worker co-chairperson of the committee or, if that person is unavailable, a committee member who represents workers;

(b) if there is a representative designated under section 41, that representative or, if he or she is unavailable, another worker selected by the worker refusing to do the work;

(c) if there is no committee or representative, another worker selected by the worker who is refusing to work.

Remedial action
43(6) If the person inspecting the workplace finds that the worker has reasonable grounds for the belief, he or she shall take appropriate remedial action or recommend appropriate remedial action to the employer.

Finding of no reasonable grounds
43(7) If the person inspecting the workplace finds that the worker does not have reasonable

grounds for the belief, he or she shall advise the worker to do the work.

Referral to committee
43(8) If a worker has made a report under subsection (2) and the matter has not been resolved to his or her satisfaction, he or she may, rather than doing the work, refer the matter to the committee for the workplace or, if there is no committee, to a safety and health officer.

Investigation by committee
43(9) If it receives a referral under subsection (8), the committee shall promptly investigate the situation.

Remedial action
43(10) If the committee finds that the worker has reasonable grounds for the belief, it shall recommend appropriate remedial action or recommend appropriate remedial action to the employer.

Finding of no reasonable grounds
43(11) If the committee finds that the worker does not have reasonable grounds for the belief, it shall advise the worker to do the work.

Referral to an officer
43(12) If a worker has referred a matter to the committee for the workplace and the matter has not been resolved to his or her satisfaction, he or she may, rather than doing the work, refer the matter to safety and health officer.

Mr. Chairperson: It has been moved by Mr. Schuler

THAT section 34 of the bill be amended–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: Again, this is not new to the minister. I suspect she or her department has seen this text in one shape or form or another. It does come from the Manitoba Employers Council. It clarifies the means by which workers refuse to work is processed. I guess I would like to point out one section. If the minister would go to her text 43(3) section (b) in which it reads: If there is a representative designated under section 41, that representative, or if he or she is unavailable, another worker selected by the worker refusing to do the work.

* (21:50)

In this case, minister, I have to tell you that that is actually not appropriate. This is not an action where it is a baton and it is just handed from worker to worker. Clearly, what we have done is we have cleaned that up.

If the minister has a closer look, what we have put into our section here is: When a worker has refused to work or do a particular work under subsection 1, the employer shall not request or assign another worker to the work unless the worker has been advised by the first worker, or by his safety and health officer, of the first worker's refusal and the reasons for it.

What we have done is tightened it up. I would caution the minister there are definite weak areas, just in the wording. I suppose the example that I gave is probably the best example in this particular case.

Ms. Barrett: Mr. Chair, we are not prepared to agree to this very extensive rewrite of the section on Right to refuse dangerous work. Generally speaking, Bill 27 finds a role for the co-chairs of the health and safety committees that will expedite the addressing of issues that happen in the workplace. This was specifically recommendation No. 39 in the public review process. That the joint Workplace Safety and Health Committee worker co-chairpersons have a role to play in the resolution of work refusals. If a worker is unable to resolve a work refusal with his or her supervisor, the worker co-chairperson or designate shall participate in the investigation of the refusal and assist in efforts to resolve it. This Bill 27 section is written with a great deal of care and reflects quite clearly the recommendation from the committee.

Mr. Schuler: Another definite weak point. I would direct the committee to the first page of the amendment, Limitation on refusal. A worker may not refuse to work or to do particular work at a workplace if the refusal puts the life, health or safety of another person directly in danger or the danger in respect of which the refusal is made is inherent in the work of the worker. We

have had examples put forward, whether that is an officer or a firefighter. The feeling was that should have been clarified. I was hoping beyond hope that the minister was actually going to bring some of these recommendations in herself but did not, so we will just agree to disagree.

Mr. Chairperson: Is the committee ready for the question? Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please signify by saying aye.

Some Honourable Members: Aye.

Mr. Chairperson: All those opposed, signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Mr. Schuler: I move

THAT section 34 of the Bill be amended by replacing the proposed section 43.1(1) with the following:

Notification of officer
43.1(1) A worker who wishes to refer a matter to a safety and health officer under subsection 43(12) must notify the officer of the refusal to work and the reasons for it.

Mr. Chairperson: It has been moved by Mr. Schuler–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense. The amendment is not in order, since it refers back to an amendment that had been previously defeated.

Mr. Schuler: I would like to challenge the ruling of the Chair.

Mr. Chairperson: The ruling of the Chair has been challenged.

Voice Vote

Mr. Chairperson: All those in favour of supporting the ruling of the Chair, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Yeas have it.

Mr. Schuler: On division.

Mr. Chairperson: The ruling of the Chair has been sustained on division.

Mr. Schuler: I move

THAT section 34 of the Bill be amended by adding the following after the proposed subsection 43.1(4):

Protection of right to refuse
43.1(5) A worker's right to refuse to work or to do particular work in a workplace is protected

(a) if he or she has made a report under subsection 43(2),

(i) until any remedial action recommended under subsection 43(6) is taken to the worker's satisfaction, or

(ii) until the worker is advised under subsection 43(7) to do the work;

(b) if he or she has referred the matter to the committee for the workplace,

(i) until any remedial action recommended by the committee is taken to the worker's satisfaction, or

(ii) until the worker is advised by the committee to do the work; and

(c) if he or she has referred the matter to a safety and health officer,

(i) until any remedial action recommended by the officer is taken to the officer's satisfaction, or

(ii) until the worker is advised by the officer to do the work.

Mr. Chairperson: It has been moved by Mr. Schuler

THAT section–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense. The motion is out of order since it refers back to a previous amendment that had been defeated.

Mr. Schuler: I challenge the ruling of the Chair.

Mr. Chairperson: The ruling of the Chair has been challenged.

Voice Vote

Mr. Chairperson: All those in favour of supporting the ruling of the Chair, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Yeas have it.

Mr. Schuler: On division.

Mr. Chairperson: The ruling of the Chair has been sustained on division.

Mr. Schuler: I would like to move

THAT section 34 of the Bill be amended by renumbering the proposed section 43.2 as subsection 43.2(1) and adding the following as subsection 43.2(2):

Limitation on entitlement

43.2(2) Subsection (1) does not apply if it is determined by a safety and health officer, or in the absence of a determination by an officer, under section 43 that the worker's refusal to work or do particular work in a workplace was not based on reasonable grounds.

Mr. Chairperson: It has been moved by Mr. Schuler

THAT section 34 of the Bill be amended–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: Again, this will not be anything new to the minister. She will have seen proposals to this as it comes from the Employers Council.

If one actually refers to the section in question, what it tries to do is deal with–I hate to use the word and I use it very carefully–prevents frivolous refusal to do work actions, because I have no reason to believe that 99.9 percent of the refusals would be above board. There are individuals who may, from time to time, try to use something like this. What we have taken from the MAC is they wanted to see a little bit more of a tightening up of the rule.

Again, what we are saying here: "does not apply if it is determined by a safety and health officer, or in the absence of a determination by an officer, under section 43 that the worker's refusal to work or do particular work in a workplace was not based on reasonable grounds." It is not a big deviation from what the bill states.

Ms. Barrett: Very briefly, this is an unnecessary amendment because under the current legislation should a worker exercise the right to refuse in bad faith he or she would not pass the "reasonable grounds to believe" test and would therefore not be protected from disciplinary action. So we will be voting against this amendment.

Mr. Schuler: I sense the minister is in her "she wants to vote against some legislation" mood, and that is fine. I think this is a very good

amendment. I think it cleans up that particular section and does make it a lot easier for both sides to understand. Legislation should be clear and this is not the case with that section, but again the minister and I will disagree till the cows come home. Maybe not; maybe we should just go to the vote.

* (22:00)

Mr. Chairperson: Is the committee ready for the question? Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: Those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All opposed, please signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Clause 34–pass; clauses 35 to 37–pass.

Shall Clause 38 pass?

Ms. Barrett: I move

THAT the proposed clause 46.1(1)(a), as set out in section 38 of the Bill, be amended by striking out "technically qualified person specified by the director;" *and substituting* "person who has the professional knowledge, experience or qualifications specified by the director;"

Mr. Chairperson: It has been moved by the Honourable Ms. Barrett

THAT the proposed clause–

Some Honourable Members: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Ms. Barrett: This amendment is to clarify that the director may specify the expertise and qualifications necessary for an individual to conduct a test but the director may not specify the individual. The wording was unclear and this is simply a clarification of that, of the intent.

Mr. Schuler: The amendment itself we certainly do not have issue with. I will also be bringing a motion forward. I guess where we do have some difficulty in a big way, I guess the difficulty we have is it gets down to who pays for the test. I think the minister has probably heard and read a lot about that particular issue, in that a lot of tests can be ordered, and who pays for them, especially in light of if the test was proven to be false or wrong, or there was nothing behind it. Why would the business still be stuck with paying for each and every one of those tests? That would be my first question to the minister.

Ms. Barrett: It is the employer's obligation under the current legislation and continues under this bill to provide a safe and healthy workplace. This section of the bill allows for information to be gathered that will ensure, to the best of scientific knowledge, that a safe and healthy workplace is in fact there.

Mr. Schuler: Okay. That I would suggest to committee is a very good preamble. The question was not do we believe in safe environments, because certainly we believe in safe environments, but when tests are called for and they are proven that there was no basis to the call, why is that cost offloaded onto the business? That is the concern.

I know the minister has heard this on numerous occasions. Clearly if there was a case of something wrong at the plant, the test is called for and it proves to be correct, clearly, the business will be paying for it, but again, through the Chair to the minister: Why force the business to have to pay for someone's fishing expedition?

Ms. Barrett: I answered that question just a moment ago.

Mr. Schuler: As this motion simply does not go far enough, we will not be supporting this particular amendment.

Mr. Chairperson: Is the committee ready for the question? Shall the amendment pass?

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, signify by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Yeas have it. The amendment is accordingly passed.

Mr. Schuler: I move

THAT section 38 of the Bill be amended by replacing the proposed subsection 46.1(1) with the following:

Order to conduct tests
46.1(1) The director may, by order at the department's expense, require an employer to do the following in a manner and within the time period specified in the order:

(a) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as the director specifies for the purpose of determining whether any biological, chemical or physical agent, material, equipment, machine, device, article, thing or procedure, in or about a workplace, conforms with this Act or the regulations or good professional practice;

(b) cause any tests necessary to the production of the report or assessment to be conducted or taken; and

(c) provide a copy of the report or assessment to the director.

Reimbursement by employer
46.1(1.1) If the report or assessment reveals a risk to health or safety, the director may, in whole or in part, order the employer to reimburse the department for the cost of the report or assessment over a fair and reasonable time period.

Mr. Chairperson: It has been moved by Mr. Schuler

THAT section 38–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is in order.

Mr. Schuler: Again, this really lays it out very clearly. The minister spoke during committee on her great desire to listen and to work with the business community. We are again giving her an opportunity to do the right thing. This is something that the MAC and the business community have asked to clarify. The minister could prove that this is, instead of being a "beat up on business" bill, that actually what the minister was looking for was safety.

We will put the minister to the test on this particular issue because, again, if this was a safety issue the minister, she and her colleagues, would full-heartedly support this particular amendment. It is reasonable. It makes it very clear that where a test was warranted the business will have to pay the cost of it and where it was unwarranted the business is not expected to carry the expense.

Being a good business person herself, and I am sure all of her colleagues at the table, including her departmental staff, they will have a great understanding for what it is to be a business-person and how difficult that is. I am sure they will have a good understanding and some empathy for those individuals in this province who are trying to eke out a living, pay taxes and go home and support their families. So I see this as another one of those tests to see if the minister is going to put her money where her mouth is.

Mr. Chairperson: Is the committee ready for the question? Shall the amendment pass?

Some Honourable Members: No.

* (22:10)

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of the amendment, please signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, by saying nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Nays have it. The amendment is accordingly defeated.

Clause 38 as amended–pass. Clauses 39 and 40.

An Honourable Member: An amendment on 39?

Mr. Schuler: On 40.

Mr. Chairperson: Is there leave of the committee to revert back to clause 39. *[Agreed]*

An Honourable Member: But 39 is passed.

An Honourable Member: Okay, so pass 39.

Mr. Chairperson: Is it the will of the committee to pass clause 39? *[Agreed]* Clause 39 is accordingly passed.

Clause 40.

Mr. Schuler: I would like to move

THAT section 40 of the Bill be struck out.

Mr. Chairperson: It has been moved by Mr. Schuler

THAT section–

An Honourable Member: Dispense.

Mr. Chairperson: Dispense. The amendment is out of order according to *Beauchesne's* section 698(6): "An amendment to delete a clause is not in order, as the proper course is to vote against the clause standing part of the bill." So the amendment is out of order.

Mr. Schuler: Mr. Chairman, I understand that by leave of the committee if there is unanimous consent the committee can agree to hear the amendment and the arguments for this can then be put on the record, but it would have to be through the minister and her colleagues. It has to be by unanimous consent for us to proceed with the debate of this particular amendment.

Mr. Chairperson: Is there unanimous consent of the committee to proceed?

Some Honourable Members: No.

Mr. Chairperson: There is no unanimous consent.

Mr. Schuler: I will wait for the section to be called.

Mr. Chairperson: The amendment is out of order.

Clause 40.

Mr. Schuler: On this particular section, I know the minister has on many occasions been approached by the MAC, whether written or whether spoken to. There is nothing in the unanimous committee report about the exemption from civil cases. I think one has to look at the section that is being presented here. For those of the committee who have not had an opportunity to read it, I think it is a very serious issue:

Officials cannot be compelled to testify. A safety and health officer, a person assisting a safety and health officer, the chief occupational medical officer, the director, or any other person acting under the authority of this act or the regulations is not a compellable witness in a civil action or proceeding–other than an inquest or inquiry under The Fatality Inquiries Act–respecting any document, information or test obtained, received or made under this act or the regulations and may not be compelled to produce any such document.

I want to lay out a situation. Perhaps the minister can say I have it wrong. If there is a penalty put forward, an administrative penalty,

and the business believes it was wrong, they go to civil court and want to prove their case, they have one problem, that all the documents and the officials they would like to compel to testify, by this act, cannot be compelled to testify. The mild version of this would be caught between a rock and a hard place. I guess, further to the truth would be you are damned if you do and damned if you do not. You are given an administrative penalty, you are allowed to go and appeal it in court, you go to court and you cannot compel anybody to testify, or any documents.

This afternoon when we heard one of the presenters, a former member of the Legislative Assembly, Jim Carr, I want to make sure, I am going to take a moment, I think the comments were just fantastic–from the Business Council. His comments that he made were just remarkable. I would like to just say that business looks for good public policy. It is sections like this bill that have no logic or argument for safety.

What does 49.1 have one iota to do with safety? It has nothing to do with safety. It has to do with punishing business. That is all that is about. This is this minister's inane desire to go out and punish business. That is exactly what 49.1 is for. It makes our province uncompetitive with regard to other jurisdictions.

If the minister wants private conversations, I am willing to wait until we have her attention. Are we done?

Mr. Chairperson: Is the committee ready for the question?

Mr. Schuler: No, the committee is not ready for the question. I have not finished my comments and I would like to see a little bit more order brought to this committee when one person is speaking. I do not sit and whisper and talk when the minister is speaking. The least she could do is show some courtesy, a little bit. If she wants some time to consult with her department, I have no problem with that. I will sit quietly and give her that because that is important, as I appreciate it when I am given the time when I speak to some of the people who are here to support me, but to sit and talk the whole time when people are trying to put some comments, and it is important. You can smile all you want, Minister, I do not think it is funny.

As a small business person, when I see that kind of stuff, that I am damned if I do and I am damned if I do not, I have no recourse. This is just like Bill 14, the Education bill, which takes all the rights away. It puts all the penalties, it puts everything on the backs of the business man and woman who are struggling at the best of times.

We hear this Government talking about how hard times are. Now if they raid money from every corner, out of every corporation, and what do they do? They go after business. They are supposed to pay for absolutely everything, and this. Then they get an administrative penalty, they go to court and they cannot even defend themselves properly.

All that we are asking for, we could not even get the minister to agree to have the amendment discussed at this committee. The minister was not even big enough for that. If the minister would listen to those individuals who drive this economy, what they are saying is: Business looks for good public policy.

I would ask the minister to look at Mr. Hubert's presentation, the Mining Association of Manitoba. He called it the chaos factor in the bill. He mentioned that lenders, big lenders, when they look at when they are going to lend money to a mining company or anybody else, they do not listen to the talking heads. They actually look and they analyze legislation. It is 49.1, Minister. It is that kind of section of the bill that absolutely undermines what we are trying to do in this province, build a positive business climate. It has nothing to do with safety. It is such a sham when parents come forward, they weep about their children and they think there is going to be something positive done, maybe something in education.

We heard all kinds of great stories about what the labour unions are doing and the kind of consensus there was between business and between labour, and what do we have here? The minister and her Government doing nothing but punishing business. It is shameful.

This kind of piece should be taken out of here. If this committee had any guts, some of the members on the opposite side, they know this is wrong and that it should be removed. It is bad for Manitoba, it is bad for the province and it is bad for business. I am disgusted to see that kind of stuff in here.

Mrs. Smith: This is the first time tonight I have felt compelled to put a couple of comments on the record. I have to support what my honourable colleague from Springfield has to say in this regard. When we read this section in the bill and we hear that officials cannot be compelled to testify, this in itself supercedes the fairness and the justice that every person in a democratic society expects to have. That is the reason why we do live in the province of Manitoba in a free country like Canada.

* (22:20)

Referring again to Jim Carr of the Business Council of Manitoba, he had some very wise words. He said business decisions are made with a basket of factors used to weigh the balance: quality of life in communities, the delivery of public services to citizens, the fairness of a tax regime, the presence or absence of regulatory obstacles, all combine to lead entrepreneurs to decisions that are in their interest and in the interests of their employees. He goes on to say: Bill 27 does not take us closer to that goal, and, more importantly, there is no evidence to suggest that it takes us to a safer workplace.

I think I have to reiterate what my respected colleague has to say in this regard, because this is a section of the bill that ought not to be here, ought to be taken out and not even considered to be a part of a bill that is supposed to be talking about safety. Tying the hands of people who, in a free society, are compelled to testify or compelled to give evidence when the opportunity presents itself is something, when we hear it in this bill that it is not a compellable witness in a civil action or proceeding, et cetera, with all due respect, I would ask that the Member for Springfield's (Mr. Schuler) advice be listened to very carefully because I would take extreme exception to something like this and a lot of Manitobans would, for something like this to be in a bill here in the Law Courts in this province.

Mr. Chairperson: Is the committee ready for the question? The question has been called.

Clause 40.

Some Honourable Members: Yes.

Some Honourable Members: No.

Voice Vote

Mr. Chairperson: Those in favour of clause 40 passing, signify by saying yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Yeas have it.

Mr. Schuler: On division.

Mr. Chairperson: Clause 40 is accordingly passed on division.

Clauses 41(1) to 42.

Mr. Schuler: Clause 41, yes. I will have an amendment for 42.

Mr. Chairperson: Clause 41(1)–pass; clause 41(2)–pass. Clause 42.

Mr. Schuler: I move

THAT section 42 of the Bill be struck out.

Mr. Chairperson: It has been moved by Mr. Schuler

THAT section 42 of the Bill be struck out.

The amendment is out of order. *Beauchesne's* section 698(6): "An amendment to delete a clause is not in order, as the proper course is to vote against the clause standing part of the bill." Therefore the amendment is out of order.

Mr. Schuler: I understand that by unanimous consent of this committee, this being a very

grave issue, a very serious issue, I think it needs full debate. I think it goes to the crux of the bill and I would like to ask if we could get unanimous consent on behalf of the minister and her colleagues so that we could have a debate on this particular section.

Mr. Chairperson: Is there unanimous consent of the committee to consider the amendment?

Some Honourable Members: No.

Mr. Chairperson: Unanimous consent has been denied.

Mr. Schuler: I challenge the ruling of the Chair.

Mr. Chairperson: For clarification, Mr. Schuler, could you please advise the Chair if you are challenging the ruling of the Chair based on the amendment being out of order or on the unanimous consent?

Mr. Schuler: Based on ruling the amendment out of order.

Mr. Chairperson: To allow the challenge to proceed, I am advised that that would have had to occur immediately after the vote on the decision on the amendment being ruled out of order. So at this time there would have to be unanimous consent. I know it is convoluted, but there would have to be unanimous consent to revert back to that portion.

Mr. Schuler: Fine. Let us move on to the item.

Mr. Chairperson: We will proceed then.

Clause 42.

Mr. Schuler: This particular section of the bill is the litmus test of what it is the Government is trying to do with Bill 27. It defines clearly where the Government has intended to go from day one. I personally find it shameful that safety was even placed on a bill that has this kind of ideology painted all over a piece of legislation. AMPs, or administrative penalties, were proposed in Saskatchewan. The minister's advisor I take it would probably know more about that whole situation than most would, and it was clearly rejected in Saskatchewan.

In British Columbia it has been found to be an absolute failure. We had many presentations at this committee which laid out very clearly for the minister that AMPs are an ideological belief and not something that are grounded in fact. It has nothing to do with fact. I would like to quote from a presentation that we got from the Manitoba Chamber of Commerce: One of the key problems that we have with this whole debate, for example, in justifying administrative penalties, the Government has indicated that 30 percent of improvement orders are not compiled with. However, despite repeated requests we have not been told where this 30 percent comes from. For example, are we sure that they do not involve matters under appeal? We have not received any information as to why specifically these orders have not been compiled with, and it goes on and on dealing with it.

We had one individual come forward making a claim that Manitoba has the worst safety record in the country, and there is nothing to quantify that. Yet, other than British Columbia, nobody has AMPs. So in other words we are going to go with a system that works in no other area to try to improve a problem that by consensus it was pointed out we needed an education process, and what did the Government give us? A punishment process. This is clearly, clearly laid out. In fact it was George Fraser who put on the record: They were looking for a plan, not for punishment. It was interesting, there was this wonderful presentation by one of the unions, Ellen Olfert, and she came forward and it was just a beautiful presentation, when she talked about 120 volunteers dealing with education. Instead of the minister saying, let us work on the positives, let us work on the consensus that we have between labour and business, and from there let us go forward–I wonder, and I was wondering as I was watching the presentations, what kind of a parent would an NDP labour government be, that the only way they would try to get a child to comply is with punishment and not with other means that would show love and affection.

* (22:30)

No, no, that would not be the way, or using education, or discussing, no. It is a purely

punishment government, which brings me to the point, that ideologically this minister and this Government, this Premier (Mr. Doer) are, and always have been, anti-business, and that is exactly what administrative penalties are, because when we go back to 49.1, where if someone is slapped with an AMP they cannot go and appeal it, because you cannot even get individuals to come forward and, under oath, tell what actually happened. There is a whole list of people and a whole bunch of information that you do not have access to. They cannot testify, they cannot present the documents.

Between 49.1 and the AMPs this has nothing, nothing, to do with safety. I will tell you something. I was raised with an ounce of prevention is far better than a pound of cure. I would like to give an example to this committee. I have family in Alberta, my cousin's son was working for another family member, and there was a 40-foot steel beam, four feet high, and the steel beam became unstable. The 17-year-old, Mark Jeske, my cousin's son, whom I have known since he was a baby, thought like a 17-year-old and tried to stabilize the beam. We buried him a couple of years ago.

Steel is uncompromising. When it is unstable or moves, there is nothing you can do to stop steel. That is an education process, and I beg anybody to tell me at this committee that an AMP would have solved that. Where, minister, where would the AMP have solved that accident? I can tell you that everybody feels, even today, badly for what happened and yes, there was room for education. Now all of the young people are brought into a meeting room and they are explained how steel operates; that if a boom on the steel comes your way, you do not try to put your arms out. You drop. It is education, not punishment.

I have to tell you it is shameful, it is disgraceful that that lady was brought forward and she is led to believe that AMPs would have prevented her son's death. It is education; that young man needed more education, and yes, let us start in the schools. Where is that in this legislation? It is nowhere to be found, and the minister was told about it, it was part of that presentation. The minister talks: Consultation, consultation; roundtables, let us discuss and never listens to anybody. She makes a mockery and a sham out of those individuals who spent a lot of time, took a lot of time away from their businesses. What do they get? Their backs stabbed, minister, their backs stabbed by your legislation and AMPs. It is shameful. We deserve better in this province than that.

I feel so badly for that lady whose 18-, or 19-year-old son passed away, but I tell this committee that AMPs is not the solution. It is an ounce of prevention, that is what we need, not punishment. This Government is bent and determined, they are hell-bent on punishing business, and we have gone through this bill almost all evening now. I have pointed out section after section. The onus is always on the business.

If there is something wrong with the business, take them to court and charge them, absolutely. Go after them because that is what they deserve, but this is not right. The minister has heard it. I beg her to tell us, who from the Employers Council, who from the Business Council, from all of those individuals, who on that list is an abuser of their employees?

Minister, they came forward with very reasonable arguments, they are all very reasonable employers, and they are saying: education; let us deal with education. Let us make this a stellar province.

I am going to quote from Jim Carr, because I happen to think, even though the minister talked through the whole presentation: "does this put us at a disadvantage for a good reason?" That struck me. Maybe there are times when we are put at a disadvantage for a good reason. There is no good reason for that, and the answer is no. This puts us behind, it is punitive, the province deserves better and we expected better out of this. We had high hopes for this. The presenters had high hopes for this. There was an opportunity to bring labour and management together and the minister threw all of that out the window for her ideology, to punish business. That is unacceptable.

Minister, with 49.1 and with AMPs there is no way I, as a self-respecting MLA, can support this legislation, because it proves it is not about safety. This is totally about punishing the

business community. Then the minister sits there: Oh, we must meet; we must talk; we must get consensus. Minister, they walk out of here and they shake their heads. They must think: What is that individual thinking? We had consensus; we got together. Oh, you mean you are going to accept consensus after the last consensus which you trashed. Or are you going to trash the first consensus and then the second consensus, but maybe it is the third consensus you will go for? Which consensus are you going to buy into? You actually had consensus.

This is anti-business and it is anti-Manitoba. It is unfortunate, between 49.1 and this, no self-respecting MLA–certainly I cannot support the bill. I am very disappointed in this minister. I am, again, disappointed in this Government. We expected more. We thought they had learned their lesson with 44 and 18. We sat in Estimates and I begged the minister, I spoke to the minister, please look at what you are doing to the province, and here we go. Minister, AMPs has to come out. I hope you have the courage. I will give you the copy of my motion and you can make it yours and we will support it and we will give you accolades, but AMPs has to come out of this legislation. It is wrong and it is bad for the province.

Mr. Murray: I would very much like to support my colleague from Springfield. Having sat through the presentations this afternoon I was quite shocked, extremely surprised at how many presentations came forward specifically referencing administrative monetary penalties and the negative impact it would have upon business.

When you look at the process, if I could take a second to acknowledge that I think the minister did something right. That was to bring the stakeholders together, those who would be impacted, and ask them to give a recommendation. I believe in this kind of a situation that is something that is applaudable and I think is something, that people would take pride in that process.

What absolutely floored me was presenter after presenter came forward and said, we had consensus and we felt we were moving this process in a positive way. We all left the table basically saying this has some merit for business, for labour, for those people who are involved in trying to move Manitoba forward in a prosperous way, and lo and behold at the eleventh hour, or perhaps later than that, along comes amendments to a consensus, and amendments that are clearly, clearly from the demonstration of those people that were making presentations, very one-sided.

Now, I found it interesting when George Fraser made his comments this afternoon, because he was the one person that has actual experience, having spent time in British Columbia dealing with AMPs. I was curious because I asked him afterwards, do you know which party brought in AMPs in B.C.? He said, yes, it was the New Democratic Party. I said, well, that makes some sense, because that is another reason why B.C. has been falling from a have to a have-not province, because of the direction that the New Democratic Party was taking B.C. in.

* (22:40)

So now we find Manitoba with a New Democratic Party government that is making all of the so-called right moves to reach out to business by bringing them in and saying no, we understand that if business does not flourish and move ahead that we as a province do not flourish and move ahead, so we want to work with the business community. So along comes the business community with other members from labour sitting down at a table, and I believe it was some 60-odd items that they reached a consensus on. But they did not reach a consensus. They did not reach a consensus, because a lot of these business people, the groups, MEC that we met with had a feeling they were just there as window dressing; that there was no real reason to believe or listen to their concerns. There was no sense that they were trying to work with the best interest of Manitoba at heart; with the best interest of trying to reach out to work with this Government and members of labour, because at the eleventh hour it was just changed, not because of any recommendation, clearly, because I could quote, as my member from Springfield did, numerous presenters that have serious, serious difficulties with AMPs.

The one particular one that I would like to make reference to is Jim Carr from the Business Council of Manitoba. They are concerned that we heard from every presenter from business, had concerns that there was a claim about 30% non-compliance rate for improvement orders. Now, every business that came forward and made a presentation did their homework, substantiated and corroborated all of their detail, all of their research, all of their facts, all of their findings, and knew that of which they talked about. But yet when it came for clarification, according to what the minister would say is 30 percent non-compliance, there was no corroboration of that number. It was as if it was a number plucked out of the air. Why was that? Was that because the number is not factual, and if it is not deemed to be a supposedly high number, that in fact you cannot justify putting AMPs in? Because not one of them said this makes sense to try to bring it into compliance. It was the opposite.

Surely the minister would have heard that these people came forward with the best interests of, not only their business, but of their employees, of the people that they care for, the best interests of all of those people at heart, and all we heard from the minister was well, we want to reach out, we want to work with you. Really. Because they thought that is what you said initially when there was to be a meeting of the stakeholders and they came to some consensus. So no wonder they were frustrated and flummoxed and wondered what is it that this minister is actually going to do, because all we are hearing is platitudes and not one single, honest effort to say you know what, we have our ears on and we hear you. We hear what you are saying, and yes we will make changes.

I just, again, am stymied when the minister or the NDP government cannot corroborate 30 percent, yet every organization that came forward that had trouble with this whole section of AMPs clearly stated they were not aware of evidence that AMPs improves workplace safety. So, on one hand you have facts, and on one hand you have ideology. I believe, whether it is in health care or in this particular instance in business, when ideology drives a wedge into business, Minister, we all lose. We all lose, and that cannot be good to move this province ahead. So, I would support that section 42, the section dealing with AMPs be deleted in its entirety.

Mr. Chairperson: Is the committee ready for the question? Question has been called.

Clause 42.

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour, please say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, please say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Yeas have it.

Formal Vote

Mr. Schuler: I would like Yeas and Nays, Mr. Chair.

Mr. Chairperson: For the information of the committee, since a recorded vote has been requested, I will call out the names of the members of the committee: Mr. Struthers, Ms. Barrett, Mrs. Smith, Mr. Schellenberg, Ms. Korzeniowski, Ms. McGifford, Mr. Penner (Steinbach), Mr. Pitura, Mr. Robinson and Mr. Schuler.

All those in favour of the clause, please raise your hand.

All those opposed, please raise your hand.

A COUNT-OUT VOTE was taken, the result being as follows: Yeas 6, Nays 4.

Mr. Chairperson: Clause 42 is accordingly passed.

Clause 43–pass; clauses 44 to 45(4)–pass; clauses 45(5) to 48–pass; clauses 49(1) to 49(2)–pass; enacting clause–pass; title–pass.

Shall the bill as amended be reported?

Voice Vote

Mr. Chairperson: All those in favour of the amendment, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In the opinion of the Chair, the Yeas have it.

Mr. Cummings: On division.

Mr. Chairperson: On division the bill will be reported as amended. I believe that concludes the business of this Committee on Industrial Relations. The time being 10:50 p.m., committee rise.

COMMITTEE ROSE AT: 10:50 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Re: Bill 27

Introduction

On behalf of Manitoba Pork Council, I am pleased to present our organization's views on Bill 27, The Safer Workplaces Act (Workplace Safety and Health Act Amended). Manitoba Pork Council represents the hog farmers of Manitoba in an advocacy role and on policy development. Its mission is to foster the sustainability and prosperity of the pork industry for the good of hog farmers and all Manitobans.

Manitoba Pork Council supports, in principle, the direction the Government has set out in Bill 27 to help ensure safer workplaces for all Manitobans. Council does, however, have a few general concerns that we would ask the Committee to consider in its deliberations.

Expansion of the industry, more employees, larger workplaces

Manitoba Pork Council, while recognizing the intent of section 4.1, feels that the specific requirements set out in 4.1 (a)(iii) are unacceptable.

Section 4.1 **Duties of supervisors**

(a) (iii) ensure that a worker under his or her supervision uses all devices and wears all clothing and personal protective equipment designated or provided by the employer or required to be used or worn by this act or the regulations.

Pork Council firmly believes that, while it is incumbent on the employer to provide necessary safety devices and protective equipment, and while the supervisor may bear the responsibility to ensure that the devices and equipment are available for use and in good working order, it is the worker who must bear the responsibility of using all devices and protective equipment.

Further, while Pork Council recognizes the intent of Section 43(1), we would argue that care must be taken to ensure that this right is not used for frivolous or vexatious reasons.

Section 43(1) **Right to refuse dangerous work**

Subject to this section a worker may refuse to work or to do particular work at a workplace if he or she believes on reasonable grounds that the work constitutes a danger to his or her safety or health of another worker or another person.

Development of generally accepted workplace tasks should be accepted as acceptable work and not be eligible for refusal. Further, the process of reaching a Section 43.1(4) decision regarding whether or not a task is dangerous must be timely.

Closing comments

In the opinion of Manitoba Pork Council, the first of these two proposed changes does not sufficiently recognize the responsibility of workers in ensuring their own safety in the workplace and the second does not provide sufficient protection from frivolous or vexatious use of the right to refuse dangerous work. We

would recommend that the changes outlined above be made to the proposed act.

Thank you for your time.

Marcel Hacault,
Chairman

***

Members of the Legislative Assembly.

The Business Council of Manitoba is pleased to comment on Bill 27, the Safer Workplaces Act. The Business Council of Manitoba is a group of 55 CEOs of Manitoba's leading companies. We are committed to help make Manitoba a preferred place to work, live and invest. We have been doing so for nearly 5 years, working with governments at all levels and of all stripes without regard to partisanship but with an eye squarely focused on the public interest. Everything we do and say is aimed at making Manitoba a more competitive place in every sense of the word. We want to take full advantage of our natural resources, our human capital and our tolerant and diverse society to make this province the envy of other places.

That is why we have focused our collective attention on enhanced immigration to Manitoba, welcoming people from all over the world, just as we have welcomed others who have come before. That is why we aggressively support Aboriginal education and strive to introduce young Aboriginals to the workforces of our companies. That is why we support a first class higher education system. And that is why we put a premium on a safe and healthy workplace.

We view Bill 27 in the context of an overall objective: to make Manitoba the place our young people choose to live. First, a comment on process. Why are we making law in the heart of the summer, unlike any other legislators in Canada? Why have we not been able to find in this province, so advanced and progressive in other areas, a way to organize our public affairs so that legislators can enjoy the summer months with their families and their constituents. Rather, you toil in this charming but overheated building at a time when people's attention is diverted to lakes and parks, golf courses and canoe routes.

We would urge you to drop any thoughts of partisan advantage, blunted as it is by the heat and distractions of summer, and come up with a rational legislative calendar that focuses the work of legislators during the spring and fall and allows not only you, but other Manitobans who are affected by your work, to plan their calendars with some certainty.

But now to the business of the bill itself.

Two questions have to be posed: What problem are we solving? What is the objective we have in mind? There is no doubt that workers and employers share the goal of making our workplaces as safe as they can be. It is in no one's interest to protect unsafe working environments. It is in nobody's interests to promote policies that protect those who would endanger their employees. It is bad for business, it is bad for shareholders, investors, owners, managers, workers and their families. Nobody in this room disagrees with the objective of doing what is reasonable to make the workplace a safe environment for all. The question then becomes: Will Bill 27 facilitate reaching that objective without unreasonably putting burdens on the employer community? The answer that we have reached at the Business Council is that, in a number of ways, provisions of this bill will not help us reach the collective objective, but will provide unnecessary bureaucratic layering, forcing employers to cope with all its complexity, making Manitoba a less desirable place in which to do business.

We want the record to show that the Business Council of Manitoba agrees with these suggested amendments proposed by the Manitoba Employers Council.

PAY DURING STOP WORK ORDER

36 (6) while a stop work order is in effect

(a) any worker who is directly affected by the order is entitled to the same wages and benefits that he or she would have received had the worker continued to work; and

(b) the employer may re-assign the worker to alternate work.

Inter-Provincial Comparison:

Four jurisdictions (Saskatchewan, B.C., Newfoundland and Canada) provide pay during a stop work order. Six jurisdictions (Alberta, Ontario, Nova Scotia, New Brunswick, P.E.I., and the Yukon) do not.

Of the four jurisdictions that do provide pay during a stop work order, two limit it–the federal government limits it to a shift, and B.C. limits it to the day of the stoppage and three working days thereafter.

Discussion:

There is a concern that the provision for pay during a stop work order is not limited. This would be particularly problematic if the business ceases operation or decided to permanently discontinue the activity that was the subject of the stop work order. This latter scenario could, and in fact has, occurred where the expense involved in complying with a stop work order outweighed the value that the work activity generated for the employer's business.

This issue could be remedied by adopting the limitations contained in either the federal or B.C. legislation.

We would endorse the three-day limitation as the most reasonable solution.

REFUSAL TO WORK

There are two issues in relation to refusal to work, the grounds for such a refusal (in particular the absence of a clause relating to dangerous situations that are normally connected to employment) and the repercussions of a 'bad faith' refusal to work.

Inter-Provincial Comparison:

Eight jurisdictions (Canada, Saskatchewan, B.C., Alberta, Ontario, Nova Scotia, P.E.I., and the Yukon) have some type of qualification that limits the right to refuse work to situations where the danger is not a usual feature of the work. Two jurisdictions (New Brunswick and Newfoundland) do not make the distinction.

Six jurisdictions (Canada, P.E.I., Yukon, New Brunswick, Ontario, and Newfoundland) seem to allow some type of repercussion where the employee does not exercise this right in good faith. Four jurisdictions (Saskatchewan, B.C., Alberta, and Nova Scotia) do not seem to provide for any such repercussions.

Issues:

There is a concern that Section 43 does not limit a refusal to work where the danger involved is a regular danger associated with the employment. As indicated, most jurisdictions recognize this qualification.

As well, there is a concern that there should be some type of repercussion if the right to refuse is exercised in bad faith. However, the repercussion cannot be such that a worker, who wishes to refuse to work because of a bona fide belief that there is a dangerous situation, declines to do so because of a fear of what will happen if it is shown that he or she was wrong. Therefore, there should be a high standard to meet in order to justify retribution against an employee that refuses to work due to safety issues.

Suggested Amendments:

43(7) An employee may not, pursuant to this Section, refuse to work or to do a particular work at a workplace of

(a) the refusal puts the life, health or safety of another person directly in danger; or

(b) the danger referred to in subsection (1) is inherent in the work of the employee.[1]

43.2(b) Where it is determined that the employee's refusal was not based on reasonable grounds that employee shall not be entitled to wages or benefits.[2]

Finally, we note that although section 43(4) authorizes "remedial action", it does not authorize the person required to inspect the workplace to order the employee back to work if no danger is found. We suggest that New

[1] This wording largely reflects the wording used in Nova Scotia's Occupational Health and Safety Act, S43(9).

[2] This wording largely reflects the wording used in P.E.I.'s Occupational Health and Safety Act, S20(6).

Brunswick offers a good guide as to an appropriate protocol that should be developed for Manitoba in this regard:

> 20(1) Any employee who believes that an act is likely to endanger his or any other employee's health or safety shall immediately report his concern to his supervisor, who shall promptly investigate the situation in the presence of the employee.
>
> 20(2) Where a supervisor finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall take appropriate remedial action or recommend appropriate remedial action to the employer.
>
> 20(3) Where a supervisor finds the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall advise the employee to do that act.
>
> 20(4) Where an employee has made a report under subsection (1) and the matter has not been resolved to his satisfaction, he shall refer the matter to a committee or, where there is no committee, to an officer.
>
> 20(5) Upon receipt of a referral under subsection (4), the committee shall promptly investigate the situation.
>
> 20(6) Where a committee finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall recommend appropriate remedial action to the employer.
>
> 20(7) Where a committee finds that the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall advise the employee to do that act.
>
> 20(8) Where a matter has been referred to a committee under subsection (4) and the matter is not resolved to the satisfaction of the employee, the employee shall refer the matter to an officer.
>
> 20(9) Upon receipt of a referral under subsection (4) or (8), the officer shall promptly investigate the situation and make his findings known in writing as soon as is practicable to the employer, the employee and the committee, if any, as to whether the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health and safety of any other employee.
>
> 20(10) Where, on a referral to an officer under subjection (4) or (8), the officer finds than an employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall order appropriate remedial action to be taken by the employer.
>
> 20(11) Where, on referral to an officer under subsection (4) or (8), the officer finds that an employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall advise the employee to do that act.
>
> 20(12) Pending any investigation under this section, the employee shall remain available at the place of employment during his normal working hours.
>
> 21(1) An employee's right under Section 19 to refuse to do any act is protected,
>
> (a) if he has reported his concern to his supervisor under Section 20,
>
> (i) until remedial action recommended by the supervisor under Section 20 is taken by the supervisor or employer to the employee's satisfaction, or
>
> (ii) until remedial action recommended by the supervisor under Section 20 to do that act;

(b) if the employee has referred the matter to a committee under Section 20,

(i) until remedial action recommended by the committee under Section 20 is taken by the employer to the employee's satisfaction, or

(ii) until the committee has advised the employee under Section 20 to do that act; and

(c) if the employee has referred the matter to an officer under Section 20,

(i) until remedial action ordered by the officer under Section 20 is taken by the employer to the officer's satisfaction, or

(ii)until the officer has advised the employee under Section 20 to do that act.

DISCRIMINATORY ACTION SECTION 42(2) & 42.1(1)

Inter-Provincial Comparison:

Five jurisdictions (Canada, Ontario, Newfoundland, New Brunswick and P.E.I.) assign this issue to the board, while four jurisdictions (B.C., Saskatchewan, Alberta, and Nova Scotia) assign it to the officers.

Discussion:

The basis for the concerns in relation to Bill 27 are echoed in Alan Winter's recent review of B.C.'s legislation:

"During my meeting with representatives from the WCB's Prevention Division, it was reinforced that the discriminatory action provisions fall outside of the expertise, culture and realm of the Prevention Officers. **The Officers' involvement in discriminatory action complaints was described as difficult; time-consuming; out-of-score; and very deeply involved into labour relations.** Simply stated, the Prevention Division believes it is being drawn into the labour relations issues of the parties through the guise of occupational health and safety."[3]

[3] "Core Services Review of the Workers' Compensation Board", March 11, 2002, at p. 318.

The Minister is pursuing a number of reforms that will place many new or expanded duties–duties that predominantly involve safety issues–upon the shoulders of our health officers. It is troubling that, on top of these increased demands, these officers may receive the additional burden of an issue that is predominately a labour issue and only marginally a safety issue and for which they have no training or expertise. Indeed, adding such a burden would undoubtedly be counter-productive, as it would diminish the officers' abilities to focus on the other reforms. Of course, the ultimate irony is that there are already Labour Standards staff at the Employment Standards Branch and the Labour Board who have experience in dealing with issues of discrimination.

The Workplace Safety and Health Review Committee in its Consensus Report recommended that safety and health officers investigate complaints of discriminatory action and "offer resolution". There is of course a great difference between offering a resolution and imposing one.

Suggested Amendments:

We would suggest that Section 42.1 be removed in its entirety. Alternately, it would be acceptable to amend Section 42.1 to provide for an investigative and mediation role for the safety and health officer while retaining the current role of the Labour Board as the adjudicator.

42.1(1) A worker who believe on reasonable grounds that the employee or union has taken discriminatory action against him or her for a reason described in Section 42 may refer that matter to a safety and health officer.

POWER OF DIRECTOR TO OBTAIN INFORMATION

Inter-Provincial Comparison:

Four jurisdictions (B.C., Ontario, Nova Scotia and the Yukon) have a similar provision; five jurisdictions (Canada, Alberta, Newfoundland, New Brunswick and P.E.I.) do not. Saskatchewan may or may not have it depending on how the general provision allowing officers to request 'information' has been interpreted.

Issues:

One cause for concern is whether the reform seeks to give the director the power to order a specific person or simply the type of person (i.e. what qualifications the person should have) that should undertake the testing. Certainly Section 46.1(1) is worded so as to suggest that a specific person can be designated by the director. This is in marked contrast to the wording in the other jurisdictions, which is usually phrased as follows:

54(1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

> (f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the **expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide,** at the expense of the employer, a report or assessment by that person;[4]

As well, it appears that decisions under Manitoba's Section 46.1(1) are not appealable. This seems to be in stark contrast to every other jurisdiction that allows such orders to be appealed and needs to be changed.

On the issue of payment, it would seem that such testing could be delayed if an employer is not in a financial position to make the payment. It would also seem unfair to require an employer to pay for testing if he/she is not in violation of the Act and the testing does not reveal either a violation of the Act or any type of safety concern.

As well, there may be some dispute as the degree or sophistication of the testing that is necessary. Alternatively, the testing may confirm some but not all of the director's concerns. Therefore, it would seem that some degree of flexibility would be appropriate in ultimately apportioning any costs associated with the test.

Suggested Amendments:

Order to conduct tests

46.1(1) The director may, at the expense of the Department of Health and Safety, and within the manner and timeframe specified in the order, order than an employer:

> (a) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as listed in a schedule established by the Advisory Council or specified by the officer for the purpose of determining whether any biological, chemical or physical agent, material, equipment, machine, device, article, thing or procedure, in or about a workplace, conforms with this Act or the regulations or good professional practice; and
>
> (b) cause any tests necessary to the production of the report or assessment to be conducted or taken.

46.1(2) Upon receipt of a report or assessment made pursuant to an order under (1), where the director is of the opinion that the order was necessary as a result of a violation of a provision of this Act or the regulations, or the report or assessment reveals a risk to health or safety, the director may order that the employer reimburse the Department of Health and Safety for the costs of the report or assessment to a degree and over such period of times as is fair and reasonable.

39(1) Any person directly affected by an order or decision of the director may appeal to the board.

*This amendment deletes the reference that restricts appeals to appeals "under Section 37", and thereby opens a decision under 46.1 to appeal.

Further, a Schedule should be attached to the Regulations setting out the specific individuals or organizations that are acceptable to the director. This list should be prepared in consultation with the advisory committee.

ADDITIONAL PENALITIES SECTION 55(1)

[4] S54 "Occupational Health and Safety Act:, Ontario

Inter-Provincial Comparison:

Three jurisdictions (B.C., Nova Scotia and Newfoundland) allow for additional penalties, seven jurisdictions (Canada, Saskatchewan, Alberta, Ontario, New Brunswick, P.E.I. and the Yukon) do not.

Issues:

The issue of alternative penalties was recommended by the Workplace Health and Safety Review Committee and, in principle, is not opposed by employers. There is, however, a concern about the wording. That being said, it is of note that, ironically enough, the wording currently proposed for Section 55.1(1) is almost identical to that used by the other three jurisdictions that have such clauses.

It seems clear that the intention of the Committee was to give a judge the discretion to specify that any part of a fine that is imposed be directed to workplace health and safety education–that is undoubtedly why the Committee used 'alternative' as opposed to 'additional'.

The use of the word 'additional' in section 55.1(1) suggests that once a fine is imposed another fine can be added on to support educational funding. This is problematic in two respects. Firstly, in determining what is appropriate for the 'initial fine', a judge is required to consider the circumstances of the offense (severity of harm caused, the nature of the breach, need to punish, et.). Once that is done, to simply impose an additional penalty so as to fund health education is, frankly, against the principles of justice.

Further, a judge will often look at the employer's ability to pay in determining the size of the initial award. If the initial fine takes this into account it is unlikely a judge will find any further ability to pay an 'additional fine'. Thus, the Commission's goal of ensuring that funds are directed to education will likely to defeated.

Proposed Amendments:

55.1(1)Where the court imposes a fine, the court my, having regard to the age and character of the offender, the nature of the offence, the circumstances surrounding its commission, and the public interest, order that the offender direct such portion of the fine as the court deems appropriate to the Minister, in accordance with the regulations, for the purpose of educating the public in the safe conduct of the activity in relation to which the offence was committed.

ADMINISTRATIVE PENALTIES 53.1

Inter-Provincial Comparison:

The only other jurisdiction with administrative monetary penalties (AMP) in relation to workplace health and safety is B.C.[5]

Discussion:

A number of concerns have been raised about AMPs:

a) It has been suggested that the government has not provided any substantiation to the claim that there is a 30% non-compliance rate for improvement orders. This is troubling and ties in with a general theme that there needs to be a better analysis as to what exactly is wrong with the system. For example, where does the 30% number come from? Are we sure they do not involve matters under appeal? Why have they not been complied with (confusion over wording, dispute as to merit of order)? Have these instances of non-compliance led to injury?

To put this in a broader scope, an analysis has to be done as to the injuries that did occur to figure out what the problems within the system are (i.e. How many accidents involve orders that were not followed up? How many accidents involved workplaces that had been inspected? How many accidents involved workplaces with health committees?).

The Review Committee did acknowledge that something had to be done to improve compliance but it was not able to recommend a specific solution. While the government has picked AMPs as the solution in this regard, it has not articulated why this solution was picked among the four that were offered.

[5] While extensive reviews are underway in B.C., to date the two Bills that have been introduced to not seem to address AMPs. It is understood that more Bills will be forthcoming which will remove AMPs in B.C. As well, it has been suggested that Saskatchewan looked at, and then abandoned, the idea of AMPs.

The Minister has recently presented a letter to MEC that indicates that "there is a connection between safety and health compliance and injury prevention'. With the greatest respect, this misses the point. The key issue is whether AMPs will enhance compliance and whether the type of compliance, if any, that AMPs would enhance would lead to improvements in safety or health.

b) We are not aware of any evidence that AMPs improve workplace safety.

Suggested Amendments:

The provisions in relation to AMPs should be deleted. Specific data should be gathered in relation to the cause (and effect) of the non-compliance with improvement orders. Then a solution should be crafted based on this information. The Advisory Council may be an effective vehicle for pursuing the specifics of this reform.

In the interim in non-compliance with an improvement order is a problem existing provisions allowing prosecution may be utilized.

PAYMENT FOR MEMBERS OF A HEALTH COMMITTEE

Inter-Provincial Comparison:

Seven jurisdictions (Canada, B.C., Saskatchewan, Alberta, Ontario, Nova Scotia and the Yukon) specifically link committee remuneration to committee meetings and 'carrying out functions as a member of the committee'. Here the federal system employs the broadest language:

S135.1(10) The members of a committee are entitled to take the time required, during their regular hours,

(a) to attend meetings **to perform any of their other functions;**

Two jurisdictions (Newfoundland and New Brunswick) limit compensation to time spent in committee meetings. We could not locate any provisions in relation to this issue for P.E.I.

Issues:

While Section 40(11) of Bill 27 is entitled "Member paid while carrying out committee duties", the section states:

A member of a committee is entitled to take time off from his or her regular work duties in order to carry **out his or her duties under this Act and the regulations.** The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all the time spent carrying out his or her duties under this Act and the regulations.

The actual wording of Section 40(11) fails to make a distinction between a committee member's specific duties under the Act as a committee member, and a committee member's general duties under the Act as an employee. This is of concern insofar as Section 40(11) allows a member to "take time off from his or her regular work duties" to carry out these activities. The ambiguity of the wording in Section 40(11) may lead to confusion.

Suggested Amendments:

That Section 40(11) be amended to reflect the wording used in most jurisdictions, namely:

A member of a committee is entitled to take time off from his or her regular work duties in order to carry out his or her functions pursuant to the Act and Regulations as a member of the committee. The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all the time spent carrying out his or her functions pursuant to the Act and Regulations as a member of the committee.

While the above issues represent the critical areas of concern for Manitoba's business community, there are a number of additional changes that would enhance the effectiveness of the proposed legislation:

APPEALS

Providing Reasons For A Decision:

Inevitably, a failure to understand the logic of the decisions of those in authority will lead to contempt, either implicitly or explicitly, for the system. This is why the enforcement system for

workplace health and safety needs to emphasize communication.

Specifically, when a decision is given, whether it is by an officer, the director, or the Deputy Minister, there should be a requirement that written reasons be provided. Not only will this increase the chances that a decision is understood, it will enable those effected by those decisions to better understand whether they should appeal.

42.1(3) requires an officer to advise a worker as to his or her reasons if the officer does not find any discrimination. This is a good step but similar requirements should be imposed regarding other decisions.

Who May Present As A Party To An Appeal

Section 37(1) provides a right to appeal against the orders or decisions of safety and health officers. It speaks in terms of "A person **directly affected** by an order or decision of a safety and health officer..." Section 39(1) provides a similar right in relation to the decisions/order of the director. It states, "any person **directly affected** by an order or decision of the director..."

However, when Section 39(5) talks about an appeal hearing in front of the Board it says, "at the hearing, the Board shall give **any interested person** an opportunity to be heard, to present evidence and to make presentations." It is hard to understand the rationale for dropping the 'directly affected' requirement. This may, perhaps, be related to a desire to include unions in Board hearings, however, if this is the case unions could be specified as being entitled to be involved the Board hearing. There is a concern that Section 39(5) as currently drafted is simply too broad.

Other Jurisdictions:

Unfortunately, we were not able to find any clause regarding who may appeal and who may present during an appeal for Alberta, Saskatchewan, Newfoundland or New Brunswick. The Yukon does not discuss who may present at an appeal but it allows, "Any person aggrieved or any trade union aggrieved representing a worker aggrieved by a decision to appeal. . ."

Three jurisdictions, (P.E.I, B.C. and Ontario) provide a discretion to the Director (P.E.I.) or the Board (B.C. and Ontario), to decide who may present at an appeal. Two jurisdictions (Canada and Nova Scotia) do not specify who may present at an appeal but limit appeals to "...an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by an order or decision" (Nova Scotia) or "an employer, employee or trade union that feels aggrieved..." (Canada).

While a provision that allows a discretion is common and entails the added benefit of flexibility, given that emotions can run high in relation to health and safety issues, and given that a board may be reluctant to be seen as denying anyone 'due process' in such an atmosphere, it may be wise to have the legislation limit the scope of individuals that are afforded party status at an appeal.

It should be pointed out at this stage that being denied 'party status' is not the same as not being called as a witness. Given that the employer, the employee, the director, and any union for the worker are each entitled to call evidence, it is reasonable to think that any testimony that is truly relevant will be called.

Proposed Amendments:

There should be a requirement that the director must provide his or her reasons to the employer and employee when he or she decides not to hold a hearing [S37(3)], or decides to refer a matter directly to the board [S38(1)].

The requirement under Section 42.1(3) should be changed to require an officer to inform the employer and the employee as to his or her reasons when discrimination is not found. As well, when there is discrimination, the officer should be required to advise both the employer and the employee as to his or her stated reasons for finding discrimination. Specifically, we would suggest the following:

42.1(3) When a safety and health officer makes a decision in relation to whether a discriminatory action was taken against a worker

for a reason described in Section 42, the officer shall, in a timely manner, provide both the worker and the employer written reasons for that decision.

We also propose that: Section 39(5) be deleted in its entirety; Section 39(1) and 37(1) be amended to read "any aggrieved person"; and the definition section include a definition of "aggrieved person" that mirrors the Nova Scotia legislation:

> "aggrieved person" means an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by an order or decision.

Conclusion:

The Business Council's interest is to promote a healthy business climate within which our members operate. We are acutely aware that the movement of capital, services and people has never been more fluid than it is today. Business decisions are made with a basket of factors used to weigh the balance. Quality of life in communities, the delivery of public services to citizens, the fairness of a tax regime, the presence or absence of regulatory obstacles, all combine to lead entrepreneurs to decisions that are in their interest and in the interest of their employees.

In itself, Bill 27 is not likely to drive investors away, but it becomes part of a basket of factors that is far from ideal. It is not good enough for Manitoba to be in the middle of the pack. We should aspire to lead in all those areas where leadership is essential. We should reach out to those who create the wealth we need to fund the public services we enjoy. If we cannot extend the tax base, create new jobs and generate more tax revenue, it will not be possible to save the services we offer today, never mind improve and enhance them for our children tomorrow. Bill 27 does not take us closer to that goal and, more importantly, there is no evidence to suggest it take us to a safer workplace. We urge this committee to reach a similar conclusion.

Jim Carr

Business Council of Manitoba

* * *

Introduction

The Mining Association of Manitoba Inc. (Association) is a non-profit trade association with a mandate of fostering the collective interest of Manitoba's mining sector. This association has operated for the past 62 years and whose members operate all existing metallic and hard rock mines in the province. Membership also includes the majority of firms undertaking mineral exploration in Manitoba. The Association is financed by the members and is governed by an elected Board of Directors. The Mines Accident Prevention Association of Manitoba, a subsidiary organization to MAMI, attends to mine accident prevention and mine safety.

The mining industry in Mantioba produced roughly $1.1 billion worth of mineral products in 2001 representing about 3.4% of Manitoba's GDP. In Manitoba, there are about 4,200 people directly employed in the metallic minerals portion of the mining industry.

For 2001, members of this association posted a collective Time Loss Injury rate of 1.1. This is among the lowest if not the lowest loss time injury rate of any mining province in Canada. In 1990 the loss time injury rate was running in excess of 13 LTA (frequency). The reasons for this dramatic reduction in loss time injury rates are many. However, the masin driving force has been a dedicated commitment to safety programs by industry and the men and women employed in the mining sector.

The Mining Association of Manitoba supports the joint position of the MEC and ETF with respect to Bill 27–The Safer Workplaces Act.

The Review Panel on Making Workplaces Safer prepared a report for government after substantial public consultation. The employer community as a whole has endorsed the recommendations of the consensus report of the Review Panl, in particular the target of 25% reduction in lost time workplace injuries.

Regardless of any legislative impetus, the business community is committed to reducing workplace injuries.

The government's response to the Review Panel report recognized the ripartite process and the consensus recommendations. Bill 27 incorporates the consensus recommendations appropriate for statutory inclusion.

Bill 27 however, goes beyond the consensus recommendations. Bill 27 has the potential of adding both confusion and additional costs to employers. Many of the proposed amendments have no explanation as to why they were added. They did not originate from the Public Hearings Review committee documents.

The MEC has undertaken a very detailed assessment of which new provisions are based out of the recommendations of the consensus document. The following amendments, that are of the greatest concern that were not derived from the recommendations of the review committee include:

PAY DURING STOP WORK ORDER

36 (6) while a stop work order is in effect

> (a) any worker who is directly affected by the order is entitled to the same wages and benefits that he or she would have received had the worker continued to work; and
> (b) the employer may re-assign the worker to alternate work.

Inter-Provincial Comparison:

Four jurisdictions (Saskatchewan, B.C., Newfoundland and Canada) provide pay during a stop work order. Six jurisdictions (Alberta, Ontario, Nova Scotia, New Brunswick, P.E.I. and the Yukon) do not.

Of the four jurisdictions that do provide pay during a stop work order, two limit it–the federal government limits it to a shift, and B.C. limits it to the day of the stoppage and three working days thereafter.

Discussion:

There is a concern that the provision for pay during a stop work order is not limited. This would be particularly problematic if the business ceases operation or decided to permanently discontinue the activity that was the subject of the stop work order. This latter scenario could, and in fact has, occurred where the expense involved in complying with a stop work order outweighed the value that the work activity generated for the employer's business.

This issue could be remedied by adopting the limitations contained in either the federal or B.C. legislation.

We would endorse the three-day limitation as the most reasonable solution.

REFUSAL TO WORK

There are two issues in relation to refusal to work, the grounds for such a refusal (in particular the absence of a clause relating to dangerous situations that are normally connected to employment) and the repercussions of a 'bad faith' refusal to work.

Inter-Provincial Comparison:

Eight jurisdictions (Canada, Saskatchewan, B.C., Alberta, Ontario, Nova Scotia, P.E.I., and the Yukon) have some type of qualification that limits the right to refuse work to situations where the danger is not a usual feature of the work. Two jurisdictions (New Brunswick and Newfoundland) do not make the distinction.

Six jurisdictions (Canada, P.E.I., Yukon, New Brunswick, Ontario and Newfoundland) seem to allow some type of repercussion where the employee does not exercise this right in good faith. Four jurisdictions (Saskatchewan, B.C., Alberta, and Nova Scotia) do not seem to provide for any such repercussions.

Issues:

There is a concern that Section 43 does not limit a refusal to work where the danger involved is a regular danger associated with the employment. As indicated, most jurisdictions recognize this qualification.

As well, there is a concern that there should be some type of repercussion if the right to

refuse is exercised in bad faith. However, the repercussion cannot be such that a worker, who wishes to refuse to work because of a bona fide belief that there is a dangerous situation, declines to do so because of a fear of what will happen if it is shown that he or she was wrong. Therefore, there should be a high standard to meet in order to justify retribution against an employee that refuses to work due to safety issues.

Suggested Amendments:
43(7) An employee may not, pursuant to this Section, refuse to work or to do a particular work at a workplace of

(a) the refusal puts the life, health or safety of another person directly in danger; or

(b) the danger referred to in subsection (1) is inherent in the work of the employee.[6]

43.2(b) Where it is determined that the employee's refusal was not based on reasonable grounds that employee shall not be entitled to wages or benefits.[7]

Finally, we note that although section 43(4) authorizes "remedial action", it does not authorize the person required to inspect the workplace to order the employee back to work if no danger is found. We suggest that New Brunswick offers a good guide as to an appropriate protocol that should be developed for Manitoba in this regard:

> 20(1) Any employee who believes that an act is likely to endanger his or any other employee's health or safety shall immediately report his concern to his supervisor, who shall promptly investigate the situation in the presence of the employee.
>
> 20(2) Where a supervisor finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall take appropriate remedial action or recommend appropriate remedial action to the employer.
>
> 20(3) Where a supervisor finds the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall advise the employee to do that act.
>
> 20(4) Where an employee has made a report under subsection (1) and the matter has not been resolved to his satisfaction, he shall refer the matter to a committee or, where there is no committee, to an officer.
>
> 20(5) Upon receipt of a referral under subsection (4), the committee shall promptly investigate the situation.
>
> 20(6) Where a committee finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall recommend appropriate remedial action to the employer.
>
> 20(7) Where a committee finds that the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall advise the employee to do that act.
>
> 20(8) Where a matter has been referred to a committee under subsection (4) and the matter is not resolved to the satisfaction of the employee, the employee shall refer the matter to an officer.
>
> 20(9) Upon receipt of a referral under subsection (4) or (8), the officer shall promptly investigate the situation and make his findings known in writing as soon as is practicable to the employer, the employee and the committee, if any, as to whether the employee has reasonable grounds for

[6] This wording largely reflects the wording used in Nova Scotia's Occupational Health and Safety Act, S43(9).
[7] This wording largely reflects the wording used in P.E.I.'s Occupational Health and Safety Act, S20(6).

believing that an act is likely to endanger his health or safety or the health and safety of any other employee.

20(10) Where, on a referral to an officer under subjection (4) or (8), the officer finds than an employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall order appropriate remedial action to be taken by the employer.

20(11) Where, on referral to an officer under subsection (4) or (8), the officer finds that an employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall advise the employee to do that act.

20(12) Pending any investigation under this section, the employee shall remain available at the place of employment during his normal working hours.

21(1) An employee's right under Section 19 to refuse to do any act is protected,

(a) if he has reported his concern to his supervisor under Section 20,

(i) until remedial action recommended by the supervisor under Section 20 is taken by the supervisor or employer to the employee's satisfaction, or

(ii) until remedial action recommended by the supervisor under Section 20 to do that act;

(b) if the employee has referred the matter to a committee under Section 20,

(i) until remedial action recommended by the committee under Section 20 is taken by the employer to the employee's satisfaction, or

(ii) until the committee has advised the employee under Section 20 to do that act; and

(c) if the employee has referred the matter to an officer under Section 20,

(i) until remedial action ordered by the officer under Section 20 is taken by the employer to the officer's satisfaction, or

(ii) until the officer has advised the employee under Section 20 to do that act.

DISCRIMINATORY ACTION SECTION 42(2) & 42.1(1)

Inter-Provincial Comparison:

Five jurisdictions (Canada, Ontario, Newfoundland, New Brunswick and P.E.I.) assign this issue to the board, while four jurisdictions (B.C., Saskatchewan, Alberta and Nova Scotia) assign it to the officers.

Discussion:

The basis for the concerns in relation to Bill 27 are echoed in Alan Winter's recent review of B.C.'s legislation:

"During my meeting with representatives from the WCB's Prevention Division, it was reinforced that the discriminatory action provisions fall outside of the expertise, culture and realm of the Prevention Officers. **The Officers' involvement in discriminatory action complaints was described as difficult; time-consuming; out-of-score; and very deeply involved into labour relations.** Simply stated, the Prevention Division believes it is being drawn into the labour relations issues of the parties through the guise of occupational health and safety."[8]

The Minister is pursuing a number of reforms that will place many new or expanded duties–duties that predominantly involve safety issues–upon the shoulders of our health officers. It is troubling that, on top of these increased demands, these officers may receive the additional burden of an issue that is predominately a labour issue and only marginally a safety issue and for which they have no training or expertise. Indeed, adding such a burden would undoubtedly be counter-productive, as it would diminish the officers' abilities to focus on the other reforms. Of course,

[8] "Core Services Review of the Workers' Compensation Board", March 11, 2002, at p. 318.

the ultimate irony is that there are already Labour Standards staff at the Employment Standards Branch and the Labour Board who have experience in dealing with issues of discrimination.

The Workplace Safety and Health Review Committee in its Consensus Report recommended that safety and health officers investigate complaints of discriminatory action and "offer resolution". There is of course a great difference between offering a resolution and imposing one.

Suggested Amendments:

We would suggest that Section 42.1 be removed in its entirety. Alternately, it would be acceptable to amend Section 42.1 to provide for an investigative and mediation role for the safety and health officer while retaining the current role of the Labour Board as the adjudicator.

42.1(1) A worker who believe on reasonable grounds that the employee or union has taken discriminatory action against him or her for a reason described in Section 42 may refer that matter to a safety and health officer.

POWER OF DIRECTOR TO OBTAIN INFORMATION

Inter-Provincial Comparison:

Four jurisdictions (B.C., Ontario, Nova Scotia, and the Yukon) have a similar provision; five jurisdictions (Canada, Alberta, Newfoundland, New Brunswick and P.E.I.) do not. Saskatchewan may or may not have it depending on how the general provision allowing officers to request 'information' has been interpreted.

Issues:

One cause for concern is whether the reform seeks to give the director the power to order a specific person or simply the type of person (i.e. what qualifications the person should have) that should undertake the testing. Certainly Section 46.1(1) is worded so as to suggest that a specific person can be designated by the director. This is in marked contrast to the wording in the other jurisdictions, which is usually phrased as follows:

54(1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

> (f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the **expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide,** at the expense of the employer, a report or assessment by that person;[9]

As well, it appears that decisions under Manitoba's Section 46.1(1) are not appealable. This seems to be in stark contrast to every other jurisdiction that allows such orders to be appealed and needs to be changed.

On the issue of payment, it would seem that such testing could be delayed if an employer is not in a financial position to make the payment. It would also seem unfair to require an employer to pay for testing if he/she is not in violation of the Act and the testing does not reveal either a violation of the Act or any type of safety concern.

As well, there may be some dispute as the degree or sophistication of the testing that is necessary. Alternatively, the testing may confirm some but not all of the director's concerns. Therefore, it would seem that some degree of flexibility would be appropriate in ultimately apportioning any costs associated with the test.

Suggested Amendments:

Order to conduct tests

46.1(1) The director may, at the expense of the Department of Health and Safety, and within the manner and timeframe specified in the order, order than an employer:

> (a) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as listed in a schedule established by the

[9] S54 "Occupational Health and Safety Act:, Ontario

professional knowledge or qualifications as listed in a schedule established by the Advisory Council or specified by the officer for the purpose of determining whether any biological, chemical or physical agent, material, equipment, machine, device, article, thing or procedure, in or about a workplace, conforms with this Act or the regulations or good professional practice; and

(b) cause any tests necessary to the production of the report or assessment to be conducted or taken.

46.1(2) Upon receipt of a report or assessment made pursuant to an order under (1), where the director is of the opinion that the order was necessary as a result of a violation of a provision of this Act or the regulations, or the report or assessment reveals a risk to health or safety, the director may order that the employer reimburse the Department of Health and Safety for the costs of the report or assessment to a degree and over such period of times as is fair and reasonable.

39(1) Any person directly affected by an order or decision of the director may appeal to the board.

*This amendment deletes the reference that restricts appeals to appeals "under Section 37", and thereby opens a decision under 46.1 to appeal.

Further, a Schedule should be attached to the Regulations setting out the specific individuals or organizations that are acceptable to the director. This list should be prepared in consultation with the advisory committee.

ADDITIONAL PENALITIES SECTION 55(1)

Inter-Provincial Comparison:

Three jurisdictions (B.C., Nova Scotia and Newfoundland) allow for additional penalties, seven jurisdictions (Canada, Saskatchewan, Alberta, Ontario, New Brunswick, P.E.I., and the Yukon) do not.

Issues:

The issue of alternative penalties was recommended by the Workplace Health and Safety Review Committee and, in principle, is not opposed by employers. There is, however, a concern about the wording. That being said, it is of note that, ironically enough, the wording currently proposed for Section 55.1(1) is almost identical to that used by the other three jurisdictions that have such clauses.

It seems clear that the intention of the Committee was to give a judge the discretion to specify that any part of a fine that is imposed be directed to workplace health and safety education–that is undoubtedly why the Committee used 'alternative' as opposed to 'additional'.

The use of the word 'additional' in section 55.1(1) suggests that once a fine is imposed another fine can be added on to support educational funding. This is problematic in two respects. Firstly, in determining what is appropriate for the 'initial fine', a judge is required to consider the circumstances of the offense (severity of harm caused, the nature of the breach, need to punish, et.). Once that is done, to simply impose an additional penalty so as to fund health education is, frankly, against the principles of justice.

Further, a judge will often look at the employer's ability to pay in determining the size of the initial award. If the initial fine takes this into account it is unlikely a judge will find any further ability to pay an 'additional fine'. Thus, the Commission's goal of ensuring that funds are directed to education will likely to defeated.

Proposed Amendments:

55.1(1)Where the court imposes a fine, the court my, having regard to the age and character of the offender, the nature of the offence, the circumstances surrounding its commission, and the public interest, order that the offender direct such portion of the fine as the court deems appropriate to the Minister, in accordance with the regulations, for the purpose of educating the public in the safe conduct of the activity in relation to which the offence was committed.

ADMINISTRATIVE PENALTIES 53.1

The only other jurisdiction with administrative monetary penalties (AMP) in relation to workplace health and safety is B.C.[10]

Discussion:

A number of concerns have been raised about AMPs:

a) It has been suggested that the government has not provided any substantiation to the claim that there is a 30% non-compliance rate for improvement orders. This is troubling and ties in with a general theme that there needs to be a better analysis as to what exactly is wrong with the system. For example, where does the 30% number come from? Are we sure they do not involve matters under appeal? Why have they not been complied with (confusion over wording, dispute as to merit of order)? Have these instances of non-compliance led to injury?

To put this in a broader scope, an analysis has to be done as to the injuries that did occur to figure out what the problems within the system are (i.e. How many accidents involve orders that were not followed up? How many accidents involved workplaces that had been inspected? How many accidents involved workplaces with health committees?).

The Review Committee did acknowledge that something had to be done to improve compliance but it was not able to recommend a specific solution. While the government has picked AMPs as the solution in this regard, it has not articulated why this solution was picked among the four that were offered.

The Minister has recently presented a letter to MEC that indicates that "there is a connection between safety and health compliance and injury prevention'. With the greatest respect, this misses the point. The key issue is whether AMPs will enhance compliance and whether the type of compliance, if any, that AMPs would enhance would lead to improvements in safety or health.

b) We are not aware of any evidence that AMPs improve workplace safety.

Suggested Amendments:

The provisions in relation to AMPs should be deleted. Specific data should be gathered in relation to the cause (and effect) of the non-compliance with improvement orders. Then a solution should be crafted based on this information. The Advisory Council may be an effective vehicle for pursuing the specifics of this reform.

In the interim in non-compliance with an improvement order is a problem existing provisions allowing prosecution may be utilized.

PAYMENT FOR MEMBERS OF A HEALTH COMMITTEE

Inter-Provincial Comparison:

Seven jurisdictions (Canada, B.C., Saskatchewan, Alberta, Ontario, Nova Scotia and the Yukon) specifically link committee remuneration to committee meetings and 'carrying out functions as a member of the committee'. Here the federal system employs the broadest language:

S135.1(10) The members of a committee are entitled to take the time required, during their regular hours,

(a) to attend meetings **to perform any of their other functions;**

Two jurisdictions (Newfoundland and New Brunswick) limit compensation to time spent in committee meetings. We could not locate any provisions in relation to this issue for P.E.I.

Issues:

While Section 40(11) of Bill 27 is entitled "Member paid while carrying out committee duties", the section states:

A member of a committee is entitled to take time off from his or her regular work duties in order to carry **out his or her duties under this Act and the regulations.** The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all the time spent carrying out

[10] While extensive reviews are underway in B.C., to date the two Bills that have been introduced to not seem to address AMPs. It is understood that more Bills will be forthcoming which will remove AMPs in B.C. As well, it has been suggested that Saskatchewan looked at, and then abandoned, the idea of AMPs.

his or her duties under this Act and the regulations.

The actual wording of Section 40(11) fails to make a distinction between a committee member's specific duties under the Act as a committee member, and a committee member's general duties under the Act as an employee. This is of concern insofar as Section 40(11) allows a member to "take time off from his or her regular work duties" to carry out these activities. The ambiguity of the wording in Section 40(11) may lead to confusion.

Suggested Amendments:

That Section 40(11) be amended to reflect the wording used in most jurisdictions, namely:

> A member of a committee is entitled to take time off from his or her regular work duties in order to carry out his or her functions pursuant to the Act and Regulations as a member of the committee. The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all the time spent carrying out his or her functions pursuant to the Act and Regulations as a member of the committee.

While the above issues represent the critical areas of concern for Manitoba's business community, there are a number of additional changes that would enhance the effectiveness of the proposed legislation:

APPEALS

Providing Reasons For A Decision:

Inevitably, a failure to understand the logic of the decisions of those in authority will lead to contempt, either implicitly or explicitly, for the system. This is why the enforcement system for workplace health and safety needs to emphasize communication.

Specifically, when a decision is given, whether it is by an officer, the director, or the Deputy Minister, there should be a requirement that written reasons be provided. Not only will this increase the chances that a decision is understood, it will enable those effected by those decisions to better understand whether they should appeal.

42.1(3) requires an officer to advise a worker as to his or her reasons if the officer does not find any discrimination. This is a good step but similar requirements should be imposed regarding other decisions.

Who May Present As A Party To An Appeal

Section 37(1) provides a right to appeal against the orders or decisions of safety and health officers. It speaks in terms of "A person **directly affected** by an order or decision of a safety and health officer..." Section 39(1) provides a similar right in relation to the decisions/order of the director. It states, "any person **directly affected** by an order or decision of the director..."

However, when Section 39(5) talks about an appeal hearing in front of the Board it says, "at the hearing, the Board shall give **any interested person** an opportunity to be heard, to present evidence and to make presentations." It is hard to understand the rationale for dropping the 'directly affected' requirement. This may, perhaps, be related to a desire to include unions in Board hearings, however, if this is the case unions could be specified as being entitled to be involved the Board hearing. There is a concern that Section 39(5) as currently drafted is simply too broad.

Other Jurisdictions:

Unfortunately, we were not able to find any clause regarding who may appeal and who may present during an appeal for Alberta, Saskatchewan, Newfoundland or New Brunswick. The Yukon does not discuss who may present at an appeal but it allows, "Any person aggrieved or any trade union aggrieved representing a worker aggrieved by a decision to appeal. . ."

Three jurisdictions, (P.E.I, B.C. and Ontario) provide a discretion to the Director (P.E.I.) or the Board (B.C. and Ontario), to decide who may present at an appeal. Two jurisdictions (Canada and Nova Scotia) do not specify who may present at an appeal but limit appeals to "...an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by

an order or decision" (Nova Scotia) or "an employer, employee or trade union that feels aggrieved..." (Canada).

While a provision that allows a discretion is common and entails the added benefit of flexibility, given that emotions can run high in relation to health and safety issues, and given that a board may be reluctant to be seen as denying anyone 'due process' in such an atmosphere, it may be wise to have the legislation limit the scope of individuals that are afforded party status at an appeal.

It should be pointed out at this stage that being denied 'party status' is not the same as not being called as a witness. Given that the employer, the employee, the director, and any union for the worker are each entitled to call evidence, it is reasonable to think that any testimony that is truly relevant will be called.

Proposed Amendments:

There should be a requirement that the director must provide his or her reasons to the employer and employee when he or she decides not to hold a hearing [S37(3)], or decides to refer a matter directly to the board [S38(1)].

The requirement under Section 42.1(3) should be changed to require an officer to inform the employer and the employee as to his or her reasons when discrimination is not found. As well, when there is discrimination, the officer should be required to advise both the employer and the employee as to his or her stated reasons for finding discrimination. Specifically, we would suggest the following:

42.1(3) When a safety and health officer makes a decision in relation to whether a discriminatory action was taken against a worker for a reason described in Section 42, the officer shall, in a timely manner, provide both the worker and the employer written reasons for that decision.

We also propose that: Section 39(5) be deleted in its entirety; Section 39(1) and 37(1) be amended to read "any aggrieved person"; and the definition section include a definition of "aggrieved person" that mirrors the Nova Scotia legislation:

"aggrieved person" means an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by an order or decision.

Concluding Remarks

The Manitoba employer community has both stated its commitment to workplace safety and reacted accordingly. Employers welcome the 25% reduction target and will work towards achieving the goal quickly.

Many of the proposed amendments in Bill 27 however, are not likely to assist in achieving the objective and, in fact, may prove to be obstacles by diverting energy and resources into non-productive disputes.

Further, many of the recommendations in the consensus report, which are reflected in the proposed legislation, involve increased burdens and costs to the employers. The employer community has accepted these increased costs, where they have been identified in the consensus report, as furthering the objective of reducing workplace injuries. Nevertheless there is a cost involved and that cost is likely to be significant., Accordingly it is appropriate to avoid costs that are not supported by an identifiable objective or a demonstrated need.

Ed Hubert
Mining Association of Manitoba Inc.

* * *

INTRODUCTION:

The Manitoba Chambers of Commerce (MCC) is the umbrella organization for Manitoba's Chamber movement. With a membership comprised of local chambers as well as direct corporate members we represent, in total approximately 10,000 businesses across Manitoba.

The MCC is unique among the business organizations that will present to you. Our organization is not confined to any specific region within Manitoba. Nor do we represent

only one size of business. In fact, the MCC represents the entire spectrum of the business world, from sole proprietorships to some of the largest companies in Manitoba. Nor do we represent only one particular sector of the economy. To cite but a few examples, our membership includes representatives within the transportation industry, mining, technology, services, manufacturing and agriculture.

The MCC is pleased to have this opportunity to present its submission to the Law Amendments review committee in relation to Bill 27.

It should be stated at this juncture that the MCC, like so many other representatives of management or labour, has had the privilege of ongoing discussions with the Honourable Becky Barrett, Minister of Labour and Immigration; Mr. Farrell, Deputy Minister; and Mr. Parr, Assistance Deputy Minister; in relation to Bill 27. We commend the government for its willingness to discuss these issues. We share the minister's hope that the process of consultation that our government has embarked upon, a process that culminates in these Committee hearings, will lead to legislation that effectively enhances the health and safety of our workers without unnecessarily hampering the economic vitality of our workplaces.

SUBMISSION:

1) Specific Responses to Bill 27:

The MCC is proud to be a member of the Manitoba Employers Council (MEC) as well as the Employers Task Force on Workplace Safety and Health & workers Compensation (ETF). We understand that these organizations will be making a joint submission today that will outline specific proposals in relation to the items of Bill 27 that have caused employers the greatest concern.

As a member of both MEC and ETF, the MCC was actively involved in the drafting of that submission, and we heartily endorse its recommendations.

We leave it to the MEC and ETF to outline the specifics of the reforms that are being suggested to Bill 27. To avoid repetition the remainder of our submission will focus on what we regard as "The Bigger Picture"–the environment in which the final form of Bill 27 will need to operate if the goal of enhancing the safety of our workplaces is to be achieved.

However, make no mistake, the MCC regards the reforms suggested by the joint submission of the MEC and ETF as crucial to ensuring that Bill 27 does effectively enhance the health and safety of our workers without unnecessarily hampering the economic vitality of our workplaces.

2) "The Bigger Picture"

Of course, to be truly effective Bill 27 cannot occur in isolation from other, broader efforts to enhance workplace safety and health. In recognizing this Minister Barrett has pursued comprehensive strategy to improve workplace safety and health, that has included: the appointment of eight additional workplace inspectors; a pledge to implement a public awareness campaign on workplace safety and health; a commitment to develop safety and health curriculum resource materials to improve health and safety education in schools; the appointment of a provincial farm safety co-ordinator; and a commitment to a review of the safety and health regulations that involves labour, management and technical-professional representatives.

We applaud the Minister for all of these initiatives. However, if Bill 27, in whatever form it ultimately takes, is to be truly effective, there are two more elements to the vision that must be put in place: a) "A Commitment to Enhancing the Effectiveness of Officers" and b) "A Genuine Commitment To Empowering Manitobans' Understanding of Workplace Safety and Health Issues".

a) "A Commitment to Enhancing the Effectiveness of Officers":

It is trite to say that Safety and Health Officers play a key role in the enforcement of the legislation in relations to workplace health and safety. Many of the Minister's recent

reforms enhance the role of Officers within the system. Thus, now more than ever, Officers will be required to assume a myriad of roles ranging from that of investigator, to advocate, to mediator, to advisor, and to enforcer. It is crucial that Officers possess the wide of array of competencies that are required for each of these roles.

For this reason it is imperative that the Minister embrace a commitment to enhancing the effectiveness of Officers. Specifically, Officers must be trained in communicating, both verbally and in writing (for example, Improvement Orders), in a way that is easy to understand and both inspires and empowers the ability of both employers and employees to enhance workplace safety and health.

There should be a requirement that all Officers be registered as a Canadian Registered Safety Professional. This should be mandated for all new Officers. For current Officers a reasonable timeframe should be given in which they are to receive this certification.

Further, a manual of Protocol for Officers should be developed. This manual should be made available to the public (including placement on the Workplace Safety and Health Web site).

b) "A Genuine Commitment to Empowering Manitobans' Understanding of Workplace Safety and Health Issues"

The MCC has been calling for a genuine commitment to empowering Manitobans' understanding of workplace safety and health issues since the Minister announced her vision for improving workplace safety and health. It cannot be denied that the Minister has engaged in extensive consultations and has made a considerable amount of information available. While we applaud those efforts, they, with the greatest respect, have not empowered the discussion of these issues in the way that is necessary.

Consider in this regard the following excerpt from our submission to the Workplace Safety and Health Committee:

Never forget that any reforms that you suggest will exist within a definite context. Specifically, while employers may regard workplace health and safety seriously, they invariably regard any removal of their autonomy over the workplace with suspicion. Whether this attitude is right or wrong is really beside the point, for it is the way things are. Given this reality, if you want to empower the partnership that we need in order to truly make significant strides in workplace safety and health, go beneath the surface–provide an in-depth analysis of our challenges and an in-depth discussion of the solutions.

For example, it isn't good enough to simply say 'safety committees need more power'. Provide the research to show that these committees are currently ineffective, explain why they are in effective, explain how this ineffectiveness is leading to injuries or the risk of injuries, and then pursue solutions that are effective while, at the same time, minimizing the encroachment upon the autonomy of our employers. Do this and your report will build bridges rather than alienate.

Use the incredible resources that Manitoba has to get the type of in-depth analysis that we need. Tap into the research of the Workplace Health and Safety Division and the WCB. Tap into the benefit of the many committees that have been created to address these very issues, including the Advisory Council.

Tell Manitoba where the problems exactly are–identify the initiatives that are working, and those that are not, and identify why.

While our submission to the Review Committee approached this issue from the perspective of the natural reluctance of employers to relinquish autonomy over their workplaces without a justifiable reason for doing so, from a broader perspective it simply makes sense that if you wish to pursue reforms that will be both effective and embraced by the key stakeholders, you must provide a meaningful improvement of workplace health and safety, you need to provide a meaningful analysis if

what is working (and why), and what isn't working (and why).

'Provide Specifics As To What Is Working'

For example, in a May 8, 2001 governmental news release, Minister Barrett said "Achieving safer, healthier workplaces requires employers, employees and government to act in partnership and accept shared responsibility. **Manitoba is making significant strides** because we understand the value of sustaining this partnership and the positive benefits an improved working environment will have for our people, our economy and our future."

Yet we have not seen any meaningful analysis as to where these "significant strides" are being made. Such an analysis would have the double effect of a) informing employers of 'what works' so that they could adopt those practices; and b) celebrating safety success stories to that others are encouraged to follow suit.

'Provide Specifics As To What Isn't Working'

For example, in justifying Administrative Penalties the government has indicated that 30% of Improvement Orders are not complied with. However, despite repeated requests we have not been told where this 30% comes from (for example, are we sure they do not involve matters under appeal?) We have not received any information as to why specifically these orders have not been complied with (was there a confusion over the wording or a dispute as to merit of order?) We have not been provided with any information that suggests that these instances of non-compliance led to injury.

To put this in a broader scope, an analysis has to be done as to the injuries that did occur in order to identify the specific problems within the current system (e.g. How many accidents involve Orders that were not followed up? How many accidents involved workplaces that had been inspected? How many accidents involved workplaces with health committees?).

Certainly this information should be available. At page 30 of the Labour and Immigration annual report for 2000-2001 the Workplace Health and Safety Division confirms that one of its core business activities is: "Evaluating the effectiveness of our safety and health and public safety activities to ensure that programs are delivering services in an efficient and effective manner."

Minister Barrett is quoted as saying during the legislative proceedings on April 26, 2001, "a new Advisory Council on Workplace Safety and Health has been appointed [as of February 2001]. The new council will consider, examine and review a number of crucial workplace issues. These will include violence in the workplace, safety and health enforcement, safety concerns among youth workers, safety in the farming community and threshold limit values, which are guidelines to limit exposure to health hazards."

Why isn't the Advisory Council used to undertake and then disseminate the information that is needed to effectively assess what is specifically 'right' and what is specifically 'wrong' with workplace safety and health in Manitoba.

Unless there is a genuine commitment to empowering Manitobans' understanding of workplace safety and health issues there is a serious risk that any reforms to the system will simply "go through the motions" to, to paraphrase William Shakespeare, be "full of sound and fury, while signifying nothing."

Consider in this regard the Government's commitment to a five-year injury reduction target of 25% in the Workers Compensation Board time-loss injury rate. On the surface this may sound like a good thing, but on closer inspection it really runs contrary to a serious commitment to improving workplace health and safety. How so? Because the key is not the number, the key is the effort behind the number.

The question we must ask ourselves over a five-year period is not "did we meet some arbitrary target?", but rather, "have we, as Manitobans–as government, as employers, and as employees–done everything we reasonably can to prevent workplace injuries?" Until we answer that question, reaching any arbitrary target means nothing.

Worse still, setting an arbitrary target is counter-productive for it diverts attention away from a discussion about what we should be doing to enhance workplace safety and onto a debate about whether the target has actually been met. Consider in this regard the words of "For the Common Good–The Final Report of the Royal Commission of Workers' Compensation in B.C.":

According to board documents and interviews with senior management, Prevention Division views overall injury rate changes, and injury rate changes in targeted industries, as global indicators of the division's performance. While this may be generally true–it is often the way injury rates are viewed in other jurisdictions–it is equally possible that injury rate changes, both short-term and long-term, are occurring because of a variety of factors unrelated to Prevention Division activity. **With such a global measure, the division cannot assess which activities might be working or why.**

The notion that injury rates are unreliable indicators of program effectiveness is not new. A 1981 Economic Council of Canada report entitled "Occupational Health and Safety: Issues and Alternatives" stated: "injury statistics are influenced by many factors and users are cautioned accordingly. New injuries and wage loss injuries will be responsive to shifts in the composition of the workforce, shifts in the structure of industry, worker attitudes toward reporting injuries, compensation board policies on what constitutes a compensable injury, appeal times, and the business cycle.[11]

The threat of reforms that 'look good on paper', but really accomplish nothing was also alluded to in Rob Hilliard's submission to the Workplace Health and Safety Review Committee: "One of the issues not raised in the discussion paper is the clarity of the legislation. Both employers and workers are constantly misinterpreting the content and intention of the Act. Most employers in Manitoba aren't even aware of their responsibilities until they have an accident and a subsequent visit from an inspector. Legislation is often difficult to understand and because managers and workers must play an integral role in any successful workplace health and safety system, efforts should be made to make the legislation as user-friendly as possible.[12]

In it's report the Review Committee states: "While it is now up to government to take a leadership role, we will only succeed if all Manitoba commit themselves to implementing the recommendations in this report."[13] However, it is a mistake to fail to see that these two issues, a government's leadership and the commitment of its people, are inextricably intertwined. For, by definition, true leadership points the way by informing and inspiring its citizens to follow.

Manitoba is at a crossroads in workplace health and safety. Our government has committed to a broad and sweeping vision for improvement. Both labour and management have come together in a committee that was unanimous in its recommendations. We have a community of employers that have embraced most of the suggested changes in Bill 27, have suggested improvements, and have indicated a commitment to work with government and labour to continue to improve the safety of our employees.

The door is open; the opportunity is upon us. It is now up to government to lead by undertaking a specific and in-depth analysis, on a truly meaningful level, that will show how we (employers, employees, government, and the 'system' of workplace and safety) have failed those who have been injured, and, more importantly, how we can prevent such tragedies from occurring again.

Graham Starmer
Manitoba Chambers of Commerce

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On behalf of the Canadian Federation of Independent Business (CFIB), I would like to

[11] Volume 1, Chapter 5 "Operations: Preventions Division", January 1999, at p. 37.

[12] Submission of Rob Hilliard, Manitoba Federation of Labour, October 24, 2001 at p. 11.

[13] "Building a Workplace Safety and Health Culture", January 2002, at p. 51.

take this opportunity to provide comment on the proposed amendments to the Workplace Safety and Health Act. As you know, CFIB participated in the public consultation, making both a presentation and a written submission, and provided follow-up comments on the Review Committee recommendations. In addition, CFIB participated in the special session on agriculture in Brandon.

Safety continues to be a top concern of CFIB members. As noted in our submission, over 81 percent of members reported that they feel employers have a primary responsibility for safety. It is clear that CFIB members believe they, as employers, play a critical role in ensuring safe workplaces. Therefore, it is incumbent upon government to ensure employers' views of the recommendations are considered. In order to create a safety culture in Manitoba, employers must 'buy into' the government's approach, and view it as reasonable and workable. It is also important to note the importance employers place on worker's responsibility for safety. Employers feel that together, they and their employees play key roles in safety and reducing accidents. This spirit must be embraced and translated into a workplace safety culture where the two parties involved play essential roles. Safety cultures cannot be fostered in 'command and control' regulatory approaches to workplace safety.

CFIB supports many of the concepts brought forward in the proposed amendments, but is cautious of others. The Federation notes that our members' concerns are not limited to what has been proposed in the amendments, but what has been left to interpretation. The following comments will highlight areas of support and areas of concern to employers. I will begin with general comments, following by an examination of sections of concern.

To begin, CFIB is extremely disappointed the government strayed away from the consensus recommendations of the Review Committee report. The government has gone beyond the scope of recommendations and has broken its own promise to build a safety culture in Manitoba. Such a departure sends the message that government is not interested in the views of employers and is fulfilling a pre-arranged agenda.

In our original presentation, CFIB emphasized the importance of making the legislation workable and understandable to both workers and employers. Unfortunately, many of the amendments create greater confusion and uncertainty. Complex and difficult legislation only serves to frustrate employers. CFIB will provide specific examples of this concern later in the presentation.

CFIB is extremely concerned with the lack of accountability placed on workers. The Act fails to provide any meaningful repercussion in the event a worker knowing and willingly fails to follow safety procedures. Given the importance of safety, and the penalties employers face as a result of safety infractions, it is incumbent on government to ensure workers face a proportionate burden should they choose to violate the Act.

Employer's Duties

CFIB cautions this section fails to recognize the risks involved in completing various forms of employment and the differing level of supervision that may be required. Of particular concern is the proposed amendment referring to employers' duties, which states: "Without limiting the generality of an employer's duty under subsection (1), every employer shall . . . (h) ensure that all of the employer's workers are supervised by a person who (ii) is familiar with this Act and the regulations that apply to the work performed at the workplace". The legislation must recognize employees performing entry level accounting duties and those working in a labour-intensive factory require different levels of supervision. Therefore, CFIB recommends the government include a provision for risk assessment in this section.

In addition, the legislation requires that all supervisors are familiar with the Workplace Safety and Health Act. Such provisions will be very difficult if not impossible to implement in a small business. In workplaces with five or fewer employees, it is not unreasonable for all employees to engage in some type of supervisory role at one time or another. It would

be very difficult and impractical for employees and supervisors of small businesses to be fully versed with the inner workings of this legislation. Small businesses operate in a very different fashion than large unionized workplaces. The amendments to the WS&H Act fail to recognize the safety concerns of small business.

Wages and benefits during training

Currently, legislation regarding wages and benefits fall under the jurisdiction of Employment Standards legislation. Amendments requiring employers to pay full wages and benefits during training may be confusing for employers. Amendments governing pay and benefits during any form of training are best suited in one piece of legislation. Furthermore, reduced pay during training has been an accepted practice and is often an incentive to hire additional staff.

Duties of Supervisors

CFIB is concerned with the duties and responsibilities of supervisors. In section 4.1, supervisors are required to "(iii) ensure that a worker under his or her supervision uses all devices and wears all clothing and personal protective equipment designated or provided by the employer or required to be used or worn by this Act or regulations".

The legislation fails to provide any remedy to the employer in the event an employee fails to follow safety practices and/or wear designated safety equipment. As employees cannot be supervised continually, the employer should have some legislative authority to discipline a worker who fails to follow safety procedures. CFIB recommends government adopt legislation that enables employers to discipline staff who fail to engage in safe work practices. The legislation should provide consequences for all parties who disregard safety measures.

Workplace Safety and Health Program

CFIB is concerned with the amendment requiring all workplaces where 20 or more workers of that employer are regularly employed to prepare a written health and safety plan. Such a plan, at a minimum would include a hazard assessment plan and emergency preparedness plan and would also require a formal workplace safety and health committee, hazard elimination/control measures, regular work site inspections, qualifications and training of workers and incident investigations. CFIB is concerned that the proposed amendments may not serve to encourage employers to make their workplaces safer, instead, it may actually weaken many Manitoba employers' commitment to the promotion of workplace safety for the following reasons.

First, it may be viewed as yet another government-imposed paper exercise with which employers must comply. In a recent CFIB survey we found that over one-quarter of Manitoba small business owners already spend more than 6 hours a week filling out forms to comply with various government regulations. The same survey also found that over one third believe that provincial paper burden requirements continue to increase despite recent attempts by the provincial government to lessen this burden.

Second, the proposed amendments are of concern as they are to be applied to all businesses that employ 20 or more employees regardless of the level of risk. There is no doubt that the level of risk varies from sector to sector. For example, a small accounting firm is unlikely to present the same level of risk as other types of firms and yet would be subject to the same degree of regulatory scrutiny if they employee 20 staff. Requiring a low-risk firm with 20 employees to comply in the same way to these regulations as an industrial plant of 500 employees is an ineffective approach to promoting workplace safety. Many small business employers will regard these changes as yet another example of the government's lack of understanding of small business operations and as a blatant disregard of their concerns.

Third, while the explanatory notes for the "Content of program" section identifies a sense of reasonableness to the legislation, this reason is not prescribed in the actual legislation. Therefore, the content of workplace health and safety programs are subject to interpretation. An employer's comprehension of risk assessment

may be significantly different than that of a workplace safety and health officer. It will be extremely difficult to employers to know what is expected of them.

Furthermore, the costs to employers associated with the implementation and maintenance of this amendment has not been fully considered.

CFIB urges the committee to take the concerns of small business into consideration when reviewing the proposed amendments. We are all striving for the same goal of building safer workplaces and CFIB strongly believes that employer commitment to that objective is key in obtaining that goal. However, some of the proposed changes to the Workplace Safety and Health Act, including formal health and safety programs are not the best way of gaining that commitment. CFIB urges the committee to reject the written component of these proposed regulations. Instead, CFIB recommends that the government continue to provide practical advice and support to small firms, in their efforts to build safe workplaces.

Regulations

CFIB is concerned the legislation respecting committees may be used by government to pass very stringent regulations. The Federation recommends further consultation on this issue.

In addition we note that the regulation prescribing certificates or other means of identification of safety and health officers has been repealed.

CFIB supports legislation, which grants the director authority to exempt a person or class of persons from any provision of a regulation to meet the special circumstances in a particular case. This regulation is particularly important and needs to be readily accessible to smaller firms. CFIB recommends government identify in legislation the framework for exempting firms.

Improvement orders

CFIB supports amendments to improvement orders which strike out "on the third day prior" and substitutes with "within seven days after". Such legislation provides employers with a greater opportunity to review the order and decide how best to proceed. In addition, CFIB supports the decision to grant Safety and health Officers the authority to remove a stop work order. This is a positive step, which will eliminate time-consuming roadblocks to employers who fulfill improvement orders in a timely fashion.

CFIB raises concern with the proposed amendments involving stop work orders and payment of employees. The proposed legislation that states "While a work order is in effect, any worker who is directly affected by the order is entitled to the same wages and benefits that he or she would have received had the worker continued to work". However, the legislation fails to provide the instances when the employee has caused the stop work order to be issued. CFIB urges government to remedy this potential situation by providing an exception in the event a stop work order is in place due to an employee's failure to follow safety procedures. We do not want government to implement a system that would create the potential for "paid vacations" by misusing safety legislation.

In addition, CFIB cautions that the legislation fails to consider the economic impact of long-term or permanent closures of work sites due to stop work orders. As some improvement orders may take a long period to rectify, causing business to shut down for a lengthy period of time, CFIB is concerned the existing legislation does snot permit employers to lay off staff while safety issues are being addressed. How long with an employer be required to pay staff in the event a workplace has been deemed unfit to continue operating?

Lastly, CFIB is cautious that introducing wage related issues under the Workplace Safety and Health Act will be confusing for employers as it is already covered under Employment Standards legislation.

Appeals

CFIB supports the time extension to appeal decisions of a Safety and Health Officer for improvement orders, stop work orders, discriminatory actions, or right to refuse

dangerous work. In addition, streamlining the appeal process will ease the burden for employers who wish to challenge an order.

With respect to decisions of appeals, CFIB questions the impact of the Labour Board's authority to utilize The Labour Relations Act to remedy unfair labour practices. The Federation is extremely uncomfortable linking Workplace Safety and Health violations with this piece of legislation.

Workplace Safety and Health Committee and Representatives

Under the existing WS&H Act, exception or limitation to cl.(1)(a) (2) reads "Notwithstanding clause 1(a), the Governor in Council may designate an individual business office or retail store, or classes of business offices or retail stores, or similar workplaces, where as safety and health committee is not required to be established until a number of workers exceeds 50." In the explanatory notes of the proposed amendments, this authority is extended to the Directory, which CFIB supports. However, the authority is not found in the text of the legislation, but simply in the explanatory notes. CFIB wants to ensure that this important piece of the legislation is not overlooked and the power to exempt lower-risk employers is not lost.

In addition, CFIB cautions the legislation involving multiple workplaces may be confusing to employers. As the Director may exempt an employer from having multiple committees, or require a prime contractor to establish more than one committee, CFIB fears this may create uncertainty for employers. The Federation is concerned employers may be penalized if they do not establish the appropriate number of committees.

CFIB draws attention to the requirements for co-chairs of committees. The legislation provides that the employer and employees each chose one representative. The concern arises over the definition of supervisors. Can a supervisor represent both management and workers?

Given that the government has promoted a consensus approach to safety in the workplace, CFIB opposes legislation which permits one representative of a health committee to make safety recommendations to employers. The proposed amendment states "If an employer receives written recommendations from the committee representative identifying anything that may pose a danger to safety or health, the employer shall respond in writing to the committee or representative no later than 30 days after receiving the recommendations unless the employer implements all of the recommendations within 30 days of receiving the recommendations." Providing opportunities for individual representatives to make recommendations take away from the consensus approach and the need for a committee. Therefore, CFIB recommends "or representative" be taken out of the legislation.

Discriminatory Action

CFIB opposes the proposed changes which would grant workplace safety and health officers the authority to deal with incidences in which an employee alleges that an employer or union has discriminated against the worker for exercising a right or duty under the Act. CFIB fears that officers may spend more time dealing with labour-related issues and less time on safety. The Federation supports the existing legislation where a worker must apply to the Labour Board to address such concerns. We caution the proposed legislation grants officers too much discretion in dealing with complaints and orders in this section. Lastly, we urge government to impose consequences for employees who file false complaints with the Labour Board or workplace safety and health officer. The proposed legislation reads: "If a safety and health officer decides that no discriminatory action was taken against a worker for a reason described in section 42, the officer shall inform the worker in writing of the reasons for that decision." While employees should have every right to file legitimate complaints, provisions need to be made for those workers who choose to abuse the process.

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Right to Refuse Dangerous Work

CFIB recommends government include a provision that exempts certain workers from the right to refuse dangerous work if it is a normal condition of employment. For example, firefighters and police officers are often put in dangerous work situations, however, this is a part of their day-to-day employment responsibilities. CFIB encourages appropriate safety training to assist workers who may deal with particularly dangerous work.

With respect to worker entitlement to be paid despite refusal to work due to dangerous conditions, CFIB urges government to include consequences for workers who may abuse this provision.

Power of Director to Obtain Information

With respect to the Director ordering the employer to conduct tests, current legislation provides any person upon whom a notice is served under subsection (1) may, within five clear days of receipt of the notice, appeal to the minister by stating in writing why such a notice should be set aside, varied, amended or suspended. CFIB supports the ability to appeal such notices and urges government to carry forward the existing clause to the new legislation, or provide an alternate appeal mechanism.

Also, CFIB is concerned with the wording of the following: "The director may, by order, require an employer to do the following at the employer's expense: (a) have tests conducted by a technically qualified person specified by the director; (b) give the director a report or assessment prepared by that person; and to do so in the manner and within the time period specified in the order." CFIB fears the wording in part (a) may be subject to misinterpretation and/or abuse. The statement "specified by the director" needs to be clarified. IT is unclear if the Director will set the criteria/standards of what is deemed a technically qualified person, or if the Director will determine the actual person conducting the tests. CFIB supports the use of criteria/standards to determine if a person is technically qualified, but does not support government appointed consultants.

Administrative Penalties

The Federation would like to restate our opposition to the use of administrative penalties. In a recent survey 46.4 per cent of CFIB members replied 'no' when asked if the use of administrative penalties would be an effective method of reducing workplace accidents, 28.5 were unsure and 25.1 percent said 'yes'. It is evident that the majority of business owners do not feel administrative fines would help to reduce workplace accidents.

CFIB challenges government to provide information that the use of administrative penalties reduces the number of workplace accidents. In addition, we request documentation outlining the type of improvement orders that have not been fulfilled and their link to accidents. We also note that the administrative penalties were not recommended in the consensus Review Committee report.

In addition, CFIB fears the use of administrative penalties may become a core

revenue source for Workplace Safety and Health. The Federation fears officers may be pressured to meet quotas or may receive incentives for writing fines. The use of administrative penalties may be abused by officers, which will come to an extreme costs to employers. Also, CFIB feels funding education programs through the use of administrative penalties sends a poor message to all Manitobans as the funding would decrease if compliance improves.

Also, it should be noted that Manitoba employers found guilty of grave workplace safety and health violations may currently face prosecution with a maximum fine of $150,000. The ability to prosecute is intended to serve as a specific deterrent to noncompliance for the individual charged, as well as a general deterrent to others who might otherwise choose not to comply with the legislation. Recently the government strengthened its capacity to prosecute employers through the hiring of a workplace safety and health officer who will act as liaison with Crown attorneys to enhance the province's ability to prosecute offenders. Therefore, CFIB recommends against the introduction of administrative penalties, as the government has recently increased its ability to punish employers who do not meet their obligations under the Act.

Lastly, CFIB notes that few jurisdictions in Canada utilize administrative penalties. British Columbia is currently reviewing their utility and Ontario limits the use of administrative penalties to the construction industry. It is important to note that Saskatchewan has resisted the use of administrative penalties despite attempts by unions to have them introduced.

Offences and Penalties

CFIB opposes the use of additional penalties to fund public education. The proposed legislation reads: "When a person is convicted of an offence under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, order the offender to pay the minister, in accordance with the regulations, an amount for the purpose of educating the public in the safe conduct of the activity in relation to which the offence was committed. Such a penalty may be required in addition to any other penalty that may be imposed under this Act." CFIB notes the Review Committee did not recommend additional penalties be imposed to fund public education, but a portion of the existing penalty be used for this purpose. CFIB supports the Review committee's recommendation and urges government to remove the additional penalty. Again, linking education funding to workplace safety and health offences sends a negative message to Manitobans.

Conclusion

CFIB has been pleased to present our members' views on this important issue. As stated previously, safety is a top concern of our members. The Federation supports the use of voluntary options to improve safety in the workplace and believes encouraging a safety culture is the most effective approach to improving safety. However, it is CFIB's position that the proposed amendment go beyond the scope of the Review Committee's recommendations. In addition, we fear that workplace safety and health officers have been granted far too much discretion in interpreting the legislation. It is also the Federation's position that the legislation does not provide consequences for workers who abuse it. Given that safety is everyone's responsibility, CFIB feels government should ensure all parties understand the legislation and are accountable if they misuse it.

CFIB is willing to participate in any further discussion or consultation on workplace safety and health. We thank you for the opportunity to present our members' views. Should you have any further questions or require clarification on any of the comments made, please feel free to contact us at 982-0817.

Shelly Wiseman
Canadian Federation of Independent Business

* * *

INTRODUCTION

With a membership of approximately 2,600 individual representatives from ore than 1,400

companies with a combined workforce of greater than 60,000 employees, The Winnipeg Chamber of commerce is the leading business association in the city of Winnipeg.

Our mission is *"to foster an environment in which Winnipeg business can prosper"*. An essential ingredient of a competitive environment, supportive of business growth and expansion, is an attractive labour climate founded on fair and balanced labour legislation.

Specific to the issue of workplace safety, The Chamber, in both its capacities as an employer and advocate for the business community, is committed to creating and maintaining a safe and healthy work environment. The Chamber was an active participant in the Workplace Safety and health public consultations, and subsequent meetings with the Minister of Labour and departmental staff to discuss the recommendations arising from those consultations.

While The Chamber has a number of concerns with the current proposed legislation, it applauds and embraces the 25% workplace injury reduction target. Chamber members strive on a daily basis to provide their employees with the safest work environment in Canada, and will continue to do so aside from any legislative requirements.

The Chamber, on behalf of our members whose business climate sensitive investments drive economic development and job creation in Manitoba, is please to submit the following concerns with respect to Bill 27.

Review Panel Recommendations Versus Bill 27 Amendments

The Workplace Safety and Health Review Panel prepared a report for government after substantial public consultation. The employer community as a whole has endorsed the recommendations of the consensus report of the Review Panel, in particular the target of a 25% reduction in lost time workplace injuries. Regardless of any legislative impetus, the business community is committed to reducing workplace injuries.

The government's response to the Review Panel report recognized the tripartite process and the consensus recommendations. Bill 27 incorporates the consensus recommendations appropriate for statutory inclusion.

Bill 27 however, goes beyond the consensus recommendations. Bill 27 has the potential of adding both confusion and additional costs to employers. Many of the proposed amendments have no explanation as to why they were added. They did not originate from the Review Panel document.

The Winnipeg Chamber of Commerce has undertaken a very detailed assessment of which new provisions are based out of the recommendations of the consensus document. The following amendments that are of greatest concern, that were not derived from the recommendations of the review committee include:

PAY DURING STOP WORK ORDER

36 (6) while a stop work order is in effect

> (a) any worker who is directly affected by the order is entitled to the same wages and benefits that he or she would have received had the worker continued to work; and
>
> (b) the employer may re-assign the worker to alternate work.

Inter-Provincial Comparison:

Four jurisdictions (Saskatchewan, B.C., Newfoundland and Canada) provide pay during a stop work order. Six jurisdictions (Alberta, Ontario, Nova Scotia, New Brunswick, P.E.I. and the Yukon) do not.

Of the four jurisdictions that do provide pay during a stop work order, two limit it–the federal government limits it to a shift, and B.C. limits it to the day of the stoppage and three working days thereafter.

Discussion:

There is a concern that the provision for pay during a stop work order is not limited. This would be particularly problematic if the business ceases operation or decided to permanently discontinue the activity that was the subject of the stop work order. This latter scenario could, and in fact has, occurred where the expense involved in complying with a stop work order outweighed the value that the work activity generated for the employer's business.

This issue could be remedied by adopting the limitations contained in either the federal or B.C. legislation.

We would endorse the three-day limitation as the most reasonable solution.

REFUSAL TO WORK

There are two issues in relation to refusal to work, the grounds for such a refusal (in particular the absence of a clause relating to dangerous situations that are normally connected to employment) and the repercussions of a 'bad faith' refusal to work.

Inter-Provincial Comparison:

Eight jurisdictions (Canada, Saskatchewan, B.C., Alberta, Ontario, Nova Scotia, P.E.I. and the Yukon) have some type of qualification that limits the right to refuse work to situations where the danger is not a usual feature of the work. Two jurisdictions (New Brunswick and Newfoundland) do not make the distinction.

Six jurisdictions (Canada, P.E.I., Yukon, New Brunswick, Ontario and Newfoundland) seem to allow some type of repercussion where the employee does not exercise this right in good faith. Four jurisdictions (Saskatchewan, B.C., Alberta and Nova Scotia) do not seem to provide for any such repercussions.

Issues:

There is a concern that Section 43 does not limit a refusal to work where the danger involved is a regular danger associated with the employment. As indicated, most jurisdictions recognize this qualification.

As well, there is a concern that there should be some type of repercussion if the right to refuse is exercised in bad faith. However, the repercussion cannot be such that a worker, who wishes to refuse to work because of a bona fide belief that there is a dangerous situation, declines to do so because of a fear of what will happen if it is shown that he or she was wrong. Therefore, there should be a high standard to meet in order to justify retribution against an employee that refuses to work due to safety issues.

Suggested Amendments:

43(7) An employee may not, pursuant to this Section, refuse to work or to do a particular work at a workplace of

> (a) the refusal puts the life, health or safety of another person directly in danger; or
>
> (b) the danger referred to in subsection (1) is inherent in the work of the employee.[14]

43.2(b) Where it is determined that the employee's refusal was not based on reasonable grounds that employee shall not be entitled to wages or benefits.[15]

Finally, we note that although section 43(4) authorizes "remedial action", it does not authorize the person required to inspect the workplace to order the employee back to work if no danger is found. We suggest that New Brunswick offers a good guide as to an appropriate protocol that should be developed for Manitoba in this regard:

> 20(1) Any employee who believes that an act is likely to endanger his or any other employee's health or safety shall immediately report his concern to his supervisor, who shall promptly investigate

[14] This wording largely reflects the wording used in Nova Scotia's Occupational Health and Safety Act, S43(9).

[15] This wording largely reflects the wording used in P.E.I.'s Occupational Health and Safety Act, S20(6).

the situation in the presence of the employee.

20(2) Where a supervisor finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall take appropriate remedial action or recommend appropriate remedial action to the employer.

20(3) Where a supervisor finds the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall advise the employee to do that act.

20(4) Where an employee has made a report under subsection (1) and the matter has not been resolved to his satisfaction, he shall refer the matter to a committee or, where there is no committee, to an officer.

20(5) Upon receipt of a referral under subsection (4), the committee shall promptly investigate the situation.

20(6) Where a committee finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall recommend appropriate remedial action to the employer.

20(7) Where a committee finds that the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall advise the employee to do that act.

20(8) Where a matter has been referred to a committee under subsection (4) and the matter is not resolved to the satisfaction of the employee, the employee shall refer the matter to an officer.

20(9) Upon receipt of a referral under subsection (4) or (8), the officer shall promptly investigate the situation and make his findings known in writing as soon as is practicable to the employer, the employee and the committee, if any, as to whether the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health and safety of any other employee.

20(10) Where, on a referral to an officer under subjection (4) or (8), the officer finds than an employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall order appropriate remedial action to be taken by the employer.

20(11) Where, on referral to an officer under subsection (4) or (8), the officer finds that an employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall advise the employee to do that act.

20(12) Pending any investigation under this section, the employee shall remain available at the place of employment during his normal working hours.

21(1) An employee's right under Section 19 to refuse to do any act is protected,

(a) if he has reported his concern to his supervisor under Section 20,

(i) until remedial action recommended by the supervisor under Section 20 is taken by the supervisor or employer to the employee's satisfaction, or

(ii) until remedial action recommended by the supervisor under Section 20 to do that act;

(b) if the employee has referred the matter to a committee under Section 20,

(i) until remedial action recommended by the committee under Section 20 is taken by the employer to the employee's satisfaction, or

(ii) until the committee has advised the employee under Section 20 to do that act; and

(c) if the employee has referred the matter to an officer under Section 20,

(i) until remedial action ordered by the officer under Section 20 is taken by the employer to the officer's satisfaction, or

(ii) until the officer has advised the employee under Section 20 to do that act.

DISCRIMINATORY ACTION SECTION 42(2) & 42.1(1)

Inter-Provincial Comparison:

Five jurisdictions (Canada, Ontario, Newfoundland, New Brunswick and P.E.I.) assign this issue to the board, while four jurisdictions (B.C., Saskatchewan, Alberta and Nova Scotia) assign it to the officers.

Discussion:

The basis for the concerns in relation to Bill 27 are echoed in Alan Winter's recent review of B.C.'s legislation:

"During my meeting with representatives from the WCB's Prevention Division, it was reinforced that the discriminatory action provisions fall outside of the expertise, culture and realm of the Prevention Officers. **The Officers' involvement in discriminatory action complaints was described as difficult; time-consuming; out-of-score; and very deeply involved into labour relations.** Simply stated, the Prevention Division believes it is being drawn into the labour relations issues of the parties through the guise of occupational health and safety."[16]

The Minister is pursuing a number of reforms that will place many new or expanded duties–duties that predominantly involve safety issues–upon the shoulders of our health officers. It is troubling that, on top of these increased demands, these officers may receive the additional burden of an issue that is predominately a labour issue and only marginally a safety issue and for which they have no training or expertise. Indeed, adding such a burden would undoubtedly be counter-productive, as it would diminish the officers' abilities to focus on the other reforms. Of course, the ultimate irony is that there are already Labour Standards staff at the Employment Standards Branch and the Labour Board who have experience in dealing with issues of discrimination.

The Workplace Safety and Health Review Committee in its Consensus Report recommended that safety and health officers investigate complaints of discriminatory action and "offer resolution". There is of course a great difference between offering a resolution and imposing one.

Suggested Amendments:

We would suggest that Section 42.1 be removed in its entirety. Alternately, it would be acceptable to amend Section 42.1 to provide for an investigative and mediation role for the safety and health officer while retaining the current role of the Labour Board as the adjudicator.

42.1(1) A worker who believe on reasonable grounds that the employee or union has taken discriminatory action against him or her for a reason described in Section 42 may refer that matter to a safety and health officer.

POWER OF DIRECTOR TO OBTAIN INFORMATION

Inter-Provincial Comparison:

Four jurisdictions (B.C., Ontario, Nova Scotia and the Yukon) have a similar provision; five jurisdictions (Canada, Alberta, Newfoundland, New Brunswick and P.E.I.) do not. Saskatchewan may or may not have it depending on how the general provision allowing officers to request 'information' has been interpreted.

Issues:

One cause for concern is whether the reform seeks to give the director the power to order a specific person or simply the type of person (i.e.

[16] "Core Services Review of the Workers' Compensation Board", March 11, 2002, at p. 318.

what qualifications the person should have) that should undertake the testing. Certainly Section 46.1(1) is worded so as to suggest that a specific person can be designated by the director. This is in marked contrast to the wording in the other jurisdictions, which is usually phrased as follows:

54(1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

> (f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the **expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide**, at the expense of the employer, a report or assessment by that person;[17]

As well, it appears that decisions under Manitoba's Section 46.1(1) are not appealable. This seems to be in stark contrast to every other jurisdiction that allows such orders to be appealed and needs to be changed.

On the issue of payment, it would seem that such testing could be delayed if an employer is not in a financial position to make the payment. It would also seem unfair to require an employer to pay for testing if he/she is not in violation of the Act and the testing does not reveal either a violation of the Act or any type of safety concern.

As well, there may be some dispute as the degree or sophistication of the testing that is necessary. Alternatively, the testing may confirm some but not all of the director's concerns. Therefore, it would seem that some degree of flexibility would be appropriate in ultimately apportioning any costs associated with the test.

Suggested Amendments:
Order to conduct tests

46.1(1) The director may, at the expense of the Department of Health and Safety, and within the manner and timeframe specified in the order, order than an employer:

> (a) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as listed in a schedule established by the Advisory Council or specified by the officer for the purpose of determining whether any biological, chemical or physical agent, material, equipment, machine, device, article, thing or procedure, in or about a workplace, conforms with this Act or the regulations or good professional practice; and
>
> (b) cause any tests necessary to the production of the report or assessment to be conducted or taken.

46.1(2) Upon receipt of a report or assessment made pursuant to an order under (1), where the director is of the opinion that the order was necessary as a result of a violation of a provision of this Act or the regulations, or the report or assessment reveals a risk to health or safety, the director may order that the employer reimburse the Department of Health and Safety for the costs of the report or assessment to a degree and over such period of times as is fair and reasonable.

39(1) Any person directly affected by an order or decision of the director may appeal to the board.

*This amendment deletes the reference that restricts appeals to appeals "under Section 37", and thereby opens a decision under 46.1 to appeal.

Further, a Schedule should be attached to the Regulations setting out the specific individuals or organizations that are acceptable to the director. This list should be prepared in consultation with the advisory committee.

ADDITIONAL PENALTIES SECTION 55(1)

Inter-Provincial Comparison:

Three jurisdictions (B.C., Nova Scotia and Newfoundland) allow for additional penalties, seven jurisdictions (Canada, Saskatchewan,

[17] S54 "Occupational Health and Safety Act:, Ontario

Alberta, Ontario, New Brunswick, P.E.I. and the Yukon) do not.

Issues:

The issue of alternative penalties was recommended by the Workplace Health and Safety Review Committee and, in principle, is not opposed by employers. There is, however, a concern about the wording. That being said, it is of note that, ironically enough, the wording currently proposed for Section 55.1(1) is almost identical to that used by the other three jurisdictions that have such clauses.

It seems clear that the intention of the Committee was to give a judge the discretion to specify that any part of a fine that is imposed be directed to workplace health and safety education–that is undoubtedly why the Committee used 'alternative' as opposed to 'additional'.

The use of the word 'additional' in section 55.1(1) suggests that once a fine is imposed another fine can be added on to support educational funding. This is problematic in two respects. Firstly, in determining what is appropriate for the 'initial fine', a judge is required to consider the circumstances of the offense (severity of harm caused, the nature of the breach, need to punish, et.). Once that is done, to simply impose an additional penalty so as to fund health education is, frankly, against the principles of justice.

Further, a judge will often look at the employer's ability to pay in determining the size of the initial award. If the initial fine takes this into account it is unlikely a judge will find any further ability to pay an 'additional fine'. Thus, the Commission's goal of ensuring that funds are directed to education will likely to defeated.

Proposed Amendments:

55.1(1)Where the court imposes a fine, the court my, having regard to the age and character of the offender, the nature of the offence, the circumstances surrounding its commission, and the public interest, order that the offender direct such portion of the fine as the court deems appropriate to the Minister, in accordance with the regulations, for the purpose of educating the public in the safe conduct of the activity in relation to which the offence was committed.

ADMINISTRATIVE PENALTIES 53.1

Inter-Provincial Comparison:

The only other jurisdiction with administrative monetary penalties (AMP) in relation to workplace health and safety is B.C.[18]

Discussion:

A number of concerns have been raised about AMPs:

a) It has been suggested that the government has not provided any substantiation to the claim that there is a 30% non-compliance rate for improvement orders. This is troubling and ties in with a general theme that there needs to be a better analysis as to what exactly is wrong with the system. For example, where does the 30% number come from? Are we sure they do not involve matters under appeal? Why have they not been complied with (confusion over wording, dispute as to merit of order)? Have these instances of non-compliance led to injury?

To put this in a broader scope, an analysis has to be done as to the injuries that did occur to figure out what the problems within the system are (i.e. How many accidents involve orders that were not followed up? How many accidents involved workplaces that had been inspected? How many accidents involved workplaces with health committees?).

The Review Committee did acknowledge that something had to be done to improve compliance but it was not able to recommend a specific solution. While the government has picked AMPs as the solution in this regard, it has not articulated why this solution was picked among the four that were offered.

[18] While extensive reviews are underway in B.C., to date the two Bills that have been introduced to not seem to address AMPs. It is understood that more Bills will be forthcoming which will remove AMPs in B.C. As well, it has been suggested that Saskatchewan looked at, and then abandoned, the idea of AMPs.

The Minister has recently presented a letter to MEC that indicates that "there is a connection between safety and health compliance and injury prevention'. With the greatest respect, this misses the point. The key issue is whether AMPs will enhance compliance and whether the type of compliance, if any, that AMPs would enhance would lead to improvements in safety or health.

b) We are not aware of any evidence that AMPs improve workplace safety.

Suggested Amendments:

The provisions in relation to AMPs should be deleted. Specific data should be gathered in relation to the cause (and effect) of the non-compliance with improvement orders. Then a solution should be crafted based on this information. The Advisory Council may be an effective vehicle for pursuing the specifics of this reform.

In the interim in non-compliance with an improvement order is a problem existing provisions allowing prosecution may be utilized.

PAYMENT FOR MEMBERS OF A HEALTH COMMITTEE

Inter-Provincial Comparison:

Seven jurisdictions (Canada, B.C., Saskatchewan, Alberta, Ontario, Nova Scotia and the Yukon) specifically link committee remuneration to committee meetings and 'carrying out functions as a member of the committee'. Here the federal system employs the broadest language:

S135.1(10) The members of a committee are entitled to take the time required, during their regular hours,

> (a) to attend meetings **to perform any of their other functions;**

Two jurisdictions (Newfoundland and New Brunswick) limit compensation to time spent in committee meetings. We could not locate any provisions in relation to this issue for P.E.I.

Issues:

While Section 40(11) of Bill 27 is entitled "Member paid while carrying out committee duties", the section states:

> A member of a committee is entitled to take time off from his or her regular work duties in order to carry **out his or her duties under this Act and the regulations.** The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all the time spent carrying out his or her duties under this Act and the regulations.

The actual wording of Section 40(11) fails to make a distinction between a committee member's specific duties under the Act as a committee member, and a committee member's general duties under the Act as an employee. This is of concern insofar as Section 40(11) allows a member to "take time off from his or her regular work duties" to carry out these activities. The ambiguity of the wording in Section 40(11) may lead to confusion.

Suggested Amendments:

That Section 40(11) be amended to reflect the wording used in most jurisdictions, namely:

> A member of a committee is entitled to take time off from his or her regular work duties in order to carry out his or her functions pursuant to the Act and Regulations as a member of the committee. The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all the time spent carrying out his or her functions pursuant to the Act and Regulations as a member of the committee.

Concluding Remarks

The Winnipeg Chamber of Commerce has stated its commitment to workplace safety and reacted accordingly. Employers welcome the 25% reduction target and will work towards achieving the goal quickly.

Many of the proposed amendments in Bill 27 however, are not likely to assist in achieving the objective and, in fact, may prove to be obstacles by diverting energy and resources into nonproductive disputes.

Further, many recommendations in the consensus report, which are reflected in the proposed legislation, involve increased burdens and cost to employers. The employer community has accepted these increased costs, where they have been identified in the consensus report, as furthering the objective of reducing workplace injuries. Nevertheless there is a cost involved and that cost is likely to be significant.

Accordingly it is appropriate to avoid costs that are not supported by an identifiable objective or a demonstrated need.

Loren Remilliard
Winnipeg Chamber of Commerce

* * *

Introduction

The Manitoba Employers Council (MEC), established in 1999, is the largest collective of individual employers and employer associations in Manitoba, including:

Alliance of Manufacturers & Exporters Canada
Canadian Council of Grocery Distributors
Canadian Federation of Independent Business
City of Winnipeg
Construction Labour Relations Association of Manitoba
Keystone Agricultural Producers
Manitoba Association of School Trustees
Manitoba Chamber of Commerce
Manitoba Fashion Institute
Manitoba Home Builders' Association
Manitoba Hotel Association
Manitoba Motor Dealers Association
Manitoba Restaurant & Foodservices Association
Manitoba Trucking Association
Mining Association of Manitoba Inc. (The)
Winnipeg Chamber of Commerce
Winnipeg Construction Association (The)

The mandate and role of the MEC is to develop consensus labour relations policy among the various employer associations, in addition to facilitating consensus nominations to an array of labour relations boards, agencies and committees.

The following outlines the position of the MEC with respect to Bill 27–The Safer Workplaces Act.

The Review Panel on Making Workplaces Safer prepared a report for government after substantial public consultation. The employer community as a whole has endorsed the recommendations of the consensus report of the Review Panel, in particular the target of a 25% reduction in lost time workplace injuries. Regardless of any legislative impetus, the business community is committed to reducing workplace injuries.

The government's response to the Review Panel report recognized the tripartite process and the consensus recommendations. Bill 27 incorporates the consensus recommendations appropriate for statutory inclusion.

Bill 27 however, goes beyond the consensus recommendations. Bill 27 has the potential of adding both confusion and additional costs to employers. Many of the proposed amendments have no explanation as to why they were added. They did not originate from the public hearings Review Committee document.

The MEC has undertaken a very detailed assessment of which new provisions are based out of the recommendations of the consensus document. The following amendments that are of the greatest concern, that were not derived from the recommendations of the review committee include:

PAY DURING STOP WORK ORDER

36 (6) while a stop work order is in effect

> (a) any worker who is directly affected by the order is entitled to the same wages and benefits that he or she would have received had the worker continued to work; and
> (b) the employer may re-assign the worker to alternate work.

Inter-Provincial Comparison:

Four jurisdictions (Saskatchewan, B.C., Newfoundland and Canada) provide pay during a stop work order. Six jurisdictions (Alberta,

Ontario, Nova Scotia, New Brunswick, P.E.I. and the Yukon) do not.

Of the four jurisdictions that do provide pay during a stop work order, two limit it–the federal government limits it to a shift, and B.C. limits it to the day of the stoppage and three working days thereafter.

Discussion:

There is a concern that the provision for pay during a stop work order is not limited. This would be particularly problematic if the business ceases operation or decided to permanently discontinue the activity that was the subject of the stop work order. This latter scenario could, and in fact has, occurred where the expense involved in complying with a stop work order outweighed the value that the work activity generated for the employer's business.

This issue could be remedied by adopting the limitations contained in either the federal or B.C. legislation.

We would endorse the three-day limitation as the most reasonable solution.

REFUSAL TO WORK

There are two issues in relation to refusal to work, the grounds for such a refusal (in particular the absence of a clause relating to dangerous situations that are normally connected to employment) and the repercussions of a 'bad faith' refusal to work.

Inter-Provincial Comparison:

Eight jurisdictions (Canada, Saskatchewan, B.C., Alberta, Ontario, Nova Scotia, P.E.I. and the Yukon) have some type of qualification that limits the right to refuse work to situations where the danger is not a usual feature of the work. Two jurisdictions (New Brunswick and Newfoundland) do not make the distinction.

Six jurisdictions (Canada, P.E.I., Yukon, New Brunswick, Ontario and Newfoundland) seem to allow some type of repercussion where the employee does not exercise this right in good faith. Four jurisdictions (Saskatchewan, B.C., Alberta and Nova Scotia) do not seem to provide for any such repercussions.

Issues:

There is a concern that Section 43 does not limit a refusal to work where the danger involved is a regular danger associated with the employment. As indicated, most jurisdictions recognize this qualification.

As well, there is a concern that there should be some type of repercussion if the right to refuse is exercised in bad faith. However, the repercussion cannot be such that a worker, who wishes to refuse to work because of a bona fide belief that there is a dangerous situation, declines to do so because of a fear of what will happen if it is shown that he or she was wrong. Therefore, there should be a high standard to meet in order to justify retribution against an employee that refuses to work due to safety issues.

Suggested Amendments:

43(7) An employee may not, pursuant to this Section, refuse to work or to do a particular work at a workplace of

(a) the refusal puts the life, health or safety of another person directly in danger; or

(b) the danger referred to in subsection (1) is inherent in the work of the employee.[19]

43.2(b) Where it is determined that the employee's refusal was not based on reasonable grounds that employee shall not be entitled to wages or benefits.[20]

Finally, we note that although section 43(4) authorizes "remedial action", it does not authorize the person required to inspect the workplace to order the employee back to work if no danger is found. We suggest that New Brunswick offers a good guide as to an appropriate protocol that should be developed for Manitoba in this regard:

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[19] This wording largely reflects the wording used in Nova Scotia's Occupational Health and Safety Act, S43(9).

[20] This wording largely reflects the wording used in P.E.I.'s Occupational Health and Safety Act, S20(6).

20(1) Any employee who believes that an act is likely to endanger his or any other employee's health or safety shall immediately report his concern to his supervisor, who shall promptly investigate the situation in the presence of the employee.

20(2) Where a supervisor finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall take appropriate remedial action or recommend appropriate remedial action to the employer.

20(3) Where a supervisor finds the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, he shall advise the employee to do that act.

20(4) Where an employee has made a report under subsection (1) and the matter has not been resolved to his satisfaction, he shall refer the matter to a committee or, where there is no committee, to an officer.

20(5) Upon receipt of a referral under subsection (4), the committee shall promptly investigate the situation.

20(6) Where a committee finds that the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall recommend appropriate remedial action to the employer.

20(7) Where a committee finds that the employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the committee shall advise the employee to do that act.

20(8) Where a matter has been referred to a committee under subsection (4) and the matter is not resolved to the satisfaction of the employee, the employee shall refer the matter to an officer.

20(9) Upon receipt of a referral under subsection (4) or (8), the officer shall promptly investigate the situation and make his findings known in writing as soon as is practicable to the employer, the employee and the committee, if any, as to whether the employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health and safety of any other employee.

20(10) Where, on a referral to an officer under subjection (4) or (8), the officer finds than an employee has reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall order appropriate remedial action to be taken by the employer.

20(11) Where, on referral to an officer under subsection (4) or (8), the officer finds that an employee does not have reasonable grounds for believing that an act is likely to endanger his health or safety or the health or safety of any other employee, the officer shall advise the employee to do that act.

20(12) Pending any investigation under this section, the employee shall remain available at the place of employment during his normal working hours.

21(1) An employee's right under Section 19 to refuse to do any act is protected,

(a) if he has reported his concern to his supervisor under Section 20,

(i) until remedial action recommended by the supervisor under Section 20 is taken by the supervisor or employer to the employee's satisfaction, or

(ii) until remedial action recommended by the supervisor under Section 20 to do that act;

(b) if the employee has referred the matter to a committee under Section 20,

(i) until remedial action recommended by the committee under Section 20 is taken by

the employer to the employee's satisfaction, or

(ii) until the committee has advised the employee under Section 20 to do that act; and

(c) if the employee has referred the matter to an officer under Section 20,

(i) until remedial action ordered by the officer under Section 20 is taken by the employer to the officer's satisfaction, or

(ii) until the officer has advised the employee under Section 20 to do that act.

DISCRIMINATORY ACTION SECTION 42(2) & 42.1(1)

Inter-Provincial Comparison:

Five jurisdictions (Canada, Ontario, Newfoundland, New Brunswick, and P.E.I.) assign this issue to the board, while four jurisdictions (B.C., Saskatchewan, Alberta, and Nova Scotia) assign it to the officers.

Discussion:

The basis for the concerns in relation to Bill 27 are echoed in Alan Winter's recent review of B.C.'s legislation:

"During my meeting with representatives from the WCB's Prevention Division, it was reinforced that the discriminatory action provisions fall outside of the expertise, culture and realm of the Prevention Officers. **The Officers' involvement in discriminatory action complaints was described as difficult; time-consuming; out-of-score; and very deeply involved into labour relations.** Simply stated, the Prevention Division believes it is being drawn into the labour relations issues of the parties through the guise of occupational health and safety."[21]

The Minister is pursuing a number of reforms that will place many new or expanded duties–duties that predominantly involve safety issues–upon the shoulders of our health officers. It is troubling that, on top of these increased demands, these officers may receive the additional burden of an issue that is predominately a labour issue and only marginally a safety issue and for which they have no training or expertise. Indeed, adding such a burden would undoubtedly be counter-productive, as it would diminish the officers' abilities to focus on the other reforms. Of course, the ultimate irony is that there are already Labour Standards staff at the Employment Standards Branch and the Labour Board who have experience in dealing with issues of discrimination.

The Workplace Safety and Health Review Committee in its Consensus Report recommended that safety and health officers investigate complaints of discriminatory action and "offer resolution". There is of course a great difference between offering a resolution and imposing one.

Suggested Amendments:

We would suggest that Section 42.1 be removed in its entirety. Alternately, it would be acceptable to amend Section 42.1 to provide for an investigative and mediation role for the safety and health officer while retaining the current role of the Labour Board as the adjudicator.

42.1(1) A worker who believe on reasonable grounds that the employee or union has taken discriminatory action against him or her for a reason described in Section 42 may refer that matter to a safety and health officer.

POWER OF DIRECTOR TO OBTAIN INFORMATION

Inter-Provincial Comparison:

Four jurisdictions (B.C., Ontario, Nova Scotia, and the Yukon) have a similar provision; five jurisdictions (Canada, Alberta, Newfoundland, New Brunswick, and P.E.I.) do not. Saskatchewan may or may not have it depending on how the general provision allowing officers to request 'information' has been interpreted.

Issues:

[21] "Core Services Review of the Workers' Compensation Board", March 11, 2002, at p. 318.

One cause for concern is whether the reform seeks to give the director the power to order a specific person or simply the type of person (i.e. what qualifications the person should have) that should undertake the testing. Certainly Section 46.1(1) is worded so as to suggest that a specific person can be designated by the director. This is in marked contrast to the wording in the other jurisdictions, which is usually phrased as follows:

54(1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

> (f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the **expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide**, at the expense of the employer, a report or assessment by that person;[22]

As well, it appears that decisions under Manitoba's Section 46.1(1) are not appealable. This seems to be in stark contrast to every other jurisdiction that allows such orders to be appealed and needs to be changed.

On the issue of payment, it would seem that such testing could be delayed if an employer is not in a financial position to make the payment. It would also seem unfair to require an employer to pay for testing if he/she is not in violation of the Act and the testing does not reveal either a violation of the Act or any type of safety concern.

As well, there may be some dispute as the degree or sophistication of the testing that is necessary. Alternatively, the testing may confirm some but not all of the director's concerns. Therefore, it would seem that some degree of flexibility would be appropriate in ultimately apportioning any costs associated with the test.

Suggested Amendments:
Order to conduct tests

46.1(1) The director may, at the expense of the Department of Health and Safety, and within the manner and timeframe specified in the order, order than an employer:

> (a) obtain a report or assessment from a person who possesses such special expert or professional knowledge or qualifications as listed in a schedule established by the Advisory Council or specified by the officer for the purpose of determining whether any biological, chemical or physical agent, material, equipment, machine, device, article, thing or procedure, in or about a workplace, conforms with this Act or the regulations or good professional practice; and
>
> (b) cause any tests necessary to the production of the report or assessment to be conducted or taken.

46.1(2) Upon receipt of a report or assessment made pursuant to an order under (1), where the director is of the opinion that the order was necessary as a result of a violation of a provision of this Act or the regulations, or the report or assessment reveals a risk to health or safety, the director may order that the employer reimburse the Department of Health and Safety for the costs of the report or assessment to a degree and over such period of times as is fair and reasonable.

39(1) Any person directly affected by an order or decision of the director may appeal to the board.

*This amendment deletes the reference that restricts appeals to appeals "under Section 37", and thereby opens a decision under 46.1 to appeal.

Further, a Schedule should be attached to the Regulations setting out the specific individuals or organizations that are acceptable to the director. This list should be prepared in consultation with the advisory committee.

ADDITIONAL PENALTIES SECTION 55(1)

Inter-Provincial Comparison:

[22] S54 "Occupational Health and Safety Act:, Ontario

Three jurisdictions (B.C., Nova Scotia and Newfoundland) allow for additional penalties, seven jurisdictions (Canada, Saskatchewan, Alberta, Ontario, New Brunswick, P.E.I., and the Yukon) do not.

Issues:

The issue of alternative penalties was recommended by the Workplace Health and Safety Review Committee and, in principle, is not opposed by employers. There is, however, a concern about the wording. That being said, it is of note that, ironically enough, the wording currently proposed for Section 55.1(1) is almost identical to that used by the other three jurisdictions that have such clauses.

It seems clear that the intention of the Committee was to give a judge the discretion to specify that any part of a fine that is imposed be directed to workplace health and safety education–that is undoubtedly why the Committee used 'alternative' as opposed to 'additional'.

The use of the word 'additional' in section 55.1(1) suggests that once a fine is imposed another fine can be added on to support educational funding. This is problematic in two respects. Firstly, in determining what is appropriate for the 'initial fine', a judge is required to consider the circumstances of the offense (severity of harm caused, the nature of the breach, need to punish, et.). Once that is done, to simply impose an additional penalty so as to fund health education is, frankly, against the principles of justice.

Further, a judge will often look at the employer's ability to pay in determining the size of the initial award. If the initial fine takes this into account it is unlikely a judge will find any further ability to pay an 'additional fine'. Thus, the Commission's goal of ensuring that funds are directed to education will likely to defeated.

Proposed Amendments:

55.1(1)Where the court imposes a fine, the court my, having regard to the age and character of the offender, the nature of the offence, the circumstances surrounding its commission, and the public interest, order that the offender direct such portion of the fine as the court deems appropriate to the Minister, in accordance with the regulations, for the purpose of educating the public in the safe conduct of the activity in relation to which the offence was committed.

ADMINISTRATIVE PENALTIES 53.1

Inter-Provincial Comparison:

The only other jurisdiction with administrative monetary penalties (AMP) in relation to workplace health and safety is B.C.[23]

Discussion:

A number of concerns have been raised about AMPs:

a) It has been suggested that the government has not provided any substantiation to the claim that there is a 30% non-compliance rate for improvement orders. This is troubling and ties in with a general theme that there needs to be a better analysis as to what exactly is wrong with the system. For example, where does the 30% number come from? Are we sure they do not involve matters under appeal? Why have they not been complied with (confusion over wording, dispute as to merit of order)? Have these instances of non-compliance led to injury?

To put this in a broader scope, an analysis has to be done as to the injuries that did occur to figure out what the problems within the system are (i.e. How many accidents involve orders that were not followed up? How many accidents involved workplaces that had been inspected? How many accidents involved workplaces with health committees?).

The Review Committee did acknowledge that something had to be done to improve compliance but it was not able to recommend a specific solution. While the government has picked AMPs as the solution in this regard, it has not articulated why this solution was picked among the four that were offered.

[23] While extensive reviews are underway in B.C., to date the two Bills that have been introduced to not seem to address AMPs. It is understood that more Bills will be forthcoming which will remove AMPs in B.C. As well, it has been suggested that Saskatchewan looked at, and then abandoned, the idea of AMPs.

The Minister has recently presented a letter to MEC that indicates that "there is a connection between safety and health compliance and injury prevention'. With the greatest respect, this misses the point. The key issue is whether AMPs will enhance compliance and whether the type of compliance, if any, that AMPs would enhance would lead to improvements in safety or health.

b) We are not aware of any evidence that AMPs improve workplace safety.

Suggested Amendments:

The provisions in relation to AMPs should be deleted. Specific data should be gathered in relation to the cause (and effect) of the non-compliance with improvement orders. Then a solution should be crafted based on this information. The Advisory Council may be an effective vehicle for pursuing the specifics of this reform.

In the interim in non-compliance with an improvement order is a problem existing provisions allowing prosecution may be utilized.

PAYMENT FOR MEMBERS OF A HEALTH COMMITTEE

Inter-Provincial Comparison:

Seven jurisdictions (Canada, B.C., Saskatchewan, Alberta, Ontario, Nova Scotia and the Yukon) specifically link committee remuneration to committee meetings and 'carrying out functions as a member of the committee'. Here the federal system employs the broadest language:

S135.1(10) The members of a committee are entitled to take the time required, during their regular hours,

> (a) to attend meetings **to perform any of their other functions;**

Two jurisdictions (Newfoundland and New Brunswick) limit compensation to time spent in committee meetings. We could not locate any provisions in relation to this issue for P.E.I.

Issues:

While Section 40(11) of Bill 27 is entitled "Member paid while carrying out committee duties", the section states:

> A member of a committee is entitled to take time off from his or her regular work duties in order to carry **out his or her duties under this Act and the regulations.** The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all the time spent carrying out his or her duties under this Act and the regulations.

The actual wording of Section 40(11) fails to make a distinction between a committee member's specific duties under the Act as a committee member, and a committee member's general duties under the Act as an employee. This is of concern insofar as Section 40(11) allows a member to "take time off from his or her regular work duties" to carry out these activities. The ambiguity of the wording in Section 40(11) may lead to confusion.

Suggested Amendments:

That Section 40(11) be amended to reflect the wording used in most jurisdictions, namely:

> A member of a committee is entitled to take time off from his or her regular work duties in order to carry out his or her functions pursuant to the Act and Regulations as a member of the committee. The member shall be paid by his or her employer at the member's regular or premium pay, as applicable, for all the time spent carrying out his or her functions pursuant to the Act and Regulations as a member of the committee.

While the above issues represent the critical areas of concern for Manitoba's business community, there are a number of additional changes that would enhance the effectiveness of the proposed legislation:

APPEALS

Providing Reasons For A Decision:

Inevitably, a failure to understand the logic of the decisions of those in authority will lead to contempt, either implicitly or explicitly, for the system. This is why the enforcement system for

workplace health and safety needs to emphasize communication.

Specifically, when a decision is given, whether it is by an officer, the director, or the Deputy Minister, there should be a requirement that written reasons be provided. Not only will this increase the chances that a decision is understood, it will enable those effected by those decisions to better understand whether they should appeal.

42.1(3) requires an officer to advise a worker as to his or her reasons if the officer does not find any discrimination. This is a good step but similar requirements should be imposed regarding other decisions.

Who May Present As A Party To An Appeal

Section 37(1) provides a right to appeal against the orders or decisions of safety and health officers. It speaks in terms of "A person **directly affected** by an order or decision of a safety and health officer..." Section 39(1) provides a similar right in relation to the decisions/order of the director. It states, "any person **directly affected** by an order or decision of the director..."

However, when Section 39(5) talks about an appeal hearing in front of the Board it says, "at the hearing, the Board shall give **any interested person** an opportunity to be heard, to present evidence and to make presentations." It is hard to understand the rationale for dropping the 'directly affected' requirement. This may, perhaps, be related to a desire to include unions in Board hearings, however, if this is the case unions could be specified as being entitled to be involved the Board hearing. There is a concern that Section 39(5) as currently drafted is simply too broad.

Other Jurisdictions:

Unfortunately, we were not able to find any clause regarding who may appeal and who may present during an appeal for Alberta, Saskatchewan, Newfoundland or New Brunswick. The Yukon does not discuss who may present at an appeal but it allows, "Any person aggrieved or any trade union aggrieved representing a worker aggrieved by a decision to appeal. . ."

Three jurisdictions, (P.E.I, B.C., and Ontario) provide a discretion to the Director (P.E.I.) or the Board (B.C. and Ontario), to decide who may present at an appeal. Two jurisdictions (Canada and Nova Scotia) do not specify who may present at an appeal but limit appeals to "...an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by an order or decision" (Nova Scotia) or "an employer, employee or trade union that feels aggrieved..." (Canada).

While a provision that allows a discretion is common and entails the added benefit of flexibility, given that emotions can run high in relation to health and safety issues, and given that a board may be reluctant to be seen as denying anyone 'due process' in such an atmosphere, it may be wise to have the legislation limit the scope of individuals that are afforded party status at an appeal.

It should be pointed out at this stage that being denied 'party status' is not the same as not being called as a witness. Given that the employer, the employee, the director, and any union for the worker are each entitled to call evidence, it is reasonable to think that any testimony that is truly relevant will be called.

Proposed Amendments:

There should be a requirement that the director must provide his or her reasons to the employer and employee when he or she decides not to hold a hearing [S37(3)], or decides to refer a matter directly to the board [S38(1)].

The requirement under Section 42.1(3) should be changed to require an officer to inform the employer and the employee as to his or her reasons when discrimination is not found. As well, when there is discrimination, the officer should be required to advise both the employer and the employee as to his or her stated reasons for finding discrimination. Specifically, we would suggest the following:

42.1(3) When a safety and health officer makes a decision in relation to whether a discriminatory action was taken against a worker

for a reason described in Section 42, the officer shall, in a timely manner, provide both the worker and the employer written reasons for that decision.

We also propose that: Section 39(5) be deleted in its entirety; Section 39(1) and 37(1) be amended to read "any aggrieved person"; and the definition section include a definition of "aggrieved person" that mirrors the Nova Scotia legislation:

"aggrieved person" means an employer, constructor, contractor, employee, self-employed person, owner, supplier, provider of an occupational health or safety service, architect, engineer or union at a workplace who is directly affected by an order or decision.

Concluding Remarks:

The Manitoba employer community has both stated its commitment to workplace safety and reacted accordingly. Employers welcome the 25% reduction target and will work towards achieving the goal quickly.

Many of the proposed amendments in Bill 27 however, are not likely to assist in achieving the objective and, in fact, may prove to be obstacles by diverting energy and resources into nonproductive disputes.

Further, many of the recommendations in the consensus report, which are reflected in the proposed legislation, involve increased burdens and cost to employers. The employer community has accepted these increased costs, where they have been identified in the consensus report, as furthering the objective of reducing workplace injuries. Nevertheless there is a cost involved and that cost is likely to be significant.

Accordingly it is appropriate to avoid costs that are not supported by an identifiable objective or a demonstrated need.

Paul Labossière
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