Fourth Session - Thirty-Fifth Legislature

of the

Legislative Assembly of Manitoba

STANDING COMMITTEE

on

ECONOMIC DEVELOPMENT

42 Elizabeth II

Chairperson
Mr. Jack Reimer
Constituency of Niakwa

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON ECONOMIC DEVELOPMENT

Friday, July 16, 1993

TIME — 1 p.m.

LOCATION — Winnipeg, Manitoba

CHAIRPERSON — Mr. Jack Reimer (Niakwa)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Downey

Mr. Alcock, Ms. Barrett, Messrs. Evans (Brandon East), Helwer, Laurendeau, Maloway, McAlpine, Mrs. Render, Mr. Reimer

APPEARING:

Conrad Santos, MLA for Broadway

WITNESSES:

Larry Baillie, Private Citizen

Barry Steinfeld, Manitoba Lawyers for Responsible Automobile Insurance

Jacob P. Janzen, Western Bar Association

Frank O. Meighen, Q.C., Western Bar Association

Mel Holley, Public Interest Law Centre

Gervin L. Greasley, The Winnipeg Construction Association Inc

Al Harris, Employers Task Force on Workers Compensation

John Lane, Canadian Paraplegic Association

Greg Rodin, Legal Rights Network

Chuck Blanaru, Private Citizen

Victor Schroeder, Private Citizen

Mary Ann Stanchell, Private Citizen

Frank Bueti, Private Citizen

Rob Hilliard, Manitoba Federation of Labour

Jerry Kruk, Canadian Automobile Association

WRITTEN SUBMISSIONS:

Dale Botting, Canadian Federation of Independent Business

George Creek, Assiniboine Insurance Brokers

Henry Enns, Disabled Peoples' International

Nancy Hallock, Manitoba Chronic Pain Association Inc.

Grace Harris, Private Citizen

Jennifer Jenkins, Private Citizen

Tamara McRitchie, Private Citizen

Guy Simard, The Nightingale Research Foundation

MATTERS UNDER DISCUSSION:

Bill 37—The Manitoba Public Insurance Corporation Amendment and Consequential Amendments Act

* * *

Mr. Chairperson: Will the Standing Committee on Economic Development please come to order. We have before us the following bill to consider, Bill 37, The Manitoba Public Insurance Corporation Amendment and Consequential Amendments Act.

For the committee's information, copies of the bill are available on the table behind me. It is our custom to hear presentations from the public before the detailed considerations of the bill.

I have before me a list of persons registered to speak on Bill 37. For the committee's benefit, a copy of the list has been distributed to each member. Also, for the public's benefit, a copy of the list is proposed on a board just outside the committee room.

At this time, I would like to canvass the audience and ask if there are any other persons present who would like to make a presentation to this committee this afternoon to Bill 37, who have not registered. If so, please give your name to the staff at the back of the room, and they will add your name to the list.

The committee has also received written submissions to Bill 37, and they are from a Mr. Dale Botting, with the Canadian Federation of Independent Business; Mr. Henry Enns, with the Disabled Peoples' International; and Grace Harris, private citizen. The copies have been distributed to committee members at the beginning of the meeting. Copies of these submissions will appear

at the back of the transcript of the committee's meeting.

From time to time, there has also been discussion regarding the committee meetings of limiting the time of presenters. Just as a matter of record, there was a committee held for the recognition of time restraints on one other bill this year, of 20 minutes, and the constitutional hearings were also 20 minutes.

At this time, we are not entertaining the aspect of time limits, but at the same time, I would like to make a point of the fact that I will remind any presenters of a 20-minute duration of their speech, and at that time, they can act accordingly. But we are not limiting time presentations. It is up to the will of the committee to revisit this subject possibly later on, or at a different time during the presentation period.

For that information, I would not like to—

Mr. Reg Alcock (Osborne): Just on a point of procedure here, I have received and discussed with the minister a request from, I believe it is, presenter No. 28, that he be allowed to move to the top of the list for personal reasons.

I would just like to ask the committee's indulgence to give leave for this one individual to move to the top of the order.

Mr. Chairperson: Is it agreed then that we will start then and call this gentleman first? [agreed]

I will then call upon Mr. Larry Baillie to come forth with his presentation. Do you have a written presentation, Mr. Baillie?

Mr. Larry Baillie (Private Citizen): No, I have scribbled notes.

Mr. Chairperson: Well, you can work with those then. Okay. You may begin.

Mr. Baillie: Just if you could bear with me for a minute. If you want to see scribbled notes, this would put a lot of people to shame.

First, let me introduce myself. I am Larry Baillie. I am 33 years old, a father of one, and was involved in a motor vehicle accident in Saskatchewan on May 30, 1990, where I sustained a head injury. I have settled my case with Saskatchewan Government Insurance last December.

I feel no-fault, as proposed, could have an effect on me if I was ever unlucky enough to ever be in another motor vehicle accident and also for other future Manitobans who might be in similar circumstances.

In the '50s and '60s, private vehicle insurance was the way to go. In the '70s and '80s, it was government insurance. Now in the '90s, it is no fault. I am sure in the near future or the next five to 10 years, it will be something else.

I believe the reasoning behind changing the current system is very correct. As a matter of fact, I believe the majority of Manitobans agree with changing the system, lawyers and special interest groups included. The system has to change, but how you get there is where I have disagreement, and I am sure many others.

This is my first time to ever present at a legislative hearing, so please bear with me. Also because of the head injury, I have an attention span of about two hours a day and I am about two hours right now. Hopefully, I am an hour and 40 minutes.

I am not here to cry sour grapes, although I have been motivated to present because of my head injury and because of my accident. I will try to keep my personal experiences out of it and will only mention them when asked after the presentation.

I think I have some good ideas and good insight because I have gone through the system. I will try to explain changes that I believe are more cost efficient to the Manitoba Public Insurance Corporation and the people of Manitoba than the proposed no-fault plan.

In a brochure I received in the mail from I believe it was Manitoba Public Insurance Corporation, it stated a high percentage of claims are for minor amounts of money. I believe it is approximately 80 to 90 percent of claims that are under $10,000, and some of these people have never missed a day of work.

My first suggestion is to eliminate these claims by legislating a policy that would eliminate claims under $10,000. You could say the first $10,000 is like a $10,000 deductible.

This is very drastic, but this bill is also very drastic, so further down you will see where the person with the long-term injury, and this is my concern, is somebody who sustains an injury that is not a two-year or three-year injury, it is somebody like me who has been told I will probably never be able to get into competitive employment, although I think my desire might prove them wrong, and I am

certainly giving it a shot. So in this case, you would only have to deal with the remaining 10 to 20 percent of the claims. You do not have to have a head injury to realize the amount that the government would save.

* (1310)

This would preserve the right to claim pain and suffering for people with more serious and permanent injuries. That is my big area of concern. Somebody who gets injured for a year or two, three, four or five years, sure it is going to have very significant effects on their life, but for somebody who is going to be injured for the rest of their life, it is going to have devastating effects.

Another process I would like to hit—I might skip and jump here, but I will try to be fairly fluent—is mediation. I believe in legislating a mediation process to deal with claims and do away with costly discovery hearings and court cases. I do not know anyone who has a pleasant thing to say about discovery hearings. It might be a routine for adjusters and lawyers, but it is often devastating to the injured person, and I do not know one injured person who has a pleasant thing to say about discovery hearings.

Mediation has proven to be very effective in other areas. Certainly in B.C., where they have used retired judges in the mediation process in the government insurance program out there, the reports I hear back have proven very effective.

One of the things I am going to skip and jump to is that in preparing my case I do not take any one side. I do not take the side of MPIC. I do not take the side of lawyers. Well, maybe I do take the side of the head injured.

I have talked to everybody. I have talked to adjusters. Because I have a hard time reading things, especially bills, I have heard from various amounts of people and gotten things interpreted. I seem to hope that in my presentation it will cover all areas and is not a biased report.

When you have a long-term injury or disability, you often go through depression, denial and lack of self-worth, to name a few. If one side is feeding on those vulnerable feelings, I feel it will really affect your progress in rehab. It has been proven that attitude really does affect somebody's progress in rehab. Some people might—I do not want to take a bow here, but I seem to think my attitude is not too bad. I seem to think I have made great gains because of that.

I am not here to tout my hat or anything, but when I sustained a head injury, I was told I could do nothing about my—one of the main things with a head injury is time and patience. It is great when you have a head injury to be told that. It really does not give you much hope for anything else. One of the things I did was I said, hey, I may not be able to control my head injury, but I can control my physical conditioning. I went from a size 46 to now, in a year and a half, a size 34 and lost 100 pounds. To me, that is motivation.

The appeal process, I would like to touch on this one since when you look at a head injured—I see the current appeal process that is proposed. I would have liked to have seen an appeal process in the current Autopac system as it stands. When you have a problem right now under the current system, you have no way of appealing, to my knowledge. You have no unbiased appeal. The only appeal that you can do is through the court system. I do not think the court system is the best way to go—as I said earlier, with mediation.

Let us look at this appeal process for a second. You have a head-injured person that has to argue his case, future and survival against a big corporation with an abundance of lawyers and very experienced adjusters that will get even more experience with the appeal process as it goes on.

What are some of the common problems a head-injured person faces? I would like to look at them: lack of insight, memory problems, poor concentration, poor planning, problem solving, talking excessively, temper outbursts, depression, inappropriate behaviour and impulsiveness. Who do you think the system favours? Certainly not the head-injured person.

Under Sections 79, 170, 172, 184 and 185, it says that under law and jurisdiction you can take your case to the Court of Appeals, or you can have it heard by a judge that will take it to the Court of Appeals. It also says that this new commission also will have access to legal counsel.

Of course, Autopac will have legal counsel. What happens to the injured person? What happens to the head-injured person? What is a lawyer to me? A lawyer is my advocate. A lawyer is not somebody that fights my court case. A lawyer is somebody that represents my case

effectively. A lawyer is somebody that interprets the law to me. Life is not fair, and it is the lawyer to tell you the unfair parts of life.

So on that part I think my lawyer in my case did a very effective job, although at his admission probably I paid a little bit more than what I should have, but I do not think I did because, had I not retained the lawyer that I had, I would not have had my voice effectively heard, and he did effectively hear my voice, and he did effectively represent me and my concerns.

I may skip back to this one, but another area I want to get into is, a person who is injured in a motor vehicle accident—this has to do with rehab—will go to his or her local MPIC office and put in a claim for vehicle damage and bodily injury. After the person leaves the MPIC office their course of treatment is guided by their attending medical practitioners and lawyer.

MPIC may order the occasional independent medical report or refuse to pay for certain treatment. However, the course of treatment is ultimately in the hands of the victim. MPIC should call the person in for an assessment by an independent rehabilitation consultant, especially when a head injury has happened. The earlier rehab the better that person will get back.

In my case I was on the Health Sciences Centre waiting list for two years. I went out and hired my own occupational therapist, I hired my own neuropsychologist and I started my own fitness program. Now, ladies and gentlemen, that is somebody that has a desire to get better. My main concern is not what I am going to get from an Autopac claim, my main concern is to get as better as I can.

I can honestly say, a year after my accident I was a turkey to my family. At last report, my wife loves me very dearly, and I was very close to losing that. I am also lucky I have a very understanding wife. When head injuries come into place, 90 to 95 and even higher percentages of all marriages end in divorce. So right there is a success rate that my wife should be proud about, because she hung in there. And that takes a lot of guts for somebody to hang in when somebody else is going through a lot.

In the case of head injuries, a delay in appropriate medical intervention may mean the difference between recovery and having a lifelong disability. I strongly encourage the use of independent assessments in order to ensure recovery and rehabilitation.

Now I would like to go on to something about proactive rehab. MPIC currently, right now, starting today, not 1994, should take a more active role in rehab, encouraging the injured to do their best to get started in rehab. The earlier the better, especially with head injuries.

Rather than wait for room on a hospital waiting list—in my case it was two years—encourage nonprofit boards where there is currently, like head injuries—a new board just came into effect called the Quality Choice Opportunity Ventures. Before then there was no community-based rehab for people with head injuries, so boards that help particular injuries, and head injuries is the No. 1 killer under the age of 44, ladies and gentlemen. MPIC should encourage those boards to set up rehab programs, because it is proven, as in head injuries, early intervention, as I repeat myself again, provides the best results.

A positive attitude is also very beneficial and positive encouragement should come from all parties—lawyers, adjusters, doctors—because everybody's first goal should be to get me back as good as I can get and to get other head injured back as good as they can get. This is a two-way street, ladies and gentlemen.

* (1320)

If the person is not following his or her rehab program and refuses to follow his or her rehab program, it should have serious results on his or her settlement. So I say, go both ways on this. You know, tell somebody, listen, if you do not get your act together and start getting rehab we are not going to be handing you money. We want to get you better. We do not want you sitting feeling sorry for yourself.

One of the problems I have is poor memory and concentration. At last count I have eight cans of oven cleaner. My wife tells me if I buy another can I am dead. I have six bags of croutons, just to name a few. Maybe before I go on any further, does anybody need any oven cleaner? I cannot count the number of times I have bought something, forgotten it or lost it. This is really frustrating. It is hard to keep a positive attitude on things when you do stupid things, and expensive.

Under this new proposed system I cannot see where I am going to recover that money that I lose

and that amount of times I buy roast beef and leave the roast beef on the kitchen table. It really worries me. It really concerns me.

Also, when you are injured you go to organizations to go get help, some very good organizations like the Manitoba Head Injury Association, like Independent Living Resource Centre. But in order to use their systems you are strongly encouraged to get memberships in their organizations.

So if I did not have a head injury I would not have to get a membership, so I would save money. This way they are encouraging people, in order to use their systems, to get it because in true honesty to these programs these are nonprofit organizations, and in the case of the Manitoba Head Injury Association get no government funding.

So maybe that is another suggestion for the government to look at. If you are going to impose no-fault the way it is, boy oh boy, do injured people need advocates. If we cannot get lawyers as advocates maybe we can get organizations we have get more funding where they can hire advocates.

Also, in talking to various people, and certainly in my particular case, although I was a Saskatchewan vehicle accident, there was involvement with MPIC but, really, you know, my case was settled with Saskatchewan auto.

It appears that once it is determined the injury will be a long-term injury, either over the year, and in my case it was about the 13- to 14-month mark, they really start to look at your claim with a microscope. They really do.

When I talked to other people who had less injuries that only went a month or two months or three months, anywhere up to a year, they did not quite look at it as close as they should. So my idea is, look at all claims with a microscope. If you are going to look at long-term injured, look at them all. Just do not look at the beneficial, financial things.

Abuse of the system does me no good. People that abuse the system through this bill are proving to hurt people that have long-term injuries.

I have another problem. Well, it is not really a problem. It is adjusters being investigators. Often bodily injury adjusters do check with the injured's employer and do have authorization to continue that investigation if necessary. It does not happen in all cases, but it happens. Some people will say it happens sometimes. Some people will say it happens frequently. So it all depends if you are talking to a lawyer or an adjuster.

How can an adjuster be nonbiased when they are investigating one of the claimants? You could have a special investigations unit handle all avenues of investigations. This way adjusters would be more impartial and, I feel, more fair.

In conclusion, if an adjuster is truly impartial, how can he or she be involved in investigating a claimant and still be impartial? This, I feel, would result in a fairer system and, I believe, a financial savings to MPIC because what happens when you have a biased adjuster, it just strengthens up both sides. They just go at loggerheads, and then a big settlement comes up. What does a big settlement mean to me? My attitude means a lot to me. What is going to get me better in rehab is attitude. Money is not going to recover any of the losses that I have gone through, but I certainly, on the other hand, do not want to be forced on social assistance because of my injury.

Another one, this should have been my first point. This is something that I just found out by reading the bill a couple of days ago. I am sorry for clouting you, but I would really like every member in this room to listen to what I have to say on this particular point. I do have a concern with how the bill is currently written when it comes to people with disabilities. People with disabilities can be and have proven to be very productive people to society and to their families. Even if they cannot return back to work, and even if they were injured in a motor vehicle accident, it would have the same devastating effect as somebody who did not have a disability before the injury than a nondisabled person.

I would like to give a scenario that I feel could happen. Let us say I was crossing the street with a healthy, unemployed father of one, when a drunk driver travelling at a high rate of speed runs through a red light hitting us both. Now this is remarkable, because we are all of a sudden both in a coma for seven days. We both sustain identical head injuries, which is also almost an impossibility.

The other guy, the healthy, unemployed gentleman-father of one, will receive income replacement indemnity, IRI, and after a waiting period—I forget what the waiting period is—he is entitled to the IRI benefits until he is sixty eight

years of age or deemed ready to return to work. I, on the other hand, will receive no IRI, as stated in Section 104 of Bill 37. He could also be entitled to Section 126, a lump sum indemnity for permanent impairment, but, because I had a head injury already, an existing head injury, he would probably receive much more money than I, although we have identical final results. Because I had circumstances before, and although we end up as the same—this concerns me. This really concerns me.

This section is also written in a very vague way. It does not clarify. Section 126 is what I am referring to, ladies and gentlemen. Section 126 says you can get as little as $500 or as high as $100,000. Now under those circumstances, wow, that is like a just an unbelievable scope there. Five hundred dollars would not even pay for three neuropsych assessments—or a neuropsych assessment, $500 would not even pay for it, whereas $100,000 is incredible. So where do injuries fall in this category? Stated in this bill, it does not clarify. Do you have to have complete paralysis and be on life support for the $100,000, or could you be a head-injured and have serious impairments for $100,000? So that is what I would like to see clarified.

* (1330)

I would like to also mention the driver. By the way, ladies and gentlemen, under what I can see from this no-fault insurance, the impaired driver that I feel has no right, has no financial right, if he was out drinking and driving—I am sorry, that is his responsibility—in my understanding, under private insurance, he would not get anything either.

He has injured me, ladies and gentlemen. He has ruined my life, but he has the same injury, same everything. He was making $54,000 a year. He now makes 10 percent less than that. Wow, is he ever making more money than I. Also, because he was healthy and because of his financial status, he will probably make a higher scope of money than I, an unemployed person—and all this for injuring me. I am missing something. I have the head injury. I am missing something.

I think that, when the bill was written, it was just an overlook, I really do. I really honestly believe it was just an honest overlook when the bill was written, but that is what concerns me on people with disabilities and I am disabled. The chances of my walking across a green light and not realizing the speeding vehicle, because of my lack of concentration and attention, is very great. Those things happen. I am sure you can hear case after case of head-injured people. I know of three in particular who were lucky enough to sustain extra injuries after their initial injuries.

Also, here is another problem I have with the current system as it stands now and not the no-fault system: father is driving a car. Father gets in an accident. Everybody in the car gets whiplash. Under the current system, the mother and the children can all sue father for whiplash. Let us say they did not miss a day of work. They could, in my understanding, let us say, settle for about $5,000 each. I think that is a loophole that should have been closed a few years ago.

I decided to make my presentation on Bill 37 when I received a brochure in my mail. It sounded very good, but in my personal experience it was anything but what I have experienced—that is the best part, to put it. Although I had a lawyer, I listened to a MPI—no, I do not want to get into that. That is getting into a personal experience.

In closing, I want to say that even though I did have a lawyer, I feel my lawyer represented me well—oh, I forgot another thing, too.

I would like to address what the new bill addresses is MHSC, Manitoba Health Services Commission and group insurance. Now I may have a misunderstanding on it, so you may just go "pfff", but please bear with me.

When I settled my claim, I had to pay Manitoba Health, I think, a little over $5,000. Under the bill, it is my understanding—although head-injured understanding—that the money would not be forwarded to Manitoba Health. Why do we not do that now?

Also, I think it was about $20,000 that I had to pay group insurance for what they had paid me in return. I had to pay them back. So if there is a way you can legislate the group insurance part, because I did not see that money anyway. That was sort of given to me and sort of not given to me—here you go, ha ha. It was given to me and not given to me.

What I am suggesting is that another way the government could save money is to legislate that the government keeps the money, not the group insurance companies.

Also, under some of the plans you can get 100 percent or 80 percent of your group insurance or 80 or 70 percent of your MPIC. Actually you have people with injuries that are being rewarded for being injured. Why should I get a rehab if I am being paid 150 percent of my salary? Why should I want to get better? That is what I am making.

In my case, that was not the case. In my case, under my group insurance plan, I could only make I think 70 percent or 80 percent. End that loophole.

One of the complaints I have heard from vehicle adjusters is that bodily injury adjusters do not generally deal with the general public. They mainly deal with lawyers. So why not open up the communication process? Rather than my lawyer saying, well, the adjuster said that and the adjuster saying, well, the lawyer said that, why not get me into the process where the adjuster can see my face, the adjuster can see what I am going through? If I think the adjuster has made a mistake, I am going to tell him or her.

Why do we not open up that process? So what you have is you open up communication, and the lawyer sits back and observes and the adjuster and the injured person do their thing. If the adjuster errs, I am sure the lawyer will bring it to their attention.

I have another thing called risk charges. If someone sustains a head injury that is proven could have been prevented if they were wearing a seat belt—ladies and gentlemen, I was not wearing a seat belt. That is probably one of the biggest regrets of my life. I do not get in or near a vehicle where I do not wear a seat belt, where I do not wear a helmet. My son is not allowed to go on a bike if he does not wear a helmet. Nobody here wants to sustain a head injury. Through personal experiences, please take my advice on that. If you are riding a bike and not wearing a helmet, wear a helmet. If you are riding in a car and not wearing a seat belt, you are silly, because you should do it.

I feel—

Mr. Chairperson: I will just remind you, the time is 30 minutes.

Mr. Ballile: Okay. Sorry about that. So because with the risk charges, if we can implement a risk thing under the no-fault to include those sorts of things—there is nothing under legislation that really deals with a legislated amount for not wearing a seat belt. It is under my understanding.

My final—I think it is my final point—is lawyers' rates. If you streamline the system through mediation, you do all these things. You make the system user-friendly. You adopt a mediation process. If you make the system user-friendly it will require less time of lawyers, so you could legislate a fair fee schedule based on the average hourly wage, let us say maybe $150, and have a risk charge, so lawyers will take all cases just in case a cases loses, let us say a 5 percent to 10 percent risk charge, not to exceed the 30 percent amount that most lawyers are signing for now.

A tariff of fees set out in the MPIC regulations or Court of Queen's Bench rules could be done. Less legal fees means it will give the victim a higher enough settlement; even though the victim earlier on took the $10,000 reduced amount that I said, he probably may even come out ahead in the long run.

The final thing I want to deal with is the 10 percent, and I will only take two minutes, Mr. Chairperson. In the brochure I received it says, no-fault will help the person with the long-term injury. The only benefit I see, which I applaud, I really do, I really applaud whoever wrote this up, is on unlimited amount on rehab. Wow, you guys need to take a bow for that one, but maybe it should have been in effect all the way along.

* (1340)

But when you offer a person 10 percent less than net after taxes, I have problems with that. The person will never make more than 10 percent than net. I believe probably every person on this panel hopes they will do his or her best job, and it will be recognized. You could get a promotion, you could get a job raise, you could become Premier or you might be offered a job that might offer you more money, but the injured person will always receive 10 percent less than net.

So why should the injured person have to be punished for being injured? I will always make 10 percent less than net, even though he or she will be facing one of the hardest challenges of their life. Rehab is definitely the hardest challenge I have ever had. I was making $26,000 a year in January 1990. My salary was changed to $20,000 a year. I was a salesman on the road. The remaining $6,000 was switched to an expense account where I received $500 tax-free every month, and it was presented from the company to save us more money, because we did have those travel

expenses. I know somebody might be snickering, $6,000 expense account, let me think.

Okay, so now you nail me 10 percent—or you do not nail me, you assess me—on my $20,000. I am actually making, my calculations may be off, but I figured it out to be about 34 percent of my salary, and here, ladies and gentlemen, I brought you the piece of paper that did say I made $26,000 a year, so I did bring it to show you that this is not a scenario that does not happen.

So in closing, I hope that you bear with me, and I am sorry for taking over 20 minutes, but you seriously look at all the recommendations that I have made, and if no-fault does come in, you really look at what effects it will have on the disabled people. We are already behind the gun. Our services are being cut. We are in a recession, I agree, but the money that we can save on this no-fault plan, if we do come through with it, maybe we can put it into boards organizing rehab programs, organizations like the head injury association, organizations like SMD. That also is an organization I use, and I feel is very helpful.

Thank you very much and have a nice day. I hear you have 70 more presentations. Good luck.

Mr. Chairperson: Mr. Baillie, thank you very much for your presentation. Would you be willing to take a few questions if there are any questions from the floor?

Mr. Baillie: Sure.

Mr. Chairperson: Okay.

Hon. Glen Cummings (Minister charged with the administration of The Manitoba Public Insurance Corporation Act): I do not so much have a question as to thank you for the points that you have raised. I believe a number of them are considered in the operations and the different facets of how the act will be implemented. I appreciate your presentation today, and we have people with us from the corporation plus members of the Assembly. Thank you for your presentation.

Mr. Baillie: You know, the only problem I see, Mr. Cummings, is I did not see it in the bill—are you Mr. Cummings?

Mr. Cummings: Yes.

Mr. Baillie: Oh, okay, I just wanted to make sure I was not calling you Mr. Smith when your name was Mr. Jones.

One of the things that I did mention, and what I would like to see is maybe at the end of the committees—I think you are going to have a lot of real good ideas and suggestions—is a whole cross section of people, people that have gone through this system picked from the lawyers, people that have gone through this system picked from MPIC, adjusters that know the faults of this system a lot clearer than me and you, somebody from MPIC, somebody from each political party, somebody from special interest groups, and sit down and see if we can work within this bill.

I believe that we have to make changes, but, like I said, I would hate to see us come through with the pure no-fault and in five years have to go back to the table and redo something over again. This is a very expensive process, I am sure, and I feel sorry for you guys. You are going to be listening to a lot of information over the next couple of days.

Mr. Alcock: Thank you, Larry, I appreciate the presentation today. I note that one of the written, in fact two of the written presentations are also from disabled people. One from Disabled Peoples' International, which is making much the same case that in many ways this bill discriminates against disabled persons. Have you been in contact with any other groups? I know you are with the head injury society group.

Mr. Baillie: Yes, I have, Mr. Alcock. When the president of the MHIA, I believe he is installing a septic tank today, saw the thing on the appeal process and at the time that I saw him, he did not know about—I had not read the legislation. He was really concerned, actually, and so concerned that I think he was almost thinking of making a presentation, although, I probably feel in that case it is too late.

David Martin from the MLPH, Manitoba League of the Physically Handicapped, is very concerned. He wants to make a presentation, but unfortunately they are putting a lot of energy on the home care thing. They are concerned, and the people they have heard from from other disabled groups are concerned that it took this long for us to get a copy of the bill. You know, we have heard presentations from the media, we have heard presentations from the lawyers, we have heard presentations from the group, but no disabled group thought this would affect us and so we never really saw the bill.

So I guess it is sort of lucky we were able to get a glimpse of the bill before we presented.

Mr. Conrad Santos (Broadway): One question, Mr. Chairperson. You say that almost 80 or 90 percent of all claimants under $10,000 you would rather eliminate, and if we do so by legislative fiat, are we not forcing them to the social assistance network?

Mr. Baillie: No, what I mean by that—I should have clarified it a little bit more—you would still give the person lost wages, so they would still recover lost wages. I am only head injured. I am not a lawyer and I am not a politician, but the part that concerns me is the people who never miss a day of work and get $5,000.

You know, the money I have got, although it may seem like a lot, I have to survive on it until age sixty-eight. I really have a problem with it, and if by any chance my group insurance kicks out and does not cover me—my group insurance is covering me—wow, I am really going to be hurt. I cannot get a job, whereas that person that is only affected for six months or a year or two years, hopefully he can have enough in the bank where he can be helped out.

This whole program, as proposed in this bill, has a serious effect, and I am not throwing out the baby with the bathwater, I am trying to make a suggestion, and we are going to have to tighten our belts and it is horrible. I would hate to see no-fault come into plan, but you know something is better than nothing.

Mr. Chairperson: Thank you very much for your presentation, Mr. Baillie. I will now call upon Mr. Michael Nickerson, Michael Nickerson. Not here. Mr. Barry Steinfeld.

We have a copy of your presentation, you may begin, Mr. Steinfeld.

* (1350)

Mr. Barry Steinfeld (Manitoba Lawyers for Responsible Automobile Insurance): Mr. Chairperson, members of the committee, my name is Barry Steinfeld. I am a co-ordinator for the unincorporated group of lawyers called Manitoba Lawyers for Responsible Automobile Insurance.

Before I commence my presentation, I have in my possession letters and petitions signed by several thousand Manitobans. I apologize for not being able to deliver this to the Premier (Mr. Filmon) and the minister responsible before today's hearing, but this hearing sort of crept up on us very quickly.

The signatures on petitions and letters from several thousand concerned Manitobans are requesting that the government and MPIC provide all the information that MPIC has with respect to the rationale for the introduction of Bill 37 and is also asking that this matter be slowed down, that they have the opportunity to consider all the information to be properly and fully informed so that Manitobans can decide what type of insurance coverage they want for themselves. Unfortunately, the minister or the Premier has not had an opportunity to respond to the letters or the petition.

Again, I apologize for the late presentation, but I think it is important for the committee to know that there are, at such short notice, several thousand concerned Manitobans about the process and the speed of the process.

As I indicated, Manitoba Lawyers For Responsible Automobile Insurance is an unincorporated association of lawyers with many years of experience in dealing with the present automobile insurance regime in the province of Manitoba, including the day-to-day operations of MPIC, dealing with adjusters, the legal department, and, of course, prosecuting personal injury claims in the courts of Manitoba.

Over the years members of our group have gained an appreciation of the present automobile insurance plan and can categorically state that the present automobile insurance scheme in Manitoba is one of the best in North America. This statement is corroborated by a statement made by the then-chairperson of MPIC, in the 1991 Annual Report, Acting Chairperson Ruth Konzelman, where she stated, and I quote: "The insurance protection provided by the Autopac program is among the best in North America." This is the acting chairperson of MPIC in 1991.

The Manitoba Public Insurance Corporation was created in 1970 to address certain concerns which the then-government had concerning the state of automobile insurance in the province: (1) to ensure that all motorists had adequate insurance coverage and protection; (2) to provide adequate and responsible insurance packages at reasonable premiums; and (3) to provide accident victims with fair and reasonable compensation, including those

drivers who are at fault and were disabled as a result of the accident.

As you can appreciate, our plan presently is called the no-fault plan, and it is a hybrid component of a tort system and a no-fault system. Over the past 20 years or more, MPIC has evolved to provide adequate insurance coverage at fair and very affordable rates in comparison to other major centres in Canada. I have attached to my brief a schedule—it should be B, not A; it is a study commissioned by the Legal Rights Network in January of 1993, comparing the 10 major centres and rural areas in some of those centres on insuring a 1994 Taurus, using all the same data and age of driver with the same driving record. The city of Winnipeg is ranked third lowest in Canada, behind Regina and Halifax, that is, as of January of 1993.

In the fall of 1992, the Minister responsible for MPIC, the Honourable Glen Cummings, stated that there would be public discussion and debate concerning the automobile insurance in Manitoba to determine what Manitobans wanted and required vis-à-vis automobile insurance. Without public discussion and debate, Bill 37 was introduced in the Manitoba Legislature, which represents a radical departure from the state of automobile insurance currently in place in Manitoba.

Bill 37 is based on a Quebec-style or model, total no-fault. MLRAI's position is that, before there is a radical departure from the nature and type of automobile insurance Manitobans presently enjoy, which is one of the best in North America, there should be public discussion and debate with all parties after being provided with all reports and studies which MPIC has obtained to rationalize the introduction of this, what I refer to, draconian measure in Manitoba.

MLRAI's position is that this legislation should not proceed without public discussion and debate and without giving Manitobans all the information so that they can make an informed decision as to the nature of the insurance package which they desire.

Furthermore, my group's position is that Bill 37 should not be introduced without all the regulations, as it is the regulations which define the act and which set out the blueprint for the day-to-day operation of MPIC under this new regime.

Bill 37 refers to the regulations in over 40 different sections or areas of the proposed bill. Because MPIC is the only automobile insurer available to Manitobans, any major change to the nature of the coverage and benefits should first be reviewed in an open public forum. And if Manitobans decide that this is the type of coverage that they wish, and plan that they wish in place, knowing all the pros and cons of such a plan, then legislation with the regulations should be proceeded with.

Without the regulations being introduced at the same time as the bill, MPIC, through the government of the day, would be able to make changes to the regulations without any legislative debate or review, but by simply an Order-in-Council. MLRAI's position is that this should not be rushed into, and all relevant data and information should be made public at this time.

If changes to The Municipal Act can warrant public hearings throughout the province of Manitoba where far fewer Manitobans will be affected by those amendments under The Municipal Act, then surely changes to The Manitoba Public Insurance Corporation Act, which will affect each and every Manitoba in this province, whether you are the driver, a registered owner, a passenger or a pedestrian, warrants close public scrutiny before legislation is passed in the House.

Furthermore, MLRAI's position is that making a radical change to a pure no-fault or total no-fault plan would not prove to be a simple solution to a complex set of problems. It is our view that motorists would lose more than they would gain from such a quick-fix solution.

By reviewing the history of the Quebec and Ontario no-fault plans, it is evident that their plans have not proven to result in or translate into lower premiums and, in fact, the drivers in both provinces pay substantially higher premiums than Manitoba motorists. Again, I invite you to look at Schedule B attached to my brief, and if you look at the cost of insuring a vehicle in Montreal, the same vehicle, it is $1,025. Vancouver is $1,213.60. Winnipeg is $806; Portage la Prairie, $625.

Furthermore, the price of premiums should not be the driving factor in selecting a type of automobile insurance system. There are many other issues that must be considered, including the price to relinquishing the historical right for an

injured person to sue for compensation for injuries and losses sustained as a result of the negligence of another driver.

The system has allowed for courts to take into account the unique circumstances of individual claimants, such as those like the previous presenter before the committee today, and to assess each case individually and separately, compensating victims for pain, suffering and losses that directly flow from the negligence of the other driver, which can be substantiated or corroborated, including the cost of medical care, loss of income, loss of future income and cost of future care.

A review of Bill 37 indicates that MPIC is trying to reduce the benefits to innocent accident victims in the hopes of controlling what it considers to be increased future costs by paying out less benefits to all accident victims.

It is my understanding that in Ontario, insurance companies posted profits of $750 million in the first year of the no-fault insurance plan. In Quebec, the provincial government has appropriated more than a billion dollars in surplus funds collected over the no-fault plan to help finance health care services, highway construction and improvement.

In 1992-93, the government of Quebec also transferred $275 million straight to general revenues. The only logical conclusion one can surmise from this state of facts is that premiums are too high and benefits too low, something that we are concerned may occur in the present plan being proposed by Bill 37.

It is also MLRAI's view that there are other ways to exact the same savings that MPIC is alleging it can achieve through a total no-fault plan. This, in fact, is corroborated by MPIC's own internal review which looked at other plans. It is my understanding that this plan reviewed five different ways of trying to save monies and therefore reduce premiums, and they all basically exacted the same savings as the no-fault plan. But it is my understanding, as well, that from this report, its aim was really to justify a total no-fault scheme.

* (1400)

The problem with a total no-fault scheme, in our respectful submission, is that there are several elements that one cannot control which affect increasing claims and therefore costs. One is the number of accident claims, no one can control that; and two, the cost of operating a no-fault scheme.

The difficulties in such a program can be readily found by comparing other no-fault types of schemes such as workers compensation schemes. This plan is analogous to a WCB scheme, which plans are basically in a great deal of trouble throughout Canada and the United States.

What has transpired since 1991, when Autopac was patting itself on the back and deservedly so, when in its annual report the then-chairperson stated that it offered one of the best plans in North America and one of the cheapest. One cannot look at things in isolation. We must look at the entire picture since 1991.

I am sure that there will be other speakers that will appear before you who are more qualified and able to analyze financial statements, but it is my understanding that in 1991, MPIC forgave the Province of Manitoba an undertaking to pay the balance of monies with respect to losses on general lines, and then consolidated the financial statements of general lines and MPIC, thereby MPIC assuming some $32 million of debt and general lines, which reduced MPIC reserves in excess of 40 percent.

The following year, MPIC was before PUB seeking an increase in rates. Furthermore, the winters since '91 have been harsher and driving conditions have been more perilous. In addition, the City of Winnipeg has changed its policy with respect to snow clearing and removal and is not clearing streets until 15 centimetres of snow has accumulated.

I have been a resident of Winnipeg all my life, and this past winter was the first winter I can remember ice and hard-packed snow built up on Portage Avenue throughout the winter months. In fact, between Christmas and New Year's there was a huge number of automobile accidents because of the conditions of the roads. These factors contribute to increased accidents, costs and claims. You do not have to be an expert in accident reconstruction, just your own personal experience as a human being living in this city will tell you that there has been a dramatic change in the last couple of years.

In addition, it would appear from the financial statements of MPIC that MPIC has managed to accumulate an additional $250 million of investments since 1987. Upon reviewing the data provided by MPIC in its discussion paper on Bill 37,

it would appear that no-fault claims under the current system are projected to increase by 59 percent over the next three years, while tort claims are projected to increase by only 20 percent over the same three-year period. By eliminating the tort component of the current system, it would appear that MPIC is concentrating on an area that is increasing costs greater than the tort system and thereby could be engaging in a perilous venture into no-fault.

Our group is also concerned that the total no-fault plan is shifting costs of health care from MPIC with respect to injured accident victims back on the backs of the Manitoba Health Services Commission and therefore the public. Total no-fault could also result in more losses in workers compensation and therefore increase premiums for employers resulting in further wage freezes, loss of employment or closure of businesses. I do not intend on reviewing in great detail in those areas, because I am sure that there will be speakers dealing with the impact on MHSC and Workers Compensation, but from a review of the plan and its impact, these are areas of concern our group does have.

A general review of Bill 37 clearly indicates a complete elimination of the right of innocent automobile accident victims to claim full compensation for all their losses and to seek redress, if necessary, through the courts. Instead, all accident victims will be treated the same and entitled to the following scheduled insurance benefits on a first-party basis.

Permanent impairment benefits: As you are aware, there is a maximum permanent impairment benefit of $100,000. An accident victim who is rendered a quadriplegic presumably will be entitled to the total amount of this benefit. Other accident victims sustaining permanent impairment will be entitled to claim benefits according to a schedule of permanent impairments to be contained in regulations which have not been produced with Bill 37. These charts are commonly referred to as meat charts, do not take into account individual differences vis-à-vis occupation and employment, education, et cetera. The more serious the permanent impairment, the greater the disparity between what the innocent accident victim would be entitled to claim for noneconomic loss under the present system and what he/she would be entitled to claim under the proposed total no-fault plan.

You can readily determine, by example, how this would impact. If you had an individual losing a hand, and it is my understanding that the schedule will provide for a sum of $25,000 I believe, if you were a bricklayer or a truck driver and you lose your hand, $25,000 is small compensation for the fact you will never be able to work at your occupation. Based on the act, you will then be deemed to have an occupation by an adjuster or found another occupation, and you will never recover your actual loss of income or future loss of income or future advancement potentials. Whereas if a lawyer loses his hand, if I lose my hand, I get the same $25,000. A lot of people may say, well, that is a good thing because that is one less hand of Steinfeld's in my pocket, but I can still continue practising law. That is the problem with this bill and with Bill 37, that it does not discriminate between the various differences and individuality of the claims and circumstances of the claimants.

Income replacement indemnities: The maximum available income replacement indemnity is based on 90 percent of net income to a maximum eligible gross income of $55,000 per year. In order to calculate entitlement to the maximum benefit, income taxes payable on gross income must be deducted along with UIC and CPP deductions. There is also a one-week waiting period that will never be recovered by the injured party.

I set out an example in my paper which is based roughly, closely on the average industrial gross weekly wage of Canadians. It is based on income of $500 gross per week. Under the present system such an individual is entitled to 70 percent of gross weekly earnings to a maximum of $350 per week. If a labourer with no dependants earning $500 per week is disabled, this labourer presently would be entitled to the maximum $350 per week. By the way, the $350 is nontaxable.

Under the proposed no-fault plan, a labourer would receive 90 percent of net weekly income after deducting income taxes, UIC and CPP. Based on calculations we have done, based on the tax tables and the CPP and UIC tables with the deductions, this labourer would then, under Bill 37, be entitled to $334 per week. That is less than what is presently being paid out under the present plan.

Now, MPIC is advertising that this plan is fair and adequate compensation for the average person. Well, this is an average person, I would submit, and

it clearly is not acceptable or fair, because that person will never recover the one-week waiting period and will never recover the 10 percent of net income that is being taken off him or her. So when you consider the fact that you lose the one-week waiting period, the 90 percent is really less than 90 percent.

MPIC is suggesting that Manitobans who wish to obtain additional coverage or protection can purchase private disability insurance. However, this would result in a two-tier system of insurance coverage, because those who could afford it would be able to buy the additional coverage if they could afford the premiums and if, by reason of age or health, they could quality for the additional disability protection. Disability insurance can only be purchased to replace existing income loss, not projected income loss.

* (1410)

In other words, if you are disabled in an accident, you are fixed in time under Bill 37 at that rate of income and at that rate of benefit. You cannot buy disability insurance on projected income. You cannot go to an insurance company and say, in five years from now my boss has promised me a raise. I am going to be a supervisor and I am going to earn $20,000 more a year income. I want disability insurance.

I have attached to my paper a quote. It is Schedule C from Provident Life and Accident Insurance Company. It is an individual noncancellable disability policy. We set it out as an example to highlight, even at the extreme end, someone earning or wanting to protect a gross income of $120,000 a year. If you look at what the annual premium is for an individual age forty-five for a monthly benefit of $10,000—

Mr. Chairperson: I just remind the member, it is 20 minutes.

Mr. Steinfeld: —the premium is over $8,000 per year. If you look age page 5 of that quote at the top where it says Benefits, male, age forty-five, monthly benefit is $10,000, the annual premium is $8,200; monthly premium is $698.95.

I would submit that if your gross income is $120,000, it is highly unlikely you would be able to protect your income with that kind of additional cost, bearing in mind that a lot of these people have mortgages, car payments and a family to raise.

This example also highlights a situation for small business people. Farmers whose gross income may be $120,000 but who live off and manage their farms on a gross income, their net incomes may be far less or may be no income at all. If your answer to a farmer who is totally disabled is, go out and buy disability insurance, and they look at his gross income of $100,000 or $120,000—well, a farmer is not going to be able to afford that premium, No. 1; and No. 2, assuming he can get an insurance company to insure him because they are a high-risk group, and assuming that person is qualified because he does not have some pre-existing health problem or physical problem such as a bad back, et cetera. So I think it is unrealistic for the corporation to say in selling this bill to Manitobans, well, you can go out and buy additional disability insurance.

There are problems under the bill with respect to students and men and women just embarking on their careers. Under Bill 37, the legislation proposes that a university student would be entitled to a maximum claim of $12,600 for every school year he or she misses to the date of scheduled graduation. Thereafter, the injured victim would be entitled to an income replacement indemnity equal to the average industrial wage in the province.

(Mr. Marcel Laurendeau, Acting Chairperson, in the Chair)

This individual will therefore never be able to earn an income anywhere near his or her potential, so if you have a person, a pre-med student or if you had a person in a business course or in a CA course, that person would never have their potential recognized if that individual became disabled. Furthermore, there is no way that such a victim can protect himself or herself against the devastating financial loss under the proposed scheme, because they cannot get disability insurance.

Same thing with a young person embarking on his or her chosen career, if totally disabled early on, he or she will only earn a percentage of the income that that individual was earning the year before the accident, notwithstanding his or her potential.

Seniors age sixty-five and older who happen to be unemployed at the time of their accident are not entitled to any income replacement indemnity whatsoever ever under this bill. Employed seniors 64 years of age or older at the time of the accident

will have their income replacement indemnity reduced by 25 percent after their first year of the accident and 25 percent yearly thereafter until the victim's sixty-eighth birthday, when that individual will no longer be entitled to any income replacement indemnity whatsoever.

My understanding is that more and more of us are working beyond age sixty-five out of financial necessity; this clearly discriminates against senior Manitobans because what I submit that you are saying to them is that their value in the workplace is not as highly regarded as those under sixty-four years of age. Their obligations to family, et cetera, are not being recognized or protected.

Temporarily unemployed accident victims: Under this no-fault proposal, accident victims will not be entitled to claim any income replacement indemnity whatsoever for the first six months after the accident, and after six months Autopac will be required to determine an employment for the claimant. Again, we have a problem with deeming occupations, and those of you who have been involved with Workers Compensation matters will know that this is probably the sorest point that employers and employees have with the system, the deemed occupation.

Two years after the anniversary of the accident, Autopac can determine a new employment for this victim, and if this employment is at a job that would pay less income than the job the individual had prior to the accident, regardless of the circumstance, this individual's income replacement indemnity will be terminated. The person will be entitled to make a one-time claim after one year after the second determination for employment for the difference between the net income from the previous employment and the deemed employment that Autopac finds for this individual. It is small comfort for someone who has left the workforce on a full-time basis to assist in raising a family, and if they have the misfortune of being disabled in an accident while they are so employed, to say to them, well, sorry, we are not going to recognize your future plans and your future potential capability.

I have already touched on the effect on farmers and small-business owners and those self-employed who will receive no compensation for pain and suffering and entitled to receive 90 percent of net income. How will these individuals, who require the gross incomes to operate their businesses, meet their liabilities, such as mortgage payments, payments on equipment, et cetera? Accordingly, these individuals stand to lose their farms or businesses and will receive no compensation under Bill 37 for the loss of their farms or businesses. This could very well translate into these individuals losing their entire savings and having to resort to assistance from various social service agencies.

Now, many of us may say, well, what are the odds? Many Manitobans may say, well, I have not been in an accident, so why do I care? I want lower premiums. Statistics are that there are 20,000 Manitobans involved in accidents every year, so that during our lifetime we are assured of being involved in at least one accident, and there are those who will be involved in catastrophic or devastating accidents.

Medical rehabilitation benefits and personal care expenses: Bill 37 is being promoted as providing unlimited medical rehabilitation benefits as well as personal care expenses, but there is a cap. It is $3,000 for attendant home care for those who cannot look after themselves. Under the proposed no-fault plan, MPIC will not be required to repay MHSC for such costs. This could amount to millions of dollars. We estimate approximately $8,000 yearly, and therefore it could be a shift of health care costs back to MHSC on the taxpayers.

* (1420)

The other problem with the bill is that an adjuster will determine what course of rehabilitation an individual may be entitled to, and therefore an adjuster who is working under orders from his employer to keep costs down and to hold the line is going to find the cheapest available course of rehabilitation that that adjuster deems appropriate for the injured individual, not the individual's doctor, not the individual's therapist, but an adjuster. What recourse does that individual then have? An internal review. Who is going to be the advocate for that individual? Who is going to pay when this individual has been disabled and is receiving 90 percent of net income and has got a family and mortgage and a bank payment? Who is going to be the advocate for that individual?

Based on our experiences in handling accident victims who have been severely injured, $3,000 per month is totally inadequate to provide home care for seriously injured accident victims, which would

result in these individuals having to be institutionalized, thereby creating a further strain on segments of government and condemning these people to lifelong institutionalization, impoverishment and denying them the opportunity of remaining in their communities and in their homes.

The death benefit: The minimum death benefit is set at $40,000 pursuant to this bill. There is a schedule in the bill which sets out the entitlement to death benefits based on gross income of the deceased and the victim's age. Dependants of a deceased victim are also entitled to claim, depending on age. Under the present regime, spouses and dependants of deceased accident victims are entitled to claim such amounts that will be sufficient to provide a net income stream equivalent to that which the surviving spouse and dependants would have enjoyed but for the fatal accident.

As well, the survivors are entitled to the claim for loss of guidance, care, companionship and training. By using the assessment and award made in a recent Manitoba Court of Queen's Bench case of Oleschak, the widow and two children received approximately $480,000. The deceased was a factory worker earning $9.40 per hour or $19,552 per annum. Under the proposed total no-fault plan, based on our calculations, this family would receive approximately $96,000. Clearly, this family would suffer severe financial hardship and ultimately would end up requiring assistance from government institutions, thereby creating a further demand on already strapped agencies.

Furthermore, by virtue of the definition of "dependants" in Bill 37, where if the deceased parent happened to be earning less than the surviving parent, the victim's children are not entitled to claim a death benefit. By virtue of the definition of "spouse" in Bill 37, where the surviving spouse has lived with the deceased for less than five years preceding the accident and where there are no children, the surviving spouse would not be entitled to claim the death benefit.

This clearly flies in the face of other legislation in this country which takes a more enlightened view to relationships amongst men and women in this country. Canada Pension allows a spouse who has been married, I believe, less than five years to a death benefit. You may argue, well, that is a contributory plan, but in effect, we are contributing to this plan. We pay premiums every year. Whether it is to register a motor vehicle or it is on your driver's licence, we are paying for this coverage.

Furthermore, the provisions in the act dealing with common-law unions clearly discriminate against those individuals in such relationships, and I would submit, not in keeping with other legislative coverages in Canada, again, the Canada Pension Plan.

Review and appeals: By virtue of Bill 37, MPIC has exclusive jurisdiction to decide any matter relating to bodily injury compensation arising out of motor vehicle accidents and also to review any such decision. An accident victim would be entitled to appeal any decision to the automobile injury compensation appeal commission, except for questions of law and jurisdiction to be decided by the courts, the court of appeal, on leave.

In other words, you have to go to a judge in the court of appeal for leave, and then that judge decides whether you can go further. An expensive process for an individual claimant who does not have the resources to hire counsel in such a proceeding. In all other respects, the decision of the appeal commission is final.

I would submit that there is a question as to whether or not this provision of Bill 37 is constitutionally valid as it takes away the exclusive jurisdiction under Section 96 of the Constitution Act for federally appointed judges to make such determinations.

MPIC has not published long-term forecasts dealing with costs and investment income. MPIC presently has, I believe, $750 million in reserves which will never be paid out in any one year. MPIC's financial situation does not appear to have suffered over the last five years. At the end of the fiscal year 1992, MPIC had total corporate assets of $747.5 million. This is an increase of some $332.8 million over five years, 80 percent. In 1987, MPIC had total assets of $414.7 million.

MPIC's increased assets were masked as a result of automobile premiums levied and collected for motorists exceeding the cash payments made on claims over the last five years, as well as interest earned on investments. It would be beneficial to all Manitobans if MPIC was required to provide complete and adequate financial reporting including forecasts regarding income earned on investments, et cetera.

It is evident that Autopac has proposed a radical change to its approach to automobile insurance in Manitoba. This change is being brought about quickly, backed with an expensive advertising campaign. We understand MPIC has committed $400,000 to this campaign without providing the regulations and financial forecasts and without sharing the rationale for rejecting alternative approaches such as tort reform.

More detailed information is required so that the public can make an informed decision as to whether they wish this type of coverage before the bill proceeds any further. Manitobans want and deserve this before a change is made to this insurance coverage. Presently, we are unaware of the coverage, the terms and the exclusions because there are no regulations introduced with the bill.

We are being asked to buy a policy of insurance with our eyes closed, trusting that this is what is in our best interests. As I indicated before, if the government feels that Manitobans should have an opportunity at public hearings to deal with changes in The Municipal Act or for remuneration and benefits of MLAs, surely they should be able to see the entire insurance package before it is ramrodded through the Legislature.

There is just one other point I would like to raise, and I have in possession, which I can pass around to the committee, a letter which emanates from the Honourable Mr. Jim Ernst's constituency office addressed to some of his constituents advising his constituents that the government has recently introduced legislation to implement no-fault automobile insurance and indicating that none of us are pleased when we have to pay more for automobile insurance, especially when most of us have not had accidents and, by and large, are not a burden on the Manitoba Public Insurance Corporation.

Well, again, here is a misconception that is being promulgated by a member of this Legislature, and that is that those who do not have an accident are not burdens to MPIC and those people who have an accident are a burden. But they are missing the whole principle and idea of insurance. You are paying money to protect you in the case you are involved in an accident, and the odds are, ladies and gentlemen, that in our lifetime each and every one of us will be in one or more accidents and have to look to our insurance coverage for protection.

He goes on to quote an astonishing rise in personal injury claims, 160 percent in the past six years and vehicle damage claims only increasing by 5 percent. Again, we do not know where he gets his information or what it is based on, and 16,000 claims were lesser injuries like bruising, sprains and whiplash. Furthermore, only 20 percent of the money—here is another one—paid out went for accident-related costs such as paying for medical treatment or loss of income for the injured Manitoban. The remaining 80 percent was eaten up by the legal costs and financial settlements made necessary by court rulings.

Well, in '91-92, only 30 percent of accident claimants had lawyers representing them—I am sure my friends from MPIC Legal can confirm this—in their personnel injury claims. Of all claims in '91-92, less than 1 percent proceeded to court.

So when people say it is the lawyers that have caused the system to increase in costs to Manitobans, they are wrong. MPIC does not pay the legal costs. MPIC makes a small token contribution, persuant to the Queen's Bench tariff, towards legal expenses. The client who decides to retain a lawyer—and only 30 percent of them in '91-92 had lawyers—makes their own arrangement with the lawyer as to how they are to be paid for their legal services. It is not Autopac.

Again, he talks about how victims will receive compensation for all medical costs. Again, that is not completely accurate because an adjuster will decide what they are going to be covering. Costs related to the injuries such as child care, lost school years or personal care costs, these benefits are guaranteed for so long as the injured party requires the compensation, for as long as an adjuster deems the person entitled to those benefits.

* (1430)

No-fault auto insurance will do the following. It says, No. 1, ensures everyone injured in Manitoba is adequately compensated. Well, in my example I used earlier of the labourer earning $500 a week in gross income and who is single with no dependants, you tell him that getting, under Bill 37, $334 a week compared to what he would get now, $350 a week plus his total loss of income once his claim is settled, you tell that Manitoban that $334 a week is adequate compensation.

Stabilized claim costs. Well, I do not know on what basis the honourable member says that this

will stabilize claim costs. Our experience with no-fault systems in North America, like WCB, indicate that those costs have not been stabilized.

If you look to Ontario and Quebec, this year, Ontario increased premiums by some $200 on average per motorist under their no-fault system. So how this no-fault plan will stabilize claim costs, frankly, I have not seen the data, nor am I convinced.

Those are my comments. At this time I would be pleased to answer any questions.

The Acting Chairperson (Mr. Laurendeau): Thank you, Mr. Steinfeld. At this time I would like to advise the committee that we have spent approximately 40 minutes on this presentation now.

Mr. Cummings: I am not going to go through a number of the points that you made. It seems to me, however, that I can only conclude that you think I just fell off a turnip truck with some of the figures that you have put in your presentation. I would ask that I be given the opportunity to put on the record, the amount of money that MPIC holds in reserve, first of all, is held there against existing claims and honouring premiums. That is not money that the corporation can freely do what it chooses with. The interest earned off of it, if in fact interest is earned, goes to help reduce the premiums for the existing program. Secondly, in your demonstration of a case on page 10, you cite the case of Oleschuk. You used the figure of $480,000 as his settlement. I presume that would be the same Oleschuk who was injured in 1985 and received judgment in January 1990 of this year or about 1990? Oleschak versus Wilganowski?

Mr. Steinfeld: Yes.

Mr. Cummings: The information that I have, and I invite you to correct me, is that in that judgment he did receive $492,844 for the wife, the son and the daughter. That judgment was and then in turn reduced by two-thirds because he was two-thirds at fault, bringing a subtotal of $164,000. It was then reduced for legal fees, at about 30 percent of the wife's award and 10 percent of the children's awards, bringing it down another $49,000, for a subtotal of $114,000. It was then reduced by tax gross-up and management of fee portion of the award by a further $33,191.44. The family ended up receiving $81,749.

By my calculation, under the plan that we have on the table today, that family would have received $43,500 for the wife; $31,000 for the son potentially and surviving daughter potentially $34,000, for a total of $108,000. I hope we do not leave on the record the impression that all the comparisons are of the magnitude that you have made. I really hope that I have not misinterpreted some part of those figures, but if that is in fact how the dollars flowed to the family, then I believe we have a program that is defensible.

Mr. Steinfeld: Mr. Minister, in no way do I think you fell off the turnip truck yesterday. The assessment example in Oleschak—you are correct, there was a problem with liability. The court found two-thirds against the deceased. We used Oleschak as an assessment before consideration of liability, how the court assessed what the family would be entitled to based on the present system.

(Mr. Chairperson in the Chair)

As far as the question of your calculations, there can be an argument as to when you look at the age of the dependent children as of the date of the accident or when the date the bill is proclaimed or as the date of the accident which could account for our difference of approximately, I guess, $8,000 or $9,000 or $10,000 between our figures.

Aside from the question of liability, the point I was trying to raise is that—forgetting about the liability issue—under the present system I use that comparison. As far as the reserves are concerned, Mr. Minister, my point is that the $750 million will never be paid out in any one year.

Mr. Leonard Evans (Brandon East): Just one question for the presenter. I would like to ask him, from his experience, what kind of compensation could an innocent party expect to receive from a court award if the at-fault driver had no insurance or no wealth?

Mr. Steinfeld: Well, under the present system there is a $200,000 maximum, where someone is uninsured or by reason is disqualified from coverage, that that would be available to an injured accident person. There is also the underinsured provision. If that person had underinsured coverage that they purchased then they would be covered under the uninsured provisions.

Mr. Leonard Evans: I would ask, Mr. Steinfeld, there are many cases where the court cannot award damages because the guilty party, if I can use that term, has no insurance or has inadequate

insurance so that there is not sufficient compensation provided for the family or for the victim of that accident.

Mr. Steinfeld: With all due respect, the court does not consider insurance coverage at the time it makes a deliberation about what an injured victim may be entitled to. That is a collateral issue that is dealt with between the individual and the insurance companies involved.

Mr. Jim Maloway (Elmwood): I have an additional question. How long does the average court case take to be settled?

Mr. Steinfeld: Again, it depends on the complexity of the injuries, whether there are issues with respect—and only 1 percent went to court actually—whether there are issues of liability. I cannot give you an average. From personal experience, it depends again on the nature of the injury. A case can, from start to finish, depending upon when it comes into your office, be resolved in three months, it can be resolved in three years or there are some cases that have gone on for five or six years. It depends on the nature of each individual case, but those individuals presently who have been disabled and are still disabled still receive their benefits, which are deducted at the end of the day if the matter does go to court or if there is a settlement with MPIC.

Mr. Maloway: I have not so much a question as a—well, perhaps it is a question. You say, Mr. Steinfeld, in your conclusions that MPIC has roughly $750 million in reserves. I do not want to defend the corporation here but just following the balance sheet of the corporation at the end of 1992, it had $747 million in assets. I want to point out to the presenter that the liabilities of the corporation are almost that high. In fact, if you were to liquidate the corporation at that point, it would only be worth about $41 million. That would be its retained earnings after 20 years of operation, so that hardly tells me the corporation can sustain a rough time in the future.

Mr. Steinfeld: This statement also does not deal with projected revenues and investment. It just so happens that the reserves seem to cover what their projected liabilities are, and we do not know how they arrived at that figure for projected liabilities. I mean, did they go to each adjuster and say give me a breakdown on each and every one of your files what you think may be paid out?

Without the backup, it is really meaningless, I would submit.

Mr. Chairperson: Thank you very much for your presentation, Mr. Steinfeld. Thank you.

At this time, I would like to make note that we have a person from out of town, and it is our practice from time to time that we will entertain presentations by people that have come a long distance to make a presentation. Is it the will of the committee to proceed this way.

* (1440)

Mr. Alcock: I agree that it is indeed the past practice, and I have no objection to proceeding in that way.

I do note that there is at least one other individual who is here today and who has been on the list to present who will be unable to be here after today should the hearings go on, be it as he has to leave town. So I would ask that he also be allowed an opportunity to move up the list.

Mr. Chairperson: At this time, what we will do is, we will hear the out-of-town presenter and then possibly try to accommodate the individual also later.

At this time then, Mr. Jake Janzen and Frank Meighen.

Mr. Jacob P. Janzen (Western Bar Association): Mr. Minister, members of the committee, my name is Mr. Jake Janzen. I and Mr. Frank Meighen, who is also here with me this afternoon, have been asked by the Western Bar Association to make a brief submission to the committee this afternoon.

The submission will fall into two parts. There is before you an approximately 10-page submission which we have prepared which I would propose to read to you. After that, I expect that Mr. Meighen may have a few words to add to the written submission which is presently before you.

Certainly, some of the material which we will be covering is material which has already been covered and will be covered by other speakers. I think that emphasizes the importance of the issues which are before this committee today.

The present scheme of auto insurance in Manitoba commonly known as Autopac was implemented in the early 1970s. It has remained virtually unchanged in 20 years. It has served Manitobans well. Our coverages, we understand, rank amongst the best in Canada, our premiums

amongst the lowest. The present scheme is a mixed scheme of insurance, that is, there is some minimal compensation available to all victims of auto accidents whether the victim is innocent or at-fault. Beyond that, the innocent victim, but not the at-fault victim, is entitled to claim compensation for all losses suffered as a result of the accident.

The root idea underlying the present scheme is to attempt to put the innocent victim, and I emphasize, the innocent victim, as best as the law is able, back into the position he or she would have been in were it not for the wrong done by another person through the auto accident. I should be compensated in full for damages caused by the wrongdoing of another. The burden of proving what this is rests with me, the innocent victim.

There is, and this is a bit of a digression, an opinion held in some quarters, this may be an opinion held by some committee members, I do not know, that the present Autopac scheme makes the innocent rich. A Brandon Sun editorial of some weeks ago expressed this view. This view, members of this committee, is wrong. Autopac has never spent a penny unless a judge or Autopac's own lawyers and adjusters were of the opinion that the monies were paid to compensate the innocent victim for losses suffered in the accident. If any innocent victim ever became "rich," because of Autopac compensation, then it is only because the injuries suffered by this victim were so horrendously catastrophic. No one could possibly wish to become "rich" in this way.

The system is not perfect. There are changes to it which might be needed, but there is no evidence that it is in crisis. The government of Manitoba bill introduced here, Bill 37, will, if passed, dramatically alter insurance coverages in this province. The changes proposed are extraordinary. Even if the present scheme were in crisis, which we do not believe that it is, but even if it were in crisis, the present proposals could not possibly be the answer to it.

We wish to describe only some of the reasons why this bill should not and cannot become the law in this province. In the course of the submission, we will make some simplifications, but I trust that none of the simplifications made will misrepresent the proposals contained in Bill 37.

1. The bill proposes a wholesale and across-the-board—with one exception—reduction in the compensation to be paid to innocent car accident victims. Across every imaginable category of personal injury from death to catastrophic disablement, to broken limbs, to whiplash, the bill proposes to pay the innocent less. Since the present Autopac scheme never pretends to do more than compensate the innocent victims for injuries suffered in the accident, the proposed bill represents a legislative guarantee that every innocent accident victim will have suffered a permanent uncompensable loss.

Make no mistake, Mr. Minister, and members of this committee, that if premiums are going to go down, or if costs are going to be saved, it is on the backs of innocent accident victims. I am going to give you some examples. Examples could be heaped up one after the other, but the principle is exactly the same.

Innocent victims working at the time of the accident, and who miss work due to the accident, can never recover the first week of earnings lost due to the accident. If the injury proves longer term, the innocent victim can never recover a further 10 percent of his or her net earnings lost due to the accident.

If the innocent victim was working and was over sixty-eight years of age at the time of the accident, then the victim can never recover anything for earnings lost, and it follows that one of the writers of this submission, Mr. Meighen—he may be too modest to say this himself, but he is in his eighties and still an active practising lawyer—could never recover for earnings lost if he were injured in an accident due to another's wrong doing.

If the innocent victim was not working at the time of the accident and is fortunate enough not to be permanently disabled, then the innocent victim can never recover any compensation. Some years ago, one of the writers acted for a four-year-old innocent claimant. She was a passenger in her father's car. The car was rammed by an idiot speeding driver. She suffered a fractured skull, was hospitalized for months and remained under doctor's care for years. Mercifully, this young girl has recovered completely. Under the present Autopac scheme, she has received compensation for the pain and suffering she endured, even though it did not prove to be permanent. Under the changes proposed by this bill, this young claimant would get nothing.

We challenge any member of this legislative committee to say to this young girl and to her family that that would be a just and proper outcome for her condition.

There is, we noted, and as we understand, an exception to the principle of guaranteed undercompensation to the innocent. The exception is damage to the car itself. If the other driver was at fault, then while you can no longer recover in full for the loss you suffer personally, you can still recover for the full value of the loss to your car.

Number 2, coupled with this reduction in compensation to the innocent is an increase in compensation to those causing the accident, an increase in compensation to the careless, to the negligent, to the dangerous, to all those who are hazards on the road to the rest of us. In fact, the principles of compensation for the at-fault driver are now to be exactly the same as for the innocent victims. This, we understand, is to be the trade-off. In exchange for guaranteeing innocent accident victims will be undercompensated, the bill is promising to increase the compensation to be paid to the negligent. Those devastated by another driver's negligence will now, not only have undercompensation to themselves guaranteed, but they can take comfort in knowing that the party causing the accident will enjoy identical insurance coverages to themselves.

Why is this? What is in this for the innocent victim? The answer, one surmises, is that the innocent will be spared the need to prove fault. After all, under the present scheme, the innocent victim must prove innocence. If this is onerous, if this is costly, if this is a challenge that cannot be met or that many cannot meet, then perhaps there is a genuine trade-off for the innocent rather than just simply a bonanza for the wrongdoer.

The fact is, however, that in the vast majority of cases, the proof of fault is not onerous. It is not costly, and it is a challenge easily met. Of all of the injury files of which these writers presently have conduct, fault is an issue in only perhaps 10 percent of them. Even here the issue is only that the otherwise innocent party was not wearing a seat belt at the time of the accident, and there will need to be a determination of the extent to which this failure contributed to the injury suffered.

* (1450)

In not a single instance is there an issue as to who was fundamentally at fault in the accident, and on reflection, it is surely obvious as to why the proof of innocence is not onerous or costly or challenging in most cases. We cite only two evident reasons: (a) the rules of the road are, in most instances, plain, as is who breached those rules; and (b) passengers, when injured, are not likely to be a party at fault.

We conclude that Bill 37 has no trade-off for the innocent. It is a straightforward gutting of their right to compensation. It is a permanent guarantee that innocent victims can never, in law, be made whole again.

The proposed changes eliminate an innocent victim's right to have disputes and disagreements adjudicated by an independent tribunal. Under Autopac, a victim who disagrees with a decision made by Autopac's adjusters or with an Autopac settlement proposal has the right to have the issue decided by a judge in Court of Queen's Bench. The court is trained in understanding the issues in the dispute. It has recognized rules and procedures which are fair to both victim and defendant, and it considers the issues independently and impartially.

The proposed changes will transform all this. Dispute and disagreements are to be referred to a commission. This commission, far from being independent from MPIC and impartial, will be an arm of MPIC. This commission, far from being trained, need bring no expertise to its task. It is simply appointed by cabinet, as we understand. The commission, far from having rules and procedures recognized to be fair to all, will simply make its own rules.

There can, in our view, be no underestimating the mischief that can and will be caused by this fundamental change. As a general observation, it is the mandate of insurance adjusters to pay as little as feasibly possible on each claim. It would be wrong to expect that MPIC's adjusters' mandate would be any different. Our experience is certainly that this is a mandate which is scrupulously pursued by MPIC's adjusting staff. Since the commission constituted under Bill 37 is an arm of MPIC and its staff, its mandate can only be expected to be the very same.

The mandate of the Court of Queen's Bench is to be impartial, fair and just, and I ask you, before

which tribunal is it that the innocent victim is more likely to get a fair hearing?

The mischief to be caused by removing the right to an impartial hearing in a court committed to justice and fairness is made the more conspicuous by two further features of the plan proposed in Bill 37: (a) the elimination of the injury settlement; and (b) the introduction of the new and sinister concept of, what I call, the concept of fault in recovery. That is not an expression found in the legislation or in the bill, but I will get to what I mean by that.

Under Autopac's present regime, an innocent accident victim's claim concludes in a settlement, sometimes court imposed, far more usually by agreement between claimant and Autopac. All losses, whether past or future, are rolled into one lump sum payment. Differences of opinion between the victim and Autopac whether about the extent of recovery, the cost of future rehabilitation, future job prospects, whatever, those differences of opinion are resolved and concluded in the settlement. When the payment is made, the relationship between claimant and Autopac ends.

Bill 37, as we read it, eliminates the settlement. Because it eliminates the settlement, the relationship between claimant and MPIC will only end if and when the injuries end, whether this be two months, two years, 20 years or a lifetime. MPIC will make monthly compensation payments according to its estimate of the claimants' ongoing entitlement to them. To make these ongoing estimates of entitlement, MPIC will, you can see, be obliged to police all claimants' progress for as long as this takes, whether two months, two years, 20 years or a lifetime. Policing the claimants' progress will give to MPIC an ongoing right to intrude into the private lives of these claimants and to monitor the details of these private lives. We conclude that a swollen bureaucracy will be needed to man this new policing function.

But further, and by means of the concept of fault in recovery, MPIC can, in the course of its ongoing policing function, simply eliminate the compensation altogether. Section 158 of the bill says that all those who do not "for valid reason" accept the medical advice, the employment program or the rehabilitation program dictated by MPIC, can simply be cut off compensation. Who decides what a valid reason is? MPIC does. And where does the innocent victim appeal this decision? To MPIC's own commission.

The writers have rarely had an Autopac case in which there has not at some stage been a disagreement between the claimant and Autopac inter alia as to the nature and extent of injuries suffered, as to the nature and extent of the recovery of injury, as to the nature and extent of the claimant's employment prospects, as to the nature and extent of treatment required. Very often these disagreements have at their base differences in the opinions of the claimant's doctors and health care providers, differences between the opinions of those people and the opinions of MPIC's own doctors.

Under the present scheme these disagreements have their resolution. They have their resolution either in a settlement in which each side makes its compromises or in a judgment made by an impartial tribunal, the courts. Under the scheme described in Bill 37 and the powers conferred on MPIC in Section 158, these disagreements will be resolved by MPIC eliminating compensation altogether. The victim may of course appeal, but to where? To the MPIC commission constituted under the bill.

We conclude that Bill 37 effectively eliminates any right to fair adjudication. Of course, that elimination of fair adjudication is not only for the driver at fault, but to all innocent accident victims.

This should sound familiar, some of it should at least. There already is a no-fault insurance plan in place in Manitoba. It is the Workers Compensation plan. Workers Compensation has some of the same features as created by Bill 37: only partial compensation for economic loss, no compensation for noneconomic loss, no right of settlement.

But Workers Compensation also has some features distinguishing it from Bill 37. The Workers Compensation appeal panel pretends, at least, to some measure of independence in that its membership shall at least include both employer and employee representation. Moreover, and crucially, establishing fault for injuries suffered in the workplace is well nigh impossible. In this respect, the workplace makes impossible exactly that which in most instances is obvious on the highway. That is establishing who was at fault.

So in the workplace there is a genuine trade-off for the victims of accidents. In exchange for a reduction in the level of benefit, there is the

elimination of the need to prove fault. That simply does not apply on the highway in our view.

Even so, Workers Compensation does not work to anyone's satisfaction, it seems. Until it does, we conclude that Manitobans should be opposed to any attempt to duplicate it in the auto insurance field.

As it is, in our view it is difficult to imagine a scheme of insurance which could more completely victimize the innocent than does the scheme in Bill 37. It ought not be become the law in this province.

Mr. Chairperson: Thank you very much for your presentation, Mr. Janzen.

* (1500)

Mr. Leonard Evans: I would just briefly thank Mr. Janzen for his presentation. I would like to ask a couple of questions similar to those that I asked to the previous presenter.

From you own experience, Mr. Janzen, what kind of compensation do you think an innocent party can expect to receive from a court award where the guilty person has no insurance whatsoever or no wealth to be awarded?

Mr. Janzen: Well, as I think the earlier speaker indicated, there is in place a $200,000 fund available in those cases.

Mr. Leonard Evans: I was wondering whether, Mr. Janzen—

Mr. Janzen: Just further to that, as the previous speaker also indicated, depending on whether or not the party not at fault had taken advantage of the underinsurance provisions of the present Autopac scheme, in fact the party not at fault might have the full $2 million coverage available to them, even though the party at fault carried no insurance, had carried minimum insurance and otherwise had no pecuniary resources.

Mr. Leonard Evans: Well, would Mr. Janzen agree that the present system can fail to compensate whatsoever some who are entirely innocent of negligence?

Mr. Janzen: Failing an example, Mr. Evans, I do not know how to respond.

Mr. Leonard Evans: I wonder if Mr. Janzen would answer the next question. Would you agree that most people who are found to be at fault in a vehicle accident are ordinarily careful drivers who made a mistake because of some momentary loss of concentration? This is observed by Judge Kopstein who spent a long time studying this matter.

Mr. Janzen: I would not be prepared to say. Clearly, there are a good number of accidents, to the honourable member, which are caused by momentary lapses. An awful lot of accidents are caused simply by people who, by habit of driving, speed, run stop signs, run red lights, have consumed alcohol. I simply am not prepared to say that the vast majority of accidents are caused by persons who are otherwise very careful drivers and suffer from a momentary lapse.

Mr. Chairperson: I will just point out that is 20 minutes.

Mr. Leonard Evans: One last question, Mr. Chairperson. I wonder if Mr. Janzen is aware of Section 159(1) where the indemnity can be reduced if the victim is convicted under various provisions of the criminal code.

Mr. Janzen: Yes, I am familiar with the section.

Mr. Leonard Evans: Including failure to stop at the scene of an accident and that sort of thing.

Mr. Janzen: Yes. To the honourable member, all that would do is be a means of reducing the compensation to the party at fault. That is no comfort to the innocent accident victim, Section 159.

Mr. Maloway: Mr. Chairperson, I would like to ask Mr. Janzen, since he made a statement or suggested that somehow no-fault systems do not seem to work, referenced the Workers Compensation scheme, whether he is aware that the program that this bill is modelled on, the Quebec no-fault program, has been around for some 15 years now and by all accounts seems to have worked quite well. No-fault systems are in place in New Zealand on a universal basis, Australia and several other countries, so I just wanted to draw your attention, sir, to the fact that they appear to have worked in other jurisdictions.

Mr. Janzen: Well, I will not quarrel with that honourable member's observation. I was relying on the Manitoba experience. The Autopac plan which we have, as my paper indicates, may need some changes. There is absolutely no basis whatever to suggest that it requires the wrenching wholesale changes which this bill puts before us.

Mr. Santos: Mr. Janzen, the real world becomes meaningful only when it is mapped into some kind

of pragmatic scheme or theory. It could either be the tort system, with all its principles and concepts, or a competing theory like the no-fault theory.

On the basis of the assumption that no person would willingly get into an accident, how can we talk then of the concepts that are imminent in the tort system when the theory itself is another theory that makes the concept of tort fees or negligence and other things irrelevant?

Mr. Janzen: Well, I would respond in this way, and this is a personal observation. I am a great admirer of the present mixed system which was introduced here in 1970. A pure tort system would have some very hard consequences in some circumstances. And our submission, a pure no-fault system, will also have some very, very hard consequences in many circumstances. In Manitoba, we are very lucky to have the mixed system which we do, which in fact, in our judgment, marries many of the better parts of both of the systems.

Mr. Santos: Even that resources for compensation, the pool of resources for compensation, to victims is limited in any system, do you think that a system which more or less prevents a diversion of these resources to other recipients, other than the victim himself, would be a better system in any case?

Mr. Janzen: I am not certain that I understood the question, but again, I would repeat that in my judgment, the present method of distributing the resources is a very satisfactory one compared to alternatives which are available.

Mr. Santos: If I was not clear, Mr. Chairperson, I am saying that under the tort system, the pool of compensations diverted a great portion of it to people who are not victims of accidents because the cost of proceedings had to be paid, the litigations had to be paid, and all these other expenses that go into the niceties of who is at fault and who is not at fault when the only principle is, is the victim injured, and should he be compensated?

Mr. Janzen: I have several observations to make in response to that. Point No. 1 is, and as I emphasized, in virtually no cases—there are exceptions, of course, but in the vast majority of cases, fault is not an issue. The resources of MPIC, the resources of the legal profession, are not directed to questions of fault analysis. Fault is obvious in most cases. Disagreements arise inevitably on questions of the nature and extent of injury. The impact of pre-existing conditions is where the focus of attention is.

I can also say to you, sir, based on my own personal experience, in not a single case which I have ever handled, has my client, after payment of my fee, had less than what they had, had they not come to me. Every innocent accident victim for whom I have ever acted, and I say this categorically to you today, the innocent accident victim was better off. They paid me, it is true, but they were better off for it.

Mr. Chairperson: Thank you very much for your presentation.

Mr. Frank O. Melghen (Q.C., Western Bar Association): Thank you for letting us speak a little early. We had very little notice of this hearing, and unfortunately, we had some other commitments in Brandon tonight. So we are very happy to be able to get out.

I was asked by the members of the Western Bar Association to make some representations, particularly in view of the fact that I have been some 60 years at the bar, and they, when reading the material, took some umbrage at the comments and the assertions as to the position of lawyers and the fault attributed to the lawyers in Autopac's problems.

Now, Autopac has issued the discussion paper emphasizing the no-fault aspect of the proposed plan, and they have issued a brochure entitled "Manitoba Motorists do not Want Higher Autopac Rates."

Well, neither do we, but on the other hand, doggone it, everything else is going up, and you have to face the fact that your costs are going to be up, and everybody, every voter in the province of Manitoba is driving a motor vehicle with very, very few exceptions, so they are all going to be affected by the situation.

Now, all of these publications have in them criticism of the fact that the courts by their judgments have established guidelines which lawyers use to settle compensation cases and that Autopac has been prejudiced and damaged by the wrongful decisions of the courts and the lawyers, and this is the real cause of Autopac's financial problems. I think you have to say this is an accurate statement of these brochures that have gone out, and members of the bar who have asked

me to appear do resent these criticisms of Autopac and the lawyers implicit.

* (1510)

We have a job to do. Everyone of you at some stage is going to come to a lawyer, and you hope to get good service, and that is all we have done.

Now, in the last month, the Supreme Court of Canada, in an Engel case, said in part: The objective of pecuniary damages is full compensation, although it is almost impossible to accurately evaluate future losses. The trial judge must attempt to put the plaintiff in the position that she would have been in had the accident not occurred.

Now, nobody could quarrel with that finding, and that is our highest court in the land who has said that and has said it since the beginning of this year. Surely any person who is injured in an automobile accident has the right to be and is entitled to be paid proper damages to be fixed by the courts of justice unless settlement can be arranged, and Manitobans must expect and should expect fair and full coverage from our own profit, nonprofit or corporation. If the rates have to go up, then so be it. If we cannot pay, then we should not be driving a motor vehicle.

It said in the brochures, you go and get extra insurance. Well, you have to go and get that from a private corporation. That private corporation is going to want a profit, and they are entitled to a profit on that insurance coverage. Now, why should we not say, all right, if we have to pay more for our Autopac coverage and no profit, so be it. I cannot see anything wrong with that.

I suggest that all the proposed legislation will be to the detriment of the public. They will have their benefits lowered unless they can afford to pay those large, additional premiums.

I again repeat that the public is entitled to the assistance of lawyers. They are going to have to go to lawyers anyway if there is a dispute between the adjusters, Autopac and the client. So you are not going to get rid of lawyers, regardless. I say Autopac has worked pretty well. Let us not tinker with it; if we have to pay more, let us do so.

Now, I just had two other things I wanted to say. Mr. Steinfeld talked about these regulations, and he pointed out that there were some 40 points, I think, in the proposed bill which would require regulations. Who in God's name at this point can say what those regulations are going to be? Some bureaucrat sets them up and whether they are fair or whether they are not, we are going to be bound by them.

Let us know something more about this. If we cannot read the doggone stuff, you are no good as a lawyer, because if you do not have it, and we do not have it, we have no idea what might be in the minds of those who might be establishing the regulations. For the Lord's sake, let us know something more about it before this legislation goes through.

There is one other thing that I do want to say. I have pointed out to you that we had notice of this meeting only at six o'clock last night. We called this morning to see whether this committee meeting was going to take place and were told that, we do not know. At 12:30 we called again. We do not know if the thing is called.

What I am getting at now is I think it is essential that in the consideration of legislation of this nature that affects every citizen of the province that meetings held at short notice of this kind are not appropriate, and this committee should schedule a properly notified meeting in Brandon so all the people that live in the western part of Manitoba can come in and make their thoughts known because Mr. Janzen and I are not representing all the people in the area, and we have no brief to speak for them. But there are a lot of people living in that area who are going to be directly affected by this legislation.

Please schedule a meeting for Brandon, and let them make their thoughts known. Thanks, Mr. Chairperson.

Mr. Chairperson: Thank you very much for your presentation, Mr. Meighen. Mr. Meighen, you are a well-known name in Manitoba and especially in Brandon, so thank you very, very much for your presentation, today.

At this time I would like to call on Lyn Charney. Lyn Charney? Mr. Mel Holley?

Mr. Holley, we do have your presentation. You may begin then. I am in possession of your brief, sir. As mentioned, there is no time limit, but I will remind you that we are trying to work in a time frame. If you would keep that in mind, you may begin, Mr. Holley.

Mr. Mel Holley (Public Interest Law Centre): Mr. Chairperson, it is a pleasure to be here today. If I could paraphrase Mr. Meighen, as a member of the

civil service, it is a pleasure to be appearing anywhere today. I will try and do as good a job as if I were paid for being here.

Let me begin by saying, Mr. Chairperson, that we felt as a Public Interest Law Centre, when we started working on this at the request of a number of clients who had not yet taken a position but asked us to do it, that it would be appropriate not to take a position on no-fault, but rather to critique the bill with the primary intention, I suppose, of trying to look at a piece of legislation and make what we felt would be constructive suggestions for improving it and reserving our criticism primarily for those things which we felt were fatally flawed.

In our executive summary, we said to you that there are two primary problems if this Legislature is going to pass the no-fault bill; we think there are a number of critical things that must be dealt with. No. 1 has been alluded to, and that is the fact that under any social benefit or compensation scheme, which is essentially what this is, much of the workings of it and much of the impact on the public will be determined by what is in the regulations.

For that reason, we are suggesting that the regulations be made public prior to their being passed so that we can all have a chance to see and comment on them. I cannot emphasize that enough, because in our practice at the Public Interest Law Centre, we deal with social benefit and compensation schemes and bureaucracies on a daily basis. The regulations are all important in terms of the public's interaction.

* (1520)

The second key point, and again I am dealing from our executive summary, is the speed at which the no-fault legislation has been introduced, put forward, and the inability, we think, of everyone from the public to the legislators to MPIC itself, to sit back and fairly look at how this is going to work. We have represented clients over the past number of years, and I have made submissions in which we have said our clients support no-fault, but a made-in-Manitoba no-fault and a no-fault that comes about after a significant period of time and study. I am not sure that we have that now.

Recognizing that what we have has good things and bad things about it, but because there are things which cannot and will not be fixed in this process because of the time constraint, our other primary suggestion, and I have dealt with it in some detail later in the brief, is that there be a mandatory review at the end of three years. When I come to that section we will actually tell you what we think should be contained in the review. We have also set out, in the Roman numeral pages, the recommendations, but I will begin by walking through the brief, bearing in mind the nontime constraint.

In preparing the brief, Mr. Chairperson, we have drawn on our experience in representing various consumer groups, primarily consumers as in the Consumers' Association, seniors and people with disabilities. The bulk of our work falls under administrative law, although much of it deals with human rights and constitutional law.

It is not our intent in this brief to discuss whether the tort system or the proposed no-fault automobile insurance system is preferable. Rather, we have assessed the proposed legislation in light of one of the principles stated by the Minister responsible for MPIC, the Honourable Mr. Cummings, in the Legislature on May 26. The one that we are referring to is: Compensation for actual financial losses, including coverage for medical, rehabilitation and other expenses. At the bottom of that, page 1 of the text, we have set out the rest of them.

Our brief contains a general overview of the principles behind no-fault insurance and a brief description of the various no-fault options that were available to the government when it chose pure no-fault. We also examined what we believe to be gaps and deficiencies in the income replacement indemnity proposal. I might say that we have been limited in our ability to comment on the claims procedure and the treatment of claimants as most of these matters will be dealt with in regulation or policy, and those regulations have not yet been published.

Again, like others who appear before this committee, we have some concern about the haste with which the legislation appears to be proceeding and particularly by the fact that much of the workings of the no-fault system, again, will be contained in the regulations.

Because of these various concerns and the fact that they cannot or will not be met by the time this legislation comes into effect, we have made two specific suggestions which we believe will be a

benefit to legislators, administrators and to the public.

Firstly, we have suggested that government publish in draft form the regulations which would accompany this act and allow a period of time for comment by interested parties prior to their being adopted.

Secondly, we have suggested that there be a statutory review by the Manitoba Public Utilities Board at the end of three years, at which point everyone will have had an opportunity to assess the actual workings and financial implications of the no-fault system.

Recommendation No. 1, therefore, is that after the passage of the act the government publish the draft of regulations which would accompany this act and allow for comment by interested parties prior to their being adopted. Just on that, Mr. Chairperson, if I may, we could not think of a problem that would arise from doing that, and we believe it is a matter of good public policy and may in fact lead to a small amount of work at the front end but perhaps some gain later on.

Recommendation No. 2: That there be a statutory review by the Public Utilities Board after three years. We have gone as far here, Mr. Chairperson, to set out what we believe to be the necessary and appropriate wording of an amendment which would allow for such a review.

Specifically, we are suggesting that the corporation initiate the review by filing on June 1, 1997, a report, a review of their experience, and we are suggesting that the report consider the following—the fairness and adequacy of the compensation available to victims under this part, rate and financial impacts experienced by the corporation and projected for the future as a result of the compensation scheme established under this part, the fairness and efficacy of claims administration by the corporation, the fairness and efficacy of the review and appeal procedures and such other matters as the corporation deems fit or the minister may direct.

We are suggesting a public hearing in a nutshell, Mr. Chairperson, because there has not really been, in our opinion, a thorough public process and that includes the process that we are going through now, that you go through as legislators. We think something more is required. We think that even if it were your intention to do it now, the information, frankly, does not exist now in which we can do it and come up with an appropriate made-in-Manitoba system.

Yes, we can look at Quebec, and, yes, we can look at some of the things that have happened in Ontario, but if we are going to have a system that is going to be the best possible system for Manitobans, which is our objective, then we do not think you have enough information or we will have enough information to come up with that system until after a period of time, and that is why we are suggesting the review.

We have looked at the principles behind no-fault. No-fault is essentially first-party insurance; that is, the insured person purchases coverage for injuries that may happen to him or herself in a car accident. The benefits are paid regardless of how the accident happens. By contrast, the traditional tort system is based on the idea the person at fault should pay for the damage he or she has caused.

The basic distinction between the two forms of insurance, as we understand it, is sort of an underlying difference in approach. The tort system seeks to determine who is responsible and to fix the costs of the accident accordingly, the notion being that the negligent driver must be penalized for not taking adequate care. The basic premise of no-fault, however, is that most accidents are simply that, accidents, and that it is futile to try and penalize wrongdoers.

We might suggest as well, that it is not appropriate in an insurance system to attempt to penalize wrongdoers and that the penalizing of wrongdoers in automobile accidents is more appropriately left to the courts and not to an insurance scheme that is intended to compensate people for actual loss. In short, the tort system is geared toward restitution and the no-fault system toward compensation.

The general purpose of no-fault, as we see it, is to avoid the unpredictable, lengthy and expensive aspects of the tort system, and instead, to provide compensation as soon as possible to anyone injured in a motor vehicle accident. Because it seeks to be all-encompassing, no-fault insurance operates on a set scale of benefits, while the tort system proceeds on the basis of individuals claims. No-fault insurance, therefore, tends to resemble a social benefits plan, especially when it is compulsory, as in Quebec, Manitoba and several

other provinces. The impact of the plan is obviously increased to the extent that no-fault restricts or replaces the tort system.

We looked at some of the options that were available to you in coming up with pure no-fault. We looked at add-on no-fault. In an add-on system, the no-fault component is essentially a supplement to the tort system, and that is what we have at the moment. Access to the courts is unrestricted. Those who cannot recover compensation for their injuries through the tort system are also given a certain amount of protection.

In some ways this might seem to combine the best aspects of both systems; however, the no-fault benefits payable under add-on schemes are usually quite limited. To provide full access to the courts and also extend no-fault benefits could mean an overall increase in cost. This is based on the literature review that we have done. Over time, obviously it could lead to premium increases, which is one of the objectives that you are trying to avoid.

Add-on is the most common type of no-fault in Canada as it exists in all the western provinces, the Atlantic provinces and the two territories.

We look at "threshold" or "modified" no-fault. In most cases in "threshold," access to the courts will be denied and compensation will only be available in the form of no-fault benefits. However, if the injuries are serious enough to surpass a certain threshold, the victim, if not at fault, is entitled to sue. It can be either a verbal or a monetary test of the seriousness of an injury that can serve as a threshold.

For instance, in Ontario the threshold as set out in the Ontario Insurance Act restricts the right to sue in cases in which the injured person has either died, suffered, and I quote, permanent serious disfigurement or sustained permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

* (1530)

The difficulty with threshold, although they reduce the number of cases, one of the problems is whether or not a person passes a threshold. Over a period of time thresholds tend to become eroded. Sometimes in a threshold system people will inflate claims to meet the threshold. Again, as I say, even in the few years since the implementation in Ontario, the interpretation of threshold has broadened to include a subjective test as to the effect of the injury on the victim.

Finally, we have pure no-fault, the system that is being proposed for Manitoba. Pure no-fault systems, usually limited to economic loss, avoid the uncertainty of the threshold system. In addition, because the costs associated with litigation are eliminated, insurers are able to offer a higher level of no-fault benefits.

In our review of the literature, we concluded that pure no-fault schemes are generally accepted to result in the highest level of savings of any type of no-fault plan, unless they are often recommended as a means of reducing or stabilizing rates. One of the drawbacks, however, with pure no-fault is that it removes the deterrent that the previous gentleman spoke of in the tort system.

There was a study in Quebec which indicated that after the implementation of pure no-fault there was an increase of 17 percent in automobile accidents and an increase of 6.8 percent in automobile fatalities. Based on that review of the literature, although inconclusive, I think there is a strong argument to be made that no-fault is a problem in that respect. However, in Manitoba, we think that there are already existing means of punishing bad drivers and having bad drivers pay for accidents which would offset the problem that arose in Quebec. As well, we understand that Quebec has now recognized this and is moving to a system which does something like that.

The other and perhaps the chief drawback of the pure no-fault system is that it replaces a system geared to the individual claim with a scheme designed to accommodate all claimants as efficiently as possible. The purpose of the no-fault system is to provide adequate compensation for all injured parties. In doing that it must invariably fail to take into account all the individual differences between claims. The degree to which a pure no-fault plan can provide a fair, efficient and affordable insurance scheme across the board without compromising the needs of those individual claimants who do not fit into the simplified categories is the measure of its success.

Now, not to suggest to you that this has all been background or an introduction, but it is on that basis, as well, that we have looked at the proposed system. Recognizing no-fault for what it is, it is from that point on that we say, how well does this

do it or, in effect, how well does it meet the test that the minister himself has set out, which is to say, fair compensation for actual losses?

In our view, Mr. Chairperson, there are groups of people whose needs for income replacement will not be met by the no-fault plan as it is proposed. These primary concerns addressed here involve seniors, young people and to a certain extent the self-employed.

I will begin by discussing the problems we have identified on behalf of seniors. The income replacement indemnity payable to seniors is phased out by 25 percent over four years. Section 99 provides for the reduction to begin at age sixty-five for those victims who are injured before the age of sixty-four. Victims injured at the age of sixty-five or over are, by virtue of Sections 100 and 101, entitled to an income replacement indemnity only if they were employed or receiving unemployment benefits or training program benefits at the time of the accident. According to Section 103, this indemnity is also phased out over four years beginning the year after the accident.

The policy of phasing out income replacement is apparently based on the assumption that most of individuals will retire at sixty-five or shortly thereafter and that they will be able to live on their pensions after that point. It is not an unreasonable assumption, but it is one which, like most assumptions, is based on an over-broad understanding and not taking into account individual circumstances which will arise. It effectively imposes mandatory retirement on persons who expect to remain in the workforce at full salary beyond the age of sixty-five. In some cases, an individual may not simply choose to continue working but be unable to afford to retire at the age of sixty-five.

Mr. Chairperson, on its face, a legislative proposal which imposes a reduction on income replacement, or effectively mandatory retirement, violates Section 15 of the Charter. There are a number of Charter cases, primarily in McKinney versus University of Guelph, where the Supreme Court has upheld mandatory retirement. There is, however, another case, the case of Tetrault-Gadoury versus Canada, which was a UIC case. The Supreme Court held that since mandatory retirement was discriminatory, so was the denial of unemployment benefits to those over sixty-five. There was an argument that the policy was based on administrative, institutional and socioeconomic considerations. This was found to be irrelevant since the adverse impact and not the intent is what constitutes discrimination.

The court went on to decide that discriminatory provisions could not be justified under Section 1 of the Charter. Although the objectives of the provision were sufficiently important, the means used to achieve those objectives were not found to be designed to do so with minimal impairment as required by the Charter of Rights.

The objectives of the provision struck down in Tetrault-Gadoury were similar to those which likely lie behind the phase-out provisions in Bill 37. Those objectives were, as we understand them, preventing those over sixty-five from receiving double compensation—in this case it would be accident benefits on top of pension benefits—guarding against abuse of the system by those who had planned to retire, and fitting the act in question within the general registrative scheme which provides alternative benefits for seniors.

In response the court held firstly that overcompensation could be prevented by subtracting the amount of pension received from unemployment benefits. It also maintained that it was no more difficult to prevent abuse of that system by seniors than abuse by any other group, and finally it held that the denial of benefits to those over sixty-five was not necessarily compensated for by provisions of the other acts. It said: There is no evidence to show that any other acts attempt to fill the gap by addressing the problem of 65-year-olds who must keep working because their pension is insufficient or because they do not receive a pension at all.

These responses could apply equally, in our view, to the provisions regarding seniors in Bill 37. We think it is a problem. The Manitoba Human Rights Code prohibits discrimination on the basis of age. On their face the proposed reduction and cessation of income replacement indemnities appear to violate the Human Rights Code. However, the existing code permits the Lieutenant-Governor-in-Council to make regulations prescribing distinctions, conditions, requirements or qualifications that shall be deemed to be bona fide and reasonable in respect of life insurance, accident and sickness insurance, et cetera.

In short, Mr. Chairperson, what we have here is a situation where the way the Human Rights Code is written, these provisions appear to constitute a violation of the Human Rights Code. However, there is a way around it through the Legislature, should the Lieutenant-Governor-in-Council decide to invoke that way around it. Even with that, though, it is our view that the provisions respecting the phase-out of the IRI for seniors do constitute a Charter violation, and we are not sure why that has not been dealt with or why that has not been given further study.

Another matter of concern regarding the treatment of seniors is the inability of a victim receiving an income replacement indemnity to continue his or her contributions to the Canada Pension Plan or to a pension plan available through an employer. Under CPP, a person who has been disabled for a portion of the contributory period receives a retirement pension based on the level at which they were contributing to the plan before they were disabled. If they had already been making contributions at the maximum level for the required number of years they would receive the maximum pension. Thus, those victims would not suffer a loss of their CPP, but they would lose the opportunity to contribute to other employer-assisted pension plans which might have a significant impact on the amount of pension they would ultimately receive.

The situation is more serious in the case of young earners who have just entered the labour force. A young person who had either not worked long enough or not yet reached a high enough salary to have contributed to the CPP at the maximum level for the number of years necessary, will only be eligible for disability benefits and eventually retirement pension based on the contributions he or she had made to that date. This pension would not reflect that the victim would likely have been making the maximum contributions in only a few years were it not for the accident. In light of the impact on pension building, reduction of income replacement indemnity after sixty-five is all the more serious, not only for today's seniors but for all of us who will become seniors eventually.

* (1540)

Mr. Chairperson, we believe that there are a number of means of accommodating individual victims over sixty-five which would impair their rights to a lesser degree, and might enable the act to survive a Charter challenge, or perhaps even prevent a challenge from being raised. For example, income replacement indemnities could be continued indefinitely but reduced by an amount of pension benefits received by the individual. Alternatively, the system could be tailored to allow an individual to give evidence that he or she would have continued working up to a certain age with a phase-out or cessation of benefits being adjusted accordingly. This would apply to MLAs who are in the House beyond sixty-five, to judges, to many lawyers and accountants, people who can demonstrate that in their occupation, normally they work beyond sixty-five. Therefore, Mr. Chairperson, we are making two specific recommendations.

Recommendation No. 3: The no-fault system be tailored to accommodate seniors who can show that they likely would have continued working beyond age sixty-five with a phase-out or cessation of benefits being adjusted accordingly.

Recommendation No. 4: That the corporation give further consideration to the issue of the loss of pension-building capacity and report back as part of the suggested mandatory review by the Public Utilities Board.

Mr. Chairperson, students and young earners are also identified as a concern. Under Section 88(1) of Bill 37, a student who suffers a debilitating accident will be able to receive a fixed indemnity up to the time that he or she had expected to complete his or her current program of studies. After that date, if still unable to work, the student is entitled to an income replacement indemnity computed on the basis of the average industrial wage, as provided in Sections 90 and 91. To give some indication of what this provides, the gross average industrial wage for Manitoba in 1992 was $488.55 per week or $25,404.60 per year.

A student who at the time of the accident was working or seeking work would be entitled by Section 89 to an income replacement indemnity based on the salary or benefits they were receiving at the time of the accident. Section 92 provides that a student eligible for income replacement under both Sections 89 and either of 90 or 91, receive the greater of the two.

If the student is able to work after the accident, but due to the accident is unable to find employment paying at least the average industrial

wage, Section 107 provides that an employment may be determined for him or her on the basis of his or her education, training and experience at the time of the determination. By virtue of Section 114, if the student still earned less at the determined employment than the amount used to compute the indemnity to which he or she was entitled before the determination, he or she would receive the difference.

In other words, the student income would be guaranteed at the level of the average industrial wage, or if entitled to an IRI under Section 89, at the level the student was earning before the accident, whichever is the greater. Considering, however, that the student would have been in school at the time of the accident, his or her income is unlikely to have been very high, certainly not as high as they would anticipate after their studies had been completed.

A student who was prevented by the accident from completing his or her studies or whose physical or intellectual abilities were affected by the accident in such a way as to disqualify him or her from the kind of employment toward which he or she was studying, would not be compensated for the loss of earning potential.

Similarly, young persons who had just started their careers are caught in the same position. Their income would be calculated on the basis of the income they were receiving at the time of the accident and would not be revised upward to reflect the increase in earnings they would have shortly realized had they been able to continue working.

Mr. Chairperson, the losses discussed in this section are not incurred at the time of the accident. They are economic losses which are projected over time. However, they are real economic losses nonetheless which in our view go without fair compensation under Bill 37. I think this violates the principle the minister has set out which is that there be fair compensation for real economic loss.

On the basis of that, Mr. Chairperson, our next recommendation, No. 5, is that the impact of the no-fault benefit scheme on young persons or persons just beginning their careers be referred to the corporation for further study and be part of the recommended mandatory review by the Public Utilities Board.

Economic losses affecting the self-employed, and in that category, I think we are including farmers. Self-employed individuals do receive an income replacement indemnity under Section 81(2)(a) of the bill. Additionally, Section 184 provides for reimbursement of the costs of hiring a replacement for a victim who has worked without remuneration in a family enterprise up to $500 a week for the first six months. However, there appears to be no provision in the bill for reimbursing a self-employed individual for the cost of hiring his or her replacement, since such an individual would not have been working without remuneration in the words of Section 134.

The cost of hiring a replacement would likely be paid out of the profits of the business. However, it may be difficult to find a replacement willing to work for a smaller share of the profits as the owner might have, and I think this is common for most people who own and operate a small business. I cannot think of anyone who owns and operates a small business who does not put in 10, 12, 14 hours a day or whatever it takes, and takes a very small amount back out of the business, particularly when businesses are just beginning.

In addition, the business or farm operation itself may fail or suffer a loss as a result of the victim's disability. While the victim would receive his or her income replacement, he or she would not be compensated for the loss sustained by the business or farm which may represent the loss of his or her personal savings.

We have cited a case here, Mr. Chairperson, the case of Dockx versus the Otter Dorchester Insurance Company. The Ontario courts recognized that a decline in net profits of a partnership as a result of a partner's disability was a loss of income. On the basis of that case, it might be possible to broaden the definition of income to take into account some of the business losses suffered by accident victims. However, loss of the assets as opposed to the profits of an individual's business or farm would appear to be recoverable only where the victim was lucky enough to be able to sell the business or farm before too great a loss was sustained.

Recommendation No. 6, therefore, is that the impact of the no-fault system on economic losses of self-employed victims be referred to the corporation for further study and be part of the recommended mandatory review.

Mr. Chairperson, I have a small point with respect to the first week of IRI. That is effectively a deductible, and, as such, there is a rational purpose to it. Our only problem with it, again, is that there are people who will fall through the cracks. There are two ways of doing it. You can reduce the deductible to three days, or you can find some way of looking at who gets what from another source and deducting that.

Recommendation No. 7: The waiting period be reduced from seven to three days. Recommendation No. 8: That the waiting period itself be given further consideration, and, again, be brought back for the mandatory review, and I think that was commented on in the Kopstein report as well.

Death benefits, Mr. Chairperson, you have heard some comments on, and I will try and be brief. It is the last lengthy section that I have. Death benefits, again, is an area where the differences between the tort system and the no-fault system are perhaps clearest. In the tort system, compensation may be claimed under a number of heads of damage including loss of financial support, loss of care, guidance, companionship, loss of valuable services, loss of inheritance, tax allowances or gross-up, and the cost of professional advice regarding investment. These are the variables. These are the heads under which you can claim damage.

The variables considered in setting death benefits under the no-fault plan are limited compared with those taken into account by the tort system. Under Schedule 1, for example, benefits are varied according to the age and income of the victim. The gross annual income of the victim is multiplied by a factor from one to five according to his or her age. This factor increases with the age of the victim from twenty-five to forty-five and thereafter decreases from forty-six to sixty-five.

Since the highest gross income that can be used in computing a death benefit is $55,000, the maximum death benefit that can be awarded will be 275 if the victim died at age forty-five. The minimum is set at $40,000. So, presumably, high-income earners would be expected to purchase extension coverage beyond that in the event of their death.

* (1550)

Mr. Chairperson, as I say, the benefits are set out by schedule. We have looked at it as best we can. The assumptions on which the schedules are based are fairly reasonable, given that similar assumptions about dependancy, remarriage, life expectancy are made under tort law and deducted as contingencies. The important distinction is that in tort law, evidence can be introduced to alter the weight given to such contingencies and an award can be appealed.

Under Bill 37 the amounts, although indexed, are fixed in every other respect. By contrast the tort system considers not only age and income of the victim, but the percentage of the victim's income spent on his or her family. It also takes into account the life expectancy of the spouse and the degree to which he or she was dependent on the victim's income. Contingencies such as the possibility of remarriage are also factored into the determination of the award. The closeness of the relationship between the victim and the spouse or dependants may also be considered in regard to compensation for loss of care, guidance and companionship.

Because more variables are considered in regard to a death benefits award under the tort system, the benefits can be tailored to the individual in a way that would not be possible under the no-fault system. There are, however, a number of drawbacks with the tort system, a number of points that have to be made. A contingency fee in the range of 30 percent is usually applied against the amount recovered by a successful claimant. The claimant's lawyers may receive this fee in addition to any costs ordered by the court.

Secondly, it is important to remember that basic third-party liability insurance in Manitoba is set at $200,000. If the negligent driver had not purchased additional coverage, and did not have enough money to satisfy the claim, the victim's family would only be able to recover up to the $200,000 regardless of the size of their claim.

I think this is the point that Mr. Evans was trying to make earlier with that $200,000 cap. You are stuck with it. So again, if a 30 percent contingency fee is applied, the amount received would only be $140,000.

Finally, an award made under the tort system would be reduced to the extent that the victim was found contributorially negligent. After what happened to Mr. Steinfeld, I am a bit reluctant to get into it. I have cited the same case here, although I

think my figures are closer to the minister's than Mr. Steinfeld's.

If you go to the next page, after page 26 in our brief, we have a table setting out the numbers that we have calculated in respect to the very same case. We came up with a difference, acknowledging the two-thirds at-fault. Our figure was $114.9, and under the no-fault we came up with $108.5. It appears to me on a quick look, and in listening, that the difference in our figure from your figure was that we did not do the tax gross up, but it is a little more accurate, I think.

The advantage of the no-fault plan appears to be that benefits are payable automatically. As a result, the survivors of an accident are given compensation when compensation is needed most rather than after years of litigation, as was the case in the Oleschak case that was cited.

On balance, Mr. Chairperson, it appears as though a comparison between the no-fault system and the tort system, which is what we undertook as part of our analysis, discloses two systems that are flawed in various ways. Again, that is one of the reasons why we decided to not take a position on this. It is for you as legislators to decide which of these two flawed systems you want. Our purpose in being here is to suggest to you how we can reduce the number of flaws in the system that you are going to.

Mr. Chairperson, that is what I have to say about primarily money matters, death benefits primarily. I want to talk about other forms of compensation. We have said to you that the system we are going to is more akin to a social benefit and compensation system. One of the characteristics of these systems, to varying degrees with almost every one of them, is the loss of personal choice. Right now, individuals who receive tort damage awards make countless personal choices about how to use those damage awards. In essence, they alone determine how money is used to enhance the quality of their life. They make decisions about the location and quality of housing, the type and extent of home care, personal care, and the quantity and quality of physical aids devices and medical supplies, mode of transportation and numerous other lifestyle choices.

They are accountable to no one for those choices, and that is one of the benefits of the tort system. You get your money; you do with it what you like. Under the no-fault system, as with any social benefit compensation scheme, this is not the case. Everything is decided by rules, by policies, by regulations, and ultimately by human beings that various people have referred to as bureaucrats. I think I probably am one, so I am not going to use that expression, but, as I said, the loss of personal choice is characteristic, to varying degrees, of all of these systems.

Bearing that in mind, we have suggested a number of principles that the system should be based on. We believe the system should be nonadversarial. It should facilitate ease of access. It should interfere as little as possible with freedom of choice, privacy and dignity, and it should provide victims and claimants with the best possible care, maximum compensation and the greatest possible opportunity for rehabilitation. It sounds a simple thing to say, Mr. Chairperson, but after years of dealing with Unemployment Insurance and welfare and Workers Comp and everything else, these simple principles, we think, should guide the development of regulations, the development of policy, and everything down to the training of staff.

If we are replacing the tort system with a system that is intended to provide lower rates for a system that affords protection and compensation and rehabilitation for people injured in car accidents, then there really is no reason why these principles could not and should not be made to apply to that system. In simple terms, the system has to be user friendly. It has to work for Manitobans, and not become, over a period of years, a system that Manitobans fight with as they do with the compensation system, the welfare system, the UI system. It simply should not happen.

Mr. Chairperson, a few specific comments. Personal care expenses, there is a monthly cap of $3,000, and we have been advised by the corporation that payment of any part of the $3,000 cap is only made after the existing provincial home care resources have been exhausted. The existing Manitoba home care system serves a great number of people quite satisfactorily. It has, however, been the subject of considerable criticism by some people with disabilities who depend on it for their ability to perform the functions of everyday living. Many of these complaints revolve around disagreements about the assessment of need, both

the amount of assistance and the quantity and quality of supplies used by an individual.

What we are talking about here is some pretty fine picky detail, and I bore you with it because I think this is what we are going to be talking about years down the road here. People who are involved in accidents, just like people who deal with home care now, spend a great deal of time, whether we like it or not, talking to home care supervisors and assessors about how many pads they need, how often the wheelchair needs to be fixed, this kind of thing. This will be the system that will replace the tort system, which I described as you get your money and you do with it what you want, and that is why we think this stuff is important.

A specific concern raised by our disability clients is that a determination made by the home care system will be strong evidence in a dispute with the corporation about the necessity for extra personal care expenses. Yes, you can appeal. Yes, you can ask for a review, but the fact that home care said to you, you do not need anything more than $3,000 is going to be evidence against you. The onus is going to be on you to refute it, and it is going to be very hard to do.

We suggested it might be more appropriate to allow individuals who are victims or claimants under the automobile insurance scheme to have the right to choose between the existing provincial home care service and having the cost of that service paid directly by the corporation so that they can obtain their own personal home assistance.

I point out to you, as well, that this appears to be the trend across North America in respect to people with disabilities. Independent living, control of your assessment and that kind of thing is, in fact, a trend. I can think of no reason why after years of hard work on the part of disability groups, we should take a step backward.

It might also be possible to avoid disputes by having a system where the initial decision as to the extent of the personal home assistance required by the individual in the first instance would be a matter solely between the individual and their doctor. If we are not to get into a situation we are in in welfare and workers comp, where you are constantly fighting with your worker, then perhaps the simple way of doing it might be to say in the first instance, fine, up to the cap, if there is going to be a cap, you get to say what happens.

We are talking about a tradeoff again here which I have heard described by many people already, including the minister, where you make these kinds of tradeoffs, and you find out in the end that economically it was not a bad deal. I am suggesting to you this might be another case again where you could spend more money arguing with the person over the kind of care they need as opposed to simply saying, fine, it is your money, spend it how you think is best in accordance with the advice of your doctor.

Finally, we have a concern which—this draft was prepared on June 26—has been brought to my attention numerous times since then and in stronger terms by some of our disability groups, and that is the issue of the cap itself.

* (1600)

There are advantages to caps. Everyone knows what they are, and they represent a guideline for both the claimant and the worker. The problem with a cap is that if a cap cannot be exceeded, it may result—what if it is not enough?

We were in a situation with an individual under another social benefit scheme who ended up for no medical reason but solely for an economic reason at the King George Hospital. We took that case all the way to the Supreme Court of Canada. Unfortunately, we did not get leave to argue the case, but our clients have said to us in some fairly strong and clear terms, this cap cannot do that. A person who buys insurance, and subsequently has an automobile accident, should not be forced into an institution, out of their home, by virtue of an arbitrary cap set in this legislation.

There is the possibility that home care may become more severely restricted or even disappear. All of us are familiar with the cutbacks to the health system. As you will know better than anyone, the Home Care Program is not a mandated—it is not a legislated service and it could disappear in the next stroke of the budget pen. We all hope that will not happen. I am not suggesting it will, but because it is a possibility, I think more care and more attention has to be paid to this.

Specifically, Mr. Chairperson, we have recommended that, in the first instance, a determination of the requirement for personal home assistance be a matter solely between the individual and their health care professionals. We have recommended that the act incorporate the

principle that personal care be provided in the least restrictive environment, and we have recommended the corporation give further consideration to the manner in which it will administer claims for personal care expenses and report back as part of the mandatory review.

Medical care expenses—the next thing I would like to deal with—we do not have a lot to say. We tried to figure out how this would work. It is going to be based largely on the regulations. We are told it is going to be based on the Quebec regulations. So I got the regulations and looked at it. We had read somewhere, I believe, a statement of the minister talking about—and I think I am quoting from Hansard here. The minister stated: " . . . these coverages are not capped or limited, for as long as the person legitimately requires coverage, they will receive it."

I am not suggesting that is wrong, but at the same time as I heard that—and I liked it—from the minister, I got the Quebec regulations and took a look at them. I found that in the Quebec regulations, if I understand them correctly, there is a cap on the number of treatments for psychological care. There is a cap on the number of chiropractic care treatments. There is a cap on acupuncture. In addition to the number, there is a cap on the dollar amount paid per treatment. There is a cap on the expenses for correcting scars. There is a cap on the reimbursement for the purchase and repair of prostheses. There is a cap on the purchase or alteration of special footwear. There is a cap on travel costs. The list goes on and on.

When I came to the end of the list of caps in the Quebec regulation on medical expenses, I came to one which I do not understand, and perhaps somebody here will. There was a cap on the costs incurred in connection with the use of the jaws of life. That one was beyond me and suggested to me that someone had gotten out of control with a pen when they were drafting the list of caps.

As I said before, the use of arbitrary reimbursement caps reflects a system designed to provide service for all at the expense of looking at individual circumstance. By their nature, reimbursement caps ought to reflect the highest amount that a variety of individuals could face in a wide range of circumstances. A cap should be a cap. We have had experience in dealing with social benefit schemes where, if there is a cap then the cap is not really the cap, the cap is an amount somewhere far out there, but when you are picking a number for a cap, we think by its very nature the cap ought to be the maximum.

We believe that the real problem with caps is that if you put the caps in the regulation, then it is going to be very difficult to change the caps, and the world changes a lot faster than the Legislature even sometimes can account for. We think that there ought to be some automatic mechanism for review and adjustment of the caps to see that they remain adequate, and we would suggest certainly no less than annually. Arguably, the caps should not be in the regulation but by policy. If the caps were set in policy, then the policy could be overturned on review or appeal where individual circumstances and evidence dictate. We think that is important.

This would allow some degree of certainty for the corporation and for its adjustors in that in most instances they would know that the cap is a cap, but it would also allow those individuals who, of necessity, fell outside the cap to have some recourse to deal with that.

The next two recommendations accordingly are that the act contain specific provision for the annual review and adjustment of any medical expense caps and that reimbursement caps be a matter of policy, subject to the review and appeal provisions of the act.

The very first chap who was up here who was an accident victim made reference to the treatment of people with existing disabilities. This is an incredibly sore point for many of our clients, and it is a point which we have discussed with this corporation going back many years.

In Bill 37, the government proposes to continue differential treatment of people who suffer from mental or physical disabilities. Section 104, I will just read it to you: "A victim who is regularly incapable before the accident of holding employment for any reason except age is not entitled to an income replacement indemnity." There is a similar provision in Quebec.

We believe this is discriminatory and it is based on stereotypes of the mentally and physically disabled. A person's mental or physical condition prior to an accident may very well be a factor in determining whether or not they are capable of employment. However, many people who suffer from a mental or physical disability are frequently

prevented from employment not by that mental or physical disability, but by the stigma that attaches to it and by the failure of society to make a reasonable accommodation. In Manitoba, that reasonable accommodation is a matter of law in the Human Rights Code.

We believe that generally the corporation ought to view physical and mental disabilities for the purpose of determining capacity to work, in light of the fact that a reasonable accommodation is required by law and in most cases can result in most people being considered employable and being employed.

For that reason, we are recommending that in all cases involving people who are mentally or physically disabled prior to an accident, that the corporation not operate on a presumption of incapacity but rather examine each case on its merits to determine individual capacity on the assumption of reasonable accommodation being made.

Mr. Chairperson, if I can stop and stress this for a moment. As a long-standing member of a national voluntary organization dealing with particular kinds of disabilities, we have over the last 10, 20, 30 years finally come to the conclusion that the single most important factor affecting people with disabilities is stigma. That applies to mental disability, but it also applies to physical disability. The rate at which that stigma is disappearing is not fast enough. We believe this kind of provision in legislation contributes to that stigma, and it continues to debilitate and make second-class citizens of people.

Medical examinations: Mr. Chairperson, under Bill 37, the corporation can require a claimant to undergo a medical examination by a doctor of the claimant's choice or a doctor chosen by the corporation. When the corporation orders such an examination and pays the cost, the doctor who examines the claimant is required to report to the corporation on the condition of the victim and any other related matters requested by the corporation. The medical exam must be conducted in accordance with the regulations.

Now, obviously, medical exams are intended to carry significant weight in determining a victim's claim for compensation, ongoing benefits or in determining their employability. It may, in fact, be an advantage to both the corporation and the claimant that medical exams are comprehensive and that clear direction be given as to the necessary content of reports prepared by doctors. This is a problem in some compensation schemes where there is a variety of effort made by a variety of doctors and you end up with some spotty reports.

It is important, however, that Manitobans understand exactly how the system would work. We would like to know if the regs here are going to be, as the regs are in Quebec, as specific as they are. We think it is important to tell us. I repeat, see Recommendation 1 here. Recommendation 1, if you recall, was a recommendation that the regulations be made public prior to their implementation.

* (1610)

Under rehab, the rehab sections that we have at the moment, the Quebec pure no-fault system does not have the kind of regulation in respect to rehabilitation that is already contained in the Manitoba statute. Frankly, we were pleased to note that the Manitoba regulation on rehab is pretty good. So we have a simple suggestion: simply that you incorporate the rehab regulation that we have now in Manitoba into the no-fault system.

I think that probably will be done but, specifically, our recommendation is that the existing regulation on rehab subsection 9(2) of the regulations under The MPIC Act be made applicable to the no-fault system.

Claims and administration. There is a guiding principle, Section 149: "The corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled under this Part." That is a great section.

I think it is very much like the principles that we were talking about when I began. We have to have a system here that works, that is user friendly, that is intended to help people and not intended to fight with people. I think that section reflects that.

Now, if I thought that section were going to be the guiding principle for every interaction between a claimant and the corporation, we would walk away happy. The reality is, it is not going to be that way because the real rules and regulations, the real guiding principles for the person who does the job every day and the person who walks in the door are going to be in the regulations.

So, once again, let us see the regulations, let us comment on them and let us know what we are getting before we get it.

In a nutshell, Mr. Chairperson, the appeal process is not bad. If we have, in our office, extensive experience, perhaps most of it is with various kinds of appeal processes. This one is okay. There are a few things wrong with it. It is apparent to us that the appeal process is intended to create an independent, successful, fair and flexible mechanism for dispute resolution.

We have a number of specific suggestions, however, that we think could improve it. Under the principle of full disclosure, the rules of natural justice require disclosure of all material facts and evidence in order to assure the fairness of any hearing process. However, since these legal rules are only enforceable in courts, and going to the courts is a slow and expensive process, we believe it is always preferable to enshrine the full disclosure principle in the governing legislation itself, thereby guiding the administrative agency and protecting the claimant at the same time. Yes, you have the right to full disclosure, and why have to go to court to get it? Why not build it into the statute now?

There are some elements of disclosure principle, not to be too critical, in the bill already. There are written reasons for decision, there is access to material filed with the appeal commission and there are reasons for decision. Reasons for decision, I think, are critical, and we commend you for having some of the stuff in here.

There is no expressed direction to the corporation in Bill 37, however, to fully disclose its file material to the claimant. This duty to disclose should be clearly stated in the act and should apply at every stage, claims, adjustment, review of claims and appeal to the commission. The only exception that we can think of would be legal advice provided by the corporation to its solicitors; otherwise, all investigations, reports and information should be disclosed.

Again, we believe that full disclosure is not only a matter of legal fairness. In our view, full disclosure can assist in the speedy determination of disputes by encouraging claimants to drop unmeritorious demands and by avoiding wrangling over perceptions that information is being hidden. We would not want anyone to suggest that there is a sinister mode of work at the corporation. Accordingly, recommendation 17 in our brief: The duty of full disclosure be clearly stated in the act and apply at all stages including claims adjustment, review and appeal.

Moving on as quickly as I can to representation of claimants in the appeal process, Bill 37 makes no provision for representation of claimants during the appeal process, although participation by lawyers or others is not expressly precluded. Representation would be available to claimants assuming they are able to retain private legal counsel, unlikely, or obtain legal aid or arrange for a lay advocate. It appears in most cases, however, that the money at stake would not justify lawyer involvement. Absent a contingency fee based on a larger amount of money, lawyers simply are not going to do it, and believe me when I say it is getting increasingly difficult to get legal aid these days.

As a result of this, we think there are many appeal cases that will be heard where individuals are disadvantaged by not having some kind of representation. It does not matter, with all due respect to lawyers, whether a person goes in there off the street knowing nothing about the system and focusing on their accident and their problem is up against a corporation lawyer or a person with 20 years experience as a claims adjuster. That person is going to be at a disadvantage, and that disadvantage is unfair.

There is a limit to what an appeal tribunal can do to correct that imbalance, and we think that the most appropriate place to correct that imbalance is here and now in this process. We suggest that either a claimant advocate service is required, and an example might be the one that exists now in the Worker Advisor Program attached to the compensation board or that there be discretion given to the Appeal Commission to award legal costs, one or the other. Without the statutory authority, the commission in our view, even though it makes rules, et cetera, will not have the power to award costs unless this Legislature decides it has that power.

Under Bill 37, appeal is available to the Court of Appeal, with leave, on questions of law or jurisdiction but not on the particular facts of a case. This means that the court would be essentially used to resolve interpretive questions rather than to adjudicate on particular claims. The Kopstein report suggested that where the corporation

appeals to the court, the claimant's legal costs should be paid by the corporation. This is a sensible suggestion which would be fair to respondent claimants, as well as recognizing the benefit to all ratepayers which flows from judicial clarification of the meaning of the legislation.

The Court of Appeal deals with a number of statutes where an appeal is available upon the granting of leave to appeal; for example, decisions of the PUB, the Motor Transport Board, the Labour Board and the Welfare Appeal Board are in this category. However, in many instances, judges of the Court of Appeal have interpreted the legislation as requiring not only a question of law or jurisdiction but also a question of some importance beyond the facts of a particular individual case before the court. This could become a particular hurdle for people who are involved in appealing from the commission to the Court of Appeal, but in any event, if the appeals are to serve the function only of defining and clarifying the meaning of the new legislation and assisting in the administration of the no-fault plan, then it is reasonable for all ratepayers, through the corporation, to pay the cost associated with court of appeal litigation once a judge has granted leave.

Mr. Chairperson, specifically we are recommending that the no-fault system include a claimant advocate program or that discretion be given to the appeal commission to award legal costs in individual proceedings, and, secondly, that subsequent to the granting of leave by the court of appeal a claimant's legal costs be paid by the corporation in all cases.

Nearing the end, the independence and quality of the commission is an issue. It looks good to us, to a certain extent. The relatively lengthy fixed terms of the commissioners and their security of tenure are good provisions. Assuming then that persons appointed are indeed independent and competent, the new tribunal should be able to carry out its function effectively. It is a fact of political life, however, that governments often use such appointments to fulfill patronage purposes rather than simply advancing the public interest.

Bill 37 is silent on the manner in which commission appointments will be considered and selections made. At a minimum, there should be a requirement to consult with interested consumer and advocacy groups and other interested parties in order to receive recommendations for names prior to the formal appointment by the Lieutenant-Governor-in-Council.

Additionally, an undertaking by the minister to the effect that patronage will not be a factor in these particular appointments would allay some of these concerns. On May 26 the minister said that the commissions would be appointed on the basis of merit. This promise should be underlined by a further commitment to use the civil service process and not the political process to fulfill these positions. So Recommendation No. 20 is that the appeal commissioners be selected using a process established by the Civil Service Commission of Manitoba.

We believe there should be a general interpretive clause, a statement of purpose if you will, and we have suggested one as follows: The purpose of this part is to fairly compensate victims for their actual financial losses regardless of fault.

That is in there because there will be circumstances where you will get to an appeal stage and there will be a draw, or there will be a situation which has not been contemplated, and we think it is appropriate, under the principles that we have suggested to you, that a guiding statement of principle be contained in the act. We think it ought to be something like that. Again, this is very close to what the minister has stated the purpose to be in the Legislature.

Another helpful suggestion, we think, would be a benefit-of-the-doubt clause. In the new no-fault system, where the evidence for and against a particular claim or benefit is evenly balanced, the benefit of the doubt should go to the claimant and not to the corporation. This might not be so in an insurance scheme, where he who asserts must prove, in accordance with the general principles of the common law. However, having moved to a public compensation scheme where all ratepayers contribute in order to provide fair compensation to victims, the claimant, in our view, should be the winner whenever there is a tie. It is reasonable. It follows the principles of insurance that we spread the risk, we spread the cost and we compensate Manitobans. We do not put Manitobans at a disadvantage. We use the system as best we can to uplift Manitobans. On that basis, giving the win to the claimant when there is a tie does not seem to be out of line.

* (1620)

Specifically, we have suggested a clause here: Where the evidence favouring payment of a benefit to a claimant is evenly balanced by the evidence contrary to the claim, the benefit be paid to the claimant. Those two clauses that I have just read are recommendations 21 and 22.

In conclusion, Mr. Chairperson, moving to a no-fault automobile insurance system, as opposed to the existing tort system, is a policy choice to be made by you. Obviously, there are problems with both systems. The existing system is characterized by uncertainty and by increasing premium costs. The no-fault system replaces the analysis of individual circumstance and individual need with the system of predetermined benefits. Like any social benefit scheme, it is also characterized by an increasing complexity in the interaction between the claimant and the benefit provider.

As we said at the beginning of our submission, it is not our intent to take a position on the difficult choice you are making as legislators. We urge you, however, not to make that choice prematurely, to accept the fact that enough time has not gone into this and that there is not, and cannot be, enough information available to you to make the kind of choice we know you would like to make.

Because of that, we urge that the three-year statutory review be written into the bill itself so that Manitobans have the benefit of a comprehensive and independent study of no-fault, which is what we believe should have been undertaken before the bill was put forward, but in any event, a comprehensive and independent study of no-fault as it operates in reality.

It may be that it was impossible to do that before we have no-fault. In any event, let us do it now and let us not find out three years from now or five years from now that we have a terrible system. Let us build into the legislation something that says we are going to find out how it works, and if it needs fixing, we are going to fix it.

Mr. Chairperson, those are my comments. At the back of our brief, there is a bibliography and at the beginning of the brief, there is a summary of the recommendations. I would be happy to entertain any questions, and let me apologize for going over the nontime limit.

Mr. Chairperson: I thank you very, very much for your brief, Mr. Holley.

Mr. Cummings: My thoughts are very brief. You have obviously put a great deal of work into this. We have had discussions previously when you have inquired, and I hope we have been useful in response to your inquiries.

I would only like to add that we are not disinterested in your suggestion of a review, and I am sure the committee will be considering that at some point.

Mr. Leonard Evans: I want to thank the presenter. I thought it was a well thought-out document and very balanced and fair.

There are so many questions one could discuss, but we are limited in time. I just want to ask very briefly, you, in your presentation, talked about the inadequacy of death benefits, and I was wondering if you had some specific suggestions to propose to the committee for improving the death benefits.

Mr. Holley: Mr. Chairperson, the shorter answer is no. The reason is because we could not figure out, and we tried to find out from the corporation, how the schedule came about. The answer we got, the best answer they could give us, was that some of their people understood it, but most of the work had been done in Quebec. We did not have access to that, and we did not go down to Quebec and find out.

It is one of the things that we felt, as I say, represents the essential difference between the tort system and the system of scaled benefits. It is a judgment call. If you are going to have scaled benefits, someone has got to set the scale. It has to be set on a number of factors. In the tort system, you can look at the number of factors.

It is a situation where we are hard pressed to say that one scale is better than another, and as I said to you, the factors that appear to have gone into this seem to be reasonable. The chief difficulty is that while those factors are reasonable, they cannot and are not all-encompassing. There will be circumstances where this death benefit scale is inadequate or inappropriate or cannot be applied in the best interests of Manitobans.

It is for that reason and, to get to the point, the best answer I can give you is that we go at it for three years and at that point we take it back to the PUB with our actuaries, with our accountants and with our experience, and say, how does it work?

Mr. Leonard Evans: Yes, just one other question. You also made reference to the rights of seniors,

and your concerns about not being able to obtain IRI, income replacement indemnity, after sixty-five.

As I understand, my reading of the act is that everyone is provided for even if, say, someone was working at the age of seventy-five. You get full compensation the first year, and then it is phased out over a period of three or four years. Apparently, you think that this still penalizes people because they may wish to work beyond seventy-five, let us say in my example, and you suggest that perhaps you should have an IRI system and then subtract the pension perhaps as one way of going at it. But it seems to me that at some point you have to phase out the income replacement.

You know, at some point people will cease to be able to work even though they may want to continue. I just do not know how you would set that system up so that would work.

Mr. Holley: It is a difficult question, and let me be clear on our approach to it. Our first approach to it was not to say, do we like it or not. Our first approach was to look at it in terms of the law, and our opinion is that it is a Charter violation and probably would not pass a Charter challenge. We suggested, I think, a referral to the Constitutional Law branch. There are other ways of doing it. You can refer it to the courts for an opinion. That is the first thing.

The second thing, putting our minds to—okay, the reality is that most people do retire at a certain point; what is wrong with this? What is wrong with it is, and something you just alluded to, at some point someone has to decide, but the problem is here that the decision is made, and the decision is arbitrary, and everyone lives with it. There are people who do not retire at sixty-five. There are people who cannot retire at sixty-five, and there are people who do not retire, normally, until they are seventy-five, such as judges.

The only suggestion we can come up with is the one that is in here, that you have the right to appeal this kind of determination to the appeal commission and to the courts. Now, it appears on the face of it to be a bit awkward, because you might suggest that, well, everyone is going to say that they are going to work until seventy-five and they are going to go to appeal. Our experience with this kind of thing is that you would not have an appeal commission or a court saying, yes, you are right.

There probably would be a very high onus on an individual. An individual would probably have to demonstrate (a) that they were in an occupation that normally works till seventy-five, (b) that there was nothing else other than the accident preventing them from working, or (c) that they had formulated some long-term specific plan to work. It is one of those things where we think if you did it, it might not be the problem for you—I am speaking to the corporation—that you first thought it was.

Mr. Leonard Evans: Thank you.

Mr. Santos: Even though the regulation is not yet formulated and not yet published, would you welcome a suggestion as desirable that such regulation be subject to overall statutory guiding principle such as the one stated in Section 149 about the interest of the victim and also the principle of full disclosures in all proceedings?

Mr. Holley: Yes.

Mr. Santos: On page 49 you make a proposal about actual financial losses. Would you think it would make a difference to take care of those economic values that cannot be translated into a salary, financial value, if we change the wording in your proposal to "actual economic losses."

Mr. Holley: I am sorry. Your question was?

Mr. Santos: I am trying to change the word "financial" to a broader, more meaningful term, "economic," like a housewife that has economic value and no salary, no financial loss.

* (1630)

Mr. Holley: I think the situation of the housewife is covered. My recollection of the bill is that it provides for people who are working in the home. So it is possible under this scenario to answer your question by saying that the word "financial loss" as it is contemplated here would in fact apply to that circumstance.

If you use a different example, I think what I was trying to get at, not at this point but previously when I talked about the example of a farmer or small businessman, your scenario would apply if you were talking about a person who was investing an incredible amount of time and family resource and effort into a small business. Is that a financial loss then? No, it is not a loss that you can say is worth $300 a week, but, yes, it is a loss, and, yes, there ought to be some way of dealing with it.

So I am not sure if that is the appropriate place to put it. Our suggestion in respect of that was that it be one of the questions that come back at the end of a three-year period to determine whether or not farmers and small businessmen were in fact taking a beating under this system.

Mr. Gerry McAlpine (Sturgeon Creek): Mr. Chairperson, I just have a question here in regard to your reference made to the no-fault in Quebec, the study where claims increased on automobile accidents 17 percent and automobile fatalities 6.8 percent. You reference the fact that there was no deterrent with that after taking away the tort system. Do you feel it is necessary to have a deterrent in order to improve the quality of driving and reduce the number of claims and accidents? Is that what you are suggesting?

Mr. Holley: This study, which I think is the only imperial study that I saw, and some other literature, certainly suggested that one of the major problems with pure no-fault was that there was no deterrent. There is a question as to whether or not the insurance system itself is the appropriate place to effect a deterrent against bad driving.

In Manitoba, I think to the extent that it is feasible, the Manitoba system currently has a deterrent, some economic disincentive. It costs more. You are penalized for having accidents.

You are asking for what is essentially a view, and if I can state my view on this, my view has always been that that is good, and the other thing that ought to accompany that—and if it is a criticism I have of the current system, it does not do enough of it and probably will not do enough of it in my opinion ever—is public safety and education.

I really do not believe that we can do more in Manitoba than we are doing now by way of economic disincentive, and the corporation shares that. There is a limit to how high you can put the driver premium or the no-fault surcharge before people simply ignore it and drive anyway.

Mr. Chairperson: I thank you very much for your presentation this afternoon, Mr. Holley.

I will now call on Mr. Marc Levine, Marc Levine. Mr. Wayne Onchulenko, Mr. Wayne Onchulenko. Mr. Gervin Greasley.

Mr. Gervin L. Greasley (The Winnipeg Construction Association): Mr. Chairperson, I am told that when you take professional training as a speaker, the one thing they tell you is that about every six to eight minutes, you should put in some hot spice items to wake up the audience and refresh them. Let me give you this piece of hot spice. This will be the first one this afternoon that stays within the 20 minutes.

Actually, it is unfortunate in a way that we even have to be here this afternoon, and maybe we would not have to be here this afternoon if we had had some white papers and some consultation prior to the drafting of the bill and getting as far as second reading.

The concerns I am going to express today are cumulative concerns of contractors I have talked to throughout the province and construction-related industries we have also had meetings with. Incidentally, the construction industry is the largest single industry employer in the province with some 30,000 workers, and we have a concern with both MPIC and, of course, with WCB. We represent 350 firms in the building sector, and we employ about 16,000, a little better, employees.

Our firms operate a wide variety of vehicles, and some of them have some large fleets, but it is not the general insurance aspect of MPIC that we are here today to express our concerns about. What does concern us is the potential negative financial impact that the proposed legislation will have on the Manitoba workers compensation system.

Contrary to the perception of many people in the community, the Workers Compensation Board does not, in fact, have any money of its own. Any money that it does have is obtained from employers, obtained through annual assessments, and that money funds the operations of the board and, incidentally, the Workplace Safety and Health division as well. When the board faces rising costs, it turns always to its primary source, the employers, through their higher assessments.

Bill 37, in our opinion, eliminates the current practice by which the Workers Compensation Board is able to accept claims, process them, pay them and then recover from MPIC. In the future, as we understand the bill, the Workers Compensation Board will have to absorb the cost of those claims. There are many problems, we think, that are inherent with that.

For many years, we have urged WCB to adopt a system of financial accountability, particularly with regard to policies, future policies and programs. We have requested that they do cost-benefit

studies so they know what the impact will be, and they can properly allow for them in their future rate setting. To a large extent, WCB has, in fact, got that system in place now.

Under Bill 37 changes, in our opinion, WCB will face the very difficult task of trying to allow for this significant added cost of claims estimated by people familiar with compensation to be somewhere between a low of $5 million and a high of $10 million.

The WCB budget setting takes place each October and runs from October to October. In our talks with WCB and with MPIC, none of them could tell us how many claims WCB will likely face next year as a result of this new legislation. In fact, we could not find out from MPIC how many of the 1992 total vehicle accidents involved workers while in the performance of their duties.

So we wonder, then, how the WCB is going to be able to exercise continuing fiscal responsibility and accurate budgeting with employers' money. What we have here is the linking of a new no-fault system to a definite fault-finding system.

This afternoon somebody said WCB was no-fault. It is no-fault in that if you do have an accident legitimately at work, you do get paid. But it is definitely fault-setting when it comes to assessing the recovery of those costs. It is either recovered directly from the employer or from the rate group as a whole or from a third party.

An example: An employee who is driving a vehicle as part of his job duties, stopped at a stop sign, vehicle under control, truck struck by an out-of-control vehicle and his hip is broken. Under Bill 37, there is no fault assigned to the offending driver. But if the injured employee chooses to claim under Workers Compensation and his claim is accepted and paid, WCB will have to find a source of revenue for the immediate costs of that claim, plus the long-term future costs.

The only place they have to go, of course, is to employers through rate setting. More than likely, rather than being set against the group rate, the individual who is injured will have his costs assessed against that employer even though the employer had nothing to do with the accident. The employee, actually, had nothing to do with the accident.

In addition, the employer will not pay just an increased premium on the wages of that employee, but on every single employee that he has for years to come. The employer, as I say, will again be the end financier, because that is the primary source of revenue.

* (1640)

What is perceived as totally unfair by members of our industry is that there are going to be two sets of premiums collected for the same coverage. In one case, there will be premiums paid, of course, to MPIC, and there will be WCB assessments paid to WCB—one to MPIC and to WCB. Yet, WCB may well pick up the claims if that is the election.

Vehicle owners in Manitoba pay MPIC for insurance coverage, and when they buy that product they expect that when they need it the product will be delivered. At the same time, they even pay at a higher fee if they indicate they are going to use that car, their own personal car, for work. So you are paying a premium plus a surcharge for the type of use, which I assume is relative to the added risk that you are faced by using it for work.

In many cases, the employer also will say to the employee, because you are using your personal car and there is a difference in the fee between your normal use of the car and the business use, we will reimburse you for the difference in between.

Now we have a situation where if an employee elects to claim from WCB, then the MPIC which has collected the premiums to provide that product, that coverage, will not have to use any of its revenue for that purpose, and WCB which has not collected in advance for that purpose will now pay the claim, incur the costs, and not have any advantage from that revenue. They will then have to seek other revenue, which means coming back to a selected group of employers, because not all employers are covered, although I assume there would be some argument if election is allowed on Bill 37, and an employee is injured and elects to go to WCB and his employer is not covered by WCB—well, we are not sure what the result of that will be.

There are sections of WCB right now, if you do not pay, you do not play. Whether that happens in the future will remain to be seen, but if it does not, it means the mandatory groups who are under WCB will pay even more. So that is a situation which is a tremendous concern for the people whom we represent.

We do see a strong likelihood that those who are injured in the future in automobiles during the course of work will, in fact, be more inclined to go to WCB for collection. Now that is not a statistical fact we can prove. It is an assumption based on discussions we have had, a broad base of discussions, because for one thing, MPIC will continue the seven-day waiting list before any payments start, whereas WCB starts right away.

We do not think it is fair to transfer claim costs to a relatively smaller group of payers—that is to say, the selected employers who are involved with WCB—when the insurance coverage has already been paid once and by a much larger group of payers, which are all of the vehicle owners of this province.

In the past, WCB has recovered, as we said, for injured workers not only the costs from the actual accident, but also they have, in a number of cases, been able to claim or recover pain and injury for the employee, and that was passed on to the employee.

In the future, of course, under no-fault, there is not going to be any pain and injury payments, so it would seem to us that if WCB was allowed to continue to recover only the basic accident cost element and no pain and suffering from WCB, then there would be a significant reduction in the amount of money that WCB will be asking back from MPIC which will result, of course, in a saving to MPIC without eliminating the recovery.

We would therefore recommend, Mr. Chairperson, that Bill 37 be amended to allow WCB to continue to recover from MPIC the cost of the claims made by workers who, while performing work related to the duties, are injured in vehicle accidents.

Thank you.

Mr. Chairperson: Thank you very much for your presentation.

Mr. Cummings: Thank you. I appreciate your presentation. I would only raise one question, and that was, in looking at this, generally speaking, MPIC benefits are higher than WCB benefits, and it certainly was not contemplated that there would be a shift, as you envisage it.

In representing your industry, would you feel satisfied with an arrangement that contemplated not allowing the historic relationship between the two organizations to shift? In fact, the monies that are paid to hospitals today from part of MPIC in order to be able to make sure we are not shifting costs into the hospital system, the historic relationship is intended to be continued.

I presume you might want something more specific than that, but do you view that as a correct approach until we clearly understand how people may, in fact, choose, or would you prefer the choice to be removed? I am not asking you to make an on-the-spot decision. I am simply raising it for discussion.

Mr. Greasley: It is something we would like to look at. It is something we would have liked to look at before we got to the bill. As I say, had we had—WCB, for example, is accustomed to putting out a lot of white papers on intended policy changes, legislative changes and so on. By the time they get to public hearings, we rarely appear because we have either lost the case or our concerns have already been addressed. There was a time back a number of years ago when the government used to litter the countryside with white papers, and we were at liberty to respond and we usually did.

It is difficult now to come to this sort of eleventh hour before the passage of the bill and then say, well, would you like this approach, would you like that approach or what is the approach.

I think the concern is that here, there is a double jeopardy. There is a group of people who are paying premiums and the product is not delivered to them because they can go choose from somebody else they did not pay a premium to. On the other hand, there is no provision in Bill 37, obviously, I would not expect there would be, that if I buy a product, including a business coverage of my car, and I get hurt and I go to WCB, there is no provision in Bill 37 for them to give me back the premiums for the product they charged me for but they are not going to give me because of my election.

That would be unrealistic to expect to get money back from the government, but it is just this double jeopardy of payment, and the WCB is now coming to the point where it is getting its unfunded liability, thank God, into place, and all these things are coming together. They are getting some rather sophisticated responsibility now for some of their pricing and their long-range costs, and we hate to blow them out of the water again with another $5 million or $10 million which they are going to have

to turn around and come to us with, you know, that kind of thing.

We just leave that with you, that it is a concern. We are not arguing about recovery to injured people under Autopac and all these kinds of things. The concern is the secondary impact on the system that used to exist, and that is primarily our concern.

Mr. Santos: Mr. Chairperson, I want to ask the presenter to please elaborate on the basis of the conclusion that the claimants who have a choice will most likely choose workers compensation rather than MPIC?

Mr. Greasley: That comes from a lot of conversations in a lot of areas in Manitoba, Flin Flon, Brandon, Dauphin, Portage la Prairie, everywhere we have been. We have talked to employers and employees, as well, and we have said just in a general sense, do you know that, for example, there may be richer benefits under Bill 37, and we got into conversations.

It seems to us that there is a significant percentage, I would not call it a majority, but a significant percentage of people we talked to would rather take what they can get now than wait for what they can get later. They may do that and find out with regret later on they should have gone to MPIC. That I do not think is the issue. The issue is, you asked me why I think that, and it is based on the conversations we have had with people who feel they do not want to wait the seven days.

Mr. Santos: Does it mean then that if the seven-day waiting period is eliminated, that outcome will not be expected?

Mr. Greasley: That is difficult to predict, but it would certainly remove, I think, one portion of that. I guess the other would be the level of the so-called meat chart and those kinds of operations.

I am talking only for the construction industry now. I do not know how this would work in other industries, but in the construction industry, we are very seasonal, and this summer, as you can see, there are many days we are not working. So seven days is a lot of time.

So on that basis, Mr. Santos, I would say that might persuade a number of them to double check which way they were going to go.

Mr. Chairperson: Thank you very much for your presentation, Mr. Greasley.

I will now call on Mr. Al Harris. Do you have a written presentation there?

* (1650)

Mr. Al Harris (Employers Task Force on Workers Compensation): Yes.

Mr. Chairperson: Thank you very much. You may begin then, Mr. Harris.

Mr. Harris: My presentation, Sir, will follow very much as Mr. Greasley's because I am the co-chair of the Employers Task Force on Workers Compensation, and therefore, we have some very, very similar interests.

The task force is comprised of some 27, the note says 25, it is 27 industry and trade organizations and large entities, the railways and the City of Winnipeg who are self-insured under WCB. We represent companies which employ upward of perhaps 300,000 workers.

I would just like to read into the record, if I may, those associations and companies who are members of the Employers Task Force. There is the Canadian Federation of Independent Business, Canadian Manufacturers' Association, Furniture West Inc., Manitoba broadcasters' association, Manitoba Built Up Roofers Association, Manitoba Chamber of Commerce, Manitoba Fashion Institute, Manitoba Heavy Construction, Manitoba Hotel Association, Manitoba meat packers, Manitoba Redi-Mix Concrete Association, the Manitoba Restaurant & Food Service Association, Manitoba sign association, Manitoba Trucking Association, Mining Association of Manitoba, Prairie Implement Manufacturing Association, Retail Council of Canada, Canadian National Railways, the Manitoba printing industries association, Canada Post Corporation, the Heavy Equipment Rental Association of Manitoba, Western Retail Lumbermen's Association, Canadian Pacific Railway, City of Winnipeg, Winnipeg Chamber of Commerce, and, incidentally, Mr. Greasley's organization, The Winnipeg Construction Association.

I wanted to read those in to you, of course, to indicate to you the wide area of the Manitoba economy which we do represent.

This task force, Mr. Chairperson, was formed in 1988 in response to burgeoning WCB premiums, and at that time, there was a legislative review in process examining a system which was totally out of control. At that time, we decided that there

should be a certain criteria for change which we would adhere to no matter what pressures were brought upon us.

Two of these principles, if you will, were to ensure the financial implications of any change were understood—in other words, a cost-benefit study must be conducted—and that long-term substantiated projections must be in place. We convinced the board administration and the ministers, the minister then and the minister since, that these were reasonable requests, and the board has indeed complied with them.

The result, Mr. Chairperson, has been that we now have a WCB compensation system which other jurisdictions in the U.S., in some states, and most in Canada are clamoring to emulate. The spiralling costs to employers who, as Mr. Greasley mentioned, are the only contributors, has lessened dramatically. We have a disaster fund started, and the unfunded liability is under a plan of control.

Regretfully, it appears that some of this anyway, if not much of it, may now be in jeopardy because of the seemingly hasty approach being taken by this government to implement no-fault insurance.

Employers are accustomed to basing their business decisions on the study and evaluation of information, including a review of alternative action. This government, forgive me, but it appears, has apparently chosen an attitude of trust me, I am from the government, and I am here to help you.

We think that is unfair. I think it also reflects on our rights to be informed as citizens on an equal footing with those who are entrusted to govern us.

We therefore ask you, where are the financial projections? Where are the pro forma financial statements? What are the delivery costs? Will the unfunded liability be affecting future years? What are the ramifications for the system? How will the Workers Compensation Board be affected?

* (1700)

We ask why this information has not been provided to Manitobans, and indeed, we ask why the Public Utilities Board has not been asked to review the proposal. The PUB is required to look at increases in Autopac premiums, yet this is an item that will severely affect Autopac premiums and has in fact not been referred to the PUB. Mr. Chairperson, we cannot understand that. We think it should be. We pay the bill. As employers, we pay the bill.

A claimant, as we understand the bill, who is injured in a road accident while in the course of employment can elect to claim either through the Workers Compensation Board or through MPIC. In practice, we would expect the majority of claimants to go the WCB route. As well, in some cases, the average is a little more generous on the MPIC. There is a seven-day waiting period as opposed to WCB's immediate coverage. I might also mention that my understanding is that the pension options under WCB are also much more advantageous than MPIC.

Under the current WCB act, the innocent party to an accident has similar election rights, but whatever WCB pays out, I understand, can be collected back from MPIC under the insurer's contract. This is where there is a major departure from present practice. As under Bill 37, subrogation will not be permitted.

We want to suggest to you, therefore, that the proposal is not only unacceptable, but to us, to the WCB, contributors, the employers, it is also deceitful. It has been mentioned to you that insurance is bought for a purpose, and as employers, we object strenuously to any government agency offloading its costs to any degree onto another government agency when the sources of funds are so distinctly separate.

The MPIC Autopac insurance coverage has been bought, but due to the offloading process, it could be paid for again by imposing higher premiums on employers who are the sole source of funds for WCB income. Please keep in mind, too, that as WCB includes a firm experience rating, the entire claim costs will be recovered from the accident victim's employer.

We understand, Mr. Chairperson, that the MPIC and WCB have agreed between them to keep some kind of a record for the next year to ascertain just how much the offloading will be. If the bill goes through as proposed, the information that that will provide will be academic, as recovery by WCB will actually not be permitted in any event.

For the reasons stated, we have to recommend to you that the election option be deleted and the costs put where they were intended to be and for which the insurance was paid for, was purchased in the first place, that is MPIC.

Alternatively, we recommend a delay in the implementation of the election proposal to allow for

sufficient data to be collected to gauge the effect this will have on the financial position of the Workers Compensation Board. As a task force on Workers Compensation, we need to know this. Our request, we think, is simple—provide an appropriate level of information to us, and we will be pleased to enter into the consultation process and in an effective manner.

In the meantime, we ask that you delete the election option, and improve the benefits if necessary so that accident victims are not financially penalized. By that, I mean, put them on a par with the current WCB benefits and collect data which will allow this particular aspect of the bill to be revisited at an appropriate time. Thank you, Mr. Chairperson.

Mr. Chairperson: Thank you very much for your presentation, Mr. Harris.

Mr. Harris: As I say, it was very much as Mr. Greasley put to you, but as the Employers Task Force, we wanted to, perhaps, emphasize this particular part to you.

Mr. Chairperson: Thank you very much for your presentation this afternoon, Mr. Harris.

I will now call on Mr. Wayne Johnson. Wayne Johnson. I will call on Mr. John Lane. You may begin, Mr. Harris.

Mr. John Lane (Canadian Paraplegic Association): I am Mr. Lane.

Mr. Chairperson: Mr. Lane, yes, pardon me.

* (1700)

Mr. Lane: I guess it gets like a bit of a blur after a while. It certainly does from the back. Incidentally, just while clearing my head, after looking at the back of this for four hours, I wondered how I was going to speak. I wonder if a little hinged platform that could be held up here by a magnet and dropped down and moving this over would not make it a dual purpose podium. Just an idea, in any event.

Mr. Chairperson: Good point.

Mr. Lane: Your mind gets on to other things after a while in the back, as I am sure yours do.

I am the Executive Director of the Canadian Paraplegic Association in Manitoba, and it is on behalf of the Paraplegic Association that I am presenting today. We represent approximately 700 men and women with spinal cord injuries in Manitoba, permanently paralyzed. They would be 100 percenters in the eyes of the Workers Compensation Board or the new MPIC scheme. We are talking about the people with catastrophic injuries who are a concern of any compensation scheme.

In any given year, between one-third and one-half of the new spinal cord injuries in the province are due to motor vehicle accidents, which is the largest single cause. So in that scheme of things, the MPIC coverage is rather important to our constituents.

The typical injured person is a young male—about 80 percent of these spinal injuries occur to males—and the typical age group is in the 18-to-35-year age group. As far as we are concerned, they are all victims. They are not innocent, they are not guilty, they are victims. For that reason a no-fault scheme has a certain attraction to us. We are not talking about people with a glint in their eye that will run over somebody else for spite, we are talking about a farm kid that drives too fast on a dirt road and goes into a ditch, a typical single car rollover as it is called, gets thrown out and gets injured. It is his fault, he is liable, he does not collect much these days.

I would like to speak on the bill briefly, but I would also like to speak a little bit on the process first of all. It is difficult for us to make a comprehensive presentation these days, partly because we are underfunded. The funding that we do get from the government has been cut back, and I do not currently have a secretary. I spend most of my time trying to get the necessary resources to devote to the rehabilitation that the catastrophically injured people in this province need. Because of that, I am not able to provide the free advice that we used to provide in useful venues such as this, health care reform, whatever. I am not sure that this is understood and appreciated, and I would like to take the opportunity to mention that to you. You do not have a finished brief from me because of that reason.

I would like to also mention that it has been difficult to respond when we have had to work everything up from scratch. There has been no discussion paper as we had requested before the bill was put down. There have been no internal briefing papers circulated as we had requested of the minister when we met with him, so we worked from scratch. On that basis, until recently, what we had was a proposed bill and an idea of what the

regulations would expand into later, and that was basically it.

It is really quite amazing that the study group within Autopac would not consult with organizations such as ours and others in preparing this sort of thing. We were briefed the day before the bill was presented, but that does not constitute consultation into what is necessary. Now having an opportunity to present after the bill has been read through twice does not really constitute the kind of valuable dialogue with the people that are ultimately going to need the service that is required.

I think that is particularly a shame, because while I would like to speak in favour of the bill related to the current system, and I will shortly, I would like to also say that I am a bit squeamish because I am nervous that I have not seen everything, I do not know everything. Just a week ago the group LRN, which will speak shortly, prepared for us, not for us but for us as Manitobans, a document on a deductible scheme and that came into my office. I have looked at it and it has tweaked my interest. I would loved to have had the opportunity to discuss that in time and in a form other than this, because when we met with the minister we asked him, if the major problem with the current system is coming from small claims under $10,000, why not institute a deductible scheme? He turned to the Autopac official and the Autopac official said, we have looked at that, it is unworkable.

When we left we requested the briefing papers on which this sort of decision was made. We got nothing and now LRN has prepared a proposal that deals with a deductible contingency scheme. We are not in a position to say it is good, bad or indifferent, but it sits out there, and one wonders.

So having said that and with those misgivings, I will then give a couple of brief comments on the current proposal as best we can.

What we are comparing is the pure no-fault bill as proposed against the current system that exists now. When we look at the current system that exists now, we recognize that it has a limited no-fault system augmented by the right to go to court through a tort system.

In the second half of that, going to court, you of course have to prove liability and you then get damages based on three different headings, the medical cost of future care, the cost of pain and suffering, and the income loss. I think we can take it as understood that the no-fault benefits under the proposed system are preferable to the no-fault benefits under the current system, and significantly so. That moves us then, as we compare one to the other, to focus on the tort or the fault-based system and the benefits under it versus what currently exists.

This is difficult if one tries to deal in theoretical terms about the right to full compensation, et cetera, because you soon find out that you are dealing between apples and oranges so that when we get down and look at the benefits, pros and cons, to our current members, we are faced with one rather important consideration, and that is, less than half of them are at total no-fault. That means that currently less than half of them would be able to benefit to the full from whatever could be assessed through the courts.

This is an important consideration because it means that when one theoretically considers the court system versus the no-fault system, you have to rule out more than half of the people in our constituency because they are not eligible for that, so they are automatically reliant on the current no-fault benefits.

The new system, as proposed, has unlimited medical and rehabilitation benefits. That is a significant benefit. That is something that we are very pleased to see. It is welcome, it is important and it is probably an overwhelming consideration in our support of that system.

The pain and suffering side of it is less that what one would recover under a court settlement but, really, when you get down to it, money does not compensate for this kind of a catastrophic injury. It is a bit of a mug's game trying to assess it. It does not concern us overly that the sum of money there is less than what one could get through court, because it is a suspect system at best.

* (1710)

You then come down to income loss. That is where the members, I believe, would currently be at a disadvantage because, going through the court system, you are allowed, you will be able to fine tune it. There is no doubt that an individualized approach through litigation does compensate more fairly for income loss.

However, once again, we recognize that less than half of our members have access to that, and that then leads one back to an overall judgment

which says the proposed system is preferable to the current system. I keep getting stuck because I am also looking at alternatives that are not on the table here, and I am accepting this as a fait accompli given the bulldozer that has pushed it to its current place. I am pretty much considering it the current system, but it is not that bad. It is good with a couple of exceptions. I will just move very quickly to those two points, one of which has been well dealt with, and that is the appeal system.

If our members are giving up their right to sue and right to go for individualized compensation for their needs, they have a complete right to some sort of assurance that they will be fairly dealt with, and that really demands a particular attention to the appeal system, the right to appeal that they have if they are unfairly dealt with. I cannot comment on the pros and cons of various systems that are proposed by the government and by others, but I just say that is something that we are concerned about. We are concerned that that be fair and that people have full access to a proper appeal.

One item does concern us in particular and specifically, and that is the monthly cap on attendant care costs. We do not understand why attendant care costs should be capped. Three thousand dollars a month seems like a lot, but that would provide approximately 10 hours care per day to a quadriplegic. Ten hours a day to a number of quadriplegics would not be sufficient to keep them out of an institution. What that means then is that it is possible that the cap on monthly care costs would be the difference between the individual living in the community or living in an institution, and that is not a small matter of whether they are going to get 30 percent, 50 percent or 80 percent of what they were earlier earning. It is not a small matter of whether they are going to be fully or partially compensated for pain and suffering. That is a complete and fundamental about-turn in their independence and the way they live their life. They are not buying insurance to stay alive. They are buying insurance to be compensated for what happens to them in an accident.

It is not, by any stretch of the imagination, a fair compensation for somebody to move from living in the community to living in an institution. So you then look at this potential roadblock which will not affect a great number of people, but those that does it affect, it will affect in a monumental way.

One says why is there a cap? The total sum of money is not going to be enormous because it is not going to affect a huge number of people. There will not be a large number of people that severely injured. Those who are may require an extra thousand dollars a month. There may be one individual every two years who requires an extra $5,000 a month, but surely from a fairness point of view, it is essential that this system, even if it costs 1 percent more or a half a percent more or whatever, provides the approximation of what the individual had as a life before and who requires a life in the community.

I think that when it all boils down to it, the concerns we have over process, the concerns over appeal, the thing we can focus on as the single most important one is the problem with the $3,000-per-month cap on attendant care. We do not think it is a substantial cost item. We do not understand why with an unlimited cap on medical expenses and rehabilitation expenses that the two could not somehow or other be folded together, and from our experience dealing with quadriplegics on a daily basis, we can see that it would affect a few individuals in an enormous way.

We wish we had another forum to deal with this where we could discuss and debate back and forth and work together toward a better system, but this is the best shot we can provide at this time, I guess. If I can help you through answering any questions, I would be pleased to.

Mr. Chairperson: Thank you very much for your presentation, Mr. Lane.

Mr. Leonard Evans: Thank you, Mr. Lane, for your presentation.

Just briefly then, your main concern seems to be the capping at the $3,000 limit, and so would you suggest an amendment where that matter be deleted; in other words, that a victim is reimbursed for his expenses relating to personal home assistance, or did I hear you say a specific number? Did you say just eliminate the $3,000 as a cap, or did you suggest an amount higher than the $3,000?

Mr. Lane: No, I see no need to have a cap on it.

Mr. Leonard Evans: So you would just eliminate that?

Mr. Lane: Yes.

Mr. Leonard Evans: Yes, thanks. Basically, I understand you are supportive of this legislation, and you think it is far better than what we have now.

Mr. Lane: No and yes. We think it is far better than it is now, but we are not sure that all alternatives have been canvassed, so I should not say we are supportive of it. I guess we see it as a significant improvement, but we have a nagging doubt that other alternatives based on a deductible or some other system have not been canvassed appropriately.

Hon. James Downey (Minister of Northern Affairs): Mr. Chairperson, just to try and deal with that concern, there has been a suggestion that a three-year statutory review be put in place. Would that be agreeable to you, Mr. Lane, if that were to be part of the legislation?

Mr. Lane: A statutory review of the whole bill or of the regulations to it?

Mr. Downey: Of the bill.

Mr. Lane: Well, I suppose that is one way to skin a cat, but would we actually go to a whole different system? Would we go back to a partial tort system in three years' time?

Mr. Downey: Really the question is a review of the operations of this program that is being introduced through legislation.

Mr. Lane: I think that would be necessary in any event, introducing something new like this. When we are making a fundamental change to something like this, it seems to be done in a rush.

Mr. Leonard Evans: Just another question, did I understand you to say you did not have an opportunity to discuss with MPIC officials the fact that they looked at all these other options, a deductible system and a threshold system, and came to the conclusion that this was the most cost-efficient, providing the greatest number of benefits of all the options?

Mr. Lane: We were not involved in their deliberations, no.

Mr. Chairperson: Thank you very much for your presentation, Mr. Lane.

I will call Mr. Barry Rasmussen, please. Mr. Greg Rodin.

Mr. Greg Rodin (Legal Rights Network): Good afternoon, Mr. Chairperson, members of the committee.

Mr. Chairperson: We will just pass around your submission in just one second, Mr. Rodin.

You may begin, Mr. Rodin.

Mr. Rodin: We have heard a number of submissions which addressed a number of concerns relating to the total no-fault proposal currently before the Legislature. My submission is simply this, that we have an alternative which we have presented to you which addresses virtually all of those concerns, yet we have not heard to this point in time why this alternative is not acceptable or not worthy of careful and close consideration. We have heard that Bill 37 provides the best opportunity for stable premiums, that is, it delivers the highest benefits in a most cost-efficient way. This is something that we are told that MPIC looked into at one stage and drew that conclusion.

I wish to point out to you, Mr. Chairperson and members of the committee, that MPIC did not consider an enhanced no-fault deductible plan. The MPIC set out to create a study which demonstrated that total no-fault automobile insurance is the best solution for this province, and in so doing they analyzed a number of alternatives which were doomed to failure from the outset. What they did is they looked at a deductible which was unsatisfactory, a deductible which did not provide significantly enhanced no-fault benefits. It was then their conclusion that when you compare the benefits to the deductible that they studied to those which are available under Bill 37, they are not sufficient.

* (1720)

If they would have looked at a better level, a higher level of no-fault benefits, they would not have to come to that conclusion. They set out to persuade that total no-fault was the solution, and the study was geared and directed toward that conclusion. It is no wonder that conclusion was made. That presentation was then made to the minister. The minister was basically told that no-fault is the best solution for the reasons indicated in the report without really being given an opportunity to see all the alternatives that he could have seen.

The enhanced no-fault proposal provides benefits rivalling those available in Quebec in 1990. For the vast majority of accident victims, those benefits are equal to those available under Bill 37 with a few exceptions that can be addressed by

very minor modifications and changes that would not be very costly.

Let me deal with the question of impairment benefits. The impairment benefit in Quebec in 1990 was $75,000. The impairment benefit proposed under Bill 37 is $100,000. The cost to enhance the $75,000 no-fault benefit for impairment would be less than $1.1 million over that which it would have cost to provide the Quebec benefit.

The cost to increase the funeral expense benefit would have been $185,000 from that which was available in Quebec in 1990 to that which is proposed under Bill 37. The actual cost to the MPIC in fact would be $514,000 to enhance both those benefits from the levels available in Quebec in 1990 to the levels under Bill 37, because there are two innocent victims for every driver at fault. When you have two innocent victims you recover, there is in fact a reduction in public liability claims, because a greater percentage of the victims' claims is paid under the no-fault benefit portion of the plan.

So for $514,000 over and above what we are submitting, we could have had death benefits and impairment benefits equal to those available in Quebec. Was that particular proposal put to the minster? Was the minister told that? No, the MPIC did not tell, because it was not in their best interest to so do. If the MPIC told the minister that in fact we could create a system that deals with the real problem, minor claims, with a deductible and enhances no-fault benefits, that could save Autopac $56 million, the minister might have thought that was reasonable. That, obviously, was not in the Autopac agenda.

Autopac did not want to put forward a proposal that the minister might have thought was reasonable. So this government has been led down the garden path to support a proposal at a point in time where it is very late now to say, well, there are other alternatives, and we are all stuck. We are all stuck on that road simply because the MPIC did not advise the minister and this government that there were other real alternatives.

I do not think it is necessary for me to repeat all the difficulties that Bill 37 will present to seniors, to students, to the person who works, who is sitting at a red light and gets rear-ended and misses a week of work, who has insult added to his injury. It is going to cost him. Say he makes $500, not only does he have to put up with the pain under Bill 37, but it is going to cost him $500 out of his pocket, good-bye.

That is not, in my view, a reasonable degree of insurance protection for that individual, for it to cost him $5,000. Forget about the fact that he gets no compensation for his pain and suffering.

Really, that is how most people get in accidents. That is how most of your constituents come in contact with the Autopac system, because they get rear-ended, they get hurt, they lose money. Fortunately, they are not that badly hurt, and the way it presently works, they are compensated for their losses, and they are given some money for their pain and suffering.

Now, it is true, we have a problem. That is, minor claims are a great burden on our system. What minor claims do is, it makes it very difficult for the system to properly compensate seriously injured accident victims. I concede that. It is a fact.

Autopac has told us time and time again that 90 percent of all claims are settled for $10,000 in general damages or less. The beauty of the enhanced deductible proposal is that it addresses the problem of minor claims in a surgical way instead of a shotgun way, which is the way Bill 37 approaches the problem of minor claims. What Bill 37 does is, it takes substantial benefits away from all accident victims regardless of the severity of their injury. In fact, the more seriously you are injured under Bill 37, the greater loss of benefits you have in the long run. So really, it is tougher on seriously injured victims. That is one of its major problems.

What we are proposing is that the innocent victim injured in an accident trade his rights to claim compensation for pain and suffering in minor cases for increased insurance protection that would be available to him if seriously injured in an accident and at fault. We think that is a reasonable trade-off. We can live with that trade-off. We think that trade-off would be in the best interests of Manitobans, certainly in comparison to what is being proposed.

If an innocent victim has an injury worth say $7,000 under our current system and he does not get compensated for that loss, his pain and suffering, at least he knows: you know, if I would have had an accident that was my fault and I would have been seriously injured, I would have had the

protection; I could live without the $7,000, but I could not live without the enhanced protection.

We buy that. That is reasonable. We know there is a lot of concern here amongst this government and members of this committee and all parties, concern addressed to victims of accidents who are seriously injured. That is a legitimate concern. Any proper automobile insurance system should have that concern and do something about it.

What you do is you deal with it properly. You deal with it by ensuring that innocent victims receive reasonable compensation, subject to a deductible to be applied to their noneconomic losses only. Our deductible does not apply to economic losses—noneconomic losses only, pain and suffering awards only. There will be no innocent victim who receives less than full compensation for his actual losses under our proposal, his actual economic losses.

I had a chance to read Mr. Evans' remarks in the Legislative Assembly. I would like to refer to them because I think Mr. Evans deals with a number of the concerns that people have about our current system in an articulate way. I think he certainly has the best interests of Manitobans at heart, but I cannot agree with him obviously on approach. I would like to deal with his arguments and perhaps illustrate to you how the proposal we are putting forward deals with each and every one of Mr. Evans' concerns.

Firstly, Mr. Evans states, and I believe this is from the July 13 debate in the Legislature: "Under the present system, the fact is, though, that if you have made the mistake and, therefore, have been found at fault, in the present scheme we have, you have very, very minimal compensation, totally inadequate compensation for the at-fault driver, who is not a criminal type necessarily, who is usually an ordinary Manitoban who has made a mistake."

(Mr. Marcel Laurendeau, Acting Chairperson, in the Chair)

Our proposal addresses the mistakes of ordinary Manitobans. The no-fault proposal also addresses the mistakes of ordinary Manitobans, but you do not necessarily want to reward people for negligent driving, and you do not want to penalize them for their mistakes. You have to take a balanced approach. What you want to do is you want to provide them reasonable compensation, but you do not want to do it at the expense of seriously injured innocent accident victims, because remember, for every driver at fault injured in an accident, there are two innocent victims.

In order to treat the driver at fault better, you have to do something adversely to the innocent victims. You have to take a balance. You cannot say that increasing benefits to drivers at fault cannot be the goal and the only goal. You have to increase benefits to all drivers on a no-fault basis without taking too much away from the innocent victims.

The second concern that I see Mr. Evans has expressed is that the innocent party is often not compensated. That can happen because he or she may happen to unfortunately be involved in an accident with someone who has no insurance, or who has inadequate insurance and, therefore, simply does not get compensated at all or at least not to an acceptable level.

Well, we have talked about the amount of insurance, several times, available when a driver in fact does not have insurance. If the injured victim has $200,000 insurance, the minimum insurance, he will in fact get that coverage. If he happens to have underinsured coverage, he will get whatever coverage he has in that regard. However, very frequently very seriously injured victims will be injured by drivers who do not have adequate insurance, and that is a real concern under our existing system because you have seriously injured victims not receiving full compensation. Obviously, that is something that needs to be addressed, especially if you are creating a system that is geared really to making sure that seriously injured victims are taken care of.

* (1730)

The proposal that we have submitted does that. It guarantees a reasonable level of compensation to all drivers regardless of fault. I have talked to you about impairment benefits. I have talked to you about the funeral expenses. The income replacement benefit which we have proposed plays by the same rules as Bill 37 because they are based on Quebec, except we have suggested a maximum of $40,000 just for the purposes of comparing the model.

Now that is true, that is going to be a lesser level of compensation for higher income earners who earn over $40,000 in Bill 37, and in that regard I

suppose it is fair to say that our proposal does not compare equally to Bill 37 in terms of available benefits. But firstly we do not have adequate data to see what it would really cost to raise it to $55,000 because the Tillinghast 1993 study was not released to us.

If I had the Tillinghast 1993 study, I could tell you what it would cost to increase the income replacement benefit from the level we are proposing $40,000 to $55,000. I suspect that it would not be as much as people would tend to think because the vast majority of wage earners, the majority of wage earners in this province are in the less than $40,000 range, but innocent victims under our proposal of course will receive full compensation for all their losses without having to deal with the income replacement rules as provided in Bill 37.

Drivers at fault earning $40,000 or more I suggest to you are in a very good position to have income replacement insurance of their own. So, therefore, what our proposal does is it protects people who are in less of a position to protect themselves because their income is under $40,000 without taking too many benefits away from the innocent victim, while leaving drivers at fault earning more than $40,000 somewhat to their own resources which is not that unreasonable. It is a fair balance.

We see nothing wrong with saying that if a guy is earning 40 grand a year or more, go out and buy some insurance if you can afford it. That will not stop all the injustice. That will not stop the student who is forced to live, because he is disabled while in school, on $25,000 a year, which is the average industrial wage, but neither does Bill 37. Bill 37 would give that student, that medical student in second year who is totally disabled, the same thing that we are giving him under our proposal, which is the average industrial wage in the province. So there is no greater benefit.

For the majority of victims there will be no greater benefit whether there is a $40,000 maximum or a $55,000, and where there is a difference we think that the driver could have protected himself and, therefore, you should not take more benefits away than necessary from innocent victims to protect that driver, that particular high-income earning driver.

The medical rehabilitation benefit that we have costed under our proposal is the same as provided under Bill 37, unlimited medical expenses, unlimited rehabilitation expenses.

The benefit available in Quebec at the time in 1990 of the model we costed was $500 a week for those who needed continuous care. Here it is $3,000 a month under Bill 37. There is a difference. As Mr. Lane has expressed, he had some concerns over the $3,000 benefit and the adequacy of it. We have some concerns over that too.

The problem is that all victims under Bill 37 will be stuck with that limit. At least under our proposal, innocent victims will not be stuck with that limit.

Again, because we do not have the Tillinghast studies in 1993, we do not know the cost of enhancing the personal care expense benefit from $2,000 a month, approximately, which is in Quebec, to $3,000 a month.

We dare say that with savings of $56 million, there will be room under our proposal to at least equal the rehabilitation benefit provided under Bill 37, that it will not take a great deal out of Autopac profits. How much profit does Autopac have to make off the backs of innocent victims?

We submit to you that there is plenty of profit there to enable the personal care expense to be increased to the levels equalling those available in Quebec.

The death benefit that we are proposing, or that we costed, the same benefits really would apply to the death benefit as to the income replacement benefit. The formula is the same under our proposal in terms of determining the amount of benefits to individuals, however, the maximum under Bill 37 is based on a $55,000 annual income, which means there is a maximum benefit of $275,000, whereas under our proposal it is based on a $40,000 maximum income to a maximum benefit of $200,000.

Again, we feel very strongly that the vast majority of victims will receive the same benefit under our proposal as under Bill 37. For higher income earners, it is not unreasonable to expect that if they are at fault, they ought to have purchased some life insurance to protect them against that additional loss which will not be that much of a difference. Because of the way the benefits work, as you know, it is only, I think, a 45-year-old under Bill 37 that actually gets the whole benefit. He is the only

one that gets the five times 55 if you happen to be earning over $55,000.

The vast majority of deceased victims will not receive the maximum benefit. Their factoring level will be much less. Again, we do not see a material difference to the majority of people, and where there is a difference, we feel that the income of the victim would make it quite reasonable to expect the victim to obtain protection on his own.

We have heard a blanket statement from Autopac. Now we know that they have not looked at an enhanced no-fault deductible plan, but we have heard a blanket statement from them that their proposal is the best guarantee of stable premiums and cost-efficient delivery of benefits and higher benefits. Well, I have talked about higher benefits.

That is an interesting comment but it is unsubstantiated. To say it does not make it true. What evidence do they have to say that if one system saves $56 million and another system saves $56 million, that one guarantees something better? I have not heard any argument in support of that bald statement. I would very much like to see that. Where is the evidence? I submit to you it is easy to say but a different thing to prove.

Perhaps the only basis for that is power. Under Bill 37, Autopac has a great deal of power, and when you have that power to exercise control over claims, to tell people that you had better lose 50 pounds or I am cutting you off, or you better do this or I am cutting you off, or I do not like your doctor, I like my doctor, and you better do what he says or I am cutting you off.

When you have that degree of power over somebody, I suppose it does create predictability, but it is not the kind of predictability that Manitobans are going to benefit from in any great way. I suggest to you that if that is the basis for their comment which may be the reason why they have not discussed it openly as to why they came to that conclusion, then I think that is very frightening for Manitobans to think that the predictability is going to be based on that degree of power being exercised over accident victims.

Just to carry on with some of Mr. Evans' comments. Mr. Evans said that basically you are dealing with half of the population in this province, half the population involved in accidents who are deemed to be at fault and therefore receiving inadequate assistance if injured,and somehow at the present time I am talking about bodily injury. That is not accurate.

Tillinghast did a study. I produced the study as one of the exhibits. I think it is exhibit 3 in the report that you are looking at which says two innocent victims for every driver at fault. That is critical, because under our proposal, more accident victims will receive fuller compensation. That is very important. How many people overall will benefit?

I think when you are looking at a social benefit scheme like Bill 37, you cannot ignore the fact that under our proposal or one much like it more people will get more benefit, more people will get fuller compensation. It is difficult to justify a system which provides less people with less compensation when one providing more fuller compensation for more people is available and provides the same degree of cost savings.

Now there are a number of criticisms that I think are accurate in terms of our existing system, and I would like to deal with those. Mr. Evans says that we are eliminating the tort system where you unfortunately tend to be very, very involved with very lengthy procedures, very lengthy litigation. Sometimes it takes four, five, six years for a settlement.

In the meantime, the injured party may be suffering a great deal or the family may suffer a great deal. There are horror stories of people who, even though they are innocent and entitled to compensation, do not get that compensation soon enough. Therefore, there is a great deal of suffering on the part of the family.

We have a system now which is very, very tardy in dealing with settlements and many years of delay in settlement. Unfortunately that is true. When you do not have adequate no-fault benefits and you have a system which has—I think that might be a somewhat exaggerated expression of the delay, but there is an unacceptable delay in getting benefits to people under our current system when they need it most. When you have a system that does not provide adequate benefits on a no-fault basis, then you are going to have that problem.

* (1740)

Our proposal deals with that. Because our proposal provides benefits rivalling those available in Quebec, the benefits are paid on a no-fault basis

just as timely as they would be under Bill 37, and that whole problem disappears. Then I think people are willing to wait to get more.

If they have the choice of waiting to get more or not waiting to get nothing, I think they will take waiting to get more, providing that they are given adequate no-fault benefits at the outset. So I am submitting to you all that our proposal deals with the question of hardship caused by delay under our existing system.

Of course, our proposal deals with the problem which Judge Kopstein dealt with in detail that under a tort system, the entitlement to a reasonable level of compensation depends on a determination of fault. Our proposal, by enhancing no-fault benefits to the levels approaching those available under Bill 37, deals with that because no longer will the entitlement to a reasonable level of compensation be dependent upon a determination of fault. That problem is gone as well.

Insurance limits, I think I have discussed that by saying to you that briefly there is a certain level of insurance available even though individuals who injure others may not be insured. Insurance limits, under our existing system, can bar recovery of a reasonable level of compensation to victims sustaining grievous injuries. That is true. Our proposal deals with that problem because all accident victims, regardless of insurance limits, will be entitled to a level of compensation approaching those available under Bill 37.

There is a perception that victims sustaining minor injuries are overcompensated under our existing system. By applying a deductible to noneconomic losses, I think it is fair to say that that perception will no longer exist. I think we have addressed that problem, that perception people have that under our existing system, victims who sustain minor injuries receive too much compensation.

Another criticism of our existing system has been that lawyers' fees take too great a chunk out of the money available to accident victims. Our proposal deals with that as well. Under our proposal, there will be no greater need for accident victims to hire lawyers to obtain the no-fault benefits which approach those available under Bill 37 than there would be under Bill 37 itself. There are lawyers who will act for clients under our current system and will continue to do so under our proposal on a contingency-fee basis.

There are many lawyers, when they act for clients on a contingency, who do not charge the client for any work done whatsoever in furtherance of obtaining no-fault benefits for the client, even if we have to assist them in obtaining the benefits. We do not consider the no-fault benefits received by a client as part of the settlement obtained by the client for settlement purposes. When I say we, perhaps I should say many lawyers do not.

Victims would be well advised to shop around to find lawyers who do not. That is a different issue, I think, than perhaps we are addressing here, but it is important to know that if you enhance no-fault benefits, many victims will not have legal costs associated with obtaining those benefits, even if they have tort claims, and they will have the opportunity to get them in a timely way, reasonable benefits without deduction. I think that addresses the problem of lawyers' fees quite frankly.

I have never tied a client up and forced a client to retain my services. Clients go to lawyers for a number of reasons. Many clients do not feel comfortable dealing with Autopac. Perhaps the claim is complex. There are a variety of reasons, perhaps much the same as why I go to a mechanic to get my car fixed instead of trying it myself.

People will want to continue to see lawyers under Bill 37, to help them, because they certainly do not have any other help in this bill. The problem is, they may not be able to do that. The result will be that they will be prejudiced, they will lose rights, they will have a very difficult time dealing with Autopac in the event that Autopac takes a position inconsistent with theirs.

I can assure you that under our existing no-fault system, there are many disputes as to entitlement to benefits, entitlement to benefits for impairment, but more particularly, regular disputes as to disability, medical coverage, et cetera. They will continue. I cannot imagine how this system will change that. What it will change is a person's ability to advocate effectively on his own behalf with the help that he needs to do that.

You will find, I think, that many Manitobans will be very unhappy with Bill 37. In Ontario they surveyed Ontarians shortly after the passage of the threshold system there. Mr. Acting Chairperson, 67 percent of Ontarians did not approve; 69 percent

favoured an immediate change in the legislation. You know what? Their legislation is better. It is better than Bill 37, because at least in Ontario the seriously injured accident victim had access to the courts to get proper redress.

I am predicting that you will find that when this Bill 37 is surveyed, 67 percent of Manitobans and more will dislike it, and more than 69 percent will favour change, because the problem is that they do not know what they are buying into right now, because the process was so quick. There has not been a great deal of informed public debate. We have heard things about guaranteed compensation, stable premiums, rates going through the roof, skyrocketing claims. We have heard all those things.

They sound very attractive to the guy who is having a tough time in this economy, but when Manitobans find out exactly what Bill 37 will mean to them in terms of the available compensation, when they are sitting at a stop sign and get rear-ended and lose $500 because they miss a week of work, and forget about pain and suffering, they are going to question whether they bought into a pig in a poke, quite frankly. I think there is going to be some serious concern out there.

Maybe we should have had an open process of public debate a while ago to explain to Manitobans the positive sides of Bill 37 or other alternatives, because in all fairness, it does increase benefits to drivers at fault, which is good, as do other proposals—and the negative side—and really get an informed opinion from Manitobans. Instead it seems that unfortunately the decision was made quickly, for whatever reasons. I do not think Manitobans really know exactly what they are in for. I do not think it is going to be something that they are going to be very happy with. I do not think this move is going to take Autopac out of the political arena. I think that as MLAs in the province, you will be getting more phone calls about Autopac than you ever had when no-fault comes in, but we will see. Time will tell.

Very few people will be unhappy about an enhanced no-fault deductible plan. You will find very few Manitobans will complain and say, well, I think people sustaining minor injuries should get more. You will find that there will be awful little public opposition to an enhanced deductible no-fault plan. I think you will find that the CPA and other organizations will see the wisdom and merit in a system which permits innocent victims, the two to one who are injured in accidents, to get compensation individualized to their losses and still provides very, very reasonable no-fault benefits to the drivers at fault. Manitobans will see the wisdom and merit in such a system. The lawyers will see the wisdom and merit in such a system. We think that a number of people will.

It is not too late. Bill 37 can be amended. Section 72 can create a deductible, the deductible can be indexed to inflation or indexed to the CPI like the income replacement indemnities—very simple. The framework of Bill 37 is there so that the benefits levels will have to be changed. But we can fix Bill 37 to make it a bill that will make many more Manitobans happier and provide better insurance protection to all Manitobans.

I urge you to give some consideration to that option before dismissing it out of hand. Thank you.

* (1750)

The Acting Chairperson (Mr. Laurendeau): Thank you, Mr. Rodin. Would you be prepared to take some questions?

Mr. Rodin: Yes.

Mr. Cummings: I would only ask if you see the proposals that you have here being substantially different from your original approach to no-fault and deductible. When you wrote me a letter back in January, when you were very critical of a deductible insurance scheme, you stated that a deductible automobile insurance system would do just that, it would destroy the true value Manitobans currently enjoy in terms of automobile insurance protection.

Under a deductible scheme, the majority of claimants would receive no compensation for their pain and suffering. This is not the majority of injured accident victims that perceive as true value in terms of automobile insurance. Is this substantially different than what you were talking about at that time?

Mr. Rodin: It is, Mr. Minister. I was talking about the same kind of deductible scheme that Autopac looked at as an alternative to Bill 37. I was not talking about an enhanced no-fault deductible scheme. What I was talking about was a deductible which basically is a money-saving ploy used to take benefits away from individuals to save Autopac money.

What I am talking about now is an enhanced no-fault deductible scheme. I am equally critical, Mr. Minister, of the deductible schemes, and I think I made that clear at the outset during the course of my remarks, which Autopac costed out when comparing it to Bill 37.

No, Mr. Minister, what I am proposing today is not the kind of deductible scheme I referred to in my letter to you.

(Mr. Chairperson in the Chair)

Mr. McAlpine: As far as the threshold limit on your deductible, what do you think that is going to do eventually with the increasing claim levels or settlements?

Mr. Rodin: Well, I do not think there has been any evidence that I have seen indicating that the compensation paid to victims for pain and suffering has been increasing inordinately in the last number of years. Claims costs have increased, but on an individual basis, I am not so sure that pain and suffering awards in and of themselves have increased.

But what you do is, you create a deductible which is tied into the CPI, so that every year the deductible gets a little higher. It may very well be that the deductible has to be adjusted from time to time if there is a perception that the courts are increasing awards to try to get around the deductible.

But I can tell you this, and that is that in this province we are very close to having a total no-fault scheme implemented. Our courts know that. What I suggest to you, what is happening now will send a very clear message to the courts that it will be in no one's best interests for the courts to beef up awards for pain and suffering. I think that the courts are aware of the problem. I think that the courts will be responsible. I think we can be fairly assured of that. If that does not happen, then all we need to do is increase the deductible to deal with it from time to time and, in any event, make it basically indexed to the CPI.

Mr. McAlpine: Just one more question. We have heard that settlements through MPIC, bodily injury claims, 1 percent are settled by court approved or court awarded, and 30 percent are represented by lawyers. That leaves 69 percent of the balance.

We see bodily injury claims are going up and MPIC are paying an enormous amount for that. Now what, from your point of view, is driving the cost of the injuries up?

Mr. Rodin: From the statistics I have seen, and I have studied them very closely, what is driving them up, I think, is people are realizing now that when they get into an accident and they have a sore neck, they can claim compensation for their pain and suffering, compensation that they might not necessarily have claimed two, three, four years ago.

It is the minor cases, as Autopac keeps telling us, that are really the burden on Autopac right now. People are more claims conscience now. The economy is tough, and people think that if I have got a sore neck and I could be compensated for it, well, I am going to make my claim. I am going to follow my doctor's advice as to medical treatment, and that is the way it goes. I do not think they are doing anything wrong at all. More people are exercising more rights now than they ever did. I think that is the problem.

Mr. Chairperson: Thank you very much for your presentation, Mr. Rodin.

Mr. Rodin: Thank you.

Mr. Chairperson: I will now call on Sarena Kaminer. Sarena Kaminer? Chuck Blanaru.

Mr. Chuck Blanaru (Private Citizen): There are four pieces of material to be distributed.

Mr. Chairperson: I guess you can begin while she is passing out the other parts. We have got the first one.

Mr. Blanaru: Of the four pieces, three are memorandums, two of which are very similar, and I will be combining them rather than take up extra time.

The first memorandum deals with the impact of Bill 37 on small business. The second memorandum deals with the impact of Bill 37 on farmers. The third memorandum deals with the impact on labour, and the fourth is best described as a letter of opinion that I hold myself.

Let me start by saying that I am a lawyer in Winnipeg in private practice. The perspective that I have taken in this material is based on the interests of certain clients of mine, in particular in terms of farmers, a certain organization who will be appearing at these committee hearings subsequent to myself; in terms of small business, a number of small businesses that I represent; and

thirdly, many number of people who have suffered injuries over the last 10 years that I have been practising.

I will say, firstly, that what is not in my material is the fact that I would agree and adopt everything that Mr. Rodin addressed here, and I will save repetition of any of that material. I will also say, as Mr. Rodin did, that one of the only things that I would consider to be good about this bill is that it does enhance the compensation for the at-fault motorist. That has surely been lacking, at least since I have been practising anyway.

Dealing with the impact on small business and farmers, I am going to combine the two for the purposes of my submission. For each of the memorandums I use a scenario, because I think the easiest way for my clients to understand the impact of this legislation is to give as close to a real-life example as possible. I think that would be accurate in terms of explaining to those of you who are not even familiar with the exact workings of the bill.

My scenario, and you can use it as a businessman or a farmer, would be a 35-year-old male who has a wife aged thirty-two and two children age five and three. Assume for a moment that such a business person or farmer earns the maximum gross earnings of $55,000 and after taxes, UIC and CPP, such person would have $37,600 as their net, after-tax income. Using the 90 percent calculation as per the bill, such person will basically end up with $650 a week for their period of disability from employment. From that $650, the farmer or business person would have to pay for any replacement help that they had, would have to attend to payment of all of their fixed expenses, whether that is machinery, other inventory, equipment, land lease, land mortgage, other interest costs. Not to be missed is the fact that they will have their personal home expenses that they may have in addition, mortgages, car loans, clothing, food. I do not think one has to be a rocket scientist to say that $650 will not do very much for that person.

* (1800)

The obvious argument being advanced by the government to this point is that that person should be buying extension or disability insurance. I will deal with that later. I mean, that is fine for those businesses that earn a great deal of after-tax income, but what about the fledgling business, the new business, the small business, the farmer who operates with high gross revenues but also high expenses and has very little, if any, after-tax income? How is that person going to keep their business, how can they afford to buy insurance, especially when there has been no guarantee by the government that their Autopac rates will be decreased proportionately?

The other thing to consider is that in terms of those unfortunate proprietors of business or farmers who suffer long-term disability, permanent and total disability, they will never recover their 10 percent of after-tax income. You say, well, okay, there is some price to be paid. Well, present value through actuarial factors, that loss can be $70,000 to a 35-year-old person. That is a lot of money to lose considering some drunk crossed on your sidewalk and ran you down while you were walking down the street with your kids.

There is also the fact that in addition to losing 10 percent, if you are permanently and totally disabled, you will likely be entitled to CPP disability. Unfortunately, Bill 37 says that if you are getting $700 a month from CPP disability, your IRI of a meagre $650 that we have already talked about, or $2,600 a month, will now be reduced by another $700, leaving $1,900.

It begs the question, what are you buying your insurance for? What are you getting for your money? There is no guarantee rates are going to go down. There is a promise of stability, and that is to be appreciated and I think to be worked towards, but where is the guarantee that your rates are going to go down such that you can afford to supplement your insurance?

Even more so, when you have a permanently and totally disabled businessman or farmer or business woman, what happens to the fact that they lose their business? They are not there for 10 months or 12 months or 24 months. They cannot afford replacement help. They cannot pay their mortgages; they cannot pay their equipment loans; they cannot pay for their inventory. They lose their business. They spent 15 years building up that business with sweat equity, they put a lot of money, their own money, they have mortgaged their house to invest in the business, and the bill addresses absolutely nothing for the long-term loss of that investment. They are stuck on the street to be living on social assistance. This is a business

person who is a very valuable member of society. I feel that the bill completely neglects that consideration of what is the value of that business. It is lost, it is gone, and now there is no recourse to recover it.

The death benefits for the farmer or the self-employed or small-business person under the existing system, and my memorandums detail this and the numbers, and I am not going to bore you with the calculations unless you have some questions on it, but my calculations show a $400,000 loss to the family for a business person earning $37,000 after-tax dollars.

Under the pure no-fault system proposed under Bill 37, the family is going to get $227,000. Under the existing system, although not guaranteed due to contingencies, the person can claim up to $520,000, so you are talking roughly $350,000 difference. So those are the serious concerns, I think, from a small business, farmer perspective.

The notion of a family enterprise is interesting. It is not defined in the act so we really do not know what it means, but assuming it means a farmer who has no positive cash flow, in other words his expenses outpace his revenues, and from a tax point of view there is actually a deficit, there is a loss being carried forward year to year, he is lucky because he is going to get $500 a week. From that money he has to pay all of his costs that are fixed through mortgages, equipment loans and everything else, he has to pay his personal expenses. Not only that, not only is $500 a meagre amount, totally insufficient in real life, but it is cut off after 180 days. After 180 days it is, see you later, we do not owe you anything.

From the labour point of view, I set out a scenario in my memorandum of a 35-year-old male with a 32-year-old spouse, I imagine. They have two children, five and three, and again, the clerk in this case earns a gross salary of $25,000. After deductions for tax, CPP, UIC, the net income would be just over $20,600, and at 90 percent of that, the clerk is going to get $357 a week. Now, again, the clerk will never recover the 10 percent loss, and we say, well, 10 percent is not that much. With the 35-year-old clerk, that 10 percent is about $35,000 to $40,000 present valued over their working life to age sixty-five. That is being completely ignored, so despite being the innocent victim, that clerk has to lose $35,000, $40,000, because someone either was not paying attention, or was drunk, or jumped the boulevard and hit him on the sidewalk.

As mentioned by the people who have made prior submissions, at age 65, all of a sudden that clerk's payments go down by 25 percent a year, until age sixty-eight, when the clerk will receive absolutely nothing. Well, where are they going to get their money from? They have never had a capital sum available to invest for any long-term investment strategy, and now they are going to be sixty-eight and penniless and again on the social assistance system. Similarly, my comments earlier about the effect of CPP deduction will apply equally here. Whatever CPP they may get through long-term disability will again reduce their IRI.

Dealing with the death benefit again, I have calculated a $150,000 loss to the family. If the 32-year-old spouse loses her 35-year-old husband with the two children I have mentioned, under the pure no-fault system the family will get $137,000. Under the existing system, the family could claim up to $288,000 and that is just for the income not the care, guidance, companionship, whatever that means.

I think a very serious issue concerns the head injured, the uneducated and immigrants, people whose first language is not English or French, people who for whatever reason have little or no education and people who through head injury, again, lack insight, judgment, concentration, memory, or the usual things required to have any sort of business judgment. These people will now have to rely exclusively on their friendly neighbourhood Autopac adjuster. They have to rely entirely on that person to care for them, to make the wise decisions for them, to rely on all the advice of that adjuster that they are getting everything they are entitled to.

Well, that is fine except what about that Autopac adjuster? I mean the word "adjust" as far as I know, if you look it up in a dictionary, means to lessen and reduce. Well, if it is to lessen and reduce, one has to mean that it is lessening and reducing your exposure under the insurance. So how do you reconcile on the one hand this despondent immigrant or uneducated person or head-injured person relying on this adjuster for their well-being and on the other hand the adjuster being responsible to his or her superior and the other is in turn responsible to his or her superior and then turn up the bureaucracy to maintain costs and reduce

and lessen the exposure? How can those be reconciled?

I look at you each and I say tell me that I am wrong. Tell me that there is not a conflict of interest. Tell me that your scheme, which I do not believe covers it, has any redress for that. Really what you are doing is you are leaving these people at the mercy of the adjusters' sole discretion. Obviously, what I am begging the point of saying that these people need some form of advocate or consultant. It is unfortunate in our society that a lawyer who addresses this topic has to feel as though he or she is personally exposing himself to his vested interest argument, when I try to provide this in the most objective way possible.

* (1810)

I am telling you that these people, and I have done it 700 times over the last 10 years in the cases I have had, these people, whether they are educated or uneducated, head injured or not head injured, they need some verification of the information they are getting. Whether it is produced in government brochures or word on the street or the adjuster's supervisor or whoever is telling them, they want it verified that they are getting what they are entitled to, whether it is no-fault or whether it is a claim against the tort fees or whatever. Now, the unfortunate people, the truly unfortunate people, who are they going to get? They are going to have to pay a lawyer privately to do this, these people who are living on meagre income replacement indemnities, supporting their families on that, and perhaps they will get sympathetic lawyers who will undertake those cases, but the lawyers are under no obligation to. I quite frankly doubt that the people who are most knowledgeable will be the ones who volunteer their time. Typically, that is not the case.

Not only that, but in terms of appeals or anything else, these people, the head-injured, the uneducated, the immigrants, they are up against a bureaucracy that is extremely large, that will now become much more powerful, that has a much larger mandate and obviously will be empowered to exercise that mandate. This bureaucracy, who has a wealth of technical support, a legal department to some extent I am sure will still remain, and they are not going to be unrepresented in front of a judge of the Court of Appeal.

(Mr. Edward Helwer, Acting Chairperson, in the Chair)

I can assure you that most immigrants, most uneducated, most head-injured people will be unrepresented. What a joke that is when you think about it. Talk about a David and Goliath syndrome. I mean, that is what you are creating here. As long as you understand these things that is fine. If that is your position after understanding these, then you are entitled to it. That is part of a democratic society. But, if you do not understand these things, that really concerns me, and I have my concerns that many people in this government really do not understand the issues related to this program. I say that, because when I talk to the average person on the street, they have no idea of what I am talking about. You as elected members are supposed to be the average person on the street. You are supposed to be just like everyone else, and if people on the street do not understand this, I query whether any of you do.

Dealing with another topic, are the people who suffer from chronic pain. The regulations have not come out yet, so we do not know whether chronic pain will be categorized as a permanent impairment or not, but many people that I have encountered who suffer chronic pain, they do not suffer chronic pain for six months. The chronic pain diagnosis is usually made a year and a half after the trauma. The future of that person, the chronic pain sufferer, is uncertain. You have no idea whether that person is going to suffer that a lifetime or not. I suspect, and I have not seen the regulations, nor has any member of the public, that the regulations will not cover chronic pain. In other words, someone who does suffer chronic pain for their entire life will get absolutely no compensation under the proposed plan.

The appeal commission. Well, it is nice that it is a cabinet appointment. I have some serious questions about the appointment procedure. What qualifications are these people going to have? Are they going to be trained? Are they going to know anything about the plight of people who have severe disabilities, or the business person? How are they going to understand the farming aspect of this? If they have significant statistics—I attach a sample balance sheet on the back of my memorandum on farmers. Is a typical person going to understand what all that is about without some economic advice, an agricultural economist

or some financial consultant? Is a typical administrative person going to understand what that is without that. How is that going to make its way before that person if they do not have counsel? The person cannot go out and afford an agricultural economist.

At least under the WCB plan, under WCB Section 60.2(1), it says that at least there will be a representative of the employer and the labourer on any tribunals. That makes a lot of sense in terms of the Workers Compensation scenario. Under this scenario I quite frankly do not know who should be on this appeal commission, but I certainly would like it to be a broad-ranging section of the public, at least people who are trained enough to know a little bit about this area. I certainly do not believe it should be a cabinet appointment.

Mr. Minister, when you introduced the plan, you were quite confident that it provides Manitobans with the two things they want most from the Autopac program: reasonable rates and fair compensation. You also added that the new plan will allow funds to be targeted towards enhanced compensation for more seriously injured accident victims.

Such a plan, of course, would be desirable and would reflect what the needs of the Manitoba public are; however, I think what you failed to do, Mr. Minister, is explain what the costs are associated with this plan. The public has absolutely no idea, and if you think I am wrong, I am not.

When you look at the whole of the plan, it is my personal view, and not any of my clients necessarily, that there is some misrepresentation going on here. First, dealing with the question of what the reasonable rates are, what the future stability of rates are, why is it that it costs more to ensure the same vehicle in Montreal than it does in Winnipeg? That is question No. 1.

Number 2 is, Manitoba already has some of, if not one of, the lowest cost of insuring premiums in Canada. What are the long-term savings to Autopac under this scheme? We already know that they are going to save $8 million by not paying MHSC back, okay. So if they are saving $55 million, $8 million, well, I will defer to you later.

We also know that according to WCB, they do not even know what it is going to cost them, but they are estimating it to be somewhere between five and 10 million. So some of these savings are quite artificial. It is just a shifting of the cost.

Now, whatever savings there are, are they savings to the motoring public? That is really what this all comes down to, does it not? It is fine to say that there are going to be savings, but are those savings going to be translated into the pockets of the motoring public?

In my opinion, it is irreconcilable for the government to say that people should buy their own insurance to make sure they have better coverage. How can you rationalize that on the one hand by saying people should go out and pay extra money for something and then not promise them a reduction in rates that is proportionate to what it is going to cost them? It seems irreconcilable to me, and I would certainly like to hear your view on that.

Now, the one thing that I found most interesting and almost embarrassing, and I do not feel embarrassed for myself, but I feel embarrassed for the government, is that they would say that there is no role for lawyers in this system, and very proudly. I think it was the president of the MPIC, Mr. Bardua, who quite confidently said, what is the role for lawyers? The answer: There is no role for lawyers. He was really happy about that. I find that, not only obnoxious, but so untrue because if you think people are not going to come into lawyers' offices to verify that they are getting the straight goods from their Autopac adjuster, you are really misleading yourself, I think.

I think more people will now come in because the enhanced no-fault benefit will be such that a lot of people will want to make sure they get every nickel they are going to get out of the Autopac system. So you are going to see an increased bureaucratic cost; you are going to see more lawyers doing this work. Maybe the lawyers will not be paid as well, and I will concede that for sure, but you are going to see more lawyers involved than there are under the existing system.

I do not want to recite all the same facts and statistics, but I think there is something to be said about the fact that only 30 percent of bodily injury claims are handled by lawyers. I mean, that is a very small figure when you think about it. I mean, 70 percent of people are quite capable or satisfied in dealing with things themselves.

So what are lawyers contributing in terms of cost to this overall problem when only 30 percent of the

claims are handled by lawyers? Again, the client is the one who pays the lawyer. Autopac pays virtually nothing toward the lawyers' fees except what they are obligated to which are based on tariff costs, but it is the people who hire them who are paying the fees.

If the people are dissatisfied, they have a right to challenge that lawyer's fee if they want to. Do not tell me that a judge will not bend over backward to protect a client who has been abused by his lawyer in terms of legal fees. It happens all the time.

It is really interesting because when this first came out, I was interviewed by a fellow from CKY TV about it, and he said he had a conversation with the minister, and the minister was saying how it is unfair that if there is only policy limits of $500,000, and the lawyer does absolutely nothing, that he will take a full third of that fee.

I found that remarkable if it is true because it is so obviously a glaring misconception of the situation, because lawyers are accountable for what fees they charge people. There is abuse, as there is abuse with doctors and dentists and accountants and any professional, any person, a teacher, a clergy person. The fact is there is a review available.

If the person feels there was something inappropriately handled by their lawyer in terms of the legal fee being charged to them, it is free for them to challenge the fee. As I said, my understanding is that people bend over backward for those people.

* (1820)

Will there be fair compensation? Is it fair compensation for me to be walking in my neighbourhood on the sidewalk with my wife and two children and someone to hop the boulevard, run us down on the sidewalk, for my wife and I to both suffer broken legs, both have surgery on our legs, both have plates put in our legs, both have surgery to remove the plates from our legs, both of us to have 100 physiotherapy treatments, but we both make a full recovery three years from now—is it fair that we get absolutely no compensation for that? I mean, that is a political question, and you have answered that in the affirmative. I think you should rethink that. Is that fair that for nothing responsible on my part, I would get absolutely no compensation for that?

I address that to each of you to consider in your own experience, if you have been in an accident or not been in an accident, but to imagine that. You are walking down the sidewalk. Somebody hops the boulevard and runs you down and you suffer a broken leg and go through all of that, that you get no compensation for your loss of lifestyle, your recreational activities, the effect on your family. You cannot bathe your kids. You cannot bend over a tub to wash your kids in a bathtub. Well, that is, again, a political decision.

Is it fair compensation for a concert pianist to receive $2,000 for the loss of a finger if a lawyer gets the same, $2,000? Is that fair compensation? Is that realistic in our democratic society? Does that take into account individual differences amongst people?

Is it fair compensation for a gifted student who suffers a permanent disabling injury to receive no compensation for future earnings? Is that fair? You have a gifted student, one of the debating champions of the world, and that person, at no fault of his own or her own, suffers a disabling, permanent injury, and they get absolutely no compensation for their future earning potential.

Is there enhanced compensation for the more seriously injured? That is what the minister said. The minister said the plan has enhanced compensation. I guess the first thing I thought about is, under our existing system, if you are the innocent party, you are already entitled to full compensation, so what can be enhanced over full compensation? It is a nonsense point. How can you enhance something that is already 100 percent? You cannot get 150 percent compensation. You already have full compensation.

So what he has to mean by that is at the expense of the innocent person, the at-fault person will now get enhanced benefits. I think it has been cried out for years that the at-fault person get enhanced coverage, but why should it be at the cost of the innocent person? I guess that is the question, when there are other schemes available and other alternatives, some of which have been discussed already.

One of the really interesting points that for some reason no one has talked about is what about women in this? If you are a professional woman like my wife who is an interior designer, she has

taken off a few years of her practising life to be at home and raise our kids. If she has the misfortune of being totally disabled during the time she is rearing her kids, this legislation clearly discriminates against her. It says, you are worthless because we are not going to take into account your future earning potential. You are nothing but a housewife, and we are going to base you based on your income, and I think that is garbage.

I think the fact is this is highly discriminatory against women. I am really surprised women's advocacy groups have not taken action against this, but the simple bottom line is that their future earning potential is completely ignored under this scheme.

Now what are the alternatives? Well, Mr. Rodin, I think, did a great job explaining one of the alternatives. I think one of the really interesting things, doing the work I have done over the years—I mean, I speak to a lot of adjusters, a lot of supervisors, some managers, and it has been common knowledge for years that the system has been crying out for some change, that there are certain abuses that are going on, that there are certain things that can be done that are really easy.

For some reason, the government had no political will to do anything, and then all of a sudden, we get handed this, what I consider a piece of garbage. You have to ask the question, what other options were there to keep costs down? I have listed them in my material called no-fault auto mysticism and misrepresentation, and I have listed what I consider seven realistic things any Autopac adjuster, supervisor, manager or lawyer from MPIC would agree hands-down would save a significant amount of money to Autopac. For some reason—and I do not know what the reason is—none of these things have come about despite being talked about for years. They have not even been mentioned in Bill 37, but anyway, let us deal with them very quickly.

Number 1 is the elimination of double recovery for financial loss. What this is addressing are those cases where certain people are entitled to double compensation because they have their own private insurance or group insurance plan, and of course, they get money through MPIC for their financial loss. By eliminating double recovery, MPIC could have saved a significant amount of money. I have never been provided with those statistics, so I do not know what they are, but I do not think they can be refuted.

Number 2 is why is there only retesting or licence suspension appeal hearings for bad drivers? I mean, we all know that accidents are not caused just by bad drivers. They are caused by everyone. So why has there not been some action on the part of the government to impose more stringent criteria for the issuance of a driver's licence and recurrent testing of all motorists, not just those who have had problems? Why has that not been brought in? Why is that not done? Why are people who suffer certain disabilities or by age are unable to drive or continue to drive untested—they are out there until the next accident happens. All of a sudden, they are brought in and, you know, they realize they are senile.

Number 3: In cases where compensation exceeds a certain amount—now, I picked a number out of my hat of $350,000, but in those large losses—I have had a significant number of those where I have acted for people ranging between $250,000 and $600,000—the person is entitled to opt for a lump sum cash payment or a structured settlement by way of a fixed monthly annuity.

It has always been my practice to recommend a structured settlement to my clients because of certain guaranteed aspects of that, but why can the government not legislate that? Why can they not just say, look, you may be entitled to $350,000 but what we are going to do is rather than use Autopac's precious capital, we are going to invest that capital and we will pay you the interest basically in the form of an annuity.

So everyone is happy. The claimant gets dollar for dollar full compensation. They do not have the right to exercise anything over the capital sum, but they are going to recover full compensation. Autopac is happy because they have not had to pay out 350 grand. They can just pay out the annuities on a month-to-month basis and leave the capital sum invested. For some reason that has not happened.

It was mentioned, I thought quite well, by the head-injured person who appeared here first that why does Autopac not take a more proactive approach to rehabilitation of the significantly injured. Through early and effective rehabilitation, they can reduce their exposure with some people, not all people but some people. By getting

involved early and encouraging rehabilitation, they can reduce what otherwise cost them because these people may be able to get into an occupation or employment sooner.

I think the answer as to why they have not done that is really simple. It comes back to the conflict of interest. Why would they want to do anything that could potentially cost them more money in the long run if this person turns out to not be employable? What if through all this elaborate retraining or rehabilitation, the person is still not capable of employment? Well, they have really done themselves in then because they are going to have a report from their own expert saying this person is unemployable. Now why would they do that when they are trying to lessen or reduce the exposure? That is where the conflict of interest keeps coming back into this.

Number five, they could pay the financial or pecuniary losses on a net after-tax basis. Right now people are entitled, generally speaking, to their gross earnings. Well, why is that? Why has the tax not been deducted? That, again, can be done easily through regulations. Again, for some reason, the government seemed to do nothing. Why has the government not eliminated subrogation by private insurance companies? Is it perhaps because they favour private insurance companies? Is it because private insurance companies collect a premium? They do not even ever think about subrogating back. If they end up getting money back, that is a double bonus to them.

Right now, it could be a very simple thing I think, given the jurisdiction of property and civil rights in insurance, to clearly just legislate the fact that private insurance companies can no longer subrogate for money paid. I do not know why the government has not done that. It is such an obvious thing that saves money. I am sorry for looking at you, Mr. Minister, but I cannot help it. It is your jurisdiction.

* (1830)

What other long-term considerations are there? Well, we have talked about a monetary deductible. For example, the state of North Dakota has a deductible based on physical injury if you have a disability period for, whatever it is, 30 or 60 days. There are other things to consider. There are problems in all of the alternatives. There is no problem. The enhanced deductible that Mr. Rodin proposes, I think, is a very well-thought-out one and is much more preferable to Bill 37.

Why has Autopac not pushed the government to make these changes? I am blaming the government for not having introduced any of these alternatives, but why has Autopac not been pushing them to do it? I think that the answer is a really basic and simple one. I think they would rather tell the government that the system is out of control and is impossible to control and there is nothing we can do, because by saying that they are making their job really easy. I think that they have been faulty in exercising their mandate. Their mandate is to provide good insurance at an affordable price. It was open for them to do it. They could have introduced any of these seven measures I have mentioned that I have known about for years and so have they. Whether they have pushed the government to do these things or not, we would not know in the public. Maybe they have. I do not know. I think that they just want to simplify their mandate and I think they will be doing that through Bill 37 for sure.

I am almost finished, so bear with me just a minute. Again, it is my opinion that this bill is antihuman. It is antihuman because it does not recognize individual differences in people. There is a wealth of difference between people. A concert pianist should not receive $2,000 for a loss of a finger when a lawyer would receive the same amount.

It is antiwoman, and I have discussed why I think it is antiwoman, because it treats homemaking spouses who may have been professional in the years prior to child rearing as nothing.

It is antibusiness and antifarmer to some extent for the reasons I have talked about at the beginning.

It is antilabour for some of the reasons I have mentioned about earlier.

It is antistudent because it does not take into account future earning potential.

It is antiseniors because it reduces benefits at age sixty-five and wipes them out at age sixty-eight.

Most importantly, I think, in our society, it is anti-intellectual. Why it is anti-intellectual is because the government has intentionally withheld information from the public. For some reason the government is concerned about informing the public about this issue, I would submit the reason

that you are concerned about spreading information is because the public will hate this once they know what it really is.

The last point I am going to deal with is the discriminatory nature of this bill. I do not mean that in terms of men, women or age or anything like that, but I mean in terms of your civil right of action.

In Manitoba it is okay if you have a claim against your doctor for negligence. You can sue your doctor and get full compensation. If you trip at Winnipeg Stadium on a faulty board, you can get full compensation for your injuries because of their negligence. If you were on an airplane that crashed because of faulty upkeep you can sue and get full compensation for your injuries. If you are on a boat, the Paddlewheel Princess or Queen or whatever, and there is something faulty and it sinks, you can sue for full compensation.

Unfortunately, you cannot sue if you are injured in a car accident. I ask you, what is the logic of that? How can you reconcile that within the same province? It is fine to say we are hereby wiping out every civil right of action for negligence no matter what the cause is, and perhaps you will consider that in the future too, I do not know. It is one thing to be consistent at least and say we are depriving people of all of their rights for recovery and full compensation, but why discriminate and say just on car accidents, just on car accidents you are not entitled to full compensation any more? You are just going to have to live with what the schedule gives you.

I thank you very much for having the patience to listen to me.

The Acting Chairperson (Mr. Helwer): Thank you, Mr. Blanaru. Are there any questions? If not, thank you very much for your presentation.

Mr. Sam Wilder. Is he here? Priti Shah. Ralph Neuman. Victor Schroeder.

Mr. Schroeder is here. Do you have a written presentation, Mr. Schroeder?

Mr. Victor Schroeder (Private Citizen): I do, Mr. Acting Chairperson, but quite frankly, it has been evolving, and I think it would be a lot easier for the committee to follow if I just spoke here, because there have been some changes.

The Acting Chairperson (Mr. Helwer): Please, carry on then.

Mr. Schroeder: The last time I spoke in the Legislature some five years ago, I did not expect that it would be this long before I was back, but I had been retired by the electorate and put out to pasture, I hope on a no-fault basis.

It is ironic that I am speaking in this room for the first time since then. Since then, the picture of Howard Pawley has come up here—the father of Autopac. I just hope that the next picture on the wall does not show the individual who destroyed it.

When we talk about reforms, I would hope, and I am addressing these comments very specifically to the NDP group here, that when we talk about reform of the health care system, both parties talk about reform, the Tories mean something different than the NDP. They mean something different on education reform than the NDP. I would hope that when we look at automobile insurance reform, we look at reform that keeps us up with the times and does not do significant damage to Manitobans.

I would like to talk a little bit about the present system with respect to how it relates to the Quebec plan, to the so-called no-fault plan in Quebec. I would submit that for drivers, without Greg Rodin's enhanced package, the way it exists right now today, the no-fault premiums or the no-fault payments for Autopac are about the same in Manitoba now as what they will be under the new enhanced no-fault plan.

Eligibility for wage loss replacement currently commences after the driver has been unable to work after an accident for a one-week period. In the new system, the same thing will happen. The driver at fault loses a week, so no change. After that, a driver earning $26,000 per annum—that is significantly above, as I understand it, the industrial average wage in Manitoba—receives now, under this bad old system, $350 a week. Under the new improved system, he would receive or she would receive about $345 a week, maybe $350, depending on their particular income tax circumstances.

Drivers who are at fault earning something less than $26,000 per annum are in similar circumstances. Basically, drivers at fault, earning less than $26,000 or $26,000, are no worse off under the current system, which the government says it is improving, than under the new system.

It is true, for those drivers who are earning between $26,000 and $55,000 there would be

slightly greater no-fault benefits under the new plan, and the meat chart will be slightly improved for those few at-fault drivers who suffer the types of permanent injuries which will result in those payments, which are based on something like a roulette wheel, which is quite fashionable these days. That is, for certain types of permanent injuries which may impact on your life in a devastating fashion, there will be zero compensation, while for other types of permanent injuries which, while a great inconvenience, do not hamper your lifestyle, payment will be made.

(Mr. Chairperson in the Chair)

All of the above deals only with circumstances of people who are at fault in an accident. By far, the majority of individuals involved in injury accidents are not at fault. While it is trite to say that 50 percent of drivers are at fault, one should be honest and acknowledge that somewhere between 65 and 70 percent of accident victims are currently eligible for additional benefits, because either they are the driver who was not at fault or they are pedestrians or they are passengers. For them we now have the Quebec plan, plus, plus, plus.

Bill 37 is designed, I would submit, either intentionally or unintentionally, to destroy this system. It immediately commences privatization and, through very rapid erosion of public support when its impact is felt, will allow for the total elimination of public automobile insurance in this province, in my opinion, within the next decade.

* (1840)

Basic insurance principles provide that, even if I am personally to blame for negligently burning my house down, insurance I have paid for provides me for replacement for that house. Depending on what I pay for, it may be the depreciated or undepreciated value, I get approximately a house of similar value to the house which was destroyed, not a tent.

Bill 37 proposes that if a Manitoban is involved in an accident he will no longer be able to recover all of the losses suffered even though the accident was caused by the negligence or bad driving of another. This may well save some insurance premiums, but there are a lot of identifiable groups of Manitobans who will be net losers in this scheme which is geared to make the victim pay.

Who are those people who will lose? Pedestrians very seldom, if ever, cause bodily injury to the occupant of a motor vehicle. All too often, some motorist running a light or crosswalk or sidewalk manages to injure a pedestrian. That victim will now pay for the reduction in insurance premiums enjoyed by the driver who hit her because she cannot be fully compensated for the loss she has suffered. The scheme is premised on the victim paying.

Another group of losers are children under 16 years of age and others who do not have driver licences. Nondrivers include a fairly substantial proportion of our population, including many of our elderly, including many our physically handicapped, many immigrants and others, for instance those who take taxicabs or are passengers in motor vehicles, a significant portion of whom are economically disadvantaged. Each of these people will be required to sacrifice when injured. We suffer approximately, I understand, 20,000 personal injuries in the province every year or more than a thousand per constituency every four years.

We have heard about students, people entering the job market, apprentices, farmers coming off crop failures, driver-owners of transport vehicles who will find this system far more difficult than workers compensation. Seniors, for whom we have no compulsory retirement legislation, will be big losers under this Quebec-style plan. In fact, I would argue that Manitobans earning less than approximately $26,000 per annum, who are at fault in an accident, will as a result of the structure of the new system be losers.

Finally, I think this is quite important, the income replacement portion of the insurance premium under the new system, which I understand is about half the premium payment—and the minister may have some other figure on that, but that is somewhere between 40 and 60 percent—could only be described as a poll tax.

An injury victim will, in the future, be compensated not from the public liability insurance policy of the driver who was at fault in the accident but rather from her own policy. You cannot sue anybody. You are dealing with your own policy. The new policy will pay for vehicle damage. It will pay for rehabilitation. It will pay the meat chart damages. It will pay cost of future care for those approximately 30 Manitobans per annum who are permanently disabled by a motor vehicle accident and that portion of them who were at fault. It also

pays for income replacement. Many seniors do not have income to replace. If they have it to replace, the system short changes them in the first place.

Short-term injuries to the unemployed create no liabilities under this new system. However, individuals earning zero or $10,000 a year will pay the same income replacement cost on the same vehicles, assuming they have the same accident record, as individuals earning $55,000 a year. The income replacement fees paid in by those earning less than average incomes will be used to pay for the losses of those earning more than average incomes. One would expect that in a fair income replacement program, where so much of the premium paid is devoted toward that factor, you could have done something better.

UIC premiums, WCB premiums, CPP payments, all recognize that some individuals will receive more but on the other hand will be required to pay more. When people are no longer in the workforce, they are no longer required to pay those premiums. Such payments are not made for individuals choosing to stay at home with their children, for instance, but they will pay this premium. It is true that a very small portion, somewhere I would estimate less than 15 percent certainly, of current insurance fees are triggered in a similar fashion. The new policy will magnify very substantially this subsidy by low-income individuals to high-income people.

The final group I would like to comment on as being losers are the good drivers. That is the other 50 percent. They have gone for years not causing motor vehicle accidents and will now be put into a position where even though they have paid substantial amounts for insurance, if a bad driver hits them they will not be fully compensated for losses actually incurred. This group may well have the small comfort of saving an insurance premium of 10 percent—it may be 15 percent, I do not know what it is—from current rates, but should these issues not be reviewed first to determine whether there are other less draconian methods available to save 10 percent and to give Manitobans a real choice, how about the winners. Who are the winners? There are winners—the insurance companies.

The bill makes it abundantly clear that the income losses of those of us who can afford to pay for income replacement insurance will be replaced by private wage loss replacement insurance which will not be deducted from any of the indemnities. This provision, I would suggest, was not put into Bill 37 by accident. You will note that Canada Pension Plan payments to a disabled victim as a result of the accident will be deducted. Now, the individual had to make that payment the same as they had to make the payment for the private income replacement insurance, and there are, it would seem to me, logical grounds for treating them in the same fashion. So somehow publicly funded insurance is treated differently in this bill than privately funded insurance.

The reinvolvement of the private insurance industry will add back in the administration costs saved by the initiation—some of the administration costs, I do not want to make it appear that this is going to be a huge factor, but it will be some factor certainly. What we are dealing with here is the two sets of administration costs rather than one for two sets of policies. They are through two different companies. MPIC will not issue income replacement insurance above the basic, as I understand it.

Again, maybe the government will change its mind on that if this bill passes. We will have one tier of insurance for those who can afford it, and I might add for those who are healthy enough to be able to get it, because there are many people who, even if they can afford it, cannot purchase income replacement insurance because of their health conditions.

* (1850)

I do note, however, that at least you have not taken away the right, in this legislation, of Manitobans who purchase that private income replacement insurance access to a truly independent tribunal when they disagree with Sun Life. That is a small mercy. It was the, again, I would submit, requirement that all drivers be insured under our present no-fault provisions which allowed for dramatic efficiencies in savings and they will, to some extent, disappear with Bill 37.

I believe that as this new system erodes public support for public auto insurance, the insurance industry will soon be able to come back in. What we have managed to achieve here through the backdoor is what the Lyon government attempted to achieve through the front door in the 1970s. You will recall the Burns commission, and we took them on and we beat them.

The other set of winners are those bad drivers, and I appreciate some drivers are good drivers who have an occasional lapse. That does not change what it is that they have done to the lives of the people they lapsed into. There are drivers who are basically not particularly caring very much. They drive carelessly, occasionally drive through stop signs at high speeds, drive too fast for icy conditions, the ones who cause the accidents and are earning over $26,000 a year. Below that income level, it would appear that even the bad drivers, other than those who are catastrophically injured, do just as well under the present system. Certainly in terms of catastrophic injuries, something is needed to improve the current system. Nobody disputes that.

The real tragedy then is that a system of insurance which we turned into one of the best on the continent would end up being turned into one of the worst. When MPIC was introduced, we made it a requirement that all vehicles carry public liability and property damage insurance. All drivers were insured for income replacement which is referred to as the no-fault insurance. Some options remain such as deductible and the amount of insurance. The no-fault portion, and this is very important, was not factored in at the cost of the innocent victim. It was a rational add-on without which insurance costs, among the lowest in North America, would have remained even lower. Very few jurisdictions had such a no-fault component at the time. It provides the individual with income which prevents the insurer from forcing quick vastly inadequate settlements.

While it is true that it may sometimes take some years for victims to receive full compensation under the current MPIC system, they are in the meantime receiving no-fault benefits and rehabilitation which for average Manitobans is no less generous than the proposed improved no-fault payments. The difference is that after one year, two years, five years, the victim can under the current system look forward to full compensation, while under the new system that hope will be eliminated excepting for the odd case where some money will change hands based on the meat chart and your roulette wheel.

The public liability principles as they existed prior to Autopac were not changed by Autopac. Indeed, those same principles continue to apply in an enhanced fashion in other areas of our lives. It was the Pawley government which brought the law of occupier's liability in Manitoba into the 20th century when we codified that law, which had been a mishmash under the old common-law system, to now treat all visitors injured on private property basically in a similar fashion to innocent car accident victims.

That is, the duty of the occupier of property toward visitors was made identical to that of drivers of motor vehicles toward passengers, pedestrians and other drivers. That is why our homeowner insurance policies cover us for public liability, to allow for coverage where we as occupiers have been negligent and because of our negligence someone has suffered damage. Institutions carry this form of insurance as do doctors and lawyers. Where an individual or institution is not insured, payment theoretically is to come from that individual or institution, but unfortunately in those cases very often the victim cannot recover because the guilty party does not have the funds to pay. That is why in the case of car insurance, people are required by Manitoba law to carry public liability insurance.

In many circumstances not involving vehicles, people who injure themselves either through their own fault or through no fault of anyone else receive no compensation. Examples abound: people being injured while removing snow from their roof; damaging their back while gardening; falling while hunting; sporting accidents; cutting branches in your orchards.

What is the philosophical basis on which we are saying that the driver of a car who drives through a red light, smashes into a pedestrian and then is injured himself when he strikes the store, should be compensated for his wage and other costs but people injured because they fell off a ladder or because they were injured in a soccer game receive nothing. This question, I would suggest, must be answered if, in order to finance paying for the at-fault driver, we are going to be reducing the payment to that driver's innocent victim. What is the philosophical underpinning of this type of a program? If, because of the negligent actions of an individual anywhere other than in a motor vehicle or place of employment, that individual and another person are injured, the victim will be entitled to full recovery. The person who was at fault would receive no benefits unless he had an income replacement insurance policy.

I want to emphasize that I support no-fault insurance benefits and, indeed, increased no-fault insurance benefits to the at-fault driver. Let us not try to say that we are taking a position that that should not happen. I believe that it is wrong to compensate the driver who was at fault at the expense of the innocent victim.

Why are rates rising? One of the members of the committee asked that question, and I think it is a good question. They are rising, as everyone here knows, across North America. We are no exception and we should not be deluding the people of Manitoba that you have some panacea here that is going to make everything wonderful for everybody and you are going to save them some money to boot. You know that will not happen. You know that you are buying an insurance package which is of less value than the insurance package that you are throwing out.

We are not immune from the economic cycle, which does impact on insurance, nor are we aware or immune from rising costs or awareness of rights by those in our society who in the past were undercompensated. I refer and Chuck Blanaru referred to a number of examples of ways in which basically people have become more aware of their rights. I believe others have referred to that.

Payment of prejudgment interest is another factor in costs. That was brought about by a reasonable and fair change by the Pawley government. That government decided that prejudgment interest, which had not been paid until 1984, would be payable to fairly and truly compensate accident victims for the real cost of their losses and to prevent insurance companies from delaying claims once an injury victim was back to preaccident status in order to save interest costs. Yes, those extra costs, which may take three, four, five years to obtain, are obtained with interest at reasonable rates. I believe the current three-month rate is just over 5 percent.

* (1900)

I am frequently consulted by people who tell me that they have an offer from MPIC. I am able to tell them that either that offer is reasonable or they should make a counteroffer but that it appears that they will be able to settle. I understand somewhere between two-thirds and 70 percent of bodily injury claims are settled without a lawyer contacting MPIC. In those instances, victims receive 100 percent of the compensation.

Unfortunately, MPIC is more and more frequently refusing to pay full compensation without the intervention of a lawyer. I think all of us can recite stories of examples of, once a lawyer intervenes, offers coming along of four times or five times or more the original offer by Autopac which was simply not acceptable and which was the reason they were driven to the lawyer in the first place. Where you have reasonable adjusters, those things are not as necessary. Certainly, when you have serious complicated cases, there can be a requirement for legal intervention. Well-to-do Manitobans have always had full access to full legal recovery.

Another change in the last decade or so is the fact that people have become more aware of the option of contingency fees. People who are not possibly in a position where they feel they can properly defend their interests are using those rather than paying hourly fees, where they do not really know how long it is going to take, because nobody can tell on day one how many hours there will be.

The end result of all of these items is that MPIC, in 1993, is finally being required to pay out closer to the true costs associated with the carnage created on our streets, sidewalks and highways by cars and trucks and motorbikes. Now that the poor are also finally in a position to receive full recovery and the present system is finally identifying closer to those real costs, we are going to change the structure so that victims will receive, in many cases, far less than their true losses. Of course, I am sure people have mentioned to you that in some instances there will be overcompensation.

This no-fault bill fully compensates you for your damages to your glass, to your paint, to your metal but not for the damage to your body. Your car will be nice and sparkling. You will be compensated 100 percent for that loss. If you lose time off work, go pay for it yourself for the first week. I would like to see how many people, in fact, of the 20,000 who are injured—what are the numbers? How many of those 20,000 people are off work for longer than a month? How many are off work for longer than a week? I would suggest to you that there are not very many, so you are taking a pretty good bite out of the dollars that one family takes home, the family

that has an injured victim who was in the workforce, which did not happen before.

I do not think that is fair. That family, that individual had nothing to do with creating the accident. He just happened to be in the wrong place at the wrong time. You are saying to that family: because this is income you are earning now, we are taking it out of your pocket, but we will fix your car and we will fix the other guy's car, other than his deductible, and you can all go home and say, boy, we are really lucky we have this nice, new system.

The language of the act refers to a waiting period of that one week. When you have waited one week, you will still be eligible for zero income replacement for that week. You can wait for the rest of your life—not one year, three years, five years, the rest of your life, and you will never be compensated for that week. For your second week, if you are earning $500 per week and are single, you will get exactly the same as you would have received if you had been at fault under the existing system.

If you were not at fault under the existing system, if you were receiving $500 a week in income, that is what you would have received for your first week, that is what you would have received for your second week—no more, no less—the same percentage as your payments on your car. You received 100 percent of your pharmacy costs, 100 percent of costs of replacing ripped clothing, 100 percent of anything that happened to you as an individual and not as a person in a little box somewhere.

This bill has been compared to workers compensation. However, there are significant differences, both in theory and in practice. When workers compensation legislation was first enacted, prior to enactment of laws requiring that the costs resulting from negligence of several parties be shared among those parties, a worker who had done something even slightly negligent was denied any payment whatsoever by the courts from his employer, even if his employer was far more responsible for the injury. Now, we have changed that type of legislation probably before I was born.

As well, employers agreed under WCB legislation to pay for the injury of the employee, not only where the employee was the person solely responsible for the accident, or where the employer was responsible for the accident, but also in cases where a third party or no one was responsible for the accident.

The appeal body at WCB has traditionally had representations from management, from labour, someone independent. I understand that the rehab system at Workers Compensation is still basically in place and is a better model than that being proposed here under the changes to the MPIC rules, and the existing rehab is quite good. There are problems with it, and certainly it can be improved, but it is probably a better rehab system than we are going to have with the new system.

The appeal commissioners under this legislation and the culture in which they operate must be considered carefully. They will associate on an almost daily basis with the executives of the insurance company. They will get to know the adjusters. They will hear about political problems resulting from increases in rates. They will be aware that the government can replace them if they have not been careful and prudent, and there will be a tendency to support the company. Anyone who seriously considers this format must surely come to the conclusion that appellants have reason to be concerned about objectivity.

The bill does a disservice to people who might be unemployed on the day on which they suffer an accident. Right now, more than 11 percent of Winnipeggers are unemployed. Many more have temporarily withdrawn from the workforce, as you well know. If an unemployed millwright is seriously injured in an accident on April 1 of the year, he will receive no income replacement until the end of September. Under the current system, even if the millwright was at fault, he would receive income replacement benefits after the one week based on his previous year's earnings, and when the case settles, would receive any balances plus losses—I am sorry, if he is not at fault—would receive the balance for pain and suffering.

This bill reduces the income of the victim, makes no provision for the fact that the victim, who may not even have qualified for Canada Pension Plan payments, cannot contribute to that plan, and then when the victim turns sixty-eight, totally shuts off payments. So it deducts Canada Pension Plan payments from the payments to the individual, and yet does not pay them.

I think there have been references to the control that your adjuster has over your case, the fact that you now have no right to your medical records subsequent to an accident, the right that the adjuster has to terminate payment if he believes that you have provided inaccurate information to the corporation. You can of course appeal to the commission, but in the meantime you are out of income.

Not all adjusters are reasonable people. If the adjuster believes you do not have a valid reason for refusing to return to work or for leaving your work or for not taking new employment, your payments will be terminated. The adjusters can back up their position with the report of their doctor whom you are required to attend for an independent examination. The doctor they choose will be anything but independent. They will not pay for your medical report from your doctor, nor if you get one, need they rely on it. If the adjuster believes that you do not have a good reason for refusing a medical exam or for interfering with a medical exam, you will be cut off. If he believes that without valid reason you are not following medical treatment recommended by a medical practitioner and the corporation, you can be cut off.

* (1910)

One could argue that in all of these discretions if they are reasonably exercised, the system will work. That is true. The problem is even under the present system where people are entitled to legal recourse, many accident victims are abused by adjusters. It is not to deny that there is abuse of this insurance system just as there is abuse of Workers Comp and any other insurance system. The current system provides the victim with access to an independent tribunal; the proposed system does not.

Only a no-fault system which provides full compensation to serious injury victims should be allowed to replace our current low-cost system. Only a no-fault system which allows the injury victim access to an independent tribunal to determine facts should be allowed to replace our current system. It is not fair to place the burden and cost of accidents on the victims. Because of its concept, not because of detail, Bill 37 is bound to create many other injustices. No matter what amendments you make, Bill 37 takes away the right to full compensation for injuries to innocent victims and commences the process of privatization of Autopac to the delight of the insurance industry.

I would suggest that we look at real reform which addresses some of the costs involved such as the following:

One: Under the present system victims are arguably overcompensated because of the fact that when they are paid there is no recognition of income taxes. Cost savings could be substantial.

Two: Eliminate double recovery where individuals are already receiving other forms of compensation for time off work.

Three: Eliminate the right to sue in tort for the first $5,000 of pain and suffering and at the same time allow people on an optional basis to purchase this coverage with the intention of obtaining full cost recovery.

Four: Top up no-fault payments by changing the cap to something like that suggested in Bill 37. It should not be a costly add-on.

Five: Require a minimum coverage of a million dollars. Again, the extra coverage is not costly and is only reasonable.

I would suggest that the above reforms taken as a whole would save as much money as MPIC is proposing to save without causing the severe problems which will occur for victims and within the health services and workers compensation fields if the proposed bill passes.

I noticed Mr. Cummings was disagreeing with a previous speaker who was suggesting that this was going to provide a hit against MHSC. Certainly, I would like to hear more about that. The bill makes it clear, you cannot sue in tort for damages. It makes it quite logical that you cannot then collect from MHSC. There is no provision to collect. I do believe that will cost the system a significant amount of money.

Another point, in terms of hearings, when the Schreyer government introduced Autopac requiring drivers to buy all auto insurance, whether it be public liability, property damage or no-fault, through one company leaving the system for calculating losses as it then existed in place, it first held hearings right across the province, from north to south, from east to west. The issue was: Is this plan feasible? Will it work?

Surely, at the very least, similar hearings to determine feasibility, workability must be held

before implementing such a regressive piece of legislation. What exactly would be the rush after five years of being asleep at the switch? The mathematics are not difficult. The Tories say they will save about $50 million in Autopac premiums. Of that amount, about $10 million to $20 million will be saved by passing on costs to other public organizations such as MHSC and WCB. At the same time, the Tories claim that they will substantially improve payments to no-fault drivers. Where is the peanut? The only saving demonstrated by the Tories are in reducing payments to the 70 percent of accident victims who are not at fault, and then they will be busy trying to find money for WCB and MHSC—so more cutbacks, taxes or deficit.

Accordingly, the entire $30-million to $40-million saving, in addition to the increased benefits, will be paid through reductions in compensation to innocent victims. Is that fair? Do Manitobans understand it? I would suggest that you not destroy this system until you fully understand what it is that you are doing. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Schroeder.

Mr. Leonard Evans: As the presenter Mr. Schroeder knows, in the committee we are not supposed to engage in debate but to ask questions of the presenters.

Mr. Schroeder talked about good drivers and bad drivers. I ask Mr. Schroeder if he would agree with Judge Kopstein, who said that the vast majority of people who are found to be at fault are ordinarily careful drivers who have made a mistake because of a momentary lapse of concentration and that normally people who do get into the accidents are ordinary people who make a mistake.

Mr. Schroeder: That does not change what happens to the victim because of somebody else's lapse.

The point is, if somebody did that to you and you had a couple of kids at home and all of a sudden you are without an income and you cannot pay the mortgage payment, does it matter to you that that is a nice person? That person has done some fairly substantial economic damage to your life. You are not asking that person to do anything other than be properly insured against that kind of stupidity, which we can probably all say that we may all, at one time or another, be involved in.

Let us not say that the person who is going to pay for that is the victim. That is what you are saying with this legislation. You are saying that just because the guy who rammed through the red light was a nice guy, you should end up being the one who ends up losing your mortgage payment on that particular week. I do not buy that.

Mr. Leonard Evans: Again, we are not supposed to debate, but I would submit that at least under the new bill there will not be the delay of four or five or six years of payment to the innocent party and his or her family with all the economic loss and considerable suffering that does take place at the present time. We all know of specific cases.

My other question is: Would Mr. Schroeder agree, really there is a basic philosophical difference between himself and many of the other presenters here, between those who advocate the tort system, which is based on a principle of negligent drivers being penalized, as opposed to the principle behind pure no-fault, which is, accidents are just that, accidents, and it is geared essentially towards a compensation thrust, and as Mel Holley said, it resembles a social benefits program, similar to a social assistance, social benefits program?

Mr. Schroeder: You did not add in yes or no.

Several presenters have explained to you that we do not wait three or four or five years now to get paid. You get paid immediately. You get paid the no-fault payments immediately. You are into your rehab as soon as you establish what you need. You have a far better chance now of getting that payment immediately than you will have in the future when you will not have the assistance for the difficult cases of the legal profession.

The money you are going to get three, four, five years down the road is money which you will not get under the new system. Under the new system there will be delays with respect to what you receive on the meat chart. Not even Autopac is going to be able to tell how serious a head injury is in month No. 3. Not even Autopac is going to be able to tell, on a whole series of injuries, whether there will be recovery and where you are going to end up. So let us not pretend that even that meat chart portion is going to be paid out early.

In terms of philosophy, I am not going to speak for other people's philosophy here. You have heard what I think. That is where I stand.

Mr. Leonard Evans: Would you not agree that the innocent driver is far better off under this proposed plan of Bill 37 than the present tort system where a driver is involved and has no insurance or totally inadequate insurance or inadequate wealth, so the innocent driver cannot claim anything because there is nothing to claim?

* (1920)

Mr. Schroeder: Len, why are you saying this? Have you talked to Autopac? Talk to the people who understand the system. Take a look at your licence. You probably have underinsured motorist coverage.

I have told you in the past, Len, I have not run into a case like that. Let us not legislate for the one in 14 billion cases. Let us legislate for what is really happening out there. Let us not do it on the basis of theory. Let us do it on the basis of practical fact.

Mr. Leonard Evans: Mr. Schroeder indicated that the winners would be insurance companies. I wonder if he has taken into consideration that by increasing the gross income from, I do not know what it is now, $26,000 to $55,000, virtually doubling it, that virtually there is less room for private insurance than there is under the present system.

Mr. Schroeder: That is a valid point, and beyond that, of course, you are really in a position where you can never compensate fully under this existing proposal, that is, the new proposal will not compensate you completely. Therefore you still have that requirement, plus you would be relying on a group of people with really nothing to hold them back in terms of their decision making.

Mr. Leonard Evans: Just one more question and that is the whole matter of the proposal of a deductible. As has been indicated, I have been advised that MPIC and the government have looked at the various options, including the deductible that is being proposed, and the analysis shows that a reduction of compensation payments may prompt claimants to attempt to build up the value of their claims to offset the impact of the deductible. This would tend to delay settlements as claimants seek additional and possibly excessive treatment for their injuries at the expense of the insurer.

Further, the application of the deductible may be viewed as unfair, particularly to those with higher value claims and could lead the courts to increase awards simply to mitigate the impact of claimants. Both actions tend to increase the costs of claims and reduce the potential savings occurring from the introduction of the deductible. As a result, frequent legislative changes may be needed to increase deductible levels. In other words, the deductible level gets eroded through time.

Mr. Schroeder: Clearly, a deductible, just like any other item, should be dealt with on the basis of inflation, so in terms of the latter part, that is no problem.

What Autopac is telling you, what the bureaucrats are telling you is that you are going to lie to bring your claim up from $9,000 to $10,000, but you are not going to lie to bring it from $10,000 to $11,000 as it exists now. If a person wants more money, why would they not be lying now? You have a system in place that determines how your first $5,000 or $10,000 or whatever it is is calculated. If you say there is a deductible of the first $5,000, why would MPIC be paying if there was—it blows my mind. I do not understand why you are saying that these 20,000 people who were involved in accidents for a year are going to suddenly become so untruthful. These reasonable Manitobans who just had a momentary lapse a moment ago have turned into lying thieves. I do not buy that.

Mr. Leonard Evans: Last comment, and I guess I should ask it by way of a question, but the point is that there are many jurisdictions in North American that have looked at this deductible system and have rejected it for the very reason.

I guess my question is, are you aware that there are various jurisdictions in North America that have looked at it and have not implemented it, and that is the reason we do not have a deductible system anywhere in North America? There is not any anywhere.

Mr. Schroeder: That sort of reminds me of the fellow who says he hunts elephants. People say there are no elephants around here, and he claims that he has done a good job. I do not know. You may be right. It may well be that there is a whole ton of jurisdictions that have done that study. I have not seen a piece of paper on it, and if you have it, I would appreciate your providing it. I would appreciate MPIC providing that kind of material, and I would appreciate MPIC providing the Tillinghast report and all of the other

documentation on which they are basing this stuff, which they are not making public, and they are coming to this committee and telling us to trust them.

You heard John Lane of the Paraplegic Association telling you that while Autopac had told them these things, they had produced nothing to back it up. They had not shown how they had arrived at these decisions. So let us have Autopac come clean before this committee passes this kind of legislation.

Mr. Santos: One concern of mine is the potentially unbridled discretion of adjusters under the system. They will be the ones who will be the determiners of the claim.

Is there any way by which such unchecked administrative discretion can be controlled by putting in the statute itself the standard, like the interest of the victim or full disclosure of all the facts, that they would follow as a matter of procedure in making the determination? Do you have a proposal?

Mr. Schroeder: I heard that proposal from Mr. Holley, and certainly I think it is a useful proposal, but I would not rely on it all that much. I mean, look at what happens with adjusters at Workers Compensation and other places. There is a tendency in the corporation to save money, and you really need a balance. You need that balance of a complete outside opportunity to review.

It is just like you and I. If you and I are making decisions that nobody has the right to appeal to anybody, you tend to possibly—at least I, maybe not you—be a little more dictatorial than when I know that somebody can go to Leona and get a real decision.

Mr. Chairperson: Thank you very much for your presentation, Mr. Schroeder. Thank you very much.

I will now call on Martin Pollock. Martin Pollock? Rod Roy? Mary Ann Stanchell?

Did you have a written presentation?

Ms. Mary Ann Stanchell (Private Citizen): No, I do not, Mr. Chairperson.

Mr. Chairperson: Okay, you may proceed then.

Ms. Stanchell: I can express to the committee, I am so happy I am now here. I have been eyeing this jug of water for the last two hours, lovingly, waiting to get up here to finally have something to moisten my throat.

I am here before this committee as a Manitoban. I have heard an awful lot in the press and today about what Manitobans want. Well, I am one of them, and I am going to tell you what I want, and I am going to tell you what I do not want. I do not want Bill 37.

Mr. Schroeder described winners and losers, and I just happen to fit into one of the categories of losers. I am a good driver. I have been driving for longer in my lifetime now than I did not drive, and I have never had an accident of any kind, not minor, not severe, none. The odds are that I am going to have one, the clock is ticking against me, and it is just liable to run out after Bill 37, and that scares the hell out of me, because I grew up in this province. I have lived in this province all of my life. My family instilled in me pretty fundamental values, values that if I strive hard, if I work hard, I will move ahead and I will do better. That was important to my family. They instilled it in me. It is important to me.

I have worked hard. I have not had a long life, but I have worked all of it. I have paid taxes all of it, and all of my driving lifetime I have paid for my vehicle insurance. I hope that I will get ahead. I am still early in my working career, but my future will be jeopardized by this legislation if I am ever involved in a motor vehicle accident.

All of you at this table, everyone of you will have been in my situation, that time in your career when you are just building, when you have no money for retirement funds, when you are doing all you can to keep up with your debts. If I lose my income earning ability now, my retirement planning is a faint dream. It will be a memory never to live again. I stand to lose that under Bill 37 by something that is not even my fault.

I am a believer in individual responsibility. Bill 37 seeks to completely extinguish that. I am opposed to Bill 37 for three reasons. It is fundamentally flawed in theory. It is flawed in its operation, and it is brought in under a process that is rushed without any careful thought.

I believe I am the first woman to stand before this committee today to make an objection to this bill. Mr. Blanaru suggested we have not heard about what this bill means to women, and he suggested to you the example of the homemaker who, under this bill, is valueless.

* (1930)

I am not a homemaker, and I do not aspire to be one. It is a job that I do not think I can handle. It is not a valueless occupation. As a working woman, I fear for my future under this bill. Adjusters are mainly men, and this bill gives them the opportunity to determine for me what employment I would be eligible for. What do you think they would think I would be eligible for? I do not have the brawn to be an unskilled labourer if I suffer a head injury. I will be a parking lot attendant.

This bill is coming in with such speed that we do not have the opportunity to consider what its impact on women will be. Just yesterday afternoon I managed to catch on the radio a snippet of the results of a recent study released by the National Action Committee on the Status of Women showing that fewer women are working this year than last, that still a disproportionately large number of women earn, I think, less than $11,000 a year.

What do you think an adjuster would deem my employment to be? I do not want to run that risk. It scares the daylights out of me and there is no logical reason, no reason in law, no reason in logic as to why I should run that risk as a woman, as a Manitoban.

Let us not kid ourselves. This bill is being brought in on a theory that it will cut costs. The bottom line is it is going to cut costs by cutting benefits. I pay insurance. I buy insurance for benefits. Let us not kid ourselves by calling Bill 37 insurance. It is not. Insurance has as its fundamental root indemnity full compensation for loss. Bill 37 does not pretend to be that. It is not. Every presenter who has come before me has told you that it is not. The foundations for their arguments are, I would suggest, unshakable.

I happen to be a lawyer. You have probably seen me sitting here all afternoon with the lawyers, and today I am thankful that I am, because I have had the opportunity to review this bill and to study it and to know what it will mean to me. Because I am a lawyer, I have had access to people with experience in this nature of work who can tell me what my own government will not in terms of what this legislation means to me. I am thankful that I am a lawyer. I do not have the wealth of experience in dealing with Autopac cases that the previous speakers this afternoon have had. I cannot bring to you any kind of perspective on what this legislation will mean for anyone other than myself and my husband.

This legislation is fundamentally flawed because it is not insurance and it does not have as its goal insurance. It is social benefits legislation in kind of a distorted way really, is it not? What kind of social benefits legislation do some people contribute and not others? What kind of social benefits legislation do you contribute on the basis of the car you drive, not your income, not your means, not your needs, but the car you drive? What kind of social benefits legislation is this?

This legislation is fundamentally flawed because it takes away our futures, our futures as Manitobans, the future as earlier suggested of the gifted student. I was one. What would have happened to me if I had had a serious injury when I was in university? I did not set out to be a lawyer. If I had lost my hands when I was a chemistry student, what would I have done? My future would be gone and so would the futures of all those young people to follow me if Bill 37 becomes effective. That scares me. It scares me for the future of Manitoba, our young brains. What are we going to do for them? Even if they are not drivers, even if they are not at fault, this bill will cut off their future.

All of you at this table can plan for retirement. All of you here have a future, every one of you. What are you going to do when you have an accident on 90 percent of your net income? Are you going to be able to plan for your retirement? If something happens to you, is your spouse going to have enough money under this plan to have the type of retirement that you had envisioned with your spouse? Will this plan give you enough income to put your children through the university programs you wanted to put them through? Does this plan take any way into account what you had planned for your children, their potential, their needs, their wants, your ability to provide for them? No. It seeks to treat everyone the same, and that, I would suggest, is a fundamental flaw because this is motor vehicle insurance.

Let us not kid ourselves in thinking that it is no fault. I was shocked to read this legislation and find out what kind of exclusions there are. There remain exclusions for the reduction of benefits depending on apportionment of liability for an accident. There remain exclusions for liability where the wrongdoer is charged criminally. There

remain exclusions for driver-operators of trucks. There remain exclusions where an accident results from the repairs you did to your own vehicle. How many of us would love to save that cost—and many of us do; my husband does—and that exclusion is still there.

No fault? I do not think so. This is not no fault. This is something else. It is fundamentally flawed, and I have not yet heard what the rush is.

I challenge everyone at this table to figure out what the rush is. Why do we not have time to stop and consider what the impact of this is going to be on other women? Women are 51 percent of our population, disproportionately low-income earners, disproportionately high care givers for our future young people. Why do we not take the time to stop and think about that? What is the rush?

The process of bringing in this legislation is abhorrent. I have had the benefit of access to information which many Manitobans have not. That is abhorrent. Why is it that this legislation which stands to affect everyone in Manitoba does not receive the same consideration that potential changes to The Municipal Act do? Did you know that? There is going to be round table discussions and public hearings on changes to The Municipal Act.

I have spoken to people in Winnipeg, outside of Winnipeg, nonlawyers all, who did not know that, who did not know that their motor vehicle coverage does not warrant the same investigation. It is incredible, and it is scary.

* (1940)

I was here to hear Larry Baillie, our first presenter today, a fellow who brings a unique perspective to the discussions around this table. Larry Baillie said something that caught my ear. He said, who will hear my voice?

Do you think the adjuster will hear my voice? Do you think the adjuster with unbridled discretion to determine my employment will hear my voice? Would he hear Larry who has six boxes of croutons in his kitchen and left the roast beef out overnight? Are you sure? Are every one of you sure? I am not.

The rehabilitation provisions under Bill 37 are permissive. They are not mandatory. The adjuster has the completely unfettered discretion to make a decision on whether or not I am entitled to rehabilitation. He can decide—and chances are it will be he—whether or not I am entitled to go back and take enough training, for example, become a computer hardware technologist. Do you think he would let me? Do you think he would listen to me when I try to tell him all the experience I have, or is he going to look at me and say, you are a dumb lawyer, you cannot do anything? Even if he does, what is going to stop him?

I have a token appeal to a board which associates with the adjuster. I am in effect appealing to his boss. That is no remedy. There is no objectivity. I have not seen any argument to demonstrate what kind of impartiality that adjuster can bring.

This legislation is giving adjusters a mandate to cut costs. How can he possibly be impartial? Well, he cannot. It is pretty simple, he cannot.

Who will hear my voice if my dependant is my brother? Dependant, under this legislation, is a spouse, a common-law spouse under limited circumstances, a parent or a child under defined circumstances. It is not a question of fact. Dependants does not talk about what actually is happening in your home. What if my dependant is my brother? This legislation just does not happen to take account of that, and I think that is wrong.

This legislation also pretends to describe a wage indemnity. Well, indemnity is a misnomer here. It is not an indemnity. It does not take into account my potential, my future, and it automatically deprives me of one week's earnings.

Under the current situation that is true as well, but for the potential recovery you have at the end of the day for full compensation. You can recover today that lost week. I can recover it if I have an accident. I never will under Bill 37. That lost week might cost me my mortgage. At 90 percent of my net income, if I am seriously enough disabled, I will lose my mortgage. Why should I? That scares me because I have worked hard for that mortgage, and my future is to pay it off and move on.

I hope I do not have an accident, and I can do everything I can to prevent it. I am a good driver. My record proves that. But that is not the end of the story. Mr. Rodin's figures are that for every bad driver there are two innocent victims. It is not a 50-50 chance; it is worse that I will be an innocent victim. I cannot control what everybody else is going to do to me, and what I would normally do to

protect myself is buy insurance. Well, I cannot buy vehicle insurance apparently.

I am fortunate enough to be young enough and healthy enough to have the opportunity to buy disability insurance through my employment or otherwise. That is true for me today. Is it true for every one of you? Are you young enough and healthy enough to be able to afford it? Is it true for your spouses, your brothers and sisters? Will it be true for your children? Their children? Are you sure? Then what is the rush? I do not think you are sure; I am not sure. I do not think you can be sure, and there is no reason to hurry, no reason at all.

I have heard this government analogize in the context of economic restraint. I have heard this government analogize its budget to the family budget. When times get tough, the family has to control its budget. But when the family starts to find that it cannot afford the children's activities anymore, it does not go out and automatically disqualify every single child in the family from every single activity. It takes into account each child's needs, wants, potential, and it does not do it in a hurry.

Things like that are worthy of consideration. You do not automatically chop the education budget because you do not have the money. You stop and you think about which child needs sports facilities, which child wants to go into music and which child has the potential to be the brain surgeon. Well, the analogy just happens to break down for this government when it is applied to Bill 37. The family budget does not react that way, and this government has no mandate to do it.

My secretary said to me, this is exactly what happened in Ontario. No, it is not. The Ontario government had a legislated mandate, an election mandate, to deal with insurance. Did I miss something? No, I did not. What is the rush? No one has tried to tell me. No one has tried to tell my parents, other than me, what this legislation even means. They do not have access, like I do, to the information.

All I can try and do is interpret it for them, and their own insurer is not doing it for them. Their own insurer should have that obligation. Well, where is it? I have not seen it. It is not there. It is not coming out. Studies are not being released. Media coverage is not complete. Press releases are not complete, and the little folder I get in my mail is not complete. It describes benefits that are going to flow from regulations that do not exist.

Stop and ask yourself again, what do Manitobans want? I could speak for two of them, and I know we do not want this. We want to stop and think about it, to stop and think if this is really the best choice for Manitobans. Is what we have really so bad? Are there not other things we can do?

I know many people who have said, well, of course, it is outrageous. So many people try and abuse this system. But Bill 37 does not point to abuse. It does not try to solve abuse. It is using a shotgun approach for a little problem. It penalizes the innocent victim, the more serious claims, when the bulk of claims are not those. I have heard people tell me what the statistics are today. The bulk of claims are small ones.

Why deal with a shotgun when all you need is one of the pellets? It defies logic. It defies reason. It defies law. This legislation purports to give an indemnity to minors—on what basis? They have no such claim to date.

The meat chart is something separate again—on what basis? It defies logic. It is no basis in law. What is the rush? Why not give everybody the full information.

If you think you know what Manitobans want, think again. If you think you know what Manitobans want, what is the harm in asking? If you think you know what Manitobans want, why was this committee called on such short notice, and why were not more Manitobans given the opportunity to tell you what they want? Why were not more Manitobans given the opportunity to educate themselves about what this bill really means?

I cannot leave this committee without making one last comment about its approach to lawyers. I was here enough today to see this committee respond with smiles and chuckles to every deprecatory lawyer joke made. Every negative lawyer comment, everybody smiles and grins. Congratulations, I am glad you found something that amused you. I have been here long enough to see the Minister responsible for MPIC consistently bemused by many of the comments made, many of those about lawyers, too.

* (1950)

I am thankful that I am a lawyer today, because I have had enough information to know about what this legislation is going to mean to me, and I can be educated enough to say I can reject it. I am thankful I am a lawyer because I have the ability to understand the law, to say to you today to stop and think about where you would be without lawyers, the lawyers who drafted this legislation, by the way, the lawyers from your own corporation who tell you what they think it means, the lawyers who helped elect you by their own time and money, the lawyers who constitute approximately 2,200 people in this province, the lawyers whose high salaries you feel free to criticize and yet do not object to taxing in innumerable ways, those same people who volunteer for committee after committee after committee in this community, volunteers like me who fundraise for the United Way and contribute in a larger way than any other charity, lawyers like me who have been the pillars of this society and this Legislative Assembly for years, you feel free to criticize

I can hardly wait until any of you come into our offices if you should have the misfortune of an accident. Do you criticize your own lawyers or just some lawyers? When it is convenient maybe or all the time? No, not all the time.

This is not about lawyers. The letter that I heard Mr. Steinfeld read from Mr. Ernst suggesting that 80 percent of costs arise from legal costs—and he puts that first—and then court judgments is incorrect, absolutely incorrect. If there is that much misunderstanding amongst this Assembly, is that not an indicator that there is a need for time to stop and consider, time to stop and educate, time to stop and listen to Manitobans? If you do not, do you think adjusters will? They are no different than you. Their mandate will not be to protect the victim—far from it.

This legislation leaves no one to hear the voice of the victim, no one to hear Larry Baillie's voice. Larry Baillie hired his own occupational therapist. He would not wait two years to be on a waiting list, because he was motivated. Many people may not have that ability. What motivation does this legislation give them? I would suggest not too much.

I will conclude my comments by reiterating my initial concerns.

This legislation scares me. It scares my husband. He makes more money than I do. As a lawyer, I do not meet your $55,000 maximum. He does. If anything happens to his income, I am in trouble, big trouble, and it scares me. I am much better off under the existing system. It has its flaws, but let us not blow away the system for its flaws. Let us look at its flaws.

Larry Baillie had the foresight to suggest we should look at the court system itself and look at mediation as an alternative. Well, why not? Have you rejected it? Have you thought about it? Do you know what it will mean? If three- to five-year waits for compensation for victims are the problem, well, let us look at that. Let us not blow away the whole system with a shotgun.

We are getting a little shove here about rising insurance costs. I am concerned about rising insurance costs. I pay a lot of money for insurance costs. I know if I went to Alberta where private insurance exists, I might well pay less for more coverage. Our rising insurance costs are just a little shove. We, as a society, do not pick up a gun and kill someone for a little shove. Yet we purport to kill our insurance system for a little shove. I think that is wrong. I do not think you should do it.

I think everyone at this table—I challenge you to look at your own situation and know that you can make it on 90 percent of your net income, and know that your insurance adjuster will be unbiased before you pass this. Thank you.

Mr. Chairperson: Thank you very much for your presentation, Ms. Stanchell.

Mr. Leonard Evans: Just very briefly, I wonder if the presenter could tell us what law firm she is with.

Ms. Stanchell: I would be happy to if you would tell me how it is relevant.

Mr. Leonard Evans: Well, I am just curious because you did mention you were a lawyer by profession. Is it any secret? I did not think it would be. I think that would be public knowledge.

Ms. Stanchell: You are right. It is, and I am in the phone book. My firm is Taylor McCaffrey. We do all aspects of work.

Mr. Leonard Evans: What percentage of your caseload would be Autopac-related cases? In other words, is it a significant amount of business for your firm?

Ms. Stanchell: I can tell you it is not any part of my caseload.

Mr. Leonard Evans: The question was, was it a significant part of business for your firm?

Ms. Stanchell: Well, Mr. Blanaru was right. If I identified myself as a lawyer, I would have to face that vested interest argument. I wish I could answer your question, but I do not happen to be privy to that information in my firm. I am not a partner of my firm.

Mr. Cummings: I do not mean this to sound facetious, I mean it honestly. The fact is that lawyers are probably still held in higher regard than politicians. You are speaking to the converted here.

Ms. Stanchell: Well, I regret that it is true for all of us, and I regret that it is true that people phase us all with such inherent mistrust for no reason. It is my concern that rushing ahead with legislation like this feeds that distrust, and it is that distrust which we have to try and get back. It is that distrust which I face every day, and I am sure you do too. Let us do what we can to try and get it back. Let us not keep everybody in the dark. Let us not hurry everybody on such an important issue. Thank you.

Mr. Chairperson: Thank you very much for your presentation this evening.

I call on Stacey Skirzyk, Mr. Donald Wood, Dale Fedorchuk, Orvel Currie, Rodger Sigurdson, Robert Tapper, Craig Cormack, Michael Tomlinson, Howard Dixon, Frank Bueti.

Did you have a written presentation, Mr. Bueti?

Mr. Frank Buetl (Private Citizen): No, I do not. I just have some handwritten notes.

Mr. Chairperson: That is okay. You may proceed with that then.

Mr. Buetl: My name is Frank Bueti. I am also a lawyer, and I do a great deal of personal injury work. Today I am speaking before this committee as a private citizen who has a lot of knowledge about how the present system works, because I deal with it on a daily basis.

The reason I am before the committee is that I respectfully submit to this committee that the proposed legislation is fundamentally flawed and will have disastrous consequences for innocent accident victims.

Before I begin though, I would like to thank the elderly gentleman, I do not know if you remember him, who was seated in the front row here for a short period of time. When I told him that I was going to make a presentation before this committee he warned me that appearing before a legislative committee is somewhat like going on a blind date. There is a lot of anxious anticipation but you are never quite sure what is going to go on.

* (2000)

As a lawyer I have dealt for many years with the present system and I can tell you all that in my respectful opinion, and I think it is the opinion shared by most of the people who have presented to this committee, the current system is an excellent system. It works very well. It is a hybrid and in my opinion combines many excellent elements from the tort system with a good element from the no-fault system.

Even the Manitoba Public Insurance Corporation until very recently was very keen on extolling the virtues of the present system. They were constantly reminding us in their annual reports that it was offering excellent coverage for Manitobans with one of the lowest premium costs on the continent of North America.

Before I start to talk about the proposed new system, I would like to spend a few minutes just fleshing out what the old system is because, although we have discussed it at some length, I think it is important to try to incapsulate it in a very brief form.

The old system consists of two sections basically. There is the no-fault section. Under the no-fault section you get medical expense coverage to a maximum of $100,000 so that all of your medical expenses will be covered up to a maximum of $100,000. You get weekly disability benefits based on the rate of 70 percent of your average gross weekly earnings to a maximum of $350 per week, minimum $175 per week, as long as you are totally disabled by virtue of the accident. That starts seven days after the accident occurs. Finally, you get moderate death benefits. On top of that, where you are an innocent accident victim, the tort system kicks in.

I guess the best theoretical explanation of the way the tort system functions is contained in the trilogy of three cases that were before the Supreme Court of Canada back in 1974-75, Teno & Arnold; Mr. McCullough is intimately familiar with them.

Essentially what the Supreme Court of Canada said was that accident victims who are not at fault are entitled to full compensation, that is, full restitution for their real losses actually sustained in the accident. What they went on to say is, that could be broken down very simply into three basic areas. First of all, general damages for pain and suffering. The court said that there had been a flurry of cases up to that point and there was a real policy issue that the court would have to decide, and that was, how high would they allow general damages to go?

The Supreme Court specifically declared that they were not going to follow the American system. They were not going to allow damages for pain and suffering to go to astronomical levels of $1 million, $2 million, $3 million. They ruled that the maximum amount that the most seriously injured accident victim could ever get would be $100,000 for pain and suffering in 1974 dollars. That amount is still the maximum applicable today. In those three cases, they were dealing with three very seriously injured young plaintiffs. One was a young boy who had been hit by a truck. All of them were either quadriplegics or vegetables by virtue of head injuries, and the court said that in these types of cases, the most serious type of case, your maximum award for pain and suffering was $100,000 plus, as I say, the inflation factor. So today that works out to, as I understand it, approximately $240,000 to $250,000.

The purpose of that award, the court declared, was very simple. It was to be a solatium, a consolation, a recognition of the fact that that individual was indeed undergoing pain by virtue of the fact that someone else had harmed him through no fault of the victim. The court recognized that you cannot translate dollars into pain and suffering. There is no scale that you can take where you weigh so many dollars as against so much pain and that all that the court could do was to try to recognize the reality of that pain, its realness, in the only medium that is available to the court, namely money. They recognized that it is important as a consolation to the victim of an accident that this pain, this suffering, be compensated.

Secondly, the court ruled that with regard to loss of income, there should be full compensation for the actual loss sustained by the victim. What that means in practical terms is that the court has to engage in a very difficult exercise. Oftentimes, especially with young victims, you have to forecast the potential earnings of that young victim for a lifetime. You have to sit down with vocational consultants and actuaries and try to figure out, well, what would this 18-year-old young woman be expected reasonably to earn over her lifetime?

That, in effect, fixes the ceiling of their maximum earnings that they should be entitled to be compensated for, and then you have to reflect upon what are the residual earnings that that particular individual has so that in most cases you deal with, people are not totally disabled. They are rather partially disabled, and you attempt to calculate what the residual earnings are to come up with a figure that is their real loss of potential earning capacity.

It is a difficult exercise, but it is a necessary exercise. That is the only way that you can fairly compensate an accident victim. You can put in place as many darn scales as you want to put in, but the system that you are looking at today, if I can just digress for a moment, its fundamental problem is it fails to individualize properly the true loss of income to the individual.

It fails to recognize the difference between the 18-year-old kid who is, let us say, a top student who is destined to be your next medical doctor and earn $50,000 a year for the rest of his life and your 18-year-old child who has very minimal income-earning capacity, because there are real differences. These things are very important, and the purpose of our present system is to try to individualize the compensation to fairly reflect real loss. There is no profit built in to the system. It is a reflection of real loss.

The third major element that the Supreme Court talked about was future care costs. What the court said was that with regard to future care costs, the victim should get full restitution for future care costs to put them in as close as possible a condition as their present situation. That means that in the case of, for example, quadriplegics, it should be care costs at home.

The courts have consistently affirmed that as recently as Watkins and Olafson, which is a very recent case for the Supreme Court of Canada, where they said, look, if you are an innocent accident victim, we are not going to award you compensation based on your being placed into a hospital or an institution because that is cheaper,

because that is not fair to you. It was not your fault that someone hurt you. We are going to award you compensation based on the notion that you should be taken care of at home just as you would have been if you were not hurt in that particular accident.

Those are the fundamental principles that underlie our current tort system. They are grafted onto a no-fault system, so that what you have is what I would call a very reasonable compromise, combining the best of both tort and no-fault systems. It is certainly not perfect, but it provides a reasonable measure of compensation to everyone.

What it basically says is that every injured person, regardless of fault, will get certain contractual insurance benefits that they have paid for in their own insurance policy, but they will not get full indemnity unless the other person is at fault. In that case, they will get the full indemnity through the tort system.

We have had some discussion earlier in this committee about costs and litigation. Certainly, the original MPIC report deals with that and suggests that a major part of the problem is the costs of pursuing claims. I would respectfully suggest to this committee that that is a very misleading argument.

First of all, as a lawyer who does a lot of personal injury work, I can tell you that in my experience, very little time, effort and money is really spent litigating the issue of fault. In most cases, fault is very straightforward to determine. In most cases where fault is not a straightforward issue, it is still a very easy issue to deal with from a legal standpoint because it is a very simple, factual issue—a who did what, when, where type of issue. It does not take a lot of time, effort and money.

* (2010)

I would estimate, and I would suspect MPIC has better numbers than I do, that is, certainly in my own experience, at most 5 to 10 percent of time and effort is spent dealing with the issue of liability in accident claims. The real issue in accident claims, and that issue does not change whether you are under a no-fault system or under the current tort system, is the issue of damages: What is proper and reasonable compensation for the injured individuals as a result of that accident?

That issue is a very, very complex issue because people react differently to the injuries. People have very different circumstances that come into the injury. Just to use examples, when a person gets hurt in a car accident, they are only entitled to be compensated for the actual injury sustained in the accident. Let us say they have preaccident conditions. Let us say the person already has a severe degenerative spine and they get a whiplash injury. To what extent is Autopac responsible for compensating for the accident injury? That is a very real issue in many cases that a court has to deal with.

That is still an issue that under no-fault you are going to have to deal with, because this legislation does not say that if a person stops working, automatically Autopac will pay. It says Autopac will only pay if he stops working because of the injury sustained in the accident. So that issue is still there, and it is a serious medical issue that comes up on a regular basis.

You get into all sorts of issues about future employment prospects, future potential earnings prospects, reasonable residual work capacities, ability to work, things of that sort, all of those issues. Essentially, the issues may change slightly in terms of the legislation, essentially are still there under the new legislation. Is a person totally disabled by virtue of an accident? That issue is still going to be an issue that comes up daily under Autopac, just like it comes up under Workers Compensation.

So with all due respect to the people who wrote this MPIC paper, I submit that all you are doing at this point in time is really, maybe at most, cutting out 5 to 10 percent of the issues that are still there. The real fundamental issues, the question of compensation, are still before the system.

You can see that yourself if you look at the Workers Compensation system. There is a no-fault system. There are hundreds, possibly thousands of appeals that go through that system every year dealing with all sorts of issues, as to whether compensation should be paid or not, that have nothing to do with who is at fault for the original accident or injury that caused the person to be on compensation.

The second thing that was suggested was that the cost of lawyers was somehow a major problem within the system. Again, with all due respect, that is highly misleading. Lawyers do not directly cost MPIC money. Lawyers are retained by accident victims. Victims have a choice. They do not have

to hire a lawyer if they do not wish to. They generally hire a lawyer because they recognize that in many cases they need the expertise of a professional to assist them in proving their claim. They do not have the ability to present the issues. They do not understand the issues. They do not have the time to learn the issues. They need someone who understands it. It is the same as when lawyers go and see doctors. They do not try to treat themselves for their own injuries because they do not have the expertise or confidence to do that. The purpose of lawyers in the system is to assist the victim.

What will happen under a no-fault system, I respectfully suggest, is exactly what has happened in Workers Compensation, which is that basically people go unrepresented. The effect of that is that it is the people who are least able to take care of themselves who are hurt the most. It is the people who are poor. It is the people who are uneducated. It is the people who do not speak English very well. It is the people who are timid who do not understand the system and who do not know how to take care of themselves and who are unable to help themselves. No fault, I would suggest, if anything, is going to be very detrimental to the poorest and the weakest elements of our society. Sophisticated, intelligent people can generally speak for themselves and take care of themselves. It is generally the poor uneducated people who need the extra help.

The last thing I would say on that particular point as well is that there is a suggestion it seems that under this no-fault plan somehow MPIC is going to act as both the representative of the public interest and also assist the accident victim to get fair compensation. Frankly, that puts MPIC in a hopeless conflict of interest. As an insurance company, its primary mandate is to keep its costs, i.e., its claim costs to a minimum. That is what it does. It maximizes the amount of premiums that are paid in, and it minimizes the amount of benefits that are paid out.

How an insurance company can in that context be expected to assist the accident victim to get his "just entitlement" is beyond me. It seems to me that what happens is what happened in the current system. Most adjusters are well-meaning and well-intentioned, but it is the old story of is the glass half full or half empty. Wherever there is an issue, wherever there is a controversy, the adjuster naturally tends to take the viewpoint that is most unfavourable to the claimant. That is only human nature.

Unless the claimant can afford and has access to adequate legal representation, the claimant is not going to be in a position to represent himself and to point out those aspects of his or her case which are most favourable to his position as to compensation. You can see this even at the Workers Compensation Board level where you have Workers Compensation creating and funding a Worker Advisor Office because it recognizes that injured workers are not represented by the claims adjuster who deals with them, that those workers need assistance to help them in dealing with the system.

Dealing with the Workers Compensation Board, the reason I raise it is that this system really is in many respects an extension of a Workers Compensation model to personal injuries in automobile accidents. Having dealt with the system, in my view, it is a disaster zone for accident victims. Accident victims are constantly cut off arbitrarily. They are cut off based on rules that nobody knows. There is no system of precedence of decisions as to why the Workers Compensation Board deals with certain cases in certain ways. You have a situation where the board passes policies and directives constantly. Those directives are unknown to the public, and there is no system for you to find them out unless you ask for them. Then you are given the directives that the board tell you exist that are pertinent to your case. It really is a very biased system that is not favourable at all to the workmen.

One of the benefits of a court-based system is that, in a court-based system all of the decisions are matters of public record. That way, that creates a system of precedent so that people can look and say, what is the proper procedure? You look to prior decisions. The board or the court has to be more consistent. That does not happen in my experience with Workers Compensation. You never quite know what the applicable regulation of law is until you walk into that committee room, and oftentimes you do not even know then.

With all due respect, I think that modelling Autopac on a no-fault workers compensation-type system is a grave mistake. Certainly, there is no question that the appeals process is fundamentally flawed. It has to be out of the corporation's control.

There has to be a right for individuals who are grieved by decisions by the corporation to go to court and get independent, impartial adjudication.

In fact, you see that, for example, in the CPP legislation, where under the Canada Pension Plan Act what they do is they provide that if you are dissatisfied with the initial decision you can appeal to the minister. If the minister's office rejects your appeal, you have a right to appeal to a pension appeal board, which consists of a designated officer being a judge of the federal court who sits—actually, there is one more intermediate step.

You appeal from the minister to a review panel, which is three different members: one appointed by you, one appointed by the minister, and the two appointees appoint the third. If you are still unhappy with that decision, you can then appeal to the a pension appeal board, which is a judge of the federal court who sits as a designated officer to hear the appeal. That way, at least, individuals will get a final independent hearing. At an absolute minimum this committee has to consider a proper appeals process where the final level of appeal, both on the facts and on the law, should be to an independent judge who has no vested interest, and, frankly, who is not appointed by the government to deal solely with those issues. It should be a judge of the Court of Queen's Bench who has a broad range of experience and is not tied in either politically, philosophically or whatever to any particular ideology, who can independently and impartially review the system.

Dealing with the current no-fault system that this committee is proposing, or rather Bill 37 proposes, it radically reduces benefits to innocent accident victims. Frankly, you do not need to be a rocket scientist to figure this one out. If the current system is too expensive, according to Autopac, and the current system only provides full compensation to innocent accident victims and partial compensation to people who are at fault, how can you possibly pay full compensation to all victims of an accident under a no-fault system? You cannot expand the category of claimants and increase the benefit and not increase the cost. It is that simple.

The reality of the situation is—and this government knows the reality, although, frankly, in its wonderful little propaganda pieces it keeps talking about this being legislation that is going to result in full and fair compensation to individuals—the reality is that you have to dramatically reduce everybody, including innocent accident victims, well below a full compensation for injury system. It is that simple.

* (2020)

This is how no-fault goes about doing it. First of all, you have permanent impairment benefits. Whereas before, under the old law, you had a situation where your maximum benefit was $240,000 for pain and suffering, under the new law, your maximum benefit is $100,000, and it is only given to people who rank on a chart that will be in the regulations, which no one has seen, because the regulations have not been produced. Most importantly, that chart is specifically going to exclude, as far as I understand, from the way it has been described, people who have injuries that are not permanent impairments in nature, which is, frankly, the vast majority of injury claimants.

In my experience as a lawyer—and I have been doing this for 10 years—I have yet to have a client who has lost a leg. I have yet to have a client who has lost an arm. I have had a few who are totally disabled, but I can tell you that 90 percent of the claims that currently go through the system, at least 90 percent, result in injuries which are serious but do not result in permanent impairments. They may have ongoing effects. They may have ongoing lingering pain problems and pain syndromes that carry on for the rest of their lives, but they do not have limitations in range of motion that are measurable on a chart. That does not mean that their injuries are not real. That does not mean that their injuries do not affect them.

Under this system, what we are doing with no-fault is we are declaring that even though you have real injuries, even though they severely affect you, you are not going to be compensated for those injuries because you cannot fall on a specific chart that has been created by regulation. That is fundamentally wrong. If someone injures you, you should be entitled to modest compensation for your real loss. To take that away by this legislation is unfair to Manitobans.

Secondly, dealing with loss of income, to me, there are simply so many deficiencies in this area that I am not even sure where to begin. Under the old system, provided you were not at fault, you started on the premise that you were entitled to full compensation, and you operated on a but-for test—but for an accident, what could you reasonably

have been expected to earn? Under the new system you are guaranteed virtually that no one will ever be fully compensated for their loss.

One of the most fundamental deficiencies to me of the new system is—I have tried to understand the legislation, but I really do not understand how it is going to compensate people for partial permanent impairments in their ability to earn an income. The reality is that very few people who are hurt in accidents are actually totally disabled forever from doing any type of work. The reality is that they tend to be partially disabled from various activities. That has a significant impact on their ability to earn an income. Under this legislation, these people will be grossly undercompensated or not compensated at all. That is fundamentally unjust.

I am just going to use one example. I am going to use a person's name. It happens to be a real case. I think it is important that cases involving real people be heard before this committee, because one of the problems that I see with this legislation is that the legislation is ignoring that it is dealing with the lives of real people. Everything is a number. Everything is a statistic. We are ignoring the fact that real people are going to be hurt very severely by this legislation.

This case involves a lady who was hurt about two and a half years ago now. At the time of the accident she was 50 years old. She was a nurse's aide, had done that work for 10 years, had an exemplary job record. She was such a hard worker that she worked full-time as a nurse's aide in one home and worked an extra four hours a day as a nurse-companion six days a week in another residence assisting another woman. So she was working literally 60 to 70 hours a week and had been doing that for a number of years.

A single woman, had no dependants, no family in Canada at all. Completely alone. Her life was her work. She was a pedestrian, and as she was crossing the street, a car missed the pedestrian crosswalk and ran her over, basically broke her arm, caused a number of very bad bruises to her body and some very severe pain.

She was in the hospital only for three days. They released her after three days. She went home. She was completely disabled from working for a number of months but gradually over time she started to recover. Now this case is a good example of the basic problem you have in most car accident claims; that is, it is very hard to say when total disability ends and partially disability begins.

According to this woman, according to her family doctor, according to occupational therapists who are treating her, she still cannot go back to work as a nurse's aide. She has undergone an extensive rehabilitation program where they put her in a work-hardening position, where they try to build up her strength and then they put her back on her old job. She worked at it for a number of days but found the pain was too much. It was unbearable and she had to quit. Her co-workers, who are registered nurses, supported her, and they have provided statements to that effect. Her employer supports her and indicates—and you can see from her work history that this woman is an exceptional employee, has had an excellent work history.

Naturally, she is extremely depressed. She has nothing to do. She feels useless; she feels alone. Whereas before the accident her life was her work, now she cannot do anything. She sort of mopes around home and is very depressed.

Now, under the current system, you have a claim for full compensation for loss of income less any residual work capacity that this woman has, and you get into a very difficult issue about what the residual work capacity of this woman is.

Under the new no-fault system, it is probable that this woman can go back to work as a home care companion. In other words, she can do very light duties work and sit with another elderly person and make them their tea and take care of them in their home. So she is not fully disabled in the sense that she cannot do anything.

But she had lost a job where she had pension benefits that she was paying into, CPP benefits, Manitoba Health benefits. Those benefits are lost to her forever because of this accident, because she has been terminated from her former employment. Under this legislation that would never be compensated.

She has lost her ability to do regular nurse's aide work because that is heavy work. You have to lift patients, carry them out of beds. She cannot do that. She has lost a very fundamental capacity, and yet I can tell you under the current system it is already a heck of a struggle to get her proper compensation because, of course, there is a major

dispute as to whether or not she is really totally disabled or partially disabled.

Under this system I guess the answer is a lot simpler. You just do not pay her any money, and somehow that is supposed to resolve the problem. That is the fundamental injustice that this committee has to attempt to redress. When you are dealing with loss of income claims, you are dealing with very complex issues. You cannot just put them in the strait jacket of this kind of legislative language that talks about total disability benefits principally and does not recognize or attempt to adequately compensate partial disabilities.

There are so many other problems with the loss-of-income benefits. You deal with students. As I say, students who are seriously injured in accidents before they graduate will never be compensated based on their potential earnings. They will only be compensated based on the average Manitoba wage. That is fundamentally unjust.

The elderly are severely, in my view, and unfairly dealt with in this legislation because there is no attempt in the legislation to recognize their real potential earning capacity. They are just deemed to be ready to retire at age sixty-eight, and that is it, and in between sixty-five and sixty-eight you take off 25 percent of their income. Whether that would have happened or not, it is irrelevant.

We have heard from Mr. Blanaru about how this legislation affects people who are not working at the time of the accident. People who earn more than $55,000 a year—believe it or not, that is apparently 10 percent of the population in Manitoba—those people are totally ruined by this legislation. It is ridiculous.

The government says, well, go out and buy private insurance. The reality is that there is no private insurance comparable to Autopac because the only private insurance you can buy is group insurance or disability insurance which will ensure you based on so many dollars a month, whatever you purchase.

The big issue is a lot of people do not quality for that. There are innumerable people who suffer from diabetes, who have had cancer, who have had a multitude of different illnesses who will never, ever be able to get a private disability policy.

* (2030)

What is going to happen to those people? What are you going to do about the guy who is a father of four and earns $75,000 a year and is putting his kids through school? And guess what! This guy has diabetes, and they will not give him insurance, and someone runs him over. You are going to say, well, I am very sorry, we are going to give you 90 percent of your average earnings to a maximum of $55,000 a year—net earnings, based on an average gross of $55,000 a year. And it is just too bad that you did not have the foresight or the ability to buy private insurance.

That, of course, is the other problem, that most people do not have the foresight to go out and buy the private insurance. That is one of the beauties of Autopac: it is mandatory. So you are mandatorily required to get full coverage. Most people think, of course, that they are never going to be seriously hurt, and that is why they do not bother to get the private insurance.

So you have a situation where you have legislated a tremendous inequity, and I cannot understand the justification for doing so at this point in time. It is beyond me.

How do you deal with people who are self-employed like salesmen? First of all, it is notoriously difficult to figure out their average earnings, but secondly, even if you could do that, most salesmen—it is very rare to have a salesman who is totally disabled. I mean, if you are a real estate salesman you can probably still get up and about and putter around and sell a few houses where maybe before you sold 30 or 40.

Unless you have some sort of an individualized process where you try to determine the real loss, you have a disaster. You have a situation where these people will never be properly compensated for their very real losses.

How do you deal with people who are businessmen who run a small business? I can think of a client I have right now. Whiplash injury. He runs a small painting business, does his own painting, used to work on his own. Now, because of his pain—he still works. He has clients; he has to serve them. He has contracts; he has to do the work.

But he has had to hire a helper at $18, $19 an hour to work full-time with him because a lot of the work he cannot do on his own. He is not totally disabled. He is working, but it is costing him a

small fortune to keep his business going. No one is going to pay for that as far as I can see under this legislation. So once again you have a very serious inequity that is not justified at all under the legislation.

I guess one of the fundamental problems I have with this legislation as well is that you are forced under our system to buy an Autopac insurance policy. You do not have a choice. You cannot say, well, you know what, I am not happy with the coverage I am getting from Autopac. I will go out and I will buy my own private automobile insurance policy, and I am prepared to pay the extra premium dollar.

So that government has, by virtue of its prior legislation 20 years ago, said there will only be one automobile insurance system in the province of Manitoba. The government has now radically changed the terms of that insurance to the point where there is no proper coverage for most individuals, and they are not giving people a choice. You cannot opt out of the system. You cannot sue. This is what you get.

To me, it is analogous to someone saying to you that, you know, you have a nice house insurance policy, and, yes, it costs you a pretty buck. I will tell you what? What we will do is we will reduce the cost of the policy by a couple of hundred bucks, but what we will do is that if your house should burn down—I know you live out in River Heights and you have $110,000 home, but you really do not need that. I think you can make do with low-rental housing. That is good enough for you, do you not think? And just legislate that for everybody.

You know, it does not matter what you really lose, all you really need is low-rental housing. We, the government of Manitoba, have determined that is all you really need. That is what you are doing with this type of insurance.

You are reducing benefits in order to keep costs down, and you are not even being honest about that with the public. That is what is the most fundamentally galling thing about this whole process is that the government has introduced legislation, and it has sold it on the basis that no-fault is going to be some wonderful panacea, that no-fault, you bring it in and everybody is going to get full and fair compensation.

This committee has heard some 15, 20 representations today. I do not think there has been a single one that has not pointed out to this committee how drastically this legislation is going to reduce the benefits that are paid to real Manitobans, the ordinary individuals that are getting hurt in car accidents day in and day out.

I guess I just have a few more comments that I want to make in regard to this legislation. Firstly, I, too, question the urgency of this legislation. As I understand the process, some time ago the Manitoba Public Insurance Corporation went out and commissioned the Tillinghast report because they were concerned about future rising claims costs, and they wanted to have a proper study of the current system, its potential future costs and alternatives to that system. That report, although it is the basis as I understand it for the decision to go to no-fault, has never been made public.

I am asking this committee and, in particular, the government, why is it that the most fundamental document that is the basis for this legislation and this radical change in our system has not been made public? If the assumptions and the methodology used in that report are truly proper and valid, I think the government ought to be willing to put that particular report to the public so that the public can scrutinize it and determine its validity.

I mean, the whole basis for this legislation is that there is some projection, which, I presume, comes from the Tillinghast report, that basically if we do not do something radical within seven or 10 years our personal injury claims costs are going to double. That is an incredible statement that should be examined very carefully. As far as I am aware, it has never been put to public scrutiny or to public challenge.

Mr. Lane has talked about the financial statements and his reading of the financial statements, the data of the corporation. Certainly, from his commentary—and he is a former chief executive officer of the Manitoba Public Insurance Corporation—as I understand it, there is absolutely no grave urgency at this point in time, and the proper course for this committee and the proper course for this government is to take this legislation and to table it at this point and to ask that there be a proper public commission of inquiry to review the entire current system, to review its faults and also its good points, and to review alternatives to determine what is really appropriate for the province of Manitoba.

I respectfully submit that the best solution for Manitobans is still the hybrid system where you have decent no-fault benefits with tort coverage providing full compensation for innocent victims. That, to me, is the proper system.

So the real impetus, as I see it, for this mad rush to pass this piece of legislation is this fear that MPIC is going to demand, and has demanded, premium increases for next February. All I can say on that point is that it is fundamentally unjust for the government to focus solely on the question of cost. The government also has to focus on the question of benefit. We are talking here about an insurance policy. You get what you pay for. People are not being told—and this government has bought into the argument that you have to reduce or keep costs to their current level because otherwise the people are going to revolt.

I have heard, and I have talked to many people in the system about it, that this government, quite simply, is deathly afraid of what happened to the NDP in 1988 when they raised insurance premiums and, as a result, lost the election. As a result of that, this government is prepared to do whatever it has to do to keep insurance premiums down to an absolute minimum. Certainly, there is no objection by me or from any of the presenters as far as I heard, to making sure that the current system operates as efficiently as possible and at the lowest possible cost, but the objection is that you should not gut the current system and destroy the essential benefits that people need when they are hurt in order to create this illusion that you are actually keeping claims costs down. All you are doing is you are doing a simple little juggling act.

I mean, it does not take a magician to figure out that, if you are going to reduce the cost of insurance, the only way you can do it is—insurance is a very simple game—that you get so many millions of dollars in premiums every year, you pay out so much in administration expense, and the balances go to benefit people who are hurt.

So, if you want to bring down costs and you are not going to touch administration, well, you know where you are going to get the money. You have to take it out of benefits. That is exactly what this government is doing; it has packaged this wonderful panacea called no-fault because everybody just focuses on the name and assumes that, if you say it is no-fault, well, that must be wonderful because everybody is going to be covered fully—that is the assumption—without having to prove fault.

* (2040)

But nobody reads the fine print, and the fine print says, well, just a sec, everybody gets full coverage but that coverage is a heck of a lot less than what you are getting under the current system.

So I guess the thing that I find most disappointing in this whole process is that this government has chosen for crass political motives, in my view, to gut a very good system that has been a great service to Manitobans for the past 20 years. It has chosen, frankly, and it has used a very crude political calculus. It sat down and it said, there are a million Manitobans. Maybe 700,000 of them pay Autopac premiums. We know there are only 20,000 claims a year. We know that if we increase premiums we may upset some of those 700,000. Well, so be it. To heck with the 20,000 who get benefits. They do not count as much as the 700,000. We know we can probably snow this by the public. They are not going to figure out the real costs of this system for a year or two down the road, and we have an election to run. 1994 is coming. We know we have an election to run, and the last thing we want to do is to walk into the election and have to tell Manitobans that we raised their premiums. We are fiscally responsible.

I say to this government—[interjection] There is no question. Anyway, the bottom line is that this legislation is being pushed by this government simply because it has a political agenda to fulfill, and in the process it is disregarding the fundamental needs of Manitoba citizens. That is the real tragedy that we have before us.

I might just comment as well on the NDP position on this legislation because frankly it mystifies me. I have sat here and I have listened to the committee members from the NDP, and I guess in the ideal world, the ideal system would be a wonderful no-fault system where everybody gets full compensation. We all know in this room that that is not going to happen. To do that, you have to raise premiums astronomically because you are increasing the class of beneficiaries and you are increasing the amount of benefits they are getting. You do not have to be an insurance man to know that.

No-fault, the way it is presently being introduced, because it is the only way that it can be introduced

and sold to the public, is by chintzing on the benefits, by taking everybody and giving them a lot less than full compensation for their loss. The NDP knows that is really what is being done. The NDP knows that a lot of their constituents, the working man, the student and so on, are going to be seriously hurt by this particular piece of legislation, and yet they basically stand idly by. That boggles my mind, quite frankly. I do not know why they do that. It makes no sense to me and, frankly, I think that is an abdication of their responsibility as an opposition party in the way that this legislation has been handled.

The process here, frankly, has been horrible. I appreciate that this committee has been very kind and patient in listening to all of the representations that are being made, but fundamentally there is no way that this legislation is ready to be dealt with in committee form. The legislation was only finished debated this morning at twelve o'clock, and we went to committee at one o'clock. People were not provided with proper notice. At least half of the people who have signed up to speak to this issue are not here. Many of them probably did not even know about it because you are calling people yesterday and today to get hold of them. People are entitled to have an opportunity to speak to such a fundamental piece of legislation.

As Mary Ann Stanchell said, if we can have hearings across Manitoba for changes to The Municipal Act, which are going to have a heck of a lot less effect than this act is on the average Manitoban, surely we can take the time to seriously consider this legislation, seriously consider (a) whether it is necessary, and (b) if it is necessary, whether this is the proper type of legislation before it is introduced. The great haste is purely for political motives, which I think is a real tragedy for the average Manitoban.

I guess I am just going to end with a couple of comments. There is only one amendment that I would propose to this particular piece of legislation, and I think that amendment would be very simple, that the minister would be required to send every accident victim a bouquet of flowers and a note of condolences. Having screwed the victims of accidents, the least the minister can do is say to them, I am sorry.

Basically, what we have here is a situation where there is an election to be run in '94, and the minister, for politically expedient reasons, is introducing a piece of legislation that is fundamentally flawed and a travesty for all Manitobans. All I can say is that we should sit here and seriously consider the victims of accidents. Let us not convert the 20,000 Manitoba accident victims into 20,000 victims of legislated injustice. Those are my comments.

Mr. Chairperson: Thank you very much for your presentation, Mr. Bueti.

Mr. Cummings: I would only like to indicate that I agree that additional debate would have been useful. We introduced this bill in early May. There was not any discussion in the House until the last few days. This committee was, in fact, held back waiting on the second opposition to speak. So I, like you, regret that discussion did not occur earlier in the House on this bill. Bear in mind, I have to say in my defence, that the debate in this area began about four or five years ago in terms of the beginnings of the Kopstein report.

I believe that a number of the comments that you made this evening are useful and that, as we move forward in putting the process in place, if in fact the bill clears the House, a number of the things that you have said about the operation of the bill and the system will be useful.

Mr. Bueti: Mr. Minister, if I could just respond to that. Firstly, what I would like to say is that when I speak of a proper process of public debate, what I am speaking about firstly is the release of the Tillinghast report, which forms the basis for the decision to enter into this decision; secondly, the release of any other MPIC papers that also form the basis for this decision—an opportunity to have that information properly reviewed by independent people and discussed and studied by an independent commission.

Mr. Minister, you know that this is a very radical change in our system of compensation for accident victims. The way in which this is being done where the most fundamental source documents are not available for public review is simply wrong. People need to know whether this type of legislation is absolutely necessary. Do we really have to make these radical changes in Manitoba today, or can we live with some modified system that we currently have?

You know that there have been suggestions made to this committee and prior in various reports about the various alternatives that would still

preserve the current system. The government has chosen to reject those alternatives. That whole decision should be properly put before the public for review.

Secondly, what I am talking about, Mr. Minister, is that back in December in a Free Press article when this whole issue really started to be dealt with, you were quoted as saying that it is now time that we have a proper debate in Manitoba about the type of insurance coverage that is available to Manitobans. Well, I am sorry. As a lawyer who has had an active interest in this particular piece of legislation, and as a lawyer who knows a lot of other people who have had an active interest, there has never been, with all due respect to this government, a proper forum to discuss this legislation.

The legislation itself came out in April. Until April, as I understand it—or May, I am not sure—no one was sure whether legislation was going to be introduced. The fact of the matter was that there was a lot of discussion about the possibility that there be some sort of public review. The next step was, legislation is introduced. Again, there is no opportunity given to properly study the legislation. It just gets rammed through the House. This unseemly haste is totally, totally inappropriate, Mr. Minister. I say that with the greatest of respect. I do not feel that this government is handling this very serious issue properly.

Mr. Cummings: I accept your difference of opinion. That is all the questions I have. Thank you.

Mr. Maloway: Mr. Bueti, I appreciated your disarming presentation style. I was agreeing with you certainly on your analysis as to why and when the government brought it in. I have said many times that the government has brought this legislation in because of the impending election.

I want to point out to you that I do draw the line when you suggested somehow our party is abdicating its responsibility in this area, because, as a former political candidate yourself, you know that, when I was the critic and when the member for Brandon East (Mr. Leonard Evans) took over as the critic, we have been in the newspapers many times over the last few years and on the radio stations advocating a no-fault system.

It was this government and this minister who said, as late as last summer, that they would have no part in it. So we were quite surprised when they did such a quick about face, as surprised as you were, I guess, that the bill was put in front of us.

* (2050)

We have been on record for many years in supporting—we did a white paper back in 1973 on the New Zealand accident and sickness program, which, you will understand, is a state-run, centralized accident corporation which essentially collapses workers compensation. I know many people would like to see that. It collapses workmen's compensation. It collapses the accident benefits from the auto corporation, and essentially it collapses all the privately run plans as well, the group plans and so and the private insurance plans. It has one strict, state-run corporation. That is the plan that we did a white paper on in the mid-'70s. That is the plan that we have been advocating to this day. We see this as the first step towards that universal program.

Mr. Chairperson: Is there a question? Was there a question there, Mr. Maloway?

Mr. Bueti: I think it was more justification of the NDP position on the issue.

Mr. Maloway: I thought we should clarify that.

Mr. Chairperson: Mr. Evans, with questions.

Mr. Leonard Evans: Very briefly, I thank the presenter for an interesting presentation.

Would you agree that there really is a basic philosophical difference between those who are advocating the present tort system, which is based on a principle that negligent drivers must be penalized, and the philosophy behind the pure no-fault principle or the premise that accidents are just that, accidents, and that we should recognize that and compensate everyone in Manitoba?

Mr. Bueti: Mr. Evans, I have to disagree with you in this sense. What I have been advocating for the past half hour now is not a pure tort system. I have never suggested that is appropriate, and I would not suggest that is appropriate.

What I am advocating is a twofold system that marries the best of the no-fault system with the best of the tort system. That system says that, if you are at fault for your own accident, you are paying insurance premiums to buy your own insurance policy under Part 2, as it now is, of the current regulations. Under your own insurance policy, which you have paid for, you are entitled to be paid

on a no-fault basis. That makes eminent sense to me.

The thing that you and I can discuss or debate, of course, is what level of benefits is appropriate. That would be a matter of how much people are willing to pay for that component of their insurance coverage. Where you and I disagree, I would suggest, Mr. Evans, is that I say that for people who are not at fault they are entitled to public liability coverage from the at-fault driver. The current system says the at-fault driver pays a premium to purchase public liability insurance, just like a tenant pays public liability insurance so that if people slip and fall on his premises and break their legs the tenant's insurer will cover that loss.

That is where, I guess, we do have a philosophical difference, because I do not see the necessity of going to a pure no-fault system. By doing that, you are of necessity legislating that innocent accident victims must never get full compensation, because no government is going to award full compensation to all victims of accidents, irrespective of cause, because no one can afford that system. That is where I have a fundamental disagreement. I have a fundamental disagreement in taking money from innocent accident victims and giving it to at-fault drivers. That bothers me. I philosophically disagree with that premise. I think this government is wrong in legislating that in the province of Manitoba.

Mr. Leonard Evans: Mr. Bueti, do you not think that the vast majority of so-called at-fault drivers are ordinary Manitobans who have made a mistake because of momentary loss of concentration?

Mr. Bueti: That is true in many cases, Mr. Evans. With all due respect, that misses the point. That person who, because of his momentary inadvertence, hurts himself is entitled to the benefits that he paid for. He went and he bought a Part 2 policy and he pays X dollars of premiums for it. He gets his benefit, period. He should not be entitled to get paid anything further than that.

If that person, whether through momentary inadvertence or through gross inadvertence or through any kind of inadvertence, hurts somebody else, then I feel his insurance policy should fully compensate somebody else for their full loss. I do not think that the issue of momentary inadvertence is really all that important here.

Mr. Leonard Evans: Just one last question, because there is a basic different, philosophical approach. With all due respect, there is a basic difference, and Kopstein outlines that in the report.

I know we cannot get into debate, and I do not want to. I would ask Mr. Bueti if he has had the opportunity to read the Kopstein report, which has been around for five years and which some of us on this side have endorsed and have advocated for years. Is he aware of the section of the recommendations, Position Paper No. 2, where Judge Kopstein says, the add-on, no-fault plan, which is presently the Manitoba plan, is no longer viable either in terms of cost or insurance protection and then goes on to advocate a pure no-fault system?

Mr. Bueti: I am not sure what the question is, Mr. Evans. I guess the first part of it was whether I had read the Kopstein report. I have to confess I have not read the full Kopstein report. I have read parts of the Kopstein report.

I also have to say that it is my recollection that Judge Kopstein was commissioned to study the old system of Autopac. He was never commissioned to study the issue of whether we should go to no-fault at all. All of his comments on no-fault were completely gratuitous, were made without the benefit of any public representation and have now been seized upon by, I guess, the NDP as being somehow some well-thought-out, well-considered approach to personal injury compensation in Manitoba, which they are not.

I would suggest to Mr. Evans, if he can show me any individual papers or presentations that were made to Mr. Justice Kopstein on the issue of no-fault compensation—to my knowledge, no one spoke about the issue, and he just threw it into his recommendations. I personally do not think a lot of weight should be given on that particular portion of the Kopstein report, but you are free to rely upon it if you think it has any value.

Mr. Chairperson: Thank you very much for your presentation this evening, Mr. Bueti.

Mr. Gerald Bohemier. I have also been informed that we have some written presentations that are being handed out by the Page right now from Jennifer Jenkins, Tamara McRitchie, George Creek with the Assiniboia Insurance Brokers, Guy Simard with The Nightingale Research Foundation and

Nancy Hallock from the Manitoba Chronic Pain Association Inc.

I will now call on Mr. Graham Lane. Mr. Robert Bruce. Gennaro Scerbo. Alan Yusim. Alan Ransom. Rob Hilliard.

We have your presentation here. We will pass it around. You may begin, Mr. Hilliard.

Mr. Rob Hilliard (Manitoba Federation of Labour): The Manitoba Federation of Labour is proud of the tradition of public auto insurance that has flourished in Manitoba for more than 20 years. Because of the vision and courage possessed by four New Democratic Party governments and expert, highly skilled public sector workers, the publicly owned and operated automobile insurance corporation known as the Manitoba Public Insurance Corporation has brought many benefits to all Manitobans.

Our motorists enjoy among the best, if not the best, insurance schemes in North America at about the lowest cost. But more than that, Manitobans have an insurance system that is far more responsive to their needs than the private sector was able to deliver prior to the creation of MPIC. Settlements and compensation are more speedily accomplished, and accident victims are not forced into ill-advised settlements in the face of lengthy insurance industry delays.

Over the past two decades, substantial premium revenue has stayed in Manitoba to work for Manitobans rather than escaping to centres outside our province or to foreign head offices. The economic benefits and jobs this has created are particularly important in this time when attracting private investment has proven to be so very difficult.

Even as trade unionists guard public insurance against a return to more expensive and lower quality private sector insurance, we are aware that all things must evolve in order to keep them vibrant and responsive to our needs. This holds true for MPIC.

* (2100)

In the mid-1980s, the Pawley government began to explore ways to improve the service delivered by Autopac, including the potential transition from the current add-on, no-fault insurance scheme to a pure no-fault scheme in order to bring greater benefits to accident victims and a more stable premium rate environment. While the MFL supports the improvement of public insurance, we caution that it not come about by creating double victims, those who are victims of accidents and victims of inadequate compensation.

We are concerned that this will too often be the result if Bill 37 is implemented in its current form. However, our analysis has suffered from an inadequate amount of time which has been made available to us and because of the unseemly haste with which it is proceeding through the House. The process leading to this day has been carried out in a large part behind closed doors. If there has been information released to the public prior to the distribution of Bill 37 for first reading, we are unaware of it.

We note the two papers prepared by MPIC that we have obtained since Bill 37's distribution are dated February and May of this year. We have no way of knowing if the information in these papers is complete or if other MPIC studies exist. Certainly from listening to other presenters, it has become quite apparent to me that there are other studies out there and they have not been released. Neither we nor other members of the public have had sufficient opportunity to assess all of the various options which may be possible. We simply do not understand the need for these tight time lines or if such a need genuinely exists.

Given the nature of Bill 37 and the implications it has for our public insurance system, we would ask that adequate information and time to digest it be granted. Further, because of its widespread impact, public hearings should be held throughout the province so that a well-informed public will have the opportunity to provide the government with well-informed advice.

Because of this rushed process, we are only able to present you with a few observations today. As we are able to further analyze the bill, some issues which we have not yet had adequate time to pursue will undoubtedly add to our list of concerns. We must point out that our silence today on certain provisions of Bill 37 should not be construed as support of those sections necessarily. It is simply a reflection of the inadequate time and information that we have had for analysis of the bill. Conversely, there are also parts of the bill which we like and which we consider to be significant improvements over the current situation.

With these caveats and concerns in mind, there are a number of issues that we would like to raise today. Firstly, under the title of Board of Directors, because of the importance of publicly owned insurance to all Manitobans and the potential impact of pure no-fault insurance, the MFL urges that MPIC's board of directors be structured in such a way as to reflect the nature of our community as much as possible. Some of the groups that should be included on the board are MPIC employees with those representatives to be democratically elected by the workers or by their union, people with disabilities, the automobile safety industry, the insurance industry, the medical community and the legal community. There may be other groups that should be represented as well. It is important that both business concerns and social policy concerns be voiced by the appropriate representatives.

Under the Definitions section of the bill, on page 4, in the Definitions section, only relationships involving opposite sex partners are recognized as being eligible for spousal benefits. Recent trends in legislation and recent court decisions are clearly establishing a pattern of recognition of the rights of same-sex spouses. This bill should do the same.

This section also stipulates that people in a common law relationship must have lived in a conjugal relationship for at least five years in the absence of children before they are considered spouses. We feel this is an unnecessarily rigorous test, and that it should be amended to a one-year period, which is becoming common practice in many benefit packages, which are required under collective agreements.

In Section 74(1): The coverage for Manitobans involved in accidents outside of Manitoba, including the United States, is a positive aspect of Bill 37; however, we suggest that Manitobans would be better served if they were covered no matter where they were in the world. The need for adequate insurance is as great if a resident of Manitoba is injured in France or Mexico as it is in Ontario or Texas.

Section 84(3): This section is meant to establish the appropriate level of benefit for temporary or part-time earners who are unable to work because of their injuries after 180 days of receiving benefits. One of the considerations that may be taken into account is the earnings of the victim in the previous five years.

Because of the nature of part-time or temporary work, as well as the feature of irregular interruptions in work due to layoffs and temporary shutdowns, this may not be an accurate measure of the victim's lost earning capacity. We recommend that this test be deleted from this section, and that the determination be based on the considerations outlined in Clauses 105(1) and 105(2).

Section 85(1): The ability of an accident victim, who is a nonearner on the day of the accident but could have been an earner had it not been for the injuries, is greatly restricted by Part (a) of 85(1). This individual would literally have to have a concrete job offer with a start date in order to qualify for benefits under this section. This provision is so restrictive that it is sure to result in unfair judgments. Most nonearners will be excluded from benefits if this provision remains in Bill 37.

Sections 99 to 102: We are concerned that the linkage between an accident victim's age and the benefit level contained in these clauses amounts to age discrimination, and, as well, it is due to faulty assumptions. The treatment contemplated for persons age sixty-five and older assumes that all Manitobans are in a position to retire from the workforce and that pension income will replace accident benefits. Neither assumption is true.

Many workers do not attain financial security by age sixty-five because of inadequate earnings during their work life. In many cases, the worker has not had access to a nongovernment pension plan and not enough income to undertake personal income planning. If the period of disability is substantial, private pension plan contributions will have suffered because of absence from the workplace, or, at the very least, diminished earning capacity.

In any event, it cannot be assumed that victims of accidents will require lower benefits simply because of their age. We recommend that benefits be determined by loss at the time of the accident and not by assumptions that may or may not be accurate. Such discrimination will surely result in many victims replacing MPIC benefits with much lower social assistance benefits through no fault of their own.

Section 104: We are not sure exactly what the government is attempting to accomplish with Clause 104. What is meant by someone who is

"regularly unemployed"? Does this include persons who are long-term victims of the unemployment crisis or of the poverty trap? How will the words "incapable," "regularly" and "for any reason" be applied? When does temporarily unemployed become regularly unemployed? Are workers who are receiving long-term disability benefits or CPP disability benefits for a period of time excluded? There are far too many ambiguities in this clause which will allow an adjuster at MPIC to apply discretionary value judgments when assessing a victim's claim.

We recommend that there be no denial of income replacement indemnity benefits except to someone who is and has been absolutely incapable of employment based solely on medical considerations and not social considerations.

Sections 105 to 108: The concept of determination of employment, when applied for the purposes of reducing benefits, is blatantly unfair. It assumes that an accident victim who is unable to return to the job held on the day of the accident or one like it is able to do other work that pays less than the lost job or career. That level of income is then deducted from the benefit level even though the victim does not have a job and does not earn that income.

The continuing unemployment crisis in Manitoba makes this a particularly unfair provision. The assumption is that if a carpenter who is unable to return to a carpenter's job is able to work as a parking lot attendant, then the only reason that the victim is not working as a parking lot attendant is that they have not been trying hard enough to find employment, and therefore they should be penalized. With double-digit unemployment, finding a job is nearly impossible for many people. Couple that with the fact that few employers are willing to hire a worker who has been injured for fear that future injuries are possible, and it becomes apparent that Bill 37 constructs a box that many victims will find no way out of and will suffer a further injury through unfairly lost benefits.

* (2110)

The MFL recommends that all clauses in Bill 37 that are based on determined employment be deleted. Deemed income or, more accurately, imaginary income should not be used as a factor to determine benefits. A victim's benefit level should be determined by the actual loss suffered at the time of the accident. Re-entry into the workforce should be the product of a meaningful rehabilitation program, one that is designed to meet the needs of the victim and the workplace.

The MFL recommends that language contained in Bill 37 relating to rehabilitation, which is found in Section 137, be replaced by provisions contained in the Workers Compensation Board policies and procedures. For the convenience of the committee members, that policy has been reproduced and attached to this brief as an appendix.

Section 110(1): The benefit level described in Clause 110(1) is not adequate. We believe that accident victims should not suffer financial loss merely because of the accident. Accordingly, we believe that 100 percent of net income should determine the benefit level. In addition, Bill 37 winds down benefits to zero by the time the victim reaches age sixty-eight. We assume that the rationale for this is that by this time most people have replaced employment income with retirement income. But if the victim is injured for any substantial period of time, pension and CPP contributions will be too small to provide adequate retirement income unless the victim's contributions are maintained during the life of the MPIC benefit. And for many that will not be possible.

Section 123: The benefit level to cover funeral costs is too low at $3,500. We recommend that it be increased to $5,000 so that it more accurately reflects real funeral costs. Further, it should be indexed to future increases in funeral costs.

Section 130: We are concerned that the level of $3,000 mentioned in this clause as the benefit level for personal assistance expenses may be inadequate to meet the real costs incurred by some victims. While many claims will no doubt be less than this amount, in fact I would suspect just about all of them, it is not reasonable to assume that it will be adequate in all cases.

We heard John Lane earlier talk about the costs of employing someone for a paraplegic in the home and that this amount would not be adequate. It is not difficult to imagine a number of other cases where that would be the case as well.

The MFL recommends that this clause be amended to remove the dollar figure and reimburse at a level that covers verifiable incurred costs.

Section 133(3): The MFL feels that the provisions contained in Clause 133(3) are too

restrictive and will result in unfair financial hardship for those accident victims who must hire professionals to provide care to dependants that they normally would have provided for themselves.

People's needs are not so predictable that benefits can only apply to the strict periods of time outlined in this clause. The level of benefit should be determined by need, not suppositions.

Section 135(1): This particular clause provides us with an opportunity to explore one of the anticipated savings to MPIC users under Bill 37. One of the economies named is the end to the practice of MPIC reimbursing the Manitoba Health Services Commission for medical costs related to the accident, which amounted to some $8 million last year.

I see the minister looking at me rather hardly here, and he will have his opportunity to ask the question, but certainly when we take a look at the bill, and we have listened to some other advice, we are advised that by the elimination of the ability of MHSC to seek tort action that they will no longer be able to recover these costs. If in fact our analysis is not correct, I would be happy to be corrected on that point.

However, if in fact we are correct, this is a very large concern, because in fact this would not be a saving at all. Instead it would be a transfer of costs from automobile owners and users to the general population. This MPIC saving becomes the MHSC cost in this case. This would be an unwise measure to implement when our medicare system is under ever increasing stress and unable to maintain levels of quality that Manitobans are accustomed to receiving.

We cannot endorse a practice which saves automobile drivers money at the expense of our health care system.

Section 142: The disturbing aspect of Clause 142 is that it does not describe what will occur if the employer does not provide proof of earnings within the prescribed time period. If this failure to comply on the employer's part occurs, does this mean that the victim's benefits will be delayed, creating an unfair hardship? Our identical experience at the Workers Compensation Board indicates that this in fact will be the likely outcome.

The MFL recommends that benefit payments should commence on time based on information supplied by the victim even if the employer has failed to comply with the MPIC's information request in a timely manner. If the employer is at fault, penalize the employer, not the victim.

Section 143(1): The labour movement's experience with company-appointed doctors has not been a happy one. Unfortunately, some doctors who wish to obtain future referrals from the company, or in this case MPIC, will report back what they believe the corporation wishes to hear at the expense of the victim. For that reason, we recommend that Bill 37 be amended to ensure that fairness not only is accomplished, but that it also removes any appearance of unfairness. The selection of a medical practitioner should be the product of mutual agreement between MPIC and the victim.

Section 145(1): The provisions of this clause are too sweeping and bring into peril the ability of the accident victim to enjoy his or her right to confidentiality of medical records; 145(1) should be amended to make it clear that only medical information relating to the accident in question be accessible by MPIC, as is the case now with the Workers Compensation system.

Also, we have not been able to find any provision in this bill which allows the victim to access his MPIC file. This oversight should also be addressed. Legislation that remains silent gives the victim no rights at all.

Section 146: As was the case in Clause 145(1), MPIC should have access to only those records that are directly related to the accident in question. Further, should a hospital or practitioner fail to meet the time line established in this clause, it should not result in a delay of benefits for the victim.

Section 147: Clause 147 limits reimbursement from medical report costs to successful appellants only. It is our concern that this will have a chilling effect on the appeal process and limit it to only those who can afford to pay for the medical report out of pocket. Having had to pay for some of those in the past, they can amount to $500 and over in some cases. The MFL recommends that all appellants be reimbursed for their medical report costs to ensure that all those with a grievance are able to use the appeal process.

Section 149: The MFL is not convinced that it is acceptable to rely on MPIC to provide victims with all the information they need to process their claim. There is an inherent conflict between the desire to

provide a decent level of benefit and the desire to reduce costs. It is preferable that fair treatment be seen by the public through the establishment of a structure similar to the Workers Compensation Board Worker Advisor Office. This removes the appearance of a conflict of interest.

Section 150(2): Some of the provisions contained in Bill 37 governing the payment of indemnities are puzzling. For example, not paying an indemnity for the first seven days following an accident has the appearance of simply a money grab. Why should an accident victim, who is entitled to a benefit, not receive it for any period? The loss is there, and the need is there, what more should be required? The MFL recommends that this provision be deleted from the bill.

* (2120)

Section 150(4): Similarly, why should students and minors be exempted from 150(1), which establishes a 14-day indemnity payment cycle? Their need for income exists throughout the term or school year and not just at the end of them. This clause should be deleted.

Section 158: Many of the reasons outlined in Clause 158 for the discontinuance of benefits have the appearance of being arbitrary, open to inconsistent interpretation and potentially unfair. The potential ambiguities that may result from this clause lead us to recommend that parts (a), (b) and (h) be retained and parts (c), (d), (e), (f) and (g) be deleted.

In a perfect world, the discretionary powers that Clause 158 endows on adjusters would be exercised consistently, fairly and in an even-handed manner and the system would work. However, our experience with these kinds of powers in other contexts have taught us that this is not a perfect world and unfairness and arbitrary measures are often the result.

Section 170(1): This clause describes the time period allowed for appeal after the victim receives a notice of decision. Is the filing of the actual appeal necessary to meet the intent of this clause or is notice of appeal sufficient? As you are aware, this is an important consideration since the proper preparation of an appeal may take more than the 60 days. The current language in the bill does not make it clear which of these actions is required.

Section 173: The establishment of an appeal structure that is obviously free of conflict of interest is important to maintain the public confidence in Autopac and the administration of MPIC. We do not believe that a process in which the government of the day appoints appeal commissioners who are accountable only to a minister of the Crown can achieve this objective. The MFL urges that careful consideration be given to ensuring that the appeal process is at least at arm's length from MPIC and the provincial government and that it be made up of expert individuals who are sensitive to the needs of victims and beyond the pale of politics. There are useful appeal structures in other institutions that may provide a valuable guide. We think that time ought to be taken to examine those options, and I am sure that in doing so you could come up with a much better appeal process.

Section 177(2): This clause enables the commission chair to establish a decision of the commission in the absence of a majority decision by the commission. Since 176(1) establishes that the commission shall be made up of three commissioners and 177(1) establishes that all three had to be present in order to hear a case, it is hard to imagine how a commission could not reach a majority decision. In any event, endowing the commission chair with the power to make a binding decision unilaterally is exactly the kind of measure that may lead to a decrease in public credibility for the appeal process. The MFL recommends that commission decisions must be based on a majority vote.

Section 181(5): The concern raised by this clause has surfaced elsewhere in this brief. It is important that Bill 37 stipulate in as many clauses as is appropriate that the only medical information that should enter into consideration is that which is directly related to the accident in question. Manitobans must be assured that their own medical records are as confidential as possible and that they will not be used unfairly.

Sections 192 and 195: Section 192 stipulates that payments from private insurance plans, something that only higher-income earners are likely to afford, will not be used to reduce the amount of MPIC benefit that the beneficiary is entitled to receive. However, Clause 195 stipulates that CPP disability payments or similar payments will reduce dollar for dollar the MPIC benefit. This is a measure that the MFL fails to understand. If supplementary benefits derived from pension plans are acceptable, what taint do

these supplementary benefits acquire by coming from a public source? We recommend that there be consistency in how non-MPIC benefit income is treated.

Access to courts: Bill 37 limits an accident victim's right of access to the courts to questions of law and jurisdiction. The MFL is concerned that the inability to resolve questions of fact before a judge is an unfair limitation on the rights of Manitobans and could lead to a victim being unfairly denied benefits. This is particularly the case, given our concern with the appeal process. The concern that this limitation is predicated on is not apparent to us. We urge this committee to remove this limitation.

Benefit versus cost: Care must be taken to ensure that there is a fair relationship between the amount of no-fault premium paid and the benefit received. For example, it would not be fair for a $25,000 per year income earner to pay the same premium for the no-fault insurance portion of coverage as a person who earns $55,000. The difference between the potential benefits requires that there be a corresponding difference between the premiums paid.

Just before I go on to the conclusion, as I indicated we have not devoted the time and energy to this analysis of this bill that we would have liked, for a variety of reasons, not the least of which is an inadequate amount of time and perhaps more importantly an inadequate amount of information.

Two other concerns have been raised to us since this morning when these words were put to paper, and one that I should have been more sensitive to admittedly and that being the greater cost of living for people who live in the North. Consequently, many of them have a higher annual income as well. That annual income does not enable them to a higher standard of living compared to that level of income here or a similar level of income here. It merely compensates for the higher cost of living that is up there. We believe that this bill ought to somehow or at least make an effort to accommodate that.

Similarly, I have heard a couple of employers actually come forward here earlier this afternoon expressing concerns for how this bill, if implemented in its current fashion, will interface with the workers compensation system. We too have similar concerns. I cannot detail them for you, because there appears to be no hard numbers out there, there appears to be no hard information.

In fact, when this bill first came forward, we did not anticipate presenting to this committee. We thought this might be one of the happy occasions when the labour movement and the government might actually agree—[interjection] Well, maybe we are, hopefully we are.

However, our workers compensation committee began analyzing the bill and raised some concerns with us. Coincident to that, the commissioner of the Workers Compensation Board requested a meeting with us to outline some concerns that they had about this bill and explained them to us and what we thought. After going through that exercise, we did become much more concerned.

The biggest issue we have with workers compensation is we do not know. There certainly appears that there could be a negative impact on the workers compensation system by virtue of the longer waiting period to qualify for benefits, that being seven days compared to one. I would agree that for long-term, very serious cases a person would very likely be foolish to go to the workers compensation system. They would probably be far better off under MPIC. For cases of shorter duration, I would suspect that the incentive would be to instead apply to Workers Compensation and not be subject to the additional seven days of loss of income.

In concluding, the Manitoba Federation of Labour's position is that the process that has led us to this committee hearing is rushed, that there has been an inadequate attempt to educate the public about the implications of Bill 37 and how it will affect Autopac services, that there has not been enough time for interested parties to review the bill and prepare an adequate presentation for the committee hearings and that there has not been an opportunity for very many non-Winnipeg residents to take part in this process.

Having said that, the MFL has serious concerns about many clauses contained in the bill, and there may be more resulting from our continuing review of Bill 37. We support the concept of no-fault automobile insurance, but it is our position that unless some of our more substantive concerns are addressed, Bill 37 should not be supported by the members of this committee or by the public.

We believe that a more measured process with a wider public consultation would result in a bill which would be fairer and which would better deliver the benefits of public automobile insurance to all Manitobans. Thank you for allowing me this opportunity.

* (2130)

Mr. Chairperson: Thank you very much for your presentation this evening, Mr. Hilliard.

Mr. Leonard Evans: Thank you, Mr. Hilliard, for the excellent presentation. I am sure many members of the committee will be taking your recommendations to heart and maybe bringing forward various amendments for consideration by the government.

I have about four or five points. We are limited for time, but I would like to discuss four or five points; 84(3) which you mention on page 4, I may be wrong on this, but my understanding is, and I stand to be corrected by the minister or the staff, that if a person has temporary employment, the corporation shall calculate what that temporary job is on a full-time basis and provide an income replacement as though that person was working on a full-time basis.

Now if I am wrong in that, I would like somebody to correct me, but that is my understanding—or if that person had two jobs, the corporation would take the higher of the two jobs, then calculate it as a full-time income and then calculate the income replacement related to the higher of those two jobs. Is that your understanding of it? Did you have that understanding of it?

Mr. Hilllard: I have heard that before, but what we find in 84(3) is in fact contradictory to that. If in fact what you are stating is true, we would be quite happy with it. But why would this bill permit MPIC to go back over five years of work history to assess a level of income? What is the purpose of it other than to reduce benefit?

The reason we say that is again due to our experience in another context, that being the Workers Compensation system. The Workers Compensation system a few years back introduced a system whereby, after two years of receiving Workers Compensation benefits, they then go back to a similar process and assess over a longer period of time what that injured worker's employment income was.

We have found in doing so that almost every single time that happens, the level of benefit gets reduced. The reason the level of benefit gets reduced is because, over a longer period of time, we find periods where a worker has been subjected to either a period of unanticipated lay-off, plant shutdown, perhaps a time of reduced work week, even part-time work, things that are an irregular part of a person's work history and not a regularly occurring pattern.

But in each of those cases, we have found with the Workers Compensation Board that this practice has resulted in the benefit level being reduced, and that is the reason for our concern.

Mr. Leonard Evans: Yes. Well, I expressed my understanding of 84(3), and I hope I am not wrong. I do not know whether the minister heard me, or the staff, but if that is the case—well, I guess I have to ask the question. I am not supposed to debate it.

Mr. Hilliard, would you agree that that would be a generous approach if the corporation took the higher of the two part-time positions, calculating them as a permanent or rather full-time income and then based its income replacement indemnity on that full-time income of the higher paid of the two jobs?

Mr. Hilllard: I would agree completely with that process. This would remove our concern, but again I must ask, why is MPIC given the ability to go back and look over a longer period of time at someone's work history? What is the purpose of doing that? If that section were removed, our concern is gone.

Mr. Leonard Evans: Okay, well, we have noted. I am not supposed to debate with you, but I want to ask you some questions for clarification alone. If the minister wanted to step in—

Mr. Cummings: Are you asking me questions?

Mr. Chairperson: Questions go through the Chair to the presenter.

Mr. Leonard Evans: Very good. That will be clarified.

Okay, 110(1), page 6. You believe that 100 percent of net income in addition to only private insurance benefits should determine the benefit level. Were you aware that if the income replacement indemnity is not taxable, and therefore if you used this approach, a person would end up

getting a higher salary than he or she got prior to the accident?

Mr. Hilliard: I disagree, Mr. Evans. It seems to me we said 100 percent of net income, not gross income. What we are suggesting is that the victim receive the very same amount of take-home pay after the accident as he did before the accident. That is all we are suggesting.

Mr. Leonard Evans: I guess I appreciate what you are suggesting, and I agree with your intent, but I am just suggesting to you that because, as I understand, this is not taxable—and again I stand to be corrected by anyone who is expert around here—it amounts to no penalty. It does not penalize the victim in terms of loss of income, because you are receiving an income now that is not going to be taxed.

Mr. Hilliard: Agreed, but we are talking about net income, not gross income. Net income means, at least it means under the Workers Compensation system, that the net income is calculated by taking the person's gross income, deducting the same amount of income tax that they would pay off that, and the CPP benefits, and the UIC benefits, and arriving at a net figure. That is the net figure after taxes have been taken off.

Mr. Leonard Evans: Okay, I see. I guess the reference is to 90 percent, and I think the argument is, or I should ask the question, do you accept—I guess you do not—the position that 90 percent is suggested because 10 percent is estimated to be for costs of going to and from work, having clothing that is required for your work, et cetera?

Mr. Hilliard: We are familiar with the argument, Mr. Evans, because we have had it before with the Workers Compensation system, identical argument in fact. However, it has been our experience that, admittedly, there are some employment costs, and I guess it is cheaper to stay home than it is to go to work. I do not know where the magic 10 percent figure comes in, however. I have never seen any real justifiable calculation for that. It seems to have been something that people pull out of the air.

But, in addition to that, we have also found that in a large number of cases where people are victims of accidents, whether they be workplace accidents or automobile accidents, there is also a range of costs that they wind up picking up that nobody else covers, and in fact, if they are saving some money due to a reduced cost of not having to go to work, they are picking up other costs in very many cases, and, in fact, that 10 percent can cover that.

Mr. Leonard Evans: Yes, thank you. What you said is a concern, although I understand there are some very generous rehabilitation and support monies in here. Again, I am not going to debate it, but this is what I am advised.

On 152, you referred to not paying the indemnity for the first seven days following an accident as having an appearance of a money grab. I would like to ask Mr. Hilliard, what is the practice for the Workers Compensation Board? Is the payment made? Is there any deduction, or what is it?

Mr. Hilliard: Workers Compensation kicks in the day after the injury. There is no benefit on the day of the injury, but immediately the next day the Workers Compensation benefit kicks in.

Mr. Leonard Evans: Thank you. Just the final area here, on page 12, at the very end you say that you support the concept of the no-fault automobile insurance, which is, as far as we are concerned, the key recommendation of the Kopstein report. Are you saying, then, you agree with the philosophy in the Kopstein report, that the tort system as such is inadequate and should be replaced by a pure no-fault system?

That is the general thrust of the Kopstein report, and that is the big debate between most lawyers in this room—past, present and future and others—whether the tort system is fair and does an adequate job. Kopstein says that it does not and recommends a major shift to a new system, which is more in keeping with a social benefits or social justice program.

Mr. Hilliard: I would agree generally with that statement.

Mr. Leonard Evans: Okay, thanks.

Mr. Chairperson: I thank you very much for your presentation this evening.

Mr. Cummings: I would just like to thank you for your presentation. You raised a point that I perhaps should have responded to sooner because other presenters had raised the point as well, and that was whether or not there was a saving in terms of any monies going to Manitoba Health.

I believe I did respond to one previous presenter, but not every time it was raised. The fact is that where it is not referenced by a directive within the

act, it was announced at the time, and it was made very clear the policy is there would be no net cost to the health care system. In other words, the traditional dollars that are going from MPIC to health care will continue to flow, and that will be by agreement, so that there is no net cost. You are quite correct that if that were deemed to have been a saving, that would be a false saving.

Mr. Hilliard: We are reassured by that. Thank you.

Mr. Cummings: Thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Hilliard.

I will now call on—Mr. Creek's presentation, he withdrew and it was one that we had passed around. Vince Bueti. Vincent Bueti. Jerry Kruk.

We have a copy of your brief, Mr. Kruk. You may begin.

* (2140)

Mr. Jerry Kruk (Canadian Automobile Association): Mr. Chairperson, first of all, let me marvel at how long people can sit. I understand the labour laws around here say something about not sitting for a period as long as this without some breaks. I have been around for eight and a half hours here. I found it an interesting learning experience from the perspective of everybody else's presentations, but let me start by saying in a very defensive way, I am not a lawyer. I say that in all seriousness because I have sat here and somehow or other—far be it for me to look at the legal profession and somehow make comments about them that are positive, given the kind of negative comments that have been made all the way through. But, quite frankly, let me start by saying, I am not a lawyer; I am just a dumb engineer. So that perhaps any questioning that I may have at the end of the day can be kept in that regard.

Mr. Chairperson, ladies and gentlemen, I just would like to read in the statement that we have prepared here and just ask some questions as opposed to getting specific into the details of Bill 37.

In keeping with the role as an advocate for motorists, CAA Manitoba has been outspoken in its opposition to the provincial government's proposed plan to introduce pure no-fault automobile insurance.

We developed our position following careful review of the no-fault plans in Quebec and Ontario, and recent discussions with the provincial government and the Manitoba Public Insurance Corporation have done nothing to change our views on this matter. Although the Autopac system is certainly not perfect, we firmly believe it would be wiser to rework provincial insurance plan rather than switch to pure no-fault. CAA Manitoba outlined its position to Autopac in a brief presented to the minister six weeks before the provincial government announced its intention to adopt a pure no-fault plan.

To sum up the key point in this document, we stated, and I quote: It would be in the best interests of motorists to improve the existing Autopac system and cut costs in areas other than accident benefits. We then went on to identify ways MPIC could reduce costs and increase efficiencies in three specific areas, namely, delivery of injury and accident benefits, automotive repair and replacement, and claims administration.

In our view, switching to a pure no-fault automobile insurance system would not provide an easy answer to a complex set of problems. In fact, it would amount to little more than trading one set of problems for another. More importantly, we believe that motorists would have everything to lose and nothing to gain if a pure no-fault plan was introduced.

In the past our primary criticism of the Autopac plan centered around rate shocks, large premium increases like the ones announced late last year. It is important to note that the government has given no guarantee that a pure no-fault plan would result in lower premium prices. So motorists would gain nothing in the end. Indeed, they would actually lose something priceless, the right to sue for compensation if they were seriously injured and/or suffered a change in lifestyle due to the negligence of others. The right to sue for full and fair compensation for injuries caused by the action of others ensures that the unique circumstances of individual victims are taken into account.

Assessing each case separately and compensating victims for pain and suffering as well as for "measurable costs" like medical care and lost income is certainly more than just using a chart to determine how much money a victim will be paid to keep body and soul together. CAA Manitoba's position on maintaining individual rights to sue is in

accordance with CAA public policy, which is derived from annual surveys of the Canadian Automobile Association members across the country, including Manitobans. Clearly, we are not the only ones that feel that injured motorists should not be deprived of the right to sue for compensation.

The government's proposed plan to introduce pure no-fault automobile insurance has raised more questions than it has answered. CAA Manitoba has received numerous calls and letters from motorists wanting clarification on what would happen to them if they were involved in an accident and were compensated under a pure no-fault scheme. More often than not, we did not know how to advise them.

On behalf of our members and other motorists throughout the province, I would like to raise some of the questions and the concerns, questions like: Who does actually pay for the tab for medical care and disability costs resulting from automobile accidents? Is it motorists or is it the taxpayers? Who pays the bill if a disabled motorist must retrofit his home to make it wheelchair accessible, such as add ramps, lower countertops, modify washrooms, facilities, et cetera?

How are innocent victims of accidents compensated for a change in lifestyle? Under pure no-fault, are they not treated the same as an individual at fault? For example, if a senior citizen disabled in an accident is not able to any longer drive across the country to visit their grandchildren, should they not receive some compensation over and above payment for their actual physical injuries?

How are seniors, students and unemployed persons compensated for lifestyle changes resulting from automobile accidents? Is it fair to assume that their circumstances could not have improved significantly had they not been injured?

A recent Winnipeg Free Press article stated that MPIC had studied four alternatives to the proposed no-fault plan. What criteria did MPIC use in selecting pure no-fault over the other options presented to them? What other alternatives were available?

A couple of other questions: How much of my vehicle insurance is attributed to property, bodily injury, liability, and how much will be attributed to each if pure no-fault is introduced? What happens to my premium cost if I am deemed at fault in an accident? The belief, I think, is that most Manitobans do not realize that their fault will still be assessed.

In our view, the motoring public has not received sufficient information about pure no-fault insurance and does not fully understand or appreciate how the adopting of such a plan will affect them as individuals. Further, we believe that Manitobans should have that opportunity to review the other insurance options available. Alternatives to pure no-fault insurance have been suggested and motorists have the right to know that there are other choices that should be made open to them.

The introduction of pure no-fault automobile insurance would have a significant impact on all Manitobans. It is for that reason we strongly recommend that the provincial government schedule a series of public hearings on this issue before going ahead with its proposed plan.

Mr. Chairperson, I thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Kruk. No questions?

Mr. Cummings: Not a question so much, I appreciate the questions that you posed here and I just want to thank you for your patience. The process is a somewhat cumbersome one. Nevertheless, it is also the most open system in Canada in terms of hearing the public at this stage of development of a bill and I appreciate your patience.

Mr. Kruk: Well, I thank you.

Mr. Chairperson: Thank you very much, Mr. Kruk.

I will now call on Joe and Sandra Mahon. Joe and Sandra Mahon? Tamsyn Schweitz? Laura Sawchuk? Teresa Wall? Rosemary Parisieau? Colleen Freund? David Levene? Janet Ross? Rick Match? Barry Shtatleman has withdrawn his name. Patricia Pester? Gregory Pester? Faye Stedman? Faye McNarland? Coleen Croy? Les McLaughlin? James Bezan? Klint McNarland? Ev Lewin? Mike Davidson? Naomi Rosenberg? Dr. Neil Stedman? Bruce Palansky? Lauralee Hackert? Michelle Saper? Janos Toth? Marie Hughes? Arnold Cohn? Theresa Zarichanski? Howard Levine? Darryl Solomon? Rachel Gendron?

I have been informed of three other names that have also registered and of which now I will call. Val Manning? Lynn Schmitt? Shawnda Soroka? Not here. Thank you very much.

The time being 9:50 p.m., committee rise.

COMMITTEE ROSE AT: 9:50 p.m.

WRITTEN SUBMISSIONS PRESENTED BUT NOT READ

Introduction

The Canadian Federation of Independent Business is a nonpartisan political action organization representing 83,000 independently owned and operated small- and medium-sized enterprises across Canada. On behalf of nearly 4,000 members who do business in Manitoba, we are pleased to present this brief on Bill 37 and the need for proper design of no-fault auto insurance for small-business owners.

Small Business Impacted
By Auto Insurance Reform

CFIB members are interested in auto coverage as both business and personal consumers of insurance products. We also have members who are directly involved in the industry as insurance brokers and agents, as well as lawyers, rehabilitation specialists, et cetera.

Policymakers should recognize that small business is the predominant form of enterprise in the province. Of the 36,111 firms with paid full-year equivalent employees operating in the private sector in Manitoba in 1990, 33,290 (92.2 percent) had fewer than 50 employees. Some 68.2 percent of Manitoba firms employ fewer than five employees. These business microdata can be extended to account for the self-employed using Statistics Canada Labour Force Survey data. In 1990, about 25,400 self-employed Manitobans worked on their own account without paid employees.

CFIB Position on Auto Insurance and MPIC

CFIB members determine direction for the organization on the basis of their majority votes on public policy issues contained in our publication, Mandate. An earlier 1986 vote measured members' views on no-fault auto insurance. The following question was posed to the membership:

Mandate No. 125

Are you for or against a no-fault system for auto-injury compensation?

A provincial task force on the crisis in liability insurance has recommended as one step to the solution a completely no-fault (no-tort) auto insurance to cover bodily injuries. The proposed insurance would cover all drivers, with premiums gauged according to the driving record and benefits paid to victims regardless of blame. In Quebec, a similar system, but run by the government, has been in effect since 1978. Three other provinces have government-run auto insurance for property damage as well as bodily injury, but each one allows for court action in certain cases.

Arguments for a no-fault system for auto-injury compensation: Faster and fairer payments to accident victims and lower legal costs should result. It would reduce uncertainty for victims with payments for injuries specified rather than through legal wrangling.

Arguments against a no-fault system for auto-injury compensation: Awards to victims would be according to pre-set schedules, with no judgments for individual considerations. Some blameless victims would receive lower compensation than under the fault system.

For	63 percent
Against	23 percent
Undecided	14 percent

In a more recent Manitoba Survey, June 1993, CFIB asked its members if they felt they were receiving sufficient value for money from their MPIC auto insurance premiums. The response is summarized below:

Question: Are you satisfied with the value for money received by your Autopac insurance? (Circle one)

Frequency of Response (percentages)

Yes	30.9
No	49.7
Undecided	19.4

(Source: CFIB June 1993 Manitoba Survey, Sample size - 537 independent Manitoba firms)

We also received numerous general comments on MPIC service and costs.

In general terms, CFIB members' goals for auto insurance include the following:

- fair and certain levels of compensation for loss of income
- fast, efficient payments to accident victims
- reasonable legal and administration costs
- affordable premiums
- accountability for drivers' actions

While CFIB members registered general support for a no-fault system for auto-injury compensation in previous surveys, we must first raise a number of general questions and concerns. We also are very concerned about a possible coverage gap for smaller businesses as well as the implications of possible downloading and duplication of costs for employers already paying workers' compensation premiums.

General Questions and Concerns

It is important to understand that our members did not vote in favour of the exact configuration of the no-fault scheme as proposed in Bill 37. The results of CFIB's previous mandate question support the goals of faster and fairer payments to all accident victims, affording greater certainty in the system. Our members are also attracted by the prospect of less legal wrangling, and consequently lower legal costs to settle these matters. As citizens and employers, they want the cost of auto insurance premiums to be affordable for themselves, their families and for employees who drive and may have only one option for getting to work. Our members would also join with many observers who support the elimination of the faked or greatly exaggerated cases, for example, whiplash cases, which have provided cash settlements for some people at great expense to the auto insurance industry. In short, our members support modifications to auto insurance plans to provide adequate insurance coverage at fair and affordable costs to insureds, and at the same time, to retain accountability for one's actions behind the wheel.

We are aware of strongly held views that the new system, as proposed in Bill 37, will not deliver on these objectives. This heightens the importance of the work of the standing committee and the government to scrutinize the legislation most carefully, and take the time necessary to delay final legislative approval until all concerns have been properly addressed. Complex issues are involved, and more time and information must be made available to Manitobans to understand the proposal.

The primary reason why this proposal is being rushed is to cut costs and restrain future premium increases. Yet small business and other interests have not been provided with any alternatives, of which there are several. Some of these are listed in the attached analysis, Appendix A, by CFIB research adviser and Winnipeg lawyer Chuck Blanaru. Furthermore, we are aware that several U.S. states, i.e., Pennsylvania and Nevada, originally opted for no-fault systems, but reverted back after their premium increases become much higher than nearby tort states. We are also aware of a modified and more modest no-fault system limited to only claim thresholds of specified amounts, i.e., $15,000, such as the systems adopted in Michigan, Ontario and Quebec. These alternatives and experiences need to be carefully analyzed and reported to the public. At this stage, we cannot be assured that, in the long term, the promised savings will be necessarily delivered, or at whose expense.

Businesses, both large and small, usually base their decisions on the careful study and evaluation of information and a comparison of alternatives. CFIB repeats the many questions asked by Graham Lane, the former CEO of Manitoba WCB and the Acting President of MPIC in 1988. In the most recent summer edition of the Employers' Newsletter on Workers Compensation, Volume 3, No. 2, Mr. Lane asks:

1. Where are the pro forma financials for the plan?
2. What are the operating cost forecasts?
3. What would be the administrative costs to deliver it?
4. Would unfunded liabilities quickly develop after the first few years of lower cash payouts?
5. How would future reform of MPIC be affected by this decision?
6. What about the ramifications for the health system of having MPIC relieved of responsibility for the health care costs arising out of auto accidents?
7. What will be the cost and availability of the supplemental insurance many Manitobans will require?
8. What will be the ramifications for workers compensation? Will the difference of the two

no-fault plans be traded off against each other? How much extra cost will be shunted over to the WCB?

9. Why has the PUB not been asked to review the proposal?

In summary, it appears that MPIC's plan has been rushed, with superficial assessment of other options. No individual should ever buy an insurance policy without knowing all the terms, conditions, costs and long-term implications. Neither should the Manitoba government.

Coverage Gap
for Smaller Businesses and Farmers

In addition to asking whether the legislation will fulfill its promises of faster, more fair compensation with adequate cost containment and the appropriate incentives for safe driving, CFIB has particular qualms about the potential treatment of small-business owner-managers, family farmers and the self-employed, who number about 60,000 in the province.

Farmers and small-business entrepreneurs are fully employed, often devoting long hours in sweat equity to their businesses. However, especially in the early years of the business and during periods of reinvestment, it is often just not possible to draw any salary. Statistics Canada's Corporation Taxation Statistics, Catalogue 61-208, show that over half the firms in any given year do not earn sufficient income for these businesses to be taxable. This is no reflection on the health of these businesses. Many are thriving and growing and bringing in substantial revenues. However, these revenues are being ploughed back into the business to finance its growth, with the owner choosing to forgo a salary and net personal gain for the sake of the business. CFIB's November 1992 research report, Business Growth in Canada: Business Formations in Fiscal 1991/92, shows that over 2,500 new incorporations are processed in Manitoba annually, while some 7,300 new proprietorships or partnerships are registered. Many of these new entrepreneurs would be hard-pressed to prove a particular net business income to establish benefits under the no-fault scheme.

Unable to prove new business income, the farmer or entrepreneur could be left with little or no benefits. This would be a heart-rending tragedy if his/her bodily injury was serious, but not permanent. Unable to work and unable to sue, the entrepreneur could lose the business and possibly his/her home which the bank holds as collateral. If the accident was caused by the other driver, the owner-manager would truly be a victim of the no-fault scheme.

Some owner-manager, self-employed and employee victims of auto accidents may need in excess of the proposed ceiling of $500 per week in expenses for family enterprises, and they would suffer pecuniary losses as well as uncompensated pain and suffering. This class of victim will become more numerous as wage inflation diminishes the value of the no-fault benefits.

The Section 134, reimbursement of expenses, i.e., family enterprise, may still be deficient since the entrepreneur actually needs an amount which approximates his/her business cash flow. If the business is to continue, all the usual expenses, for example, bank loan interest, must be paid. Calculating benefits on adjusted net income unfairly assumes that the money to pay for those business expenses will continue to flow into the business. If the entrepreneur is pivotal to generating cash flow to the business, and he/she is unable to work, auto insurance benefits must make up the shortfall.

The attached analysis in Appendix A provides a very graphic illustration of the ramifications of this new system on small-business proprietors and farmers. We have set out four different scenarios which illustrate those special hardships. CFIB would like to consult further with the government on this matter.

There are other ways to ameliorate these situations, and we suggest all of the following:

1. Provisions which permit an entrepreneur or farmer to contract with MPIC for a particular, higher level of coverage in advance, similar to that allowed by legislation in Ontario.

2. Follow the Michigan example where pecuniary loss gives a right of tort action, but strictly limit the recovery to financial loss only, not noneconomic loss.

3. Expand the Quebec approach to reimburse a victim working at the time of the accident without pay in a family enterprise, who is unable to perform his regular duties by reason of the accident.

Like Quebec, Section 134 of Bill 37 provides for a victim working without pay in a family enterprise to be reimbursed for his/her expenses for replacement manpower for 180 days post accident. The term "family enterprise" is not defined in the act. We assume that as long as the victim is unpaid, and there is another family member working in the business, the victim qualifies for the reimbursement of up to $500 weekly on the presentation of receipts. We also assume that at the 180-day point, income is presumed, and it is determined according to a chart which takes account of factors such as education and experience. Certain of the details are sketchy, but the direction of the legislation is clear in its effort to recognize the special circumstances of family businesses, particularly new family businesses.

It is our understanding that more details of this benefit schedule are to be fleshed out in regulations to the act. The gap in the scheme for entrepreneurs, working for the most part in family enterprises, but not immediate members of a family, i.e., partners, is still wide and worrisome. We urge the committee to confer with minister Glen Cummings and his officials as to the resolution of this problem. This Quebec-like approach appears quite sensible, and we would hope that the committee would recommend strongly that Manitoba learn more about Quebec in this area.

4. Use the Quebec approach for defining income earned from employment for the purpose of establishing the benefit level for self-employed auto-injury victims.

Rules appearing in Quebec further clarify that the self-employed individual may take the highest of business income: 1) over the 12 months preceding the date of the accident; 2) the last complete fiscal year; or 3) the average of the last three complete fiscal years, or two years if operating for less than three years. The rules also provide for the exclusion of depreciation costs of business-related equipment.

The need for precise guidelines for these calculations is important in avoiding situations where the self-employed business person is offered a bare minimum of benefit because, for example, he/she had large capital cost allowances for tax purposes.

In summary, it has been suggested to us that the insurance industry could respond to the gap in the no-fault scheme for entrepreneurs and others by developing new disability products such as top-up benefits. While such offerings may have appeal, they should not supplant a right of tort action for pecuniary losses.

Nor should the cost of such additional insurance be totally unfettered. As time passes and inflation erodes the value of the prescribed no-fault payments, the basic no-fault benefits will be viewed as less and less adequate, and more people will understand the need for additional protection. Will they be able to afford the coverage? Policymakers must take great care that this configuration of auto insurance coverage will endure. The danger for the future is that two classes of insureds will emerge, those who can only afford the basic policy and those who are able to top up adequately.

We doubt that the advent of threshold no-fault automobile insurance will dramatically increase the prevalence of general disability coverage, although it may have a mildly positive effect. The argument that "the individual could become ill or fall off a ladder at home with the same result, so any prudent business person should be willing to buy this additional protection to cover all perils, not just the risk of being hurt in a motor vehicle accident," loses its power in the face of actual statistics on coverage. There are several reasons why not everyone will obtain disability insurance. First, not all entrepreneurs qualify for disability insurance. The screening process is rigorous on both the medical and financial criteria. Second, such insurance is very expensive, and as such is out of reach of new entrepreneurs for some years. Third, while general disability covers all occurrences, there is a greater element of personal control associated with safety around the home, and even with healthy living, which can be distinguished from the freak auto accident caused by someone else's carelessness.

We repeat, the real victims of this new no-fault coverage scheme may be the small-business owners and farmers who may find this extra top-up insurance too expensive and/or out of reach.

Cost Shifting To Workers Compensation

We are especially concerned about the adverse impact of Bill 37 on the Workers Compensation system. Workers Compensation continues to be a key issue for small business, identified as a priority concern for CFIB action by about half of our Manitoba members. The Workers Compensation Board will no longer be entitled to recover from Autopac monies paid to injured workers involved in motor vehicle accidents. Under the existing system, if an innocent victim is a worker, Autopac is obliged to repay WCB to the extent of the legislated benefits owing to the workers. According to our sources at WCB, this additional claim cost will result in expenditures not recoverable by WCB in the range of $4 million to $10 million annually. This could increase average WCB premiums by as high as 8.5 percent, a totally unacceptable increase in today's tough economy.

More precise estimates of cost implications are not possible without more data. Statistics on the New Zealand Plan indicate that a third of the costs of work-related injuries are recorded as automobile-related once the alternative tort action is removed. The result could easily happen in Manitoba given the expanding liberal attitude toward eligible benefits. It is not difficult to imagine that the definition of a work-related injury, in a new no-fault world will be challenged and expanded. This is especially true because several WCB benefits and rehabilitation programs are either more generous or more refined than those proposed in Bill 37. Most significantly, an injured worker/driver may be compelled to now more often opt for WCB because its benefits can be received within 24 hours, as opposed to a seven-day waiting period by MPIC.

CFIB asks the standing committee and the government to investigate thoroughly the impact of Bill 37 on WCB. It is not clear whether WCB would be required to be a first payer in every case, nor is it clear under what circumstances, if any, WCB could ever recover from Autopac. There is a need for analysis and co-ordination of Autopac claims with WCB.

Employers do not understand why they must pay twice, both through Autopac and WCB premiums, to receive only one form of benefit. We would like to curtail any cost shifting on to WCB by having the new MPIC no-fault system supersede WCB and to remove any WCB election. MPIC could be first payer in all instances. At the very least, we see no reason why WCB should be required to pay more than the first seven days of claim, with the remainder of benefits covered under the alternative no-fault system. This would be the simplest approach to remove this double whammy. Any other strategy to adjudicate between competing compensation boards will only become more complex and more frustrating for both claimants and premium payers alike, i.e., we do not need yet another compensation board to adjudicate between rival compensating systems.

The government must not be allowed to shift the burden to the Workers Compensation Board and call it "savings." Such cost shifting will fall on the narrow shoulders of Manitoba business struggling to remain competitive in a challenging global economy. Universal no-fault auto insurance should be paid for and enjoyed universally.

Conclusion

While CFIB supports the principle of threshold no-fault insurance for auto-injury compensation, we have considerable concerns about how several aspects of Bill 37 will operate in practice. The goals of efficient, equitable and certain compensation must be achieved in a way that preserves appropriate accountability for one's actions behind the wheel. Fairness also demands a more precise method of determining net business income for the purpose of setting the benefit level for business entrepreneurs, farmers and the self-employed. Unpaid partners and family members working in a small firm need special consideration.

CFIB members are aware that there is no free lunch. It is well understood that the way in which the government proposes to curtail the rising cost of auto insurance is to limit compensation for noneconomic losses. What is not so obvious is that considerable cost shifting is contemplated to three additional groups: 1) auto-injury victims who sustain economic losses beyond the set benefit level; 2) companies/individuals and their life and health carriers as first payers of disability/income-continuance benefits; and 3) the Manitoba Workers Compensation Board and its financiers, Manitoba businesses.

APPENDIX A

MEMORANDUM

RE: Proposed Bill 37 - No-Fault Automobile Insurance—Impact on Small Business

1. Introduction

The existing Autopac system is a modified no-fault system. It is a no-fault system to the extent that it provides certain benefits and coverages to all accident victims irrespective of the determination of fault. It is not a pure no-fault system as is contemplated under proposed Bill 37, as under the existing system, the innocent victim of an automobile accident can claim full compensation for economic and noneconomic losses. Under the existing system, in addition to any financial loss that can be proven by an innocent accident victim, such person will also be entitled to claim an amount of monies representing the pain and suffering relative to the physical or mental injuries and the corresponding loss of lifestyle or enjoyment of life.

Integral to the existing system is the principle that the innocent victim should be fully compensated for any losses.

Under the proposed pure no-fault system, the benefits for persons at fault will be significantly improved. However, innocent victims will no longer be entitled to full compensation. Rather, they will be limited to the following:

a) As regards economic or financial loss—income replacement indemnity;

b) With respect to physical or mental injuries—permanent impairment benefits—these benefits will only be paid if there is a permanent physical or mental impairment.

In order to explain the ramifications of this new system on small-business proprietors, I have set out four different scenarios and have contrasted the existing system with the proposed system.

2. Facts Supporting the Scenario

For the purposes of illustration, assume a 35-year-old male who is the sole proprietor of a flower shop located in a strip mall. The business proprietor has a homemaker spouse aged thirty-two as well as two children ages five and three.

Also assume the following financial statement:

Total Sales:	$143,800
Cost of Sales:	$ 40,000
Expenses:	
Rent	$10,200
Equipment loans interest	3,000
Salary and wages	15,000
Advertising and promotion	2,000
Insurance	800
Telephone	1,200
Professional fees	1,600
TOTAL EXPENSES:	$73,800
Net operating income:	$70,000
Income tax payable:	23,200
CPP contribution:	1,400
Balance of net income after taxes and CPP:	$45,400

In addition to the business expenses, assume the following personal expenses:

Mortgage	$175 per week
Realty taxes on home	50 per week
Utilities for home	40 per week
Food and clothing	140 per week
Automobile loan	70 per week
Home insurance	12 per week
Home repairs	25 per week
TOTAL	$512 per week

Scenario No. 1 - Short-Term Disability. The business proprietor suffers a severe whiplash injury with a four-month disability period and a full recovery within one calendar year.

Under the existing Autopac system, the business proprietor would be entitled to a claim for the following:

1. Pain and Suffering Damages—given the severity of the injury, the disability period and the recovery, it would be likely that a court would award damages in the range of $5,000 to $7,000.

2. Loss of Income—if the proprietor was able to hire replacement help, he would be entitled to reimbursement for the cost of the replacement, and if it can be proven that his disability period resulted in a loss of earnings to the business, the proprietor would be entitled to claim the loss of his business earnings.

Under the pure no-fault system, the proprietor would receive no compensation for pain and suffering. In respect to income, the proprietor would be entitled to receive 90 percent of his net income which, in this case, would be $37,600 per

year—maximum gross income under the legislation, $55,000 less income tax of $16,000 less CPP contribution of $1,400 = $37,600. Therefore, during the period of disability, the proprietor would receive the sum of $650.77 per week - $37,600 x 90 percent = $33,840 divided by 52 weeks = $650.77. From the sum of $650.77, the proprietor will be obligated to pay for the replacement help he had to hire and will still have his fixed business expenses as well as his personal home expenses to pay.

Scenario No. 2. Proprietor suffers an intermediate term of disability. The proprietor suffers a fractured leg that requires two surgical procedures, a disability period of six months and a full recovery within two years.

Under the existing Autopac system, the proprietor would be entitled to claim the following:

1. Pain and Suffering Damages—the proprietor would likely be entitled to a claim in the range of $15,000 to $20,000 on account of his injuries;

2. Loss of Income—the proprietor would be entitled to claim the cost of any replacement help during his disability as well as any proven loss of earnings to the business that resulted from his disability period. Again, the amount of his claim for financial damages would be based on financial data relative to the loss of business earnings.

Under the pure no-fault system, the proprietor would receive no compensation for the pain and suffering relative to his injuries. In respect to income replacement indemnity, again the proprietor would receive 90 percent of $37,600 per annum or $650.77 per week. As stated previously, from the sum of $650.77, the proprietor must pay his replacement help, his fixed business expenses as well as all of his personal expenses.

Scenario No. 3. Proprietor is rendered quadriplegic and is therefore permanently totally disabled.

Under the existing system, the proprietor would be entitled to claim the following:

1. Pain and Suffering Damages—would be in the range of $240,000.

2. The proprietor would be entitled to claim a loss of earnings from the date of the accident as well as a future loss of earnings likely to age sixty-five. In order to determine the future loss of earnings, it would be necessary to evaluate the business as a going concern, and with the use of actuarial data, determine the entire loss of the business. The actuarial factor to be applied for a 35-year-old male would be 18.92, and therefore, applying that factor to the net after tax earnings of $45,400 would yield a future loss of earnings in an amount in excess of $800,000.

Under the pure no-fault system, the maximum entitlement for permanent impairment would be $100,000. In addition to the payment of $100,000, Autopac would be obliged to pay an income replacement indemnity of $650.77 per week. However, at age sixty-five, the income replacement will be reduced by 25 percent, and on each birthday thereafter this benefit will be further reduced by a further 25 percent. At age sixty-eight, the proprietor will no longer be entitled to receive any income replacement whatsoever.

Scenario No. 4. The proprietor dies as a result of the accident.

Under the existing system, the family of the proprietor will be entitled to claim a sum of monies sufficient to provide a net income stream equivalent to that which they would have had but for the fatal accident of the proprietor. In addition, surviving spouses are entitled to claim for loss of guidance, care and companionship. Dependants of the deceased are also entitled to make a claim for parental guidance, care and training. Surviving spouses have generally been awarded between $10,000 to $15,000, and surviving dependants have been entitled to claim a likewise amount.

In this scenario, the spouse and children of the deceased will be entitled to claim, based on actuarial factors, the sum of $633,500 as a lump sum, present valued, that would be required to replace the net income stream that the family has lost. In addition to the sum of $633,500, the family would also be entitled to claim between $30,000 to $45,000 for loss of guidance, care, companionship and training. In total, the family's claim would be in the range of $670,000.

Under the pure no-fault system, the family would receive a total of $227,000, calculated as follows:

1. Death Benefit Payable to Surviving Spouse	$165,000
2. Death Benefit Payable to three-year-old child	32,000
3. Death Benefit Payable to five-year-old child	30,000
TOTAL	$227,000

It should be apparent from the above illustration that the family will suffer severe hardship under this pure no-fault system.

3. Myths Concerning No-Fault Automobile Insurance

a) That a pure no-fault system as is in place in Quebec is going to be less expensive to the Manitoba public in the long term. There is no available evidence made public by the government to support this conclusion.

i) Presently, Manitoba has the third lowest auto insurance rates in Canada.

ii) In fact, the cost of insuring the same vehicle in Montreal would be higher than that paid presently in Winnipeg.

iii) Under the proposed pure no-fault system, Autopac will no longer be required to repay the Manitoba Health Services Commission the medical costs it incurs with respect to the treatment obtained by innocent accident victims. Under our existing system, Autopac must repay MHSC for such medical costs. According to Autopac statistics, it has repaid MHSC approximately $8 million on an annual basis for such medical treatment. The pure no-fault plan will shift health care costs to the health care system, and yet, these are called savings.

iv) The Workers Compensation Board will no longer be entitled to recover from Autopac monies paid to injured workers involved in motor vehicle accidents. Under the existing system, if an innocent victim is a worker, Autopac is obliged to repay WCB to the extent of benefits paid to the worker. According to sources at WCB, this additional claims cost will result in expenditures not recoverable by WCB in the range of $4 million to $10 million. Again, the government is shifting the burden to the Workers Compensation Board and calling it savings. It will be the employers in Manitoba who will pay for these savings.

v) The government has not promised any decreases in Autopac premiums. The government has suggested that the Manitoba motoring public should purchase their own disability or other insurance to make up for the shortfalls in the pure no-fault system. If it is the cost of insurance that is of primary concern to the government, then the suggestion that people should be purchasing further insurance at an additional cost seems irreconcilable. In addition, the purchase of further insurance is highly inequitable. Some people would not qualify for such insurance by reason of age or health exclusions. Others simply cannot afford to pay for extra insurance when they are already paying what they believe to be a significant amount for their existing Autopac coverage. In addition, disability insurance, by its nature, contemplates income replacement, and therefore, does not include future earning potential.

b) Lawyers are responsible for the increase in cost of bodily injury claims. Presently, only 30 percent of bodily injury claims are handled by lawyers. Autopac pays no fees to these lawyers. Rather, fees are paid only by the client who hires the lawyer.

4. Alternatives to a Pure No-Fault System

It is surprising that the government is not proposing more thoughtful and equitable changes to the existing system that would not only reduce cost of premiums but also provide greater benefits for all motorists. It would appear that Autopac, in consultation with the government, did not argue strenuously for such alternatives. One has to ask whether Autopac has made a policy decision that they would prefer an easier job, one that does not have to provide full compensation to innocent victims, for a system that essentially treats the innocent victim as if they are at fault for an accident.

In any event, the changes that could have been advocated by Autopac would include the following:

1. Elimination of double recovery for financial loss. The present system permits, in certain cases, the award of monies for financial or

economical loss even where the victim has received the same amount of monies from his own private insurance company or employer-sponsored salary continuation plan. In addition to private insurance, there is also an issue of a victim who receives unemployment insurance disability benefits during the period of disability. These claims costs would amount to tremendous savings to Autopac if implemented.

2. Impose more stringent criteria for the issuance of all drivers licences and make recurrent testing of all motorists mandatory, not just for those involved in recent infractions or accidents.

3. In cases where compensation exceeds a certain amount, for example, $350,000, pay the claimant monthly by way of a guaranteed annuity rather than a one-time lump sum payment. This mechanism would allow Autopac to reinvest the lump sum capital to earn income that, in turn, would fund the annuity.

4. Encourage Autopac to take a pro-active approach to the rehabilitation of the significantly injured or disabled so as to retrain such person as soon as possible. Through early and effective rehabilitation and retraining, significant long-term savings to Autopac can be achieved as the disabled could make a faster re-entry into his occupation or employment, and thereby, the overall financial loss of such claimant can be significantly reduced.

5. Payment of financial losses on a net after tax basis. The salaried claimant is entitled to claim a loss of income based on his gross income as opposed to a net after tax calculation. This being so, it creates what appears to be an artificial inflation of the victim's reimbursement as Revenue Canada does not impose income tax on any awards received by accident victims in respect to bodily injury claims.

6. Eliminate claims of subrogation by private insurance companies. Presently, many private disability insurance companies provide policies that require the insured to repay the insurance company for any amount of money that the insurer pays out for disability benefits where the insured has a legal claim against another party to recover damages. Therefore, despite collecting premiums from their insured, these insurance companies are then, in turn, entitled to repayment, and this repayment is at the expense of Autopac.

7. Eliminate repayment to Manitoba Health Services Commission for medical treatment rendered to accident victims. Under the proposed pure no-fault system, Autopac would no longer be required to may MHSC for such treatment. If such is proposed, why does our present system compel Autopac to repay MHSC?

8. Other long-term considerations, in place in other jurisdictions, could include: restricting bodily injury claims for pain and suffering to those that meet a prescribed threshold, such as a minimum disability period of 30 days or a physical or psychological injury that does not exceed the sum of $5,000.

I do not believe that anyone can refute the fact that each of the above proposals could result in substantial savings to Autopac. In my opinion, the reason Autopac prefers a pure no-fault system is quite simple. They would rather tell the government that the existing system is impossible to maintain at a reasonable cost, rather than exercise their mandate correctly, that is, to maintain the existing system, but advocate changes from time to time that may be necessary to keep the system in balance.

5. Where are the Savings?

The government has repeatedly indicated that our existing system will result in large premium increases year to year due to escalating bodily injury claims. As can be seen from the attached comparison of car insurance rates across Canada for 1993, Manitoba enjoys the third lowest premiums and that Quebec, no-fault system, has premiums of a significantly higher amount. According to the Graham Lane review, serious questions of Autopac's financial affairs should be undertaken. As noted in the review, Autopac's total corporate assets at the end of the fiscal year 1992 total $747 million. This total represents an increase of $332 million over the previous five years. Mr. Lane concludes that these increased assets were amassed owing to automobile

premiums levied and collected that far exceeded the cash payments made on claims during the previous five years.

Graham Lane also reviewed the amount of Autopac's profits over the last five years and concludes that taking into account the losses in 1992, Autopac still made profits over the past five years that exceed $74 million.

Chuck Blanaru
82-1225 St. Mary's Road
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APPENDIX

Comparison of Car Insurance Rates
Across Canada for 1993

B.C.	ALBERTA
Vancouver	Calgary
$1,213.60	$1,011
Kelowna	Hinton
$999	$895
SASKATCHEWAN	MANITOBA
Regina	Winnipeg
$701	$806
Moose Jaw	Portage la Prairie
$701	$625
ONTARIO	QUEBEC
Toronto	Montreal
$1118	$1025
Thunder Bay	
$894	
NOVA SCOTIA	NEW BRUNSWICK
Halifax	St. John
$841	$970
P.E.I.	NEWFOUNDLAND
Charlottetown	St. John's
$707	$949

Premiums based on: 1990 Ford Taurus 4-door 6 cylinder. Driver male age thirty-five with clear accident-free driving record. "All purpose" use. Coverage is $1 million third-party liability, $1 million under-insured motorist, $250 deductible except in Manitoba and Saskatchewan, deductible is $200. In B.C. $200 deductible for comprehensive, and $300 for collision. While this comparison is useful as a guide, insurance protection and benefits available vary from province to province. Ontario and Quebec have severe limitations on the rights of accident victims to claim compensation.

Source: Study commissioned by Legal Rights Network January 1993.

MEMORANDUM

Re Proposed Bill 37, No-Fault Automobile Insurance—Impact on Farmers

1. Introduction

The existing Autopac system is a modified no-fault system. It is a no-fault system to the extent that it provides certain benefits and coverages to all accident victims irrespective of the determination of fault. It is not a pure no-fault system as is contemplated under proposed Bill 37, as under the existing system, the innocent victim of an automobile accident can claim full compensation for economic and noneconomic losses. Under the existing system, in addition to any financial loss that can be proven by an innocent accident victim, such person will also be entitled to claim an amount of monies representing the pain and suffering relative to the physical or mental injuries and the corresponding loss of lifestyle or enjoyment of life.

Integral to the existing system is the principle that the innocent victim should be fully compensated for any losses.

Under the proposed pure no-fault system, the benefits for persons at-fault will be significantly improved. However, innocent victims will no longer be entitled to full compensation. Rather, they will be limited to the following:

a) As regards economic or financial loss—income replacement indemnity;

b) With respect to physical or mental injuries—permanent impairment benefits—these benefits will only be paid if there is a permanent physical or mental impairment.

In order to explain the ramifications of this new system on small-business proprietors, I have set out four different scenarios and have contrasted the existing system with the proposed system.

2. Facts Supporting the Scenario

For the purposes of illustration, assume a 35-year-old male farmer, his homemaker spouse aged thirty-two as well as two children ages five and three. The farmer's financial statement indicates a net operating income, before income taxes of $55,000.

Scenario No. 1 - Short-Term Disability—the farmer suffers a severe whiplash injury with a

four-month disability period and a full recovery within one calendar year.

Under the existing Autopac system, the farmer would be entitled to a claim for the following:

1. Pain and Suffering Damages—given the severity of the injury, the disability period and the recovery, it would be likely that a court would award damages in the range of $5,000 to $7,000.

2. Loss of Income—if the farmer was able to hire replacement help, he would be entitled to reimbursement for the cost of the replacement, and if it can be proven that his disability period resulted in a loss of earnings to the farm, the farmer would be entitled to claim such lost farm earnings.

Under the pure no-fault system, the farmer would receive no compensation for pain and suffering. In respect to income, the farmer would be entitled to receive 90 percent of his net income which, in this case, would be $37,600 per year (maximum gross income under the legislation - $55,000 less income tax of $16,000 less CPP contribution of $1,400 = $37,600). Therefore, during the period of disability, the farmer would receive the sum of $650.77 per week - $37,600 x 90 percent = $33,840 divided by 52 weeks = $650.77. From the sum of $650.77, the farmer will be obligated to pay for the replacement help he had to hire and will still have his fixed operating expenses as well as his personal home expenses to pay.

Scenario No. 2—Farmer suffers an intermediate term of disability—the farmer suffers a fractured leg that requires two surgical procedures, a disability period of six months and a full recovery within two years.

Under the existing Autopac system, the farmer would be entitled to claim the following:

1. Pain and Suffering Damages—the farmer would likely be entitled to a claim in the range of $15,000 to $20,000 on account of his injuries;

2. Loss of Income—the farmer would be entitled to claim the cost of any replacement help during his disability as well as any proven loss of earnings to the farm that resulted from his disability period.

Under the pure no-fault system, the farmer would receive no compensation for the pain and suffering relative to his injuries. In respect to income replacement indemnity, again, the farmer would receive 90 percent of $37,600 per annum or $650.77 per week. As stated previously, from the sum of $650.77, the farmer must pay his replacement help, his fixed business expenses as well as all of his personal expenses.

Scenario No. 3—farmer is rendered quadriplegic and is therefore permanently totally disabled.

Under the existing system, the farmer would be entitled to claim the following:

1. Pain and Suffering Damages—would be in the range of $240,000.

2. The farmer would be entitled to claim a loss of earnings from the date of the accident as well as a future loss of earnings likely to age sixty-five. In order to determine the future loss of earnings, it would be necessary to evaluate the farm as a going concern, and with the use of actuarial data, determine the entire loss of the farm. The actuarial factor to be applied for a 35-year-old male would be 18.92, and therefore, applying that factor to the net after tax earnings of $37,600, would yield a future loss of earnings in an amount in excess of $700,000.

Under the pure no-fault system, the maximum entitlement for permanent impairment would be $100,000. In addition to the payment of $100,000, Autopac would be obliged to pay an income replacement indemnity of $650.77 per week. However, at age sixty-five, the income replacement will be reduced by 25 percent, and on each birthday thereafter, this benefit will be further reduced by a further 25 percent. At age sixty-eight, the farmer will no longer be entitled to receive any income replacement whatsoever.

Scenario No. 4—the farmer dies as a result of the accident.

Under the existing system, the family of the farmer will be entitled to claim a sum of monies sufficient to provide a net income stream equivalent to that which they would have had but for the fatal accident of the farmer. In addition, surviving spouses are entitled to claim for loss of guidance, care and companionship. Dependents of the deceased are also entitled to make a claim for

parental guidance, care and training. Surviving spouses have generally been awarded between $10,000 to $15,000, and surviving dependents have been entitled to claim a likewise amount.

In this scenario, the spouse and children of the deceased will be entitled to claim, based on actuarial factors, the sum of $520,000 as a lump sum, present valued, that would be required to replace the net income stream that the family has lost. In addition to the sum of $520,000, the family would also be entitled to claim between $30,000 to $45,000 for loss of guidance, care, companionship and training. In total, the family's claim would be in the range of $550,000.

Under the pure no-fault system, the family would receive a total of $227,000, calculated as follows:

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TOTAL	$227,000

It should be apparent from the above illustration that the family will suffer severe hardship under this pure no-fault system.

3. Myths Concerning No-Fault Automobile Insurance

a) That a pure no-fault system as is in place in Quebec is going to be less expensive to the Manitoba public in the long term. There is no available evidence made public by the government to support this conclusion.

i) Presently, Manitoba has the third lowest auto insurance rates in Canada.

ii) In fact, the cost of insuring the same vehicle in Montreal would be higher than that paid presently in Winnipeg.

iii) Under the proposed pure no-fault system, Autopac will no longer be required to repay the Manitoba Health Services Commission the medical costs it incurs with respect to the treatment obtained by innocent accident victims. Under our existing system, Autopac must repay MHSC for such medical costs. According to Autopac statistics, it has repaid MHSC approximately $8 million on an annual basis for such medical treatment. The pure no-fault plan will shift health care costs to the health care system, and yet, these are called savings.

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v) The government has not promised any decreases in Autopac premiums. The government has suggested that the Manitoba motoring public should purchase their own disability or other insurance to make up for the shortfalls in the pure no-fault system. If it is the cost of insurance that is of primary concern to the government, then the suggestion that people should be purchasing further insurance at an additional cost seems irreconcilable. In addition, the purchase of further insurance is highly inequitable. Some people would not qualify for such insurance by reason of age or health exclusions. Others simply cannot afford to pay for extra insurance when they are already paying what they believe to be a significant amount for their existing Autopac coverage. In addition, disability insurance, by its nature, contemplates income replacement, and therefore, does not include future earning potential.

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In any event, the changes that could have been advocated by Autopac would include the following:

1. Elimination of double recovery for financial loss. The present system permits, in certain cases, the award of monies for financial or economical loss even where the victim has received the same amount of monies from his own private insurance company or employer-sponsored salary continuation plan. In addition to private insurance, there is also an issue of a victim who receives unemployment insurance disability benefits during the period of disability. These claims costs would amount to tremendous savings to Autopac if implemented.

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6. Eliminate claims of subrogation by private insurance companies. Presently, many private disability insurance companies provide policies that require the insured to repay the insurance company for any amount of money that the insurer pays out for disability benefits where the insured has a legal claim against another party to recover damages. Therefore, despite collecting premiums from their insured, these insurance companies are then, in turn, entitled to repayment, and this repayment is at the expense of Autopac.

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The government has repeatedly indicated that our existing system will result in large premium increases year to year due to escalating bodily injury claims. As can be seen from the attached comparison of car insurance rates across Canada for 1993, Manitoba enjoys the third lowest premiums and that Quebec, no-fault system, has premiums of a significantly higher amount. According to the Graham Lane review, serious questions of Autopac's financial affairs should be undertaken. As noted in the review, Autopac's total corporate assets at the end of the fiscal year 1992 total $747 million. This total represents an increase of $332 million over the previous five years. Mr. Lane concludes that these increased assets were amassed owing to automobile premiums levied and collected that far exceeded the cash payments made on claims during the previous five years.

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Farm Operating Statement 01.01.92 to 31.12.92
(Mr. Glen Smith)

INCOME

Corn	$ 8,230.14
Canola	44,884.37
Field Peas	12,650.92
Lentils	10,581.28
Wheat	70,663.98
Cattle	17,625.00
Canadian Wheat Board Payments	4,576.22
Stabilization	8,830.52
Custom Work	3,969.50
Net GST Recoverable from Operating Transactions	2,949.43
Rebates	786.50
	$185,747.86

EXPENSES

Wages	$ 4,545.43
Rent - Land Rent	11,411.25
Building Repairs	2,721.72
Repairs to Farm Residence	481.50
Fence Repairs	1,680.90
Electricity	2,594.74
Insurance (Buildings & Equipment)	2,502.30
Property Taxes	1,349.98
Interest -Bank	3,675.03
-MACC	15,449.82
-MACC Loan	1,840.00
-Bank Consolidation Loan	3,349.69
Gas, Oil & Grease	9,149.50
Machinery & Trust Expenses	19,495.40
Auto Expenses	2,848.38
Seeds & Plants	8,234.03
Seed Cleaning & Treating	86.60
Fertilizer & Lime	11,647.85
Pesticides	18,977.95
Minerals & Salts	279.41
Medicine, Veterinary & Breeding Fees	374.81
Commodity Insurance	3,502.15
Marketing Costs	719.27
General Supplies	102.57
Telephone	914.14
Accounting Fees	366.00
Bank Charges	388.04
	$128,688.46
Cash Operating income	$ 57,059.40
(for discussion, round to $55,000)	

APPENDIX

Comparison of Car Insurance Rates
Across Canada for 1993

B.C.	ALBERTA
Vancouver	Calgary
$1,213.60	$1,011
Kelowna	Hinton
$999	$895
SASKATCHEWAN	MANITOBA
Regina	Winnipeg
$701	$806
Moose Jaw	Portage la Prairie
$701	$625
ONTARIO	QUEBEC
Toronto	Montreal
$1118	$1025
Thunder Bay	
$894	

NOVA SCOTIA	NEW BRUNSWICK
Halifax	St. John
$841	$970
P.E.I.	NEWFOUNDLAND
Charlottetown	St. John's
$707	$949

Premiums based on: 1990 Ford Taurus 4-door 6 cylinder. Driver male age thirty-five with clear accident-free driving record. "All purpose" use. Coverage is $1 million third-party liability, $1 million under-insured motorist, $250 deductible except in Manitoba and Saskatchewan, deductible is $200. In B.C. $200 deductible for comprehensive, and $300 for collision. While this comparison is useful as a guide, insurance protection and benefits available vary from province to province. Ontario and Quebec have severe limitations on the rights of accident victims to claim compensation.

Source: Study commissioned by Legal Rights Network January 1993.

Dale Botting
Executive Director
Prairie Region
Canadian Federation of Independent Business

* * *

As an individual involved in the insurance business for over 25 years, I have seen and experienced many changes to our industry, including the implementation of government-run automobile insurance schemes.

But I have never seen or experienced a fundamental change in the principles that brought the concept of insurance into being over 300 years ago when Lloyd's was formed, and even before that when in Roman times, a form of compensation for losses was worked out between risk takers and security buyers.

As an insurance buyer for my clients, I must review their risks and recommend adequate coverage to pass those risks on to a willing risk taker. Once the risks have been decided, I then seek out the willing risk takers and buy the insurance policy for my client and receive a percentage of the premium payable to the risk taker for my knowledge and efforts. That is a short summary of what an insurance broker is.

Since the advent of the automobile this century, risk from accidents has been an ever-growing problem that governments have tried to address through regulations about speed, safety and qualifications of individuals who control the speed and direction of a vehicle. The basic principle of law, that a person is responsible for their actions, has been the basis of the courts assessing fault and setting the levels of compensation for loss and/or injuries. Through the years, the courts and insurers have adequately addressed the actual losses and future needs and requirements of injured parties. It has been evidenced that an injured person must adequately prove loss to the satisfaction of the court or adjuster in order to be compensated for actual and future loss as a result of an accident.

The Manitoba government, through MPIC, is now proposing to abandon the court system, notwithstanding the serious impact the change will have on severely injured parties and the economic hardships that result for them, their families, and unfortunately in all too many cases, their survivors. Bill 37, through the proposed predetermined levels of compensation, is like saying there is only one shoe size allowable in Manitoba, and everyone must wear the same size regardless of whether or not the shoe fits.

If Bill 37 is enacted, staff adjusters will be the only adjudicators, with the courts and judges that society has relied on for centuries to right wrongs, settle disputes and set compensation being eliminated as an option for claimants present their case in. MPIC adjusters will, in many situations, have more power than a court of law, answerable to no one except the other levels of bureaucracy either already existing or to be created within MPIC.

It is my belief that MPIC can save many millions of dollars through increased efficiencies by streamlining the system of adjusting claims with more emphasis on paying only for actual loss as opposed to offering varying amounts of money for alleged soft tissue injuries.

To give an example, my daughter was involved in an accident last fall on her way to university. The accident was caused by another party losing control in icy conditions. My daughter and her passenger were not injured except for some mild muscle extension requiring physiotherapy. The other person in my daughter's vehicle went for treatment three or four times, lost no income or school time and was offered $1,500 for her injury. My daughter went for treatment for a longer period, but in the same situation, lost no income or school

time and was awarded a similar amount without any requirement to prove economic loss.

I am aware of numerous other cases where the Autopac adjusters have given out varying amounts for similar situations, yet on the other hand, there is substantial evidence available where Autopac adjusters have prolonged the adjustment process, only to make a settlement virtually on the courthouse steps. In some cases, MPIC has prejudiced the process on third-party claims by being found liable in court for more than the policy amount.

In the 1992 application to the Public Utilities Board for a rate increase, MPIC finally revealed some interesting statistics that are not generally known, mainly because one has to wade through an overwhelming pile of paper and statistics to sift out a few nuggets of information that show where some of the root problems of the Autopac system lie.

I attach two analyses of those statistics gleaned from the application that shows that MPIC is not performing as efficiently as other government-run insurance schemes. I submit that before this bill is passed into law, that the government and the minister look to cleaning up the existing system before introducing something that can have a serious impact on the public.

In short, I believe that both the government and the public are being inadequately informed about the problems within MPIC, and rising bodily injury costs are only being used as an excuse to increase a bureaucracy that is currently overstaffed and inefficient. There is little doubt that Manitobans are being grossly misled by MPIC and the Manitoba government with the lure of lower insurance premiums without knowing or realizing the basic changes in their rights to receive adequate compensation for loss that will affect them for the rest of their lives.

I submit that the current system should be reviewed and modified to increase the efficiency of what has been touted for the last 20 years to be one of the most efficient automobile insurance systems in the world.

MPIC PREMIUM/COST ANALYSIS
1989-1992

	1989	1990
Gross M. V. Prems	236,974	233,208
Total earned Rev.	293,823	303,083
MPIC op. exp.	18,842	21,997
% of M.V.Prem.	7.95%	9.43%
% of Gr. Rev.	6.4%	7.26%
Broker Commission	10,254	10,425
% of M.V.Prem.	4.33%	4.47%
% of Gr. Rev.	3.49%	3.44%

	1991	1992	(Var)
Gross M. V. Prems	251,622	272,338	+14.9%
Total earned Rev.	324,914	348,003	+18.4%
MPIC op. exp.	25,311	29,272	+55.3%
% of M.V.Prem.	10.6%	10.7%	
% of Gr. Rev.	7.79%	8.4%	
Broker Commission	11,099	12,014	+17.1%
% of M.V.Prem.	4.41%	4.41%	
% of Gr. Rev.	3.42%	3.45%	

Sources of above:

1989-91 actual restated results for insurance years ending February 28 (see PUB/MPIC question #4, July 30, 1992)

1992 actual results to February 29, 1992 (see section T1.17 of application)

PUB 43 (9-14-92)
KEY INDICATORS ANALYSIS

	1988		
	MPIC	ICBC	SGI
Claims/Claim Empl.	445	394	417
# Admin Empl.	413	1105	396
Veh/Admin Empl.	1705	1842	2113
Veh/Claim Empl.	1141	1237	2114

	1992 (%Var)		
	MPIC	ICBC	SGI
Claims/Claim Empl.	330 (-25%)	362 (-8%)	442 (+5.6%)
# Admin Empl.	544 (+31%)	1260 (+14%)	379 (-4.4%)
Veh/Admin Empl.	1310 (-23%)	1764 (-4%)	2108 (-.2%)
Veh/Claim Empl.	1115 (-2.2%)	931 (-24%)	2194 (+4%)

Highlight.

MPIC Key Indicators

	1988	1992	(Var)
Claims/Claim Empl.	445	330	(-25%)
Veh./Claim Empl.	1141	1115	(-2.2%)
#Admin Empl.	413	544	(+31.7%)
Veh./Admin Empl.	1705	1310	(-23.1%)

George E. Creek, AIIC
Assiniboia Insurance Brokers

* * *

I am writing to you on behalf of our organization in outrage over Bill 37, no-fault auto insurance. Once again, disabled people have been ignored in this bill, and we are incensed that we are not covered under the no-fault insurance except for rehabilitation needs. Why are our needs any different? If I lose an arm, is it not just as valuable to me as an ambulatory person? I surely believe so.

As disabled drivers and as purchasers of Autopac insurance, we feel wholly discriminated in regard to this new system. Once again, the disabled community has been marginalized. Please stop and correct Bill 37 before it is too late.

Henry Enns
Disabled Peoples' International

* * *

I, Nancy Hallock, President of the Manitoba Chronic Pain Association Inc., am strongly opposed to Bill 37.

I feel income replacement indemnity is a tragedy, as named in Sections 103 and 104. I also want to challenge Sections 105 and 126.

Regarding your priorities for no-fault auto insurance, I fail to understand who is covered. Surely it is not the disabled auto insurance holder who is on Canadian disability pension. Surely, it is not the auto insurance holder who has pending health and welfare difficulties that are long term.

It is my opinion that there should be recompense for pain and/or suffering that accident victims must often endure for a lifetime as a result.

In closing, this bill must be looked into further with the goal of human rights in sight.

Thank you for your time.

Mrs. Nancy Hallock
President
Manitoba Chronic Pain Association Inc.

* * *

I am writing in protest to the passing of Bill 37 in legislation today.

The section which is objectionable is the section wherein any disabled person who may have the misfortune of being injured or reinjured in an accident would not have the same compensation as a healthy person and would only be entitled to rehabilitation expenses.

I find this discriminatory and unjust and therefore am submitting my formal letter of complaint with the hope that this section is re-examined and dealt with more fairly.

Ms. Grace Harris
Winnipeg, Manitoba

* * *

The government's plan to hold down future premium costs by denying innocent victims full compensation is a disservice to the people of Manitoba.

Autopac, as a Crown corporation, owes a duty to the people of Manitoba to deliver the best insurance possible at an affordable cost. To reduce the coverage to all, due to the actions of those people who cause accidents so they can have lower rates, is ridiculous. Charge penalties to those who cause accidents and make changes to the existing system that can result in long-term stability in premiums, but do not cut coverage and call it savings. This is a case of saving money on the misery of innocent victims.

Get your priorities straight. Protect the people of Manitoba. Do not give them false savings that future accident victims will pay for. Force Autopac to do its job, provide good coverage at an affordable cost.

Ms. Jennifer Jenkins
Winnipeg, Manitoba

* * *

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Get your priorities straight. Protect the people of Manitoba. Do not give them false savings that future accident victims will pay for. Force Autopac to do its job, provide good coverage at an affordable cost.

Ms. Tamara McRitchie
Winnipeg, Manitoba

* * *

On behalf of The Nightingale Research Foundation and its members, we represent disabled people affected with myalgic encephalomyelitis/chronic fatigue syndrome and related illnesses such as fibromyalgia.

We would like to express our opposition of Bill 37 concerning Sections 104, 105(1) and 126. I apologize as to responding so late as I only received notice of this bill late last night. I have only received the partial bill and would greatly appreciate if I could receive the whole bill by mail at your earliest convenience.

On behalf of our group and all disabled people, I feel that it is unjust that an unemployed person would have full coverage and a disabled person would not if faced in an accident. This completely goes against the Canadian Charter of Rights and Freedoms, Section 15.(1) and (2).

Please take a good look at this from a disabled person's point of view and realize that this would be an extra disadvantage and undue hardship for a disabled person.

I would be willing to express by concerns in more detail in person at the next hearing of Bill No. 37. Please call me if you have any further questions. My phone number is 222-3717.

Mr. Guy J. Simard
Manitoba Director
The Nightingale Research Foundation
Winnipeg, Manitoba