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STANDING COMMITTEE

on

ECONOMIC DEVELOPMENT

42 Elizabeth II

Chairperson
Mr. Jack Reimer
Constituency of Niakwa

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Thirty-Fifth Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA

THE STANDING COMMITTEE ON ECONOMIC DEVELOPMENT

Monday, July 19, 1993

TIME — 9 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRPERSON — Mr. Jack Reimer (Niakwa)

ATTENDANCE - 11 — QUORUM - 6

Members of the Committee present:

Hon. Messrs. Cummings, Downey, Hon. Mrs. McIntosh, Hon. Mr. Praznik

Mr. Alcock, Ms. Barrett, Messrs. Evans (Brandon East), Maloway, McAlpine, Penner, Reimer

WITNESSES:

Wayne Onchulenko, Private Citizen

Robert Tapper, Private Citizen

Craig Cormack, City of Winnipeg Finance Department

Michael Tomlinson, Private Citizen

Howard Dixon, Private Citizen

Alan Yusim, Private Citizen

Sam Wilder, Private Citizen

WRITTEN SUBMISSIONS:

Marie Hughes, Private Citizen

MATTERS UNDER DISCUSSION:

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

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Mr. Chairperson: Would the Committee on Economic Development please come to order. The committee will continue to proceed with public presentations on Bill 37, The Manitoba Public Insurance Corporation Amendment and Consequential Amendments Act.

I have a list of persons wishing to appear before this committee. For the committee's benefit copies of the presenters list have been distributed. Also, for the public's benefit, a board outside this committee room has been set up with a list of presenters that have been preregistered. Should anyone present wish to appear before this committee who has not already preregistered, please advise the committee staff at the back of the Chamber, and your name will be added to the list.

At this time I would ask if there is anyone from out of the audience who has a written text to accompany their presentation. If so, please forward your copies to the Page or the Clerk at this time.

We will continue with public presentations on Bill 37. I will call Marie Hughes. I will call Michael Nickerson. I will call Lyn Charney. I will call Marc Levine.

Wayne Onchulenko. Yes. Did you have a written text?

Mr. Wayne Onchulenko (Private Citizen): I do not have a written text, mostly because what would have been a written text, I have abbreviated significantly, given the comments that were made on Friday about trying to keep the comments about the proposed legislation somewhat more brief. So to that end, I have tried to summarize my thoughts and comments on the bill, and I will provide them to you verbally, if that is all right.

Mr. Chairperson: Certainly.

Mr. Onchulenko: I am going to suggest a couple of amendments during the course of my presentation and would be more than happy to provide you with text of those types of amendments if you require subsequently or if you would be interested in them.

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

Mr. Onchulenko: I would like to thank you for having this opportunity to speak to you about this particular bill, because it is a bill that I feel that I have some knowledge of as I have practised partially in this field for a number of years. I think that it is something that has a significant impact on Manitobans.

I would like to categorize my comments in three separate phases, one being, I think that there are a number of portions of this legislation which are

regressive. I would like to point out which sections those are and how I think they can be improved so that they are not quite as regressive. Secondly, I believe that one of the main reasons that this legislation is being brought forward is to provide a substantial saving of money with regard to this particular area. I believe and will suggest to this committee that there are other ways that money can be saved other than the way that this legislation would have us save money.

Finally, I would like to comment on what I personally perceive as government's willingness to eliminate individual rights when there are ways that the same ends can be obtained without eliminating those individual rights.

One comment that I would make is that in practising in this area, one almost exclusively deals with the regulations when dealing with the Manitoba Public Insurance Corporation. Not having those regulations before us today when making presentations to this committee, I will not say makes it impossible to comment accurately on how some of the legislation will affect Manitobans, but it certainly makes it very difficult to accurately comment on how this legislation will affect Manitobans. I think it would be something for this committee to think about to try to have additional hearings subsequent to the regulations being brought into effect.

In order to understand why this legislation, in my view, is regressive, I think one has to look back at where we came from in terms of insurance legislation in the province of Manitoba. Quite frankly, when The Manitoba Public Insurance Corporation Act was first brought in, I was a bit young to understand the subtle differences between what was then and what is now. For that very reason, I took the opportunity to speak with Howard Pawley and Vic Schroeder to find out why it was, in fact, that legislation was brought in.

* (0910)

Historically, what I was advised was that there were two critical reasons why the legislation was brought in. One of those critical reasons was that sometimes people get into accidents, and it is their fault, and they simply were not entitled to any kind of compensation. What that might mean is that if someone who is at fault for an accident rear-ended someone else and was unable to work, they could literally become bankrupt because they were unable to work and were not entitled to any compensation, and it seemed to them that that was somewhat unfair. So the MPIC legislation tried to address that concern.

The second concern was the uneven bargaining position between the insurance company and the individuals, and for lack of better terminology, the individuals were sometimes starved out by the insurance industry simply by their saying, we are not going to pay you any money until you are prepared to settle, and the new legislation in 1972 addressed that concern as well.

The act, as it was then set up, was broken up into eight portions, but only three are of particular significance to this committee, I believe. Therefore, those are the three that I will try to address my comments to. They are the three sections that deal with the no-fault benefits that we currently have with the property coverage and with the public liability benefits, what are commonly called Part 4. Over the course of time over the last 20 years, there have been a significant number of amendments made to those regulations which have enabled the corporation to change with the times to a certain extent.

What the proposed legislation does, and why I am suggesting to you that it is regressive, is that one of the most significant regressive steps that it takes is to take away the individual's right to sue for general damages. The 1972 legislation did not take away any rights that individuals had. It in fact enhanced the rights that individuals had prior to 1972. This piece of legislation, in fact, takes away certain things.

The two most economic things that it takes away are the right of an innocent victim, someone who has done nothing wrong, to sue for general damages or the pain and suffering that they incur. Secondly, it takes away their right to obtain full economic recovery, two conscious decisions to take away significant rights.

The simple way to amend the legislation so that does not occur but yet still meets the ends that I believe this government wants to meet, that is, saving money, is something that I will talk about in the second part of my presentation, about how the same money can be saved without taking away these rights. So I will not comment on that further now.

A very fundamental right that is being taken away by this legislation is the right to appeal to an independent body.

Now, the only other place that occurs is with the Workers Compensation Board, but the Workers Compensation Board is a completely different set of factual circumstances. Once again, the Workers Compensation legislation was an enhancement of the workers rights as opposed to taking away rights.

Under The Workers Compensation Act, new ability to sue an employer, to ask for compensation for an employer was first brought in. That is not the case with tort legislation or with tort rights. They have been there since the beginning of time as we know it in our legal system. As a result of that, an appeals procedure which only allows you to appeal to what is in essence another employee of the corporation seems, quite frankly, bizarre.

Even in the case of the Workers Compensation Board, the board is not a party to the proceedings, whereas there is no doubt that if one is suing their own insurance company, that insurance company is a party to the proceedings. So if one thinks about the concept that justice not only should be done but should be seen to be done, it is pretty hard to convince a claimant that the person that they are asking for money has the final decision on whether or not they are going to be able to have any kind of success in collecting what they feel is rightfully theirs.

So the type of recommendation that I would have for an amendment to the appeals procedure would be to either create a truly independent body that does not take its marching orders from the corporation or, in the alternative, do what most legislative processes do, and that is, have a final appeal to the courts. It is the only time-tested way of ensuring fairness in legislation.

Then there is one amazing section in this particular piece of legislation. For the first time in history that I am aware of, there is an invasion of privacy that is quite significant, that being that it used to be that if somebody wanted to have some information about my medical history, they would have to ask my permission. Under this legislation, Sections 141 to 146, the corporation can, any time it wants, not only seek to find out medical information that might be relevant about an accident, but any of my medical information, be it related or unrelated.

One would have to go a long way to convince me that that type of legislation is somehow fair. I think it begs a challenge to a court, and one, I think, hopes to write legislation that will not be challenged.

Section 158 talks about the powers of an adjuster. It probably is difficult to envision how much chaos a section like this could cause unless you have had an opportunity to be involved with the system, so to speak.

I have not covered all of the points that I could, but I am going to try to point out some of the highlights of that particular section.

One portion of the section talks about if the adjuster believes you are providing inaccurate information, they can terminate your benefits. Well, think about that for a second. They do not have to prove you are providing inaccurate information, they just have to believe you are providing inaccurate information. I think one could suggest that that is open to significant abuse.

As well, there is another portion of that section which talks about whether or not you have a valid reason to return to work. The example that leaps to mind is that your own doctor whom you have seen 50 times over the course of six months tells you that you are unable to go back to work to lift up those 50-pound bags because you will irreparably harm yourself if you go back to work.

On the other hand, the doctor that the corporation has asked you to see, and with which you have co-operated and therefore you have gone to see that doctor, indicates to you that I can see no reason after a 20-minute examination why you cannot return to work. That would clearly allow the adjuster, under this type of wording, to say, well, you do not have a valid reason for not going back to work because my doctor says you should go back, and your benefits would be terminated without any kind of hearing. Your only appeal is to a superior within the same corporation. I do not think anybody would say that is fair or that it would seem to be fair.

Another particular section or particular portion of that section talks about no valid reason for refusing to see a particular doctor. Even the most naive in our system would grant you that there are particular physicians that have what is called a plaintiff's bent—in particular, physicians that have a defense

bent. By that I mean, they are often called upon by either one side or the other to give testimony on a regular basis because they have—not because they are nefarious or that they are lying, but they have a particular perspective that they bring to an issue. What has happened over the course of time is that those doctors are not often called when you are trying to get an independent of view of what is going on. You try to find other medical practitioners who have a more independent view.

This section seems to say that you no longer have the right to refuse to go to someone who may clearly have demonstrated in the past their willingness to see things from only one perspective. I do not think that is what was intended, but if it was, it is certainly unfair. Again, different physicians have different ideas on what kind of treatment they believe you should follow. Medicine, although it is a science, is not an exact science. As I am sure anyone in this committee has some experience with, certain doctors will have you treated in different ways. There is a portion of Section 158 which talks about, if you do not follow the treatment that any one doctor recommends that you use, your benefits can be terminated. That cannot be right. It is just not fair. Legislation, if nothing else, should be fair.

* (0920)

Finally, not quite finally, the second-last comment on Section 158 talks about delaying recovery. Again, to one medical practitioner, what might mean delaying recovery to another medical practitioner might mean it is something that is enhancing your recovery. For example, the simple instruction to not do anything could be considered to be delaying recovery by one type of practitioner, whereas in the other case it would not be. Again, one must be very careful and very cautious in legislating rights to groups of untrained medical people. I cannot emphasize that enough.

When you first read this piece of legislation, in particular, this section, you sort of say, well, you know, that is pretty harmless. You want doctors to be able to give instructions that are followed, but one has to look at the worst-case scenario, not the best-case scenario all the time to determine whether or not the legislation is good.

Finally, there is one portion of this section which talks about: not willing to participate in rehabilitation. One has to be careful when you are talking about rehabilitation because it might be you got training to be a veterinarian, and they are asking you to rehabilitate yourself to be sweeping a street. One needs to put some more definition on this type of legislation in order to make sure that it is not unfair.

I think we have to remember that one of the things that we have cherished very much in our society is that of being individuals, not being everyone alike. If this legislation has a difficulty that I perceive it has, it is that it really tries to mass people into easily definable groups. We are not easily definable groups. We are all individuals, and this legislation should allow us to be treated as individuals if it is truly attempting to be an improvement on the past legislation and if it is attempting to be fair.

In particular with Section 158, I cannot see any redeemable purpose that it serves. Perhaps the best way is to replace it with the current legislative section and to just eliminate it in its entirety. At least then we have a history of how the system has been used over the past 20 years. Although I do not argue that it is perfect, it is light-years ahead of where this particular section intends to lead us.

Section 70 is a definition section, and it defines dependants, children and spouses. I could go over it with you in detail, but the weakness of those definitions is that they just simply are not broad enough. I will give you three quick examples why I do not believe they are.

Under the heading of "dependant," it leaves open the situation where if parties are separated—married, separated, but there is no court order dealing with how much maintenance needs to be paid on behalf of a spouse or on behalf of children or something of that nature, if you happen to be in that sort of nether world, and many people are for months and months at a time, the custodial parent as well as the nonearning spouse, which often in this case is the mother, would not be entitled to any compensation if the wage-earning spouse, in this case in my example the father, were injured. I do not think that is what is intended by this legislation, but because of the way it is worded that is in fact what would happen. I think it would be worthwhile to take a closer look at that definition to firm it up a bit so that it does not have that kind of a loophole.

Under the definition of "children," it talks about the basic needs and the maintenance costs of that

child. What it envisages is, if you have two parents that are earning unequal amounts of money and the parent who is earning the lower amount of money is hurt, that child, once again, would not be entitled to any kind of compensation as a dependant because it does not meet that definition. Once again I think that definition needs to be broadened.

My only other comment on the definition section talks about the definition of "spouse." I would think by 1993 we have come to accept the fact that sometimes people live common-law and that is an accepted way of cohabiting. This definition allows that a common-law spouse would be eliminated from any type of compensation unless they have been living together for five years with no break and/or they have had a child together within the previous one year. I do not think that was what was intended by this definition, but that is in fact what it says.

What I would urge you to do is to amend those three definitions so they can be broadened somewhat, so they can be more comprehensive.

Sections 81 to 84 deal with full-time earners. In essence what they say is that you are entitled to be compensated up to the level that you have attained at the time of the accident. I do not think it takes a tremendous imagination to see how much of a hardship that would work on someone who is an apprentice or someone who is on, let us say, probation or someone who is at an entry-level job.

One works for the Manitoba Telephone System or for Manitoba Hydro, and you are in your first year of employment, you certainly have a number of opportunities to improve your lot in living over the course of time if you are a good employee. This legislation freezes you in time so that if you happen to be hurt when you are between twenty and thirty years old, there is little doubt that this type of legislation will work a hardship on you. A simple amendment allowing for the potential earning capacity of that individual hurt would alleviate this hardship. All that needs to be done is to include a phrase that talks about potential earning.

For nonearners the offending phrase, if you will, is "would have held." What it talks about is, if an individual is currently off work, potentially laid off, a seasonal worker and is hurt, there is now an onus on that individual to prove that they would have held a type of job in order to be able to collect compensation pursuant to this legislation. It seems to me that a fairer type of working is capable of holding so that, and I believe it is what the legislation would have intended, is that if an individual who is temporarily off work is hurt and is unable to go back to work when they ordinarily would have as a result of the accident, they ought to be entitled to some sort of compensation. It is far easier for the corporation to prove that they would not be able to work than it is for the individual that they could have gotten back their employment. I would recommend that type of an amendment to you.

As well, if someone is at home with a family, how do you prove when you intended to stop being at home with your children and to go back to work, unless we are going to start calling psychics to these tribunal hearings, and I do not think that is what this legislation wants us to try to do.

Also, this section on nonearners is subject to being abused by way of overpayment. That is envisioned by someone who has retired at say fifty-five years of age, is hurt in an automobile accident and can suggest potentially that they have the ability to go back to work until sixty-five. I think one ought to take a look at the legislation and make provisions for someone who has voluntarily retired before an accident.

People sixty-four and older cannot be real happy with this particular legislation. In essence, what it tells them is that we believe you are worthless after sixty-eight on the outside. In the best-case scenario, you are only 75 percent of what you were when you were sixty-five; 50 percent when you were sixty-six; and 25 percent when you were sixty-seven. I cannot imagine productive members of our society who, for one reason or another, happen to be over sixty-five years of age feeling very comfortable with this legislation.

For some, they work because they want some extra spending money. For many others in these difficult economic times they work because they have to, because they support people and support themselves. It seems to me that this legislation is unfair to them. Once again I would recommend that this particular portion of the legislation be eliminated in its entirety. Just because you are over sixty-five it does not mean you are different. It is at least arguable that this portion of the legislation is quite highly discriminatory.

What about somebody under Section 104 who is incapable of employment? People sometimes get better. You may have, I think they call it the sickness of the '90s, chronic fatigue syndrome. People do come back and become productive members of society. People get better from different kinds of illnesses. This legislation, in essence, tells us that we do not expect anyone to ever recover and as a result of that they can never be compensated but for an accident which has somehow hampered them in their future life.

* (0930)

I do not think this type of a section is needed, and again I would recommend that it be eliminated.

Section 123 talks about death benefits and Section 130 talks about expenses. People have expenses as a result of accidents, and they are either legitimate or they are not. If they are not legitimate they ought not to be paid, but if they are legitimate, why can they not be paid?

Why place artificial caps on expenses which can have no other purpose than arbitrarily harming someone who must have been previously injured in order to go over those caps.

It would be my recommendation that those caps be eliminated. Quite frankly, ordinarily it is just a matter of transferring costs from one corporate entity to another, in this case the corporation to the Manitoba Health Services Commission. I do not think that is a progressive step with regard to this legislation, and I would recommend that it be eliminated.

I find it somewhat peculiar that throughout this legislation we will always reimburse individuals 100 percent for any property damage that they have, but when we are talking about a human loss and a physical loss, this legislation wants to place caps, limits and cut back. I do not think that is fair, and I do not think it is right.

At the beginning of my presentation I talked about how I believe that the same savings that are purported to be brought about by this legislation can also be brought about by other means.

Probably the easiest and most painless way that a saving can be brought about by this type of legislation is to eliminate what is called the more than 100 percent wage loss that some claimants now are able to take advantage of. By that I mean, pursuant to the current act you are entitled to 100 percent wage loss recovery. If you are fortunate enough to have private insurance that you have paid for on your own, you are also entitled to that recovery in some instances. So it creates a situation where one can obtain more than 100 percent recovery.

Some statistics argue that there could be a total of a 10 percent saving by simply eliminating that double recovery and transferring the costs to the private insurers from the corporation itself.

A second saving that could be had in that same area is that it has been long argued by many that the recovery should be after-tax recovery as opposed to before-tax recovery. Given that that would be a 20 to 30 percent saving on most of the wage loss, which usually is one of the most significant portions of losses with regard to these types of matters, that also would be a significant savings.

But there is one completely fail-proof way of making the same type of savings that are envisaged by this type of legislation, and that is not by having threshold legislation, but by having deductible legislation.

There is a significant difference between threshold legislation and deductible legislation. The difference is that with threshold legislation, if you meet that number, be it 5,000 or 10,000 or 15,000 or whatever it might be, then you are entitled to compensation back to the first dollar.

With deductible legislation the claim has a value and you just deduct the first dollars from it. It eliminates the concerns that many have had that if you create threshold legislation all you are going to do is make sure that all the claims are going to be higher, yet what it does is, it allows the corporation in a finite way to determine exactly what dollars per claim they want to eliminate, if truly what they are concerned about is the escalating costs which are perceived to be connected with this type of insurance.

Many others have come before you already and have suggested other ways whereby there are significant savings that can be made. I do not have a particular expertise in that area so I will not deal with any others other than those potentially three recommended amendments that could be made.

Finally, we are individuals, and I think in our society we have decided we want to be treated like individuals. This legislation tries to pigeonhole us

into groups and to easily identifiable little pockets of people. We just do not work that way.

The Legislature should not try to eliminate individual rights if there are other ways that they can meet the same ends without causing those types of difficulties. Clearly, when one starts to eliminate individual rights you just ask for a court challenge as well, and I do not think that is what the Legislature should want.

I would like to thank you for giving me this opportunity to speak with you. I would hope that you will at least consider some of the comments that I have made, and if there are portions of the amendments that you are prepared to consider and would like to see how I would have worded those amendments, I would be more than happy to spend time with whomever is making amendments to do that at your convenience.

I would like to just thank you again for having had an opportunity to speak with you, and if you have any questions I would be more than happy to answer them.

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

Mr. Leonard Evans (Brandon East): Thank you very much for the presentation. It was very positive. You had a very good presentation, some very positive recommendations that I am sure the committee will consider.

I had one question though regarding appeal. There is reference to appeal a decision of the Appeals Commission to the Court of Appeal. Some have suggested we consider the appeals to the Queen's Bench rather than the Court of Appeal. I wondered if you had any view on that matter?

Mr. Onchulenko: I think it would be a very positive change. The reason, simply put, is that our Court of Appeals primarily deals with issues of law, whereas the Queen's Bench also deals with issue of fact and law. Simply, they have more experience dealing with the kinds of issues that you would be bringing towards them, and a very practical reason is that we have over 30 Queen's Bench judges and we have but, depending on the time of year, seven, eight or nine Court of Appeal judges, so that your hearings would be able to be brought forward much quicker.

The Court of Appeal often sits as a group of five or seven, and that means that even though there are a fair number of Court of Appeal judges—they are all busy at one point in time—they also are encumbered by having to read transcripts from cases that sometimes last two or three weeks before they can go to a hearing. Queen's Bench judges almost never have that kind of problem, so if appeals are considered I would highly recommend that they be in the first instance to the Queen's Bench as opposed to the Court of Appeal.

Quite frankly, most previous legislation does it that way. You might want to limit appeals to the Court of Appeal when it is a question of law, but I would say that in most of the instances the appeals will be of both fact and law and for that reason it would be better to go to the Queen's Bench as opposed to just the Court of Appeal.

Hon. James Downey (Minister of Northern Affairs): Mr. Chairperson, on a couple or three areas I just have brief questions.

You point out that this is age discriminatory. Would you recommend that there be no age limit put on benefits paid out of this package?

Mr. Onchulenko: Yes. That does not mean that there will not be limits, because the way the system is currently worked is that if you have retired, if you in fact have retired and you do not have a wage loss as the result of an accident, you are not entitled to compensation. What it would in fact do is it would address two issues. For the person who retired at fifty-five, they would not get the bonus for the 10 years that this current legislation proposes, but on the other hand if you are over sixty-five and you are actually working, it would not penalize you for being a productive member of society subsequent to turning age sixty-five.

There are some common-sense rules that the courts have built up over time about when that line gets drawn. I do not think you have to do it with legislation.

* (0940)

Mr. Downey: In other words, you are saying, remove any age reference at all.

Mr. Onchulenko: Yes.

Mr. Downey: Mr. Chairperson, a second point that you raised and that is the intrusion, I guess, or the excessive information that is requested of medical records. You are recommending that only information as it pertains to an accident is what you are recommending should be available to the Crown corporation.

Mr. Onchulenko: What I would recommend is, once again, there is a current system that is currently in place. What that does is it only allows relevant medical information to be producible. Even more importantly, it insists that the claimant be asked. It is not an automatic thing. It does not demand that a doctor send the information without there being a request of the claimant. I have never seen legislation like this before. It is a one of a kind.

Mr. Downey: So in other words, you are suggesting that permission of the individual should be provided to get that information.

Mr. Onchulenko: Yes, that is correct.

Mr. Downey: The third area and that is the power of the adjuster, you raised some concerns about the excessive power of an adjuster where in fact an individual could be denied insurance if that individual were to be so inclined because of whatever reasons. How would you suggest that should be changed?

Mr. Onchulenko: Well, the current legislation in regulation—and if you will give me one second I brought the current regulations along—it is Regulation 290 of '88. It is under the heading of Part Two. It starts at Section No. 4. It goes through a number of definitions which I also talked about briefly, but it in detail outlines the type of wording that is currently used to determine when an adjuster can and cannot terminate benefits.

There is a group of case law that has gone along with that wording which judges over time have tried to determine what is and what is not fair. Sometimes they say there is a right to terminate; sometimes they say there is not, but there is 20 years of experience that a lot of people have looked at and have decided what is fair. Is that perfect? No, but it is certainly better than this. What I would recommend is that by using the same wording that is in these current regulations, what you do is you create the same type of situation that we currently have, and then as we have done over the past 20 years, we modify it a little bit at a time, as opposed to sort of taking a hatchet and chopping off somebody's head, saying, well, we are going to try something new, and really leaving it completely open to anybody's interpretation. What I think it says, or what—get 12 people to stand in line and read the same information, they are going to have 12 different opinions as to what it means.

At least if you used the same wording, you have some ground rules, and it is not just the regulation ground rules, but, in fact, it has been interpreted by a number of people, and there is, quite frankly, a course of conduct that has been used over time amongst the profession and the adjusters, and there is sort of perhaps an unhappy peace that settled over the course of time.

I would recommend that if you are looking for wording, use the old wording, so at least we have some certainty on how it is going to be used.

Mr. Leonard Evans: Just a follow-up, and I have just one more question. As I understand it, you are referring to the set of regulations that now pertain to the no-fault add-on section of the Autopac insurance that we already have, the very minimal.

Mr. Onchulenko: That is correct.

Mr. Leonard Evans: But you are referring to regulations. We are looking at legislation. Would your recommendation not be that the regulations be drafted along the lines of the regulations you have been referring to, rather than try to put some of those ideas into the legislation?

Mr. Onchulenko: No, that is not what I am suggesting because as Mr. Alcock has accurately pointed out, if you have this in the legislation, it overrides the regulations, and you cannot make those regulations. You would be precluded from doing so.

What you have in the legislation is a very simple statement that enables the legislators to delegate the making of regulations, and as you can see, the regulations we currently have are thicker than the legislation itself. If you put this in the legislation, you are going to preclude that type of regulation.

Mr. Leonard Evans: Just to clarify then, so what do you suggest specifically?

Mr. Onchulenko: I would suggest that the legislation be changed to the same legislation which is used that allowed us to create the current regulations and then, yes, if what you want to do is just create the regulations like those, fine, so be it.

You have to always recall that legislation has a primary place in the legislative hierarchy, as opposed to regulations, and you cannot make regulations that contradict the legislation.

Mr. Gerry McAlpine (Sturgeon Creek): Mr. Chairperson, I am just not quite clear on the authority that you give for medical information. You

indicated to Mr. Downey that permission should be granted by the claimant in order to give medical information by the doctor.

My understanding was, initially, that you suggested it should be more specific pertaining to the injury. My understanding is that is given now under the regulations, that a doctor cannot provide medical information without the permission of the injured person.

Mr. Onchulenko: Currently you have to get permission from the claimant before you can get any information. This legislation does not contemplate that, and that is why I am recommending that it be changed.

Mr. McAlpine: My understanding was you suggested that it should be more specific, only pertain to the injury.

Mr. Onchulenko: Yes, that is exactly correct, but what happens, again, when you have the ability to have an impartial tribunal, like a court, is that although the current legislation has said that with the permission of the claimant, you are entitled to get the medical information, the courts have ruled that you are only entitled to get relevant information, information that would be relevant to the accident.

I would encourage the legislators to just put that into either the legislation or the regulations, but to eliminate the ability of the corporation to get the medical information without asking for it.

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

I will call Wayne Johnson, Mr. Barry Rasmussen, Sarena Kaminer, Sam Wilder, Priti Shah, Ralph Neuman, Martin Pollock, Rod Roy, Stacey Skirzyk, Donald Wood, Dale Fedorchuk, Orvel Currie, Rodger Sigurdson, Robert Tapper.

Just before you begin, Mr. Tapper, I just have a little housekeeping to do here.

We had called a Marie Hughes as presenter No. 1. She would like us to present her written presentation, which will now be distributed to the members.

Also, Mr. Evans, did you have a committee change that you would like to do at this time before we start with this presenter?

Mr. Leonard Evans: I am sorry, Mr. Chairperson, I was tied up for a moment.

I do not suppose we need a committee change, because I do not believe we are going to be having any votes this morning, although I did not hear your point before. Did you say there were some matters that the committee was going to discuss?

Mr. Chairperson: No, the Clerk handed out to the committee members a written presentation from a Marie Hughes, who was the first person to be called.

There are no committee changes?

Mr. Leonard Evans: No, we will just leave it for the moment.

Mr. Chairperson: I am sorry, Mr. Tapper, you may begin.

Mr. Robert Tapper (Private Citizen): Thank you, Mr. Chairperson, honourable minister, members of the Legislature and of the committee.

What I would like to do in the brief time I have is to go through a few comments I have regarding specific sections and then make some generalized comments about the bill as a whole and the need for the bill.

* (0950)

I am mindful of the fact that I am not first in this list of presenters. I am mindful of the fact that I have one partner seated behind me who has already presented a fairly exhaustive brief, and I will not be, with any luck, duplicating much of what he has said. If I do, I hope you will trust that I will not be lengthy in regard to that.

With respect to the bill itself, you will see in the next few minutes, as I go through some sections, that I will be suggesting that much of this bill is thoughtless and ill-prepared, that much of this bill is the handiwork of bureaucrats who come to the table with a bias that is not anti the treatment giver, that is not antilawyer, that is anti-Manitoban, that is anticlaimant, and that what is created here is a megabureaucracy, a megasuperstructure, which will have some very serious effects on the people of Manitoba.

(Mr. Jack Penner, Acting Chairperson, in the Chair)

The first thing I wish to address is the creation of the automobile injury compensation appeal commission. No doubt, you have heard this already. If you have, I will only be a moment. It is my suggestion that that particular commission is unconstitutional and has been already held to be

such. That perhaps is the tragedy of the lack of care and thought that has gone into this. I do not lay that at the doorsteps of the honourable minister. I have met with the minister a number of times. I know the care and consideration and honesty and decency with which he approaches his ministry. I lay that at the doorstep of the bureaucrats.

That commission is identical in its terms to the Residential Tenancies Act Commission which was struck in Ontario in 1971 or '72, excuse me, '79 or '78—out a decade—and was struck down by the courts there as being an infringement of what was then called the British North America Act. The difficulty is in regard to the creation of a tribunal which will determine damages or impairments. That is the function of judges and has been so since confederation.

Carrying on then to Section 82, which is the beginning of the sections which relate to income replacement indemnities, IRIs—a nice piece of jargon; it creates a piece of jargon which is in of itself a legerdemain. Income replacement indemnity, it does not give an indemnity to income replacement. It does not give an indemnity to income at all. It gives a part.

It creates immediately within its terms a discretion, Section 82(1), where Autopac is "satisfied." That is a neat little word, "satisfied," and what it means is in the exercise of a discretion of an adjuster without insurance training—and let me stop there. This adjuster is not an adjuster. He is not licensed or she is not licensed under The Insurance Act to be an adjuster. He or she has had no special training to be an adjuster. We are dealing with a claims representative.

We are not dealing with an adjuster even though that is loosely called such. We are dealing with an uneducated, untrained person, no legal background, and this person is imbued now with all the discretion to impact upon the innocent victim of an accident. Under 82(1) that person with all their training, experience and education will determine to their satisfaction, their discretion, whether or not higher income positions would have qualified for special circumstances.

Section 89 deals with students. There is no provision for the deferral of a year's losses. What I mean by that is where a student loses a year in school, is compensated accordingly by the terms of the reference of the act, but defers a year's income. If, for example, a student were going to graduate one year later as an architect, engineer, lawyer, doctor, what have you, that year's income is lost to that person under that provision.

You have heard already about self-employed people. No doubt you will accept that or not accept that depending on the will of the Legislature. I suggest to you that the self-employed, middle-income earner will be devastated by this bill. I do not refer here to the professional. I do not refer here to the doctor or to the lawyer, but to the manager of a 7-Eleven store or the taxicab driver, those who are able by virtue of their position, such as the farmer, to put things and personal expenses that are not and business expenses that are not such that they are able to take advantage of the Income Tax Act lawfully, legally, morally, but when it comes to the terms of this act they will be ravaged.

Seniors, I heard Mr. Onchulenko just before me talking about the effect on seniors. That is immoral. It is nothing short of immoral to take someone who, say at the age of twenty before entering upon an income-earning tradition, is disabled for life and at the age of sixty-eight is reduced to zero. That is what the bill presently does. It reduces that person to zero. At the age of twenty when disabled, that person cannot plan for their future. They have not had the time. They cannot put money into an RRSP. We know that Canada Pension will not be around in all likelihood to save that person. What will happen? It is simply a transfer from MPIC to the welfare rolls.

I come now to the section of the bill which gives me the most difficulty, and that is the death benefits. When this bill was first announced in the public, the bureaucrats—those who said, there is no role for the lawyer here; the public is the winner—published a notice in the paper saying that in a fatal accident you can receive up to $275,000. I challenge you, ladies and gentlemen, I challenge you to find more than one example in the schedule where that can occur.

I will suggest to you, and, Mr. Minister, I suggest to you specifically, this section is disgraceful. This section is designed to take people and put them on the welfare rolls. It will take middle-income earners and devastate the family. Examples have probably been given to you, but I will just be a moment. If you have a $35,000 a year nuclear family earner, husband or wife the breadwinner, earning $35,000,

the other spouse not working, there being two young children, under this bill you will see less than a hundred thousand dollars come into the family unit. Invest that in today's interest rates, annuitize it perhaps so there is a return of capital, and you will see between $5,000 and $8,000 per year coming into the family unit to replace an income of $35,000 a year. On a paltry income, just barely over poverty levels by Canadian statistical purposes of $35,000 a year, we are going to replace that with $5,000 to $8,000 if you allow return of capital. That is disgraceful. That is not allowing the public any kind of compensation whatsoever. The losers here are Manitobans.

(Mr. Chairperson in the Chair)

There is another difficulty under Section 120 in terms of the definition of dependants. Where you have dependants who are caught within the normal definition, that is to say the Canadian nuclear definition, there is no problem. They will get whatever is intended, but where you have dependants who are dependent over the given age under the bill, what has been forgotten is the reason that might occur. People are dependent over the age of say eighteen or twenty because they are ill or because they are in school. Either one is expensive, and if you have a disabled dependant, the bill provides under Section 120 a further $17,500. If that person is disabled over the age of eighteen, that disability is not likely to dissipate after the age of eighteen and is going to carry on. So this $17,500 is intended as a capital grant to fund the disability of that child for that child's lifetime. That, I say, is disgraceful.

Section 122, nondependants and parents get the sum of $5,000. We live in a cultural melting pot. That section does not reflect whatsoever special cultural relationships. There are in society, in Manitoba in particular, a number of cultures and societies in which child and parents have very special relationships in the family. The sum of $5,000, according to the courts of this country, does not begin to compensate for those close, special parental relationships.

* (1000)

Mr. Chairperson, 124 of the bill creates the entitlement to make these payments periodic but does not tie that provision into The Income Tax Act, does not create a tax benefit thereby, and so you take the sum that would be payable in a lump sum and make it periodic without any benefit.

The whole purpose of a structured settlement, which you have also passed on another bill, is to create a tax benefit that is gone. So here you get the lack of the tax benefit and the lack of the lump sum. It makes no sense whatsoever.

One technical point under section 135 dealing with medical expenses—it refers to The Health Services Insurance Act. I do not know that anyone who drafted that had reference to a particular technical problem. It is a very minor matter.

I point it out for your consideration, and that is with amputees, prosthetics is a very poor science in Manitoba unfortunately and prostheses are, generally speaking, created outside of this province and much more expensive than are covered by The Health Services Act. As a result, under the present system where you can get that taken care of, in a tort claim there is nothing here which compensates for that.

An athletic person for example would not be permitted an athletic prosthesis under this bill, and that is something you may want to consider if it is something which you are not willing to consider. It is another problem with the bill.

Section 140, extending time limits—another exercise of the discretion of the megacorporation—it is within the discretion of the corporation to determine what is or is not a reasonable excuse. I say first of all, that is a judicial function. I say second of all, the fact that there is no recourse demonstrates that once again we have allowed the fox to guard the chicken coop, because there is no recourse, there is no appeal.

The very person determining their own liability will determine the reasonable excuse for extending of a time limit to appeal. That is unacceptable.

Section 142—one of the sections that I shall with greatest respect refer to as a pablum section. An employer shall comply with a demand made by MPIC, no enforcement provision. It is a nice statement to say that an employer shall comply, but what if the employer does not?

Section 145, with respect to the independent medical examination—I have a number of problems with that particular provision. First of all, anyone in the business knows that there are doctors you can go to to create an injury, who will take a perfectly healthy person and for the

purposes of a tort claim make that person injured. Mr. McCullough will smile to hear me admit that. But conversely, anyone in the business knows that there are doctors who will take a quadriplegic and diagnose them as faking.

There is no recourse here. There are no guarantees, there are no safeguards. There is nothing for the Manitoban subjected to the doctor for the independent medical examination—nothing. There are certain doctors in town whose star has risen.

Worse still, to show the one-sided nature of this, under Section 145(1) the corporation provides a copy of the report not to the claimant but to a doctor chosen by the claimant so that the claimant, the person whose rights are affected, does not even get a copy of the report.

Section 149, the other, as I call it, pablum provision—the corporation shall advise and assist the claimant. That I find scandalous. With all due respect, ladies and gentlemen, to say that the corporation, this megabureaucracy, is going to assist and advise the claimant is an unacceptable piece of nonsense.

Section 157(2)—no assignments of the income replacement indemnity are valid. I have to wonder why that was there. There are a number of provisions in this bill that I suggest were put there in order to give MPIC an unfair bargaining advantage.

I will be dealing with that in some detail in the next provision, 158, but 157 is there, I suggest, to prevent a claimant from getting assistance so that if someone were assisting the claimant and entered into some kind of arrangement whereby they would be paid under Section 157, MPIC can ignore that.

Now, you have heard me accuse the bureaucracy of some mala fides, some bad faith. Let us deal with that now, 158—income replacement indemnity can be terminated or reduced where the claimant knowingly provides false or inaccurate information. A perfectly reasonable statement. Whose opinion as to the falsity or inaccuracy? MPIC. What recourse? An appeal to MPIC.

Sub (c)—where the person refuses employment without valid reason, the IRI can be terminated. Whose opinion as to what is valid? MPIC. No recourse except for an appeal to MPIC.

Sub (d)—or refuses a medical examination without a valid reason. Whose opinion as to the validity of the reason except MPIC, and no recourse except an appeal to MPIC.

Sub (e), my favourite—does not follow medical advice. This is the provision put there by adjusters, using that word again loosely, who have received a report from an independent medical who says, with this particular neck and back injury it would well behoove the patient to take weight off, to enter into a weight loss program. I have seen that many times. I am not making that up, I have seen that myself.

The adjuster will then say, that person should be on a diet. When the person says, well, I cannot go on a diet, I just cannot bring myself to it, I have eaten this way for 30-40 years, the adjuster says, well, they are not following their treatment in good faith. Now they have a means by which to terminate their IRI. That is put there.

That is not there in the present regulations. That is not there in the present common law. That is not there in the present statutory law. Why is it put there? It is put there to give teeth to the megabureaucracy which this legislation creates.

Sub (f)—or prevents recovery by his or her activities. The same kind of thing, where the doctor says, you should exercise, and patient is not exercising according to the discretionary view of the adjuster.

Section 159—the IRI is reduced if convicted of a Criminal Code offence, for example, impaired driving, leaving the scene. Well, that seems to be fairly reasonable, but what about the person who is convicted of an offence but not at fault for the accident?

Then you lead directly into 159(3). It is the adjuster who will determine the fault for the accident. I grant you, under sub (4) there is an appeal to court permissible, an appeal without costs, taken away, an appeal without the right to an easy road to legal representation because there is no costs award, an appeal after the fault determination has been made.

There is nothing in this legislation to say that this is a determination de novo, as we call it at law, in other words, a new hearing. We are at risk of the court saying the adjuster had the discretion to make that determination, this uneducated, untrained, biased adjuster.

Mr. Chairperson, 160—no income replacement indemnity while in prison. That strikes me as

perfectly reasonable and, I will suggest, it is perfectly reasonable. It is probably something that should have been there in the past, but how did it get there? Let us examine the process of how it got there.

It got there because last year a court case called Penny versus MPIC was litigated in which the exact opposite conclusion was made on the present regulations. When the concept of this bill was being circulated amongst the bureaucrats, the wish list was proclaimed. Tell us what you would like to see in a new bill. Tell us how you would like to deal with the public in a new bill. Along comes the Penny case, and the Penny case gets overturned, I say reasonably. That is how 158 was created, as well. It is a wish list for adjusters.

I will suggest to you that this creation of a megabureaucracy is not going to sit well with Manitobans. I will suggest to you that they are out there not for the best interests of Manitobans. The problem is, ladies and gentlemen, you cannot take an adversarial system that has been in play for a hundred years and with a pen stroke it out. You cannot take people who have played in that system for the last 20 or 30 years and with a pen convert their attitudes. You cannot do that. It is unrealistic.

* (1010)

Section 170 with respect to appeals—under sub 1, a 60-day time limit. Under sub 2, MPIC shall decide whether a reasonable excuse exists to waive the failure to file. MPIC has a direct conflict of interest on the issue of an appeal, a direct conflict of interest, yet it shall be the author of that decision.

Those are the specific things I wish to raise with you. By way of a general commentary, I will suggest this. Autopac has three-quarters of a billion dollars in the bank. [interjection] It does too, Mr. Evans. It has three-quarters of a billion dollars in the bank. There is no need for this kind of activity. You have had put before you the way in which to save money for the public. You are taking a century-old system and throwing it out without a relevant need.

There is no doubt that Autopac was choking under the pressure of small claims. There is no doubt that others before me have gone to the Legislature with methods by which reforms could be made. The deductible plan, for example, was an appropriate response. You had a situation where, pursuant to the recession that Canada and Manitoba have faced for the last dozen years in various forms and to various degrees, people were looking for fringe dollars. People looked to those whiplash claims to put money in their pockets on an after-tax basis that would help them out. That was choking the system, I have little doubt. That is something which has been acknowledged for some time.

The answer to that is not to create an all-powerful megabureaucracy in the hands of people who are not, I submit, interested in the welfare of Manitobans. I repeat, you cannot, you simply cannot wipe out the adversarial system with a pen. It is going to be there, and we will see in one or two years whether or not Manitobans, 700,000 strong in the car, 700,000 drivers, plus or minus, are prepared to accept dealing with an adversarial system without an adversary.

Thank you.

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

Hon. Glen Cummings (Minister charged with the administration of The Manitoba Public Insurance Corporation Act): Thank you for your presentation. You have made some very useful comments.

I would only ask you to clarify how it is that you believe Autopac has three-quarters of a billion dollars worth of discretionary dollars that they could reallocate. Those dollars, it seems to me, are committed.

I am not sure how it is you believe those dollars could be redirected to reduce premiums further or protect against the rise in premiums, and I take it that was the implication you were making.

Mr. Tapper: What I said, Mr. Minister, was that there is three-quarters of a billion dollars in the bank. That is uncontrovertible. It arises out of your financial statements for the MPIC. I did not say they were fully discretionary. I agree with that. They are not however—and there is the difference, they are not an offset against operating reserves.

There are not claims out there to the tune of $750 million. The point is there is a lot of money there. There is more money than necessary to offset what I suggest is a two-year blip in the financial statements of Autopac.

You had as little as two and a half years ago a profitable operation. You were making profits as little as the third financial statement ago. You had a bad winter two years ago because of the freeze-thaw conditions, and on an operating basis, not on a capital basis, but on an operating basis, you lost money. You lost money this year, as well, I understand.

But I understand, as well, that the curve is slowing down dramatically and that it is pointing to the very slowing down of that losing proposition. It demonstrates to me that a corporation with that kind of financial wealth, that kind of financial background, money that was placed there by Manitobans, has the ability to rethink its position without throwing out the very system which created those reserves. That was my point.

Mr. Jim Maloway (Elmwood): Mr. Chairperson, I listened to your presentation and I thought it was rather excellent on a number of points, although I think you run into some serious problems when you get to the statement you just made about the financial health of the corporation.

I have the financial statement as of October 31, 1992, in front of me. The assets were $747 million, but you have to remember that the liabilities of the corporation as of that time were $705 million, so if you were to liquidate the corporation at that point, you would have had a residue. The retained earnings were $41 million. That was what the corporation was really worth at that point. I think it bears repeating that there is not a ton of money there that can be thrown around.

Just by way of comparison, I have the financial statement of Wawanesa insurance, which is one of the majors in the country. The retained earnings as of '92 for that company were $379 million. In other words, if you took the assets, took away its liabilities and liquidated the company, it would have been worth $379 million. MPIC, on the other hand, after 20 years of operation, would be worth only $41 million. There is the difference financially.

Mr. Tapper: It is difficult, I do not have the statement in front of me, Mr. Maloway. I am assuming that is after the $32-million reduction, which the government said it would not do, so that the retained earnings would in fact be closer to $70-some million.

But I do know this: Wawanesa has declining profits right now. It is not taking the system by which it operates and throwing it out the window, it is simply revising and revisiting its systems.

Mr. Leonard Evans: I have just a couple of questions.

Mr. Tapper referred to the problems of a bureaucratic approach to settling claims, providing IRI, et cetera, but is it not correct that MPIC already has a no-fault provision for bodily claims with minimal benefits, but that they now have that experience and now have to make these kinds of decisions and have been doing so ever since MPIC was established?

Mr. Tapper: Yes, sir, that is very true. Let me say to you, sir, that happily that is what drove people into my office. Dealing with that system and dealing with those bureaucrats is what made my business flush for the last many years because of having to deal with these very same adjusters who would deal with these people independently, fairly, and righteously, and in the bottom line, they were so unhappy that they went out and sought representation.

I did not want to come and give you specific examples of the way in which cases would arise, because it would not be fair, it would not be appropriate. But let me give you just one, to show you the way some adjusters would think. I had a lady come to see me a few years ago who was standing on the street corner in Kenora when a Manitoba car went out of control, mounted the boulevard over the sidewalk and traumatically amputated one of her legs below the knee.

Kenora was ill equipped to give her medical treatment; she would have to come to the Health Sciences Centre for her outpatient treatment, for her prosthetic treatment and so forth. She had no money. Autopac gave her nothing because they took the position, the adjuster took the position that under the no-fault regulations as they then were, he was not required to fund her any funds because it was an Ontario accident. He was wrong, but that was the position he took.

* (1020)

She was hitchhiking to Winnipeg to get treatment. She was having the Salvation Army take her to Winnipeg to get treatment. When she finally came to me, I phoned up the adjuster and I said, why are you taking this position? He gave me a technical position in response. I said, what would she be entitled to under the regulations if you had

been paying her? He gave me the number, and it was $10,000 and change. I said, will you give me a $10,000 advance tomorrow? He said yes. I said, why did you not offer that to her? He said, she did not ask for it.

That is the problem, Mr. Evans. You cannot wipe out that system with a pen.

Mr. Leonard Evans: Well, some on the committee have proposed that there be some type of worker advocacy system or some kind of a system that would permit applicants or claimants to have some assistance in dealing with MPIC.

I take it that you agree with that, you might agree with that position.

Mr. Tapper: I thought the worker advocacy system in play now was working quite fine.

Mr. Leonard Evans: Just one other question. Mr. Chadman defends the tort system, but is it not true that the tort system provides you with no benefits if you are found to be at fault or, if you were not at fault but were involved with someone in an accident who had inadequate insurance or inadequate wealth?

Mr. Tapper: Let me take the question in two parts, because I think it is a two-part question.

With respect to the issue of fault, I agree, beyond the no-fault benefits. But Mr. Rodin's paper has shown you that you can increase the no-fault benefits fairly dramatically and fairly inexpensively, especially in the deductible context. So that question can be answered very easily. It is true now, it is easily correctable.

Also I would point out to you that in comprehensive insurance scheme jurisdictions like New Zealand where if you stub your toe and you are disabled you can get compensation, the public does not appear to be behind those. With respect to the present circumstances of someone driving with inadequate insurance, someone driving with inadequate wealth, that is only true if the injury is worth in excess of $200,000. Mr. Cummings will know that I have been in his office. I have been in his predecessor's office. I have been in his predecessor's predecessor's office showing the government of the day the ease with which that situation can be corrected to the tune of less than $5 per Manitoban. It was not a high priority then to correct it. Unfortunately, I come now with the horse out of the barn door.

Mr. Leonard Evans: Well, I do not know whether the presenter has read the Kopstein report. I believe the presenter would realize that what brought Judge Kopstein to recommending a pure no-fault system was the total inadequacy of the present tort system which does leave people financially devastated. I mean, there is case after case of Manitobans being financially devastated with the present system that we have, and he categorically states that it is inadequate and has to be replaced.

Mr. Tapper: I say to you, Mr. Evans, categorically that the Kopstein report took on a momentum it did not deserve. Judge Kopstein did not have any representation before him. In practice he did not deal with this kind of thing. He had not any experience in the insurance industry at all. He was the author of the MPIC legislation in 1971. Thereafter, he went to the provincial bench where he heard criminal cases for the next 20-plus years. He had no experience.

Mr. Evans, when asked specifically by myself to receive submissions when he had that inquiry on changing the MPIC structure and the tort system, he said, no, I do not want to hear from lawyers; I only want to hear from the public about the gripes they are having with MPIC, and then gave a report which dealt with fundamental problems, fundamental problems, I suggest to you, he had no experience, training or education in.

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

Mr. Tapper: Thank you.

Mr. Chairperson: I will call Craig Cormack. Mr. Cormack, did you have a written presentation?

Mr. Craig Cormack (City of Winnipeg Finance Department): It has been circulated, I believe.

Mr. Chairperson: I believe it has. Thank you very much. You may begin, Mr. Cormack.

Mr. Cormack: Mr. Chairperson, committee members, my name is Craig Cormack and I am the workers compensation co-ordinator for the City of Winnipeg. My comments will be brief and will focus on only one aspect of this bill, namely, workers compensation. I appear on behalf of the City of Winnipeg to clarify the impact that Bill 37 will have on our ability to recover costs that are associated with third party claims.

At the present time, if a City of Winnipeg employee is involved in a motor vehicle accident while in the performance of their duties, they are offered the right of election to claim either compensation or to commence action against the Manitoba Public Insurance Corporation. Where an employee elects to claim compensation, as the greater majority do, they would subrogate the rights to the Workers Compensation Board. The board, assuming liability rested with the third party, would commence action against the Manitoba Public Insurance Corporation to recover the costs of the claim, which are in turn reimbursed to the City of Winnipeg.

Here is where the proposed legislation causes us concern. Specifically, Section 193(2) of the proposed bill would effectively eliminate the City of Winnipeg's ability to recover costs solely attributable to the negligence of a motorist insured by the Manitoba Public Insurance Corporation.

By imposing the aforementioned section of the bill, you effectively burden the City of Winnipeg with significant costs that are rightfully the responsibility of the insurance carrier, namely, Manitoba Public Insurance Corporation.

We believe this to be extremely unfair and worthy of reconsideration. The financial impact upon the City of Winnipeg currently exceeds $250,000 annually and these costs could quite conceivably double or triple in the event of a significant spinal cord injury or a fatality. These are costs that the City of Winnipeg or any other employer for that matter ought not to be held responsible for given the existing circumstances.

If the proposed bodily injury package under Bill 37 were financially more attractive than that offered by the Workers Compensation Board our concerns would be lessened in that the majority would claim through the Manitoba Public Insurance Corporation. However, in those situations where the worker elects to claim workers compensation and he/she is not at fault, we ought not be forced to absorb the costs associated with that disability. To do so would in essence be tantamount to having the employers of Manitoba subsidize the Manitoba Public Insurance Corporation. This, ladies and gentlemen, is totally and unequivocally inappropriate.

At the very least, we believe that the corporation ought to reimburse the Workers Compensation Board for the costs associated with the claim subject to the financial parameters delineated in Bill 37. This suggestion is naturally predicated on the assumption that the insured motorist has been deemed as being liable. I truly hope you will slow down the process long enough to assess anomalies such as the one we have identified here today.

Thank you for the time to present, and I am willing to answer any questions the committee might have.

Mr. Chairperson: Thank you very much for your presentation this morning, Mr. Cormack.

Mr. Cummings: I appreciate your thoughts on this. Would you get any satisfaction from an agreement between WCB and MPIC similar to one that is being contemplated in reference to Manitoba Health Services whereby the historic relationship is maintained and information is accumulated in order to support that, or are you asking for the removal of the election option which is included, say, in the last two years, where the person has been able to elect between WCB or MPIC? Have you given that any thought?

Mr. Cormack: Are you talking about Bill 59, the previous bill?

Mr. Cummings: I am, but in relationship to what is included here, because the section you referred to directly reflects on the relationship between WCB and MPIC and leads to the concerns you are raising. Therefore I was asking had you thought about whether or not the removal of the election was appropriate?

* (1030)

Mr. Cormack: The bottom line is the City of Winnipeg or any other employer in the province ought not to be subsidizing the Manitoba Public Insurance Corporation. The previous amendment to The Workers Compensation Act brought forth in Bill 59 provided the election to claim either workers compensation or claim against MPIC in the event of a motor vehicle accident.

That election was always there prior to Bill 59, not in those specific circumstances, but the election was always there, where the third party was not covered under The Workers Compensation Act at the time of the accident. The only change Bill 59 did was to allow for that election in the event that both parties were covered under The Workers Compensation Act.

So, no, that does not change our position on it. We believe that where we are the innocent victim of a motor vehicle accident, we ought not to be saddled with the costs associated with that accident. These costs can be catastrophic to a small employer in that it can drive their compensation costs up to the point where it can drive them out of business. I am not here representing other employers. Other members of the task force have done that previously. Insofar as the City of Winnipeg is concerned, costs of a quarter of a million annually or a half a million annually are costs that we just cannot turn a blind eye to.

Mr. Cummings: Perhaps my earlier question was a little bit convoluted, but what I was leading to is that there is no intention to shift the historic relationship between the two. How this amendment under this act would change that, I appreciate your advice.

Mr. Cormack: I interpret 193(2), and I have had our legal department review it, as doing exactly that, taking away the right of recovery against MPIC.

Mr. Cummings: The anticipation, however, was that this same historic relationship would continue and, especially where there was a choice, that MPIC certainly was expected it would receive the majority of the claims rather than a reduced number. I take it your view is that it might not be that.

Mr. Cormack: That is correct.

Mr. Cummings: Okay.

Mr. Chairperson: Thank you very much for your presentation this morning, Mr. Cormack.

I call on Michael Tomlinson. Did you have a written presentation, Mr. Tomlinson?

Mr. Michael Tomlinson (Private Citizen): I have a written presentation, yes.

Mr. Chairperson: I meant for distribution to the committee members.

Mr. Tomlinson: Yes, for distribution. May I hand you it afterwards. I have 15 copies.

Mr. Chairperson: Oh, have you? Maybe give it to the Page and he then will distribute it.

Mr. Tomlinson: They are over there.

Mr. Chairperson: You may begin with your presentation, Mr. Tomlinson.

Mr. Tomlinson: Mr. Chairperson, honourable ministers, ladies and gentlemen. I am a citizen of Manitoba. I do not represent any special interest group. I have no expertise on insurance administration but I do have some very relevant special knowledge to share with you.

I note that the proposed legislation for Manitoba is modelled after the no-fault auto insurance scheme that has been in force for some time in the province of Quebec. I speak to you as a person with first-hand knowledge of the Quebec scheme. I have experienced how accident victims may fair under the Quebec or similar no-fault regulations.

You are aware of many advantages of the no-fault scheme or you would not be introducing it. I acknowledge those benefits without further comment.

Here I wish to draw your attention to some very serious shortcomings which I hope you will address, because I have found that the Quebec scheme looks a lot better on paper than it works in practice.

Let me just put you in the picture. In December 1989, my son Martin was struck by a semitrailer transport vehicle skidding out of control on the Trans-Canada Highway in the province of Quebec. He was on his way home from Halifax, Nova Scotia to our home in Pinawa for Christmas. It was a stormy winter morning in Quebec. Four vehicles were involved from different provinces. The accident arose through no fault of his own.

Martin, my son, received severe head injuries which completely destroyed his hearing and balance on his right side. He suffered brain damage such that his mentation and behaviour were permanently affected. His life's progress and career aspirations were cut off at that moment. He has had to start all over again to rebuild a new life.

Now, three and a half years later, he is still not capable of supporting himself as he once did. He is retraining at Red River Community College. Because of his injuries, he has a real struggle to memorize and pass his exams. Even though he started a summer student job last week, I still do not know if he will ever be able to hold down a permanent job and support himself.

Three years before the accident he had obtained a B.A. degree from Dalhousie University in Nova Scotia and had worked at several jobs thereafter. He has had to begin all over again.

My son is getting some help with his rehabilitation efforts from the Society for Manitobans with Disabilities. Previously, through his own efforts, he had help at a critical time from the Saskatchewan Health Service and the Head Injury Association in Saskatoon.

For subsistence he has been mainly dependent upon me this year. I am supporting him out of my pension income. His spouse is independently supporting herself and his daughter born nine months after the accident. They are living apart. The accident has cut off his family life that was just beginning.

Let me outline the compensation he has had from the Quebec government's no-fault auto insurance scheme, which is administered by the Societe de l'assurance automobile du Quebec.

On the advice of the Quebec police and the Quebec hospital people and of my son's vehicle insurance people, I made application to the Quebec auto insurance immediately after the accident. They have responded. I have four office folders full of correspondence that I have accumulated since the accident.

Aside from reimbursing some expenses incurred by the accident, the main no-fault compensation has been an income replacement pension for two and a half years after the accident while he was much incapacitated. Martin's no-fault pension amounted to $225 a week on average. It has gone up a little over the years. This was a marginal amount for subsistence and rehabilitation. My son could not be retraining without money from me.

The no-fault payment ceased at the beginning of this year. The pension, when he was getting it, was only one-third of the amount, $672 a week plus food and accommodation, that he was getting in his last job before the accident. He had only been in the workforce for three years after graduation from university, and he was in the early stages of getting established in permanent employment. The no-fault insurance has not provided any help with recovery and rehabilitation.

* (1040)

We are grateful for what help we have been able to get from the no-fault compensation scheme, but it is a long way short of what the vehicle operator's accident has taken from him. We are seeking justice through the legal system by suing the vehicle operator in a different jurisdiction, namely in their own province. This is our alternate avenue for a fair, independent and unbiased treatment.

Cost saving is a major argument for the no-fault scheme. With this as a prime directive, it will inevitably lead to depriving accident victims in at least some cases. Vehicle operators are an overwhelming majority. We all want to keep our costs down, but along with the benefits of operating a vehicle, we have a responsibility, that is, to care adequately and to compensate fairly any victims of our accidents.

Severely disabled victims are a small minority. They are the ones you have to protect. That is one of the things we buy insurance for. You may be the next victim, any one of you, so do not skimp on your auto insurance.

Now my description of my son's accident and its consequences have been very much simplified here because of limitations of time. Real life is much more complex than can be envisaged in our schemes. Sometimes, to be fair, there has to be a means of examining an individual case on its merits, independently of government regulations and the inadvertent slips in the bureaucratic process and the overriding drive to pare costs.

Providing that right to a fair and independent ruling is what the legal system is for. To fully protect the victim the no-fault scheme has to allow for the victim to go outside the government scheme to seek a ruling on fair compensation. Removing the right to sue the vehicle operator would deny the victim this last recourse and protection of the law.

My message to you is, by all means include within your legislation, along with your cost-saving measures, the best regulations you can devise to give care and fair treatment to severely afflicted victims, but please refine and amend your insurance scheme of Bill 37 to allow these victims full access to the sources of redress and compensation of our democratic society. In particular, ensure that this legislation does not attempt to deny the right to sue the vehicle operator and those powers who stand behind him.

Thank you very much for your time.

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

Mr. Reg Alcock (Osborne): Thank you, Mr. Tomlinson. Can you just clarify one aspect of this for me? In the Quebec plan, we are told they offer 90 percent of a gross income up to about $44,000,

$44,900, is it? [interjection] Eighty-five percent? I note that the number you cited, your son's income at the time of the accident, $672 a week, is equivalent to about $35,000 a year, so it is well within that limit.

Why is it that he is only recovering the two hundred and some? Why not 85 percent of his income?

Mr. Tomlinson: The answer to that is contained in this stack of correspondence, but the essence of it is the Quebec auto insurance gave him a certain job classification when I first initiated the claim. That is based upon his average income over five years. Well, he had not been working for five years.

Furthermore, they assigned him a job classification which was a job he had had for a short time here in Manitoba, and it was not based anywhere near the job he had had for the last two years he had been employed. It was at a much higher rate. I am still corresponding with them trying to get them to revise that job classification, but they are very reluctant to do so. I could go into a lot more detail, but that is the essence of it.

Mr. Leonard Evans: Mr. Chairperson, I appreciate the information of the gentleman's experience and his son's misfortune. I was not clear, and maybe I did not hear or I did not read it yet, and I know it is under the no-fault system in Quebec, but somewhere along the line, was your son deemed to be totally not at fault in this accident, or was he partially at fault?

Mr. Tomlinson: There has been no assessment of that, but the essence of it was he was standing at the side of the road about to get into his truck. They had stopped because the vehicle in front had been stopped by a white-out, and just as he was getting in his vehicle to get out of the cold, this truck came up, out of control skidding, and drove his truck into his head.

If you think he is at fault in some way, I would be very interested in—

Mr. Leonard Evans: Just one other question, I wonder if Mr. Tomlinson has looked at the benefits under the bill that are being proposed, the income replacement, the rehabilitation provisions and so on, whether he has looked at it and whether he had any specific recommendations to improve those.

Mr. Tomlinson: I have not looked at the legislation specifically. I have lived three and a half years with the Quebec scheme. I think I have heard the essence of the scheme, and I do have a specific recommendation, the one I give in my presentation, which is make this bill as good as you can to protect the victims of these accidents, but leave them this other avenue, because with the best will in your world, as I have found out, it looks very good on paper, does the Quebec auto insurance scheme, but when it comes to practice, it leaves a lot to be desired. Thank you, Mr. Evans.

Mr. Chairperson: Thank you very much for your presentation this morning, Mr. Tomlinson.

Mr. Tomlinson: Thank you.

Mr. Chairperson: Thank you.

Mr. Howard Dixon? Did you have a written brief?

Mr. Howard Dixon (Private Citizen): Yes, I gave it to the clerk on Friday. There is one piece of information that came to my attention after I wrote up my presentation which was based on the MPIC circulator, circulated to homeowners.

It does not change my presentation, but it enhances it, and that is the jurisdiction which you are modelling your sample under is subject to French civil code. This is not British common law, and there are fundamental differences between these two laws. I think it is important to ascertain the differences, and failure to do that could further enhance the fear I have outlined in my presentation of overturning Bill 37.

Now, I would like to go to my presentation. Basically, what I am saying is I question if Manitobans have the lowest insurance rate in the country. There are hidden costs such as increased driver registrations, subsidies and that. I do not know what the true cost of insurance is under the present scheme.

* (1050)

I also question Manitoba Insurance Corporation's ability to make a profit. Is it because of poor business practices? Is it because of government action? I question the fact that making MPIC both judge and jury will correct the situation. Under French civil code, it might. But would it do it under British common law? That is a very fundamental question.

Now, let us look at some of the business practices. Has MPIC effectively investigated accidents for fraud? This is something Mr. Maloway pointed out. Wawanesa has the ability to

make a profit. MPIC does not. Why? These are questions. Now, the New Jersey Transit Authority, as I have seen on 20/20, has reduced its costs by investigation. Does MPIC have this?

Is the process of selling write-offs to the public, who have in some cases recycled these vehicles to unsuspecting motorists, contributing to this loss? In other words, if MPIC is selling a write-off, maybe the identification plate should be removed from the vehicle so this vehicle could never be recycled, so it is strictly for parts. This is a business practice.

Another thing that has come to my attention is several auto dealers say that in cold weather, these plastic bumpers will crumple upon impact. Does MPIC compensate for that by charging additional premiums and warning the public not to buy these kinds of vehicles? Similarly, I think we all remember the I-Team report on the Tremco car heaters. Why did MPIC make a private deal with Tremco? You know, this is a question.

Now, another question I have is does MPIC use excessive advertising? I get brochures every year. Half of them I throw in the garbage. Are these worth having written up? Are they worth the paper?

The last point I want to bring up is the concept of having claim centres. Other jurisdictions have travelling adjusters. Is there a need for claim centres? Maybe we need, say, Mr. Orchard would call in somebody like Connie Curran. Maybe the Minister of MPIC should call in a Connie Curran to regulate MPIC.

Another thing is, as Mr. Maloway pointed out and I will point out, Wawanesa makes money. MPIC makes money, but he points out that Wawanesa makes more money. Wawanesa is successful in general insurance. MPIC tried general insurance, however, MPIC failed.

The thing is maybe MPIC should be privatized, or maybe it should be opened up to competition. Competition has the ability to play by existing rules. Your honourable friends on the committee from the NDP feel that public insurance is the answer. I do not know. Maybe it is better to regulate and let the professionals do what they do best; that is, the professional adjusters as such.

Now, there is governmental action that has contributed, the failure to twin highways. Let us face it, Highway 75 in from the States is a nightmare when you go past Morris, where it is not twinned. Would you like that? Also, MPIC has to take on high-risk drivers. Maybe these drivers should be taken off the road.

The City of Winnipeg has cut its snow removal. Now, I was the victim of an accident from this cutback in snow removal. One of the things that prompted me to make this presentation is, the adjuster says, under the new scheme, I would not be talking to you. You would not have any recourse for a claim. Also, there is a failure to have an aggressive vehicle inspection system. Maybe there are vehicles on the road that should not be.

Now, removal of the courts is not, I think, the answer. It might be in Quebec because they are under a French civil code, but it is basically an attempt by MPIC to be both judge and defendant. Is there not a vested interest? This right to sue through the courts has been established by common law. The right to claim bodily injury has been established by common law.

Mr. Tomlinson is a prime example, a Manitoban involved in another jurisdiction. In other jurisdictions, you are subject to different laws. If Manitoba changes the playing field, that does not mean that the government is beyond liability, so instead of suing MPIC, the government could be sued. The bill does not remove the government as a defendant. It only removes MPIC and the car driver. But the thing is, what happens if this bill is overturned? Who is going to pay? Is it going to be the Manitoba taxpayers as was the case of MPIC's folly into the general insurance field?

Something has to be checked. Do we pass hasty legislation or do we check on the ability of MPIC to compete, or maybe we should allow professionals to enter the playing field who know how to operate.

Thank you.

Mr. Chairperson: Thank you very much for your presentation, Mr. Dixon. No questions? Thank you very much, Mr. Dixon.

I will now call Gerald Bohemier. Graham Lane. Gennaro Scerbo. Alan Yusim. Did you have a written presentation for distribution?

Mr. Alan Yusim (Private Citizen): No, I do not. I just made some notes. I planned on just—rather than prepare my remarks, just speak to the committee, and therefore I have not prepared anything for you.

Mr. Chairperson: Okay, you may begin at your pleasure.

* (1100)

Mr. Yuslm: I have come to address this committee in the capacity of a lifelong Manitoban. I am not a lawyer, nor do I represent any professional or corporate interests who may be affected by changes to the legislation.

I have had the opportunity to study Quebec's pure no-fault scheme, as well as the reports of various Ontario hearings and that of the Ontario ministry responsible for the automobile insurance review concerning reforming accident compensation.

It should never be the position of legislators that any system is perfect and cannot be improved. As well, it is unlikely that social systems that have evolved over time, though not perfect, are so imperfect that they must be scrapped altogether with one clean sweep. I am referring to the concepts of fault, blame, responsibility, penalty and compensation that have become so entrenched in the nature of our perceptions of justice in the evolution of society since the primitive beginnings of an eye for an eye or a life for a life.

I am not qualified to speak to the specific legal ramifications of the proposed legislation or to the history of tort or to specifically criticize points of proposed new legislation which I have not even seen. In that light, I am here to question quick and drastic changes and hopefully plant the seeds of a few ideas on how we should proceed with caution and common sense in improving Autopac.

I once had the opportunity to sit before another commission. In 1977, I sat before the Winnipeg Fire Commission. At that time, I had been in the process of renovating a historic riverside residential apartment block in Winnipeg and at the time knew fire codes and regulations were about to be introduced. I went before them to come to an agreement on certain upgrading of that building.

What they had initially proposed was to erect walls with fire-glass doors at the ends of each corridor so that, God forbid, if there was a fire and somebody left their suite, the smoke would not travel from level to level and would be contained on one floor. I said simply to them, why break up the beauty and character of an old building by requiring me to install these ugly doors? Why do we not put automatic door closures on every suite, so if somebody did leave their apartment, the door would close by itself and you would not even get smoke in the hallways, never mind floor to floor?

We came to an agreement, and I believe that now, that is the case in Winnipeg, if not in all of Manitoba. That is one option that is open to cases like that.

The other thing that troubles me about this proposed no-fault scheme—and I want to use the analogy of home insurance. I kind of would feel a little uncomfortable about paying a premium to insure my home and find out that my premiums are going to pay for a house three blocks down that has just been destroyed as a result of fire. I am insuring my own property, not somebody else's. That is the purpose of the insurance.

I would not think that anybody would agree with the concept that if you did lose your house, your insurance company would come to you and say, well, a bedroom is worth this and a living room is worth this and a kitchen is worth this and a dining room is worth this and a rec room is worth this, without regard to exactly what the makeup of the house was, because there are different kinds of houses. We all know that.

It seems to me that pure no-fault is a very good concept, but for Manitobans, why can it not be an option? Here we have a case where we have a provincial monopoly. If we allowed Manitobans to continue to purchase the type of automobile insurance coverage that they now have and the option of purchasing no-fault, well, if two people were involved in an accident and they both carried the no-fault insurance, no problem. If two people who were involved in an accident under the existing system were in an accident, no problem. Even if somebody who had purchased the no-fault option as well as the current option was in an accident, it should not be a problem, because it is the same insurance company. They would each be entitled to the coverage and the benefits and the compensations they had paid for.

My studies have shown me that Quebecers are not necessarily pleased with pure no-fault. However, in their case, it is definitely an improvement over their previous system. Not so in Manitoba. In Quebec, the system is also funded through surcharges on the licences of each and every driver in that province. It will not take long for a family of Manitobans with two vehicles and four

drivers to realize that their Autopac charges may not increase, but that second cheque to the Minister of Finance at the time of licence renewal will not be written with glee.

Give Manitobans the opportunity to pay for what they get, but also to get what they are prepared to pay for. Our system, by our own acknowledgement, is one of the fairest and best in North America. Improvements? Sure, but by limiting or eliminating compensation for victims of motor vehicle accidents and not allocating personal responsibility or blame or penalty to whomever may be at fault and throw us all to the mercy of meat charts and unfair, inadequate impairment or death benefits is drastic. It is also wrong. To eliminate compensation for pain and suffering and have the adversary, in this case the insurer, also act as adjuster and adjudicator is drastic.

This is not solely about abuse of the system or of the financial health of MPIC. Better minds than mine will tell you that the corporate raison d'être is not just to show great profits. It is to solely, adequately and fairly insure, protect and represent the interests of Manitobans who own and operate motor vehicles and those who are the victims of motor vehicle accidents in its philosophy and objectives.

We should constantly endeavour to ensure that MPIC adequately represents Manitobans, and that involves making changes and improvements from time to time, but what is the rush in this case? Let us slow down. This is complex. Our understanding of what we are about to do must be as broad as the issue is complex, with fair and balanced results.

To that end, more public debate must be stimulated and the effects of any changes must be monitored and probably fine-tuned and therefore phased in over time.

Please carefully consider all the alternatives before jumping wholeheartedly into a scheme that may be inadequate, unfair and devoid of compassion for even a small number of innocent victims of automobile accidents. Thank you very much.

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

I will now call on Alan Ransom, Vince Bueti, Joe and Sandra Mahon, Tamsyn Schweitz, Laura Sawchuk, Teresa Wall, Rosemarie Pariseau, Colleen Freund, David Levene, Janet Ross, Rick Match, Patricia Pester, Gregory Pester, Faye Stedman, Faye McNarland, Coleen Croy, Les McLaughlin, Klint McNarland, Ev Lewin, Mike Davidson, Naomi Rosenberg, Dr. Neil Stedman, Bruce Palansky, Lauralee Hackert, Michelle Saper, Janos Toth, Arnold Cohn, Theresa Zarichanski, Howard Levine, Darryl Solomon, Rachel Gendron, Val Manning, Lynn Schmitt, Shawnda Soroka.

* (1110)

These are new people that just registered this morning that I will call for the first time, Patrick Harynuk, Dorothy Korsunsky, Ed Belanger. I will call those names again. Patrick Harynuk, Dorothy Korsunsky, Ed Belanger.

And I will now call on Mr. Sam Wilder.

Mr. Sam Wilder (Private Citizen): Thank you, Mr. Chairperson. Honourable ministers, ladies and gentlemen, I apologize that I was not here at nine when my name was called. I was at a pretrial hearing on a personal injury matter. Therefore, I think it is obvious to you that I am a lawyer. I make no apologies for being a lawyer.

I would like to begin at the outset that I am here because I have been offended from the beginning to the end with the manner and nature of the way the legislation has been proceeded with. I say offended because I think there has been some cynicism from the beginning to the end in terms of the role of the "lawyer," and I use that term in quotation marks.

I remember in a depressed manner hearing the chairman of the corporation, I think it was, who said when he announced the proposed legislation, and I ask you, what is the role of the lawyer in this new legislation, and he said, there is no role for the lawyer. Now that may get a lot of votes, and there may be an awful lot of lawyers who are driven by self-interest. I can tell you that I do a fair amount of this work. I have in the past. Happily, I have other work. I am not here because of self-interest. It may be assumed that I am. That is fine.

I know that what I am going to say will make no difference, and that is very depressing. I am here to say it because I feel I have a duty to the public.

I believe the legislation is flawed in principle. I am not going to refer to numbers of amendments that can be made. I believe that what is being done is, we are taking the wisdom of the ages, and I am surprised that a Conservative government does

this, particularly as hastily as they are doing it. We are taking principles that have been established in western democracies from Judeo-Christian principles that have become enshrined.

I am going to refer to two principles only, because I believe those are the principles that should not have been varied by any government. It astounds me that a Conservative government believing in essential basic values, civil liberties, individual rights, would really approach this as quickly as they did and pass or at least attempt to pass the legislation.

I have only been here for a short while this morning and I have heard the comments about, quick and drastic. I really think it is important that we reconsider the manner in which this legislation has been introduced. It seems to me hearings of this kind, where law societies, lawyers and others, people who have had situations such as we have heard this morning like Martin, and I can tell you in every practice in the city there are hundreds of those people who would not be entitled to any compensation under the new system. If you wish, I could give you case after case that I have that would be in that kind of a situation. You have probably heard that over the last 24 hours.

What is the value of the consultation now? It would appear that the government has decided and they have heard other solutions, that no, this is what we are doing and we are not going to be taken off our track for one moment because, if you are going to change anything, how can you not consult with the people who are working the system, not just one side of it, not just the MPIC.

As I understand it, that consultation was limited too. Some of the lawyers in MPIC obviously had some input. Most of them did not, as far as I understand, but the lawyers have been doing this kind of work since this kind of work existed for the benefit of their clients, who essentially have been dealt with very fairly and are very happy. You hear of the odd type of situation. You will hear that for legislators, for doctors and for any other position that exists. But if there was a desire to hear what would work best for the public, then the people who are actually working in the system would be invited to hearings beforehand and they would be invited to give all kinds of possible solutions that would result in something that is fair to the public. Now, it is very clear to me that we did not have to have this kind of a drastic change.

It is very clear to me that what we see in jurisdictions in the United States to compete or to deal with some of the inequities that exist are very simple. You can have a deductible, and you can have a cap. So if you have those big million-dollar awards that we cannot afford anymore, and they do not make sense anymore, then we have a cap. If the small whiplash cases have been taking advantage of the system, then we have a deductible.

But you do not have to get rid of the right to go to a court, and that is not because I practise in the courts. You do not have to get rid of the right to basic compensation in full, subject to some limits that make some sense from the wrongdoer to the person wronged. If you look back at Exodus, Chapter 21, you will see that has been with us from the beginning of time. Why does the wisdom of ages get thrown out in a moment?

Now, I recall being told by those who practise in this field, others with MPIC, something is being drafted. It was very upsetting to me to wonder what is it that was being drafted, and nobody knew. It came out, I do not know how long ago, in its first version. Why would lawyers be deprived of having been shown some drafts? What is this government afraid of? Why did they have to push it into a summer session, knowing that people are anxious to have an adjournment, wanting to go home, begin these hearings on a late Friday and have them on Monday and probably over?

We had about 50 names called, and I would venture to say that those people who were not here were not here because they knew it would not make any difference. I am here, and I have a depressed, sinking feeling that whatever I say is of no value whatsoever, because if my opinion was considered, it would have been considered when this was drafted. That was the important time. But what we are doing is we are throwing out the baby with the bath water.

We are deciding we are changing all of these principles. You cannot sue anymore. This is very drastic stuff. This is the stuff of totalitarianism. I am not going to ask you to consider it because you will not. I pray that you will, and maybe something drastic will happen that will cause you to, but I see the writing on the wall, and if I did not come to speak, then I could not have lived with myself.

The other 50 who did not come, or the number that did not come, fell into the cynical view that the government must have had—do it this way, push it through in the summer, no one will come, we will pass the legislation. That is not the way governments who are working in the public interest should operate. I say shame, and I mean shame.

I could not care less about my public interest. Happily, I have been practising for 25 years. I have done all kinds of other work, and that is the majority of my work in any event. Whether you put dozens of lawyers out of business does not make any difference, and you will, by the way, but that does not make any difference. Is this bill any good for the public? I tell you it is not.

The two basic principles that I think did not have to be changed are, firstly, the principle that says, and as I say, has said since time immemorial, at least in western civilizations that value individual liberties, if someone gores your person, that if an ox gores your person, then there is going to be appropriate compensation to the person wronged by the wrongdoer. Look at Chapter 21 of Exodus. It might be instructive.

It is not necessary. There is no real reason in savings of money to change that principle. You have heard Martin's story. There is no reason why Martin cannot be fairly compensated. It is easy, and I understand people who are talking about this bill on the street are saying, well, the government is not concerned.

* (1120)

There is 1 percent of all people who have accidents, and then there is 10 percent of those who are going to have their rights trampled on and have no solution whatsoever. There is only a fraction of a percentage who are affected and they are not voters, so who cares? That cannot be the way you really decide things, I hope.

That small percentage of Martin's and others like him do not have to be ignored. They are not ignored in Ontario under a threshold system. Why in the world this thing has to be sprung on an unsuspecting public and an unsuspecting profession secretly the way it did and leave these kinds of inequities, I have no answer for that. I would love to have an answer for that.

For every case that you have heard, as I say, I can give you another. Forget about the drastic situations, and I have them. I have the totally face-smashed person with a head injury who will get nothing for the fact that her life is totally different. She has had five reconstructive surgeries. She does not look like the same person anymore. She is entitled to nothing. Money will not change her life. It is not going to make her life wonderful. It will change her life to some extent though; at least it will help her adjust to some extent.

That lady, by the way, interesting case, she had always worked very hard all her life. At the time of the accident she was in a failing business. That business, because of the economy at the time, was perhaps going to go under. She always had a good living before, however.

At this particular point we are talking with Autopac about what the base of her income really should be for the purposes of an award for the future, because she cannot work. Under the new system, I suspect that someone will make the decision, without the right of appeal by the way, that while she was working she was not making very much at the time of the accident and, therefore, she is out of luck here.

In this star chamber system that is being suggested, the government, and it is the government who decides that, is also making the decision through an appeal process that is flawed because, as everybody has said, you are both defendant, prosecutor and judge. My God, that is a moral irresponsibility, butthe government will make the decision, well, our adjuster decided, the adjuster knows this kind of work, that is it.

When you go to a court of law, it is not that the judges are smarter, it is not that the lawyers are smarter, but what happens is, people parade in front of the judge. They take the stand, they give their evidence, they are cross-examined. It has been found over the course of centuries to be the best way of getting at the truth, and it does get at the truth.

I hear stories on the stand that I never heard in my office, and that is not because I am not thorough. What happens is, the judge asks questions, the other side asks questions, you ask questions. Each of us does it from our own perspective. The truth comes out. It is canvassed. You hear the story and a decision is made fairly on the facts.

If you get a busy bureaucrat, and with all of the best intentions, he has heard 15 cases that day, he is not going to give it the time that is demanded by a court hearing. He will make a decision and he may become cynical and jaundiced over the course of time, and that decision is what is going to stick with the person. We have seen it in Workers Compensation legislation. I have seen in my practice nightmares of people thinking of suicide because of the way they have been treated by a bureaucracy.

This government should not be building bureaucracies. Of all governments, this government should be honouring the time-old tradition of a fair hearing before a fair and impartial tribunal. It has worked for all of these centuries. Why does the Conservative government that gives value to tradition want to change that concept?

Remember, with that adjuster, who is well intentioned, you cannot hear those stories day in and day out without becoming somewhat jaundiced. A little power corrupts. Absolute power corrupts absolutely. You are going to look back and you are going to find that this piece of evidence is going to haunt you. It may be that the government will be thrown out because of it, because it is going to show tremendous inequities.

I just cannot understand the class-divisive nature of the manner that this legislation was introduced. As I said, I remember those words that offended me personally and offended, I think, any right-thinking lawyer. It is wrong to think that all lawyers are bad. I do not think all legislators are bad. In fact, I do not think any of them are bad. I think they get misguided from time to time for reasons I do not understand.

Why would it be necessary to try and sell this legislation rather than on its merits but because we are going to take some money out of the pockets of the lawyers, which is not really that clear either, because it is not Autopac that is paying the lawyers. It is very easy to try to sell something by criticizing the lawyers.

I want you to keep one thing in mind. Many of these lines from literature are mistaken. When Henry IV said, the first thing we do is, let us kill all the lawyers, remember that Henry IV was a tyrant and he did not want any lawyers.

Lawyers are anathema to democracy, so now I will speak about lawyers for a moment, because that is what you are doing. You are cutting the lawyers out of the system so a tyrannical system can work.

Let me suggest to you, just try this for a moment. If we were to parachute anyone here into some society in history, any society, whether it be the Iron Curtain countries recently, perhaps the Nazis regime in the '40s or some other totalitarian state, the litmus test, if you were to parachute yourself into a society in history as to whether it is a just and fair society is if people had the opportunity to have their rights arbitrated by a fair and impartial tribunal. Remember Russia? Remember the sham that lawyers were under the Iron Curtain countries. We would hear a lawyer and know that was not a lawyer the way we understood the term. You are introducing, a Conservative government, of all governments, is introducing that kind of concept.

It may be that, I think it was Mr. Bardua who said, there will be no role for the lawyer, and I suggest to you, that is to the detriment of the citizen to whom you have a duty and obligation.

The other concept and major principle that is being changed by this legislation is the age-old principle that the wrongdoer, and in this case the government, and it does not make any difference who it is, but basically the wrongdoer has a duty to compensate that person injured to the extent of his injury. What could be fairer, and why was it that it was handed down as a biblical injunction some 6,000 years ago?

What could be fairer than a person who is walking down the street innocently to his job or whatever it might be and through no fault of his own gets stricken down? Why should it be that he is in a position that he cannot pay his mortgage anymore because he is not compensated to the extent of what he had before? Why should it be that his life has been turned around and he can no longer take his children camping, he cannot sleep at night or she cannot sleep at night because of a fibromyalgia syndrome or whatever it might be. They cannot work effectively. They make a pittance as opposed to what they made before.

Why should it be that they are not entitled to whatever compensation puts them back to where they were before? There may be an argument as to what that compensation should be, and that is fair. That is left to the courts in a fair and full

hearing, but why should it be that that person is not entitled to full compensation?

The answer, as I understand it, is that we cannot afford that anymore. If we cannot afford that anymore, there have been other solutions put forward and they have been looked at actuarally. I do not know if they have been presented in these last 24 hours because of the hurried nature of the whole proceedings, but as I said at the beginning, actuarially we have been shown, and I have seen the figures that a $7,500 deductible could achieve the same thing and have the system, which is essentially working well, work the same way, with the rights to the court to the right to essentially full compensation, but you do not throw out the baby with the bathwater unless you have come up with an idea, you think it is good—this is the government I am referring to—you hear some other ideas, but it is not political and you are too proud or too stubborn to change your mind.

I ask this committee, for what it is worth—and I understand that this committee does not make the ultimate decision, there is a majority in the House—I ask you to ask yourselves, why could this bill not have been put before a body of interested people, people who are from the Society for Manitobans with Disabilities, people from the Head Injury Association, without frankly implying to them that if you do not go along with our legislation, it may be that there are things we will not be able to do for you?

* (1130)

Why could not all these people be invited to hearings where they could give their input as to the kinds of solutions that would make sense and then hammer this out with a joint committee of lawyers, of legislators, so that a fair piece of legislation comes forward to the public?

There can be only one reason that this was sprung upon us the way it was, and that is because it did not want public debate. I do not think that is the way this government really wants to operate. I hope they reconsider. There is no urgency. The urgency is for the future, even by the government's own figures. The urgency is that in years three and four and five we may not be able to afford this. Right now we can afford it. The changes could have come about in a much more reasonable democratic way except when politics enters into it.

Well, if lawyers are governed by self-interest, ask yourselves, are you being governed by self-interest?

Thank you very much for your time.

Mr. Chairperson: Thank you very much for your presentation this morning, Mr. Wilder.

Mr. Cummings: Just to thank you for your presentation, and I would only say that you never heard, I do not think, any of the people around this table saying that it was intended as an attack on the legal profession. I have not put that on the record up till now, but that is certainly not the intention of anyone that I am aware of.

Mr. Chairperson: Thank you very much for your presentation this morning, Mr. Wilder.

As this concludes public presentation on Bill 37, when this committee is reconvened it will consider clause-by-clause consideration of Bill 37.

The time being 11:33, committee rise.

COMMITTEE ROSE AT: 11:33 p.m.

WRITTEN SUBMISSION PRESENTED BUT NOT READ

I would like to introduce myself. I am Mrs. Marie E. Hughes, sixty-three years of age, wife, mother and grandmother. I was a victim of a car accident approximately five years ago, which has left me with an invisible handicap.

I do not pretend to be astute with the goings on of this new proposed Bill 37 no-fault auto insurance. I cannot understand why responsible government would dare to promote such a dangerous and tragic bill. It concerns me and my family greatly.

This scheme would take away any hope of a seriously injured person trying to adjust to a life of pain and suffering, losing a reasonable lifestyle, socially and economically.

If this bill should ever pass, excluding victims of chronic pain, which is a double-edged sword, destroying any hope of any quality of life, if this new bill should pass, you cannot possibly feel, in all conscience, the facts you have put before the people of Manitoba through costly publicity are truly honest and forthright. God help our province if foolishly for greed that is not justified they should override the suffering of the innocent.

Maybe one of our honourable members would enjoy 24 hours of our lives to focus on and to gain

the people of Manitoba's confidence. Our provincial government should begin a refreshing new course putting people first.

I would like to thank you for giving me this personal time and hope that every presentation that is to be heard today would be taken to heart.

In finalizing my presentation, I would like to point out that it was only last night, July 15, at 9:45 p.m. that I was made aware of this hearing, so please bear with me for my lack of continuity, because I must bring my own personal condition amongst others. I am a victim of fibromyalgia, which is recognized in parts of the country and acknowledged to some extent here.

The compensation for chronic pain is vague, to say the least, and there is no source of appeal stated to give anyone confidence who should suffer for whatever reason. There should be, without doubt, an investigation medically by doctors with vision, in touch with research that is being done internationally in the field of chronic pain, before any new legislation should be put in place.

I have been under the understanding that our province was concerned to enhance persons with disabilities. This move is a cruel, unbelievable political act under the pretense of a better policy.

Thank you,

Marie E. Hughes