

Workers' Compensation Board

The Chair: — Good morning, everyone. We'll get started here this morning. We're dealing this morning with chapter 3 of the Provincial Auditor's fall of '96 report on the Workers' Compensation Board. Just to give everybody . . . for the benefit of everybody here this morning, sort of an overview of how we plan to proceed.

We'll open up with a general overview in fact from the Provincial Auditor and officials that he will be introducing to us shortly. Thereafter we'll provide, if desired, by officials of the Workers' Compensation Board, some general comment related to the material before us. After that then we'll throw it open for discussion, for questions from members of the committee, and finally, we'll come back to dealing with the individual recommendations contained in the chapter, recommendation by recommendation.

So with that I'll open it up to the Provincial Auditor to introduce the officials here this morning with him and to provide us with that general overview.

Mr. Strelloff: — Thank you, Chair, members, good morning. Today's focus is on chapter 3 of our 1996 fall report, and the focus of that chapter is on our audit of the Workers' Compensation Board for the year ended December 31, 1995.

With me today are Fred Wendel and Rodd Jersak. Rodd has worked on the Workers' Compensation Board's audit for this year, as well as Bob Black. Judy Ferguson led our work on the audit of the Workers' Compensation Board and will be leading the discussion today.

Also with us today are officials from KPMG. As you know, when we carry out an audit involving a public accounting firm, and we have a chapter within our report dealing with it, we invite officials from that public accounting firm to join us at this meeting. And the officials today are Tom Robinson from KPMG, and Jamie Wilson.

As you know, in this 1995 audit, we decided to carry out the work directly rather than work through . . . carry out our responsibilities through the public accounting firm, namely in this case KPMG. We did that for five reasons.

The first one was that in our work on '94 we were noticing ongoing increases in the compensation costs, for which the board in its 1994 annual report expressed some uncertainty as to why those costs were increasing. Two, in the course of our '94 work we had difficulty obtaining information that we had requested. We did obtain that information but we had difficulty obtaining it. Three, we had received many calls from members of the public as well as concerns from MLAs (Member of the Legislative Assembly) as to the ongoing increases and costs at the Workers' Compensation Board. Fourth, the government itself had initiated a review of the Workers' Compensation Board that's now called the . . . referred to as the Neville report. And fifth, the Workers' Compensation Board at that point had decided not to follow the management auditor protocols recommended in the task force on roles, responsibilities, duties

of auditors. As a result we were having difficulty asking questions of management directly. So as a result of those concerns we decided to carry out the audit of 1995 directly.

Now Judy Ferguson is here to explain our findings, conclusions, and recommendations as they are set out in chapter 3 of our 1996 report. Over to you, Judy.

Ms. Ferguson: — Thank you, Wayne, Chair, members, and officials. I'm going to spend probably about 15 to 20 minutes going through what the contents of the chapter . . . I realise the chapter's fairly complex and so I'd like to actually go through the recommendations. I'm going to use overheads and try to do it standing up. If my voice fades, the indicator on the side will let me know and I'll maybe end up sitting back down here. So, here we go.

I'm going to firstly talk about the key issues that are set out in the chapter — thank you, Greg — and next deal with the audit conclusions and recommendations that we are making in the chapter. I think it's important for us to have a look at the key issues.

We've set them up in three basic groups: the first is the relevance of the five underlying principles, the need to control and explain its significant increases, and the third point is a need for consistent and fair assessment of injuries.

Dealing with the first one: WCB (Workers' Compensation Board), like its fellow boards across Canada, use five underlying principles as the basis of the compensation system; and I think it's important to know what they are. They are: no-fault compensation; security of benefits; collective employer liability; independence of the board; and exclusive jurisdiction of the board. And those principles are really the underpinnings of the compensation system.

And the board uses those principles to guide its decisions. And if you notice . . . if you go to the annual reports and the various publications of the board, they often refer to these principles. So they're the very underpinnings of the organization.

The reason that they're a key issue is that these principles were developed in the '30s and some seem to question what their underlying relevance is. Others, like the recent report of a Committee of Review, recognize that some of these principles compete with each other while others are mutually exclusive. I think that report actually recognizes the delicate balance that the WCB has to use in applying these principles.

The second one — need to control costs and explain significant increases. Most of us are probably aware that WCB has been faced with significant costs over the last few years. From '94 . . . '90 to '95, costs increased about 70.2 million, which is 166 per cent. As we can all appreciate, those increasing costs have put pressure on WCB by various employer groups and its stakeholders to control the cost, to be able to explain why the costs are increasing, and to put programs in place that make sense and ensures that the whole compensation system remains to be affordable.

The last key issue that we have there is that there's a need for consistent and fair assessment of injuries. WCB, as we can appreciate, is in a dynamic, evolving environment, as we all are. The workplace environment's changing with the introduction of information technology; new injuries, new workplace injuries, are arising. Some of us may have never heard of carpal tunnel a few years back. Well now we all pretty well are familiar with it.

The assessment of workplace injuries requires a lot of experience, judgement, and knowledge, and WCB officials are continually exercising that experience, judgement, and knowledge.

Workers are proactive and questioning. They want to ensure that they have adequate benefits and they want to make sure that the assessments are consistent and fair. And they put pressure on WCB to make sure that this happens.

The reason that these key issues are important is for all of us to understand the environment in which WCB operates. As I've said, it's a dynamic and a challenging environment, and it's an environment where it's requiring a continual balancing of the interests of its stakeholders. And its three key stakeholders groups are the employers, the workers, and the government as its regulators. So it's a continual balancing act in the delivery of its program.

So it's within this context that we did our audit in the recognition of . . . What we tried to do is recognize the key issues that the WCB is facing as an organization.

I just wanted to remind you, whenever we do an audit, we actually have three audit objectives. The first one is to look at compliance with the law: does WCB have adequate processes to ensure it complies with the law as it relates to financial reporting, safeguarding of assets, revenue-raising, spending and borrowing, and lending activities. The second one is what we call the internal control audit: does it have adequate rules and procedures to safeguard and control its asset and ensure compliance with the law. And the third one is to look at the reliability of the financial statements. So our audit here deals with all three objectives, of those audit objectives.

So what was our audit opinion? Well basically, with respect to compliance of the law, we report that the WCB needs to set aside sufficient money to pay for costs of injuries incurred — that is reserves — so that it is complying with The Workers' Compensation Act; that's this one here.

In paragraph .26 of our chapter, you'll notice that we recommend that the WCB adjust its rate-setting process it practices to comply with the Act, or seek changes to the Act. We note that the recent report on the Committee of Review makes a number of recommendations that deal with rate-setting and reserves — specifically recommendations F.4, F.5, and F.9. We're not sure of what the board's response or the government's response to this recommendation is as yet, but I guess in our mind this is an environment that is subject to change here.

With respect to the adequacy of its financial and accounting controls, we make a series of recommendations for

improvement, and I'm going to go through each one of them here.

The first one is that we recommend in paragraph .35 that the WCB continue to develop a system to estimate compensation costs it expects to pay for each claim; and for including the claims that it has incurred but may not yet be reported by the employer or the injured worker; and that it should record these amounts in its accounts throughout the year. This is important because in 1995, WCB had compensation costs of \$121 million.

WCB does have a system to track the amounts that it pays for each claim, but it does not yet have a system to record the full cost of that claim. The full cost of the claim, as you can appreciate, is affected by a lot of different factors and I'm sure management can speak much more eloquently to that than myself. But it's things like the types of claims, the severity of claims, how long is a person going to be off work, you know, to what extent can that person earn a salary while they are injured. At times the difference between the amount that WCB is currently paying on that claim and the amount that it expects to pay over that duration of the claim can be a big difference and so that's why this system is important.

This type of information would help WCB design what programs that it needs to have in place. It could help WCB assess the programs that it currently has in place to see how well they're working. We note that by using the words 'continue,' we want to give recognition that WCB has started work in this area. They have started to develop a system — and it's been under way for awhile — to develop a system to estimate the full cost of claims on a per claim basis. During the audit, that system was not yet fully developed or tested and it's under way; so we encourage WCB to continue to pursue their actions in this area, because I think it is a very important area from both a financial perspective and a management perspective.

Our next set of recommendations really deal with again the compensation costs and benefits liability. The two of them there that we encourage or we recommend, that WCB develop expertise sufficient to estimate its compensation costs and benefits liability; and the second one that it seek independent actuarial advice to confirm the reliability of its estimates. And those come from paragraphs .42 to .44.

In that section we've raised concerns about the process the WCB used in 1995 with respect to its compensation costs and benefits liability. We recognize that the WCB placed a lot of reliance on its hired actuary — now that's an actuary that it hires from outside of its company. Actuarial evaluations are complex and they require a lot of judgement calls. Rigorous reviews and challenges by management of the work and report of the actuary are necessary to ensure the estimates are reliable.

The review and challenge process also helps management understand the reasons for changes in the liabilities. For WCB this whole challenge process was made more difficult because they don't have that system in place to estimate the full cost of the liability. So they didn't have the information to compare what they expected to what the actuary produced. So it just

makes that, the whole challenge process, a bit more difficult.

Unfortunately, due to the timing of our audit, we noticed that the rigorous part of the challenge process didn't happen in 1995 but actually it happened in 1996. And I gave . . . I think management will probably talk to that a little bit more. So it actually happened after the release of the 1995 financial statements.

In 1996 WCB undertook a number of significant and positive changes in these areas here. It hired a second actuary to look at the work and report of, in the process and the assumptions used by its first actuary, which is what this is calling for. And it did a number of other, various activities in 1996 that are in line with what we are looking for here.

While we recognize that WCB did take activities in 1996, we think that the implementation of these recommendations are necessary to ensure that over the long term, that WCB has a strong process in place to make sure that the estimates for compensation costs and benefit liability remain reliable.

We also note that the Committee of Review has made a similar recommendation in its report about actuarial expertise. And that's recommendation F.6.

The other recommendation here is dealing with the linkage of the compensation costs and benefits liability to the rate-setting process. As you can appreciate, those costs help drive what rates are being charged to the employer groups. And what we're basically saying is that when you're going through the rate-setting process, keep in mind the assumptions that you're using for recording what's on your financial statements. And we're encouraging you to use similar assumptions where they make sense to be similar, and to be able to explain the differences where you decide to take different assumptions.

Okay, moving on, to basically a different area of recommendations, and that's recommendations really dealing with the budgeting and forecasting system. In paragraphs .55 to .57 we actually make three recommendations to improve the budgeting and forecasting system.

First, we recommend that WCB prepare a budget for its entire operations. Previously it was preparing a budget just for its administration aspect of its operation. We encourage them to prepare a budget for their entire operations.

We also encourage that the board review and approve the budget before the start of the year. It's always important that you have your plan in place before the year starts or as near as possible to the start of the year.

And lastly, we recommend that the board document its monthly review of the forecast which includes its assumptions.

We note that in the audit, in our 1996 audit, there has been progress made on this area. The board has in fact prepared a budget for its entire operations for 1997. There is evidence now of the board's review and approval of that budget, and it's near the start of the year — so that's very positive changes. And lastly, that there . . . again there is evidence of the board

documenting its review of its monthly reports.

The reason of the documentation concerns is because we are dealing with a unique situation here where we have a full-time board, and as you can appreciate when they are a full-time board, they don't hold board meetings or take board minutes in the same manner that you would with a part-time board. So the nature of the evidence and the nature of leaving evidence of fulfilling your fiduciary responsibilities at times change.

And that what's these recommendations denote. Although you are a full-time board, still leave evidence that you're actually doing things even though you may be doing them on a day-to-day basis. And we're quite encouraged by the activity of progress that we've seen in this area.

The next set of recommendations really deal with the financial reporting. And this is in paragraph .66 and .67 of our report. There's three recommendations; one flows over to the next overhead. We recommend that the board prepare monthly financial statements for its entire operations and that these be a complete set of financial statements with a balance sheet or a statement of financial position, a statement of operations, and a statement of changes in financial positions; that there is a comparison of your actual to what you initially planned, i.e., your budget, and that you explained significant variances.

The second recommendation again is a documentation, one similar to the previous recommendations where we are encouraging the board to leave evidence of their review of the statements. And again, that's because they are a full-time board member and there's no minutes to leave as audit evidence. So again the nature of the evidence changes there.

The next one, which flows over onto the next page, is that dealing with financial reporting, is that we encourage the board improve the systems and practices that you use to estimate its investment income, which again is a significant figure for the board and for its compensation expenses, which links into the previous recommendations. And that it record these estimates in its accounts throughout the year.

As we note actually in our fall report, the board started in mid-1996 to receive statements of financial position and operations each month. In addition to its package of information, it was really a lot of non-financial information — good operational information.

We also note that the board has started to document the receipt of its monthly package, and we do look forward to further progress on this whole area of financial reporting. We think that they're moving in the right direction, and again, are quite encouraged by that.

The next set of recommendations deal with the area of information technology. And there's two recommendations in that area.

The first one is that again that the board complete the development of its contingency plan and test the plan to make sure that it works.

And the second one is that we recommend the board set and approve security policies and procedures based on a risk assessment. And that's saying to the board, look at what your risks are with respect to security, and make sure that you put policies and procedures in place to mitigate those risks.

The IT (information technology) area again is very important because the WCB relies on computerized systems to deliver its programs, and injured workers are relying on their cheques to live on a day-to-day basis. So we're encouraging WCB to implement these recommendations to help ensure that it has continuous operations of its IT systems — computer systems.

The next set of recommendations are recommendations that we call public accountability recommendations.

The first one there deals with our opinion on the financial statements. For the reliability of the 1995 financial statements in the section in the report, we describe our concern with these statements. As explained earlier, our office had doubts about the assumptions and process the WCB used to calculate the benefits liability, and as result the related compensation expense.

Paragraph .93 in our report sets out those doubts. And I'm just going to briefly go through them. There's a series of them. If you want to actually open the report and have a look at them as I go through.

The first is that during the course of our audit we noted that there was correspondence in 1995 between WCB and its actuary. And that correspondence raised doubts about . . . that WCB had about the process the actuary is doing and how he was applying the methodology and the assumptions.

It was part of the review and challenge process that WCB had in place, and it was from an auditor point of view. You like to see the review in challenge. But what we found is that the questions that were raised in that correspondence, they weren't resolved as yet during the course of our audit.

Also as I mentioned a little bit earlier, WCB in November of '95 hired a second actuary, again as a part of the review and challenge process that it had, which is right . . . which is the right thing to do. And it asked this actuary to assess the appropriateness of the assumptions and the process that its first actuary used.

The third area that brought doubts to us is that the WCB was unable to explain the appropriateness of some of the assumptions used in the actuary's report. And as I said earlier, its management should be able to explain the appropriateness as you go through.

We also noted that the benefits liability and the related compensation expense recorded in the financial statements did not include the amount for a future cost of administrative program. This is an area that the Workers' Compensation Board association of Canada actually recommends workers' compensation boards consider including in their actuarial reports, is the administration expense.

Another area was, is that the first actuary report, when you examined the report, it didn't disclose all the information that was expected by the actuarial standards for WCB compensation practices. For example, the report did not explain what the sources of the experience gains were since the last evaluation.

Again as a result of the work of the second actuary, the first actuary advised the WCB in August of 1996 that its 1995 report had an omission and the omission was that he advised that the first report should have included an extra couple sentences that were in the reports from the prior years. And those sentences, basically it was advisement that the benefits liability did not reflect the 1994 changes to The Workers' Compensation Act, that the actuary felt that he did not have sufficient information or sufficient history of information to be able to determine what the impact of those changes were.

Also the second actuary, during the course of our audit, advised us that he had calculated a significantly different amount for the liability than the first actuary. He raised some concerns about the process used and the assumptions used. At the point in time that we were doing our audit, the actuary was working with the first actuary to try to resolve those differences. We were unable to get a final report from that actuary, so we didn't have sufficient information to form our opinion.

So due to our concerns about the systems that were in place, combined with the concerns about the actuarial process, we felt that we didn't have sufficient appropriate audit evidence to reach an opinion as to whether or not the compensation expense and the related benefits liability was fairly presented within the financial statements. And so that's our opinion on that.

As a result of that, we've made one recommendation. We recommended that in the future WCB should ensure it has sufficient and appropriate support for its total compensation expense and related benefits liability when it publishes its financial statements. We think the adoption of the previous recommendations that we have made will ensure that this happens in the future.

There's also two other matters that we bring to the attention of the Assembly. In paragraphs .100 to .101, we note the WCB report does not contain a comparison of actual results to those planned. And as for other organizations, we recommend the WCB provide this information.

And lastly, we note that WCB does not provide the Assembly with a list of persons who receive public money, as this committee recommends. We note that there's some question as to whether or not WCB should publish details about payments to individual injured workers, and we note that the Committee of Review recommends further disclosure of details of administration expenses in the WCB's annual report.

We look to this committee's guidance on that area, to provide WCB guidance as to what it should be publishing or what this committee expects with respect to your own recommendation there.

Lastly, I want to acknowledge the cooperation extended to us by WCB and all of it — the board, management, and staff

throughout the course of the audit — and by KPMG. That cooperation allowed us to reduce and minimize the duplication of effort that may have occurred otherwise without that cooperation.

I would also like to acknowledge that the concerns that we've made and are reported here are not new concerns for the board. In a number of areas they had initiatives under way but they just weren't quite there yet. And we noticed that in 1996 they continue to move in the right direction and we find that very encouraging.

You'll notice, if you've had a chance to go through the '95 annual report of WCB, that they tell you quite clearly that 1995 is very much a year of transition, a year where they're doing lots of changes; they've got a lot of initiatives under way. And I think the recommendations that we've made and the activity and progress that we've seen to date depicts that they are truly in a transition phase.

We're confident that over time that the initiatives the board has under way will alleviate many of the concerns and issues that we've raised today. Thank you.

Mr. Strelloff: — Thank you, Judy, and Rodd Jersak, for carrying out this work. As you know, we are completing the '96 audit right now with KPMG. The task force protocols are being followed. The work is being carried out with KPMG and we expect the audit of '96 to be completed in this May.

With us, as I said earlier, are Jamie Wilson and Tom Robinson of KPMG. And Jamie is going to provide his firm's perspective on the audit of the Workers' Compensation Board.

Mr. Wilson: — Thank you, Wayne. Mr. Chair, committee members, other guests. We audited the financial statement of the Workers' Compensation Board at December 31, 1995 and the statements of operation and injury fund and changes in financial position for the year then ended.

We conducted this audit in accordance with generally accepted auditing standards, and in our opinion these financial statements present in all material respects the financial position of the board as at December 31, 1995 and the results of its operations and change in financial position for that year then ended in accordance with generally accepted accounting principles.

The Provincial Auditor has in his 1996 fall report indicated that he feels the board's December 31, 1995 financial statements may not be reliable due to uncertainty in his mind with regard to whether the board's December 31, 1995 actuarial evaluation may be relied upon.

In our opinion, and given the information existing at March 4, 1996 when our audit report on these financial statements was finalized, this evaluation report may be relied upon and the board's financial statements are in fact reliable.

General accepted auditing standards contained in the CICA (Canadian Institute of Chartered Accountants) handbook offer general guidance as to the extent of work required to justify

reliance on a specialist during the course of an audit. But ultimately this becomes a matter of professional judgement. And it is in the exercise of this professional judgement that differences of opinion are possible.

In addition, generally accepted reporting standards newly implemented for all December 31, 1996 year ends require that when financial statement items are selected from a range of possible outcomes — as in the case of the board's benefit liabilities — disclosure of this fact and the extent of variability of the amount be disclosed. This type of disclosure is intended to better communicate the subjective nature of certain financial statement balances.

Mr. Strelloff: — Thank you, Jamie. Many of the recommendations that Judy referred to are long term in nature and will take time to address. We understand that progress is taking place and we're encouraged by that.

Currently we're working with KPMG and the WCB to ensure we can sign off the 1996 financial statements. The two actuaries engaged by the Workers' Compensation Board have not yet finalized their report. We expect this to happen soon.

So, Chair, members, this ends our opening comments.

The Chair: — Thank you, Mr. Strelloff. Just before we get on to having the Chair of the Workers' Compensation Board make a few general comments, I just want to acknowledge also the presence — I didn't earlier — of the Provincial Comptroller, Mr. Terry Paton, and his official as well, Mr. Chris Bayda, from his office as well.

I'm required to advise you as a witness, in terms of giving your testimony before the committee, that witnesses should be aware that when appearing before a legislative committee your testimony is entitled to have the protection of parliamentary privilege. The evidence you provide to this committee cannot be used against you as the subject of a civil action.

In addition, I wish to advise you that you are protected by section 13 of the Canadian Charter of Rights and Freedoms which provides that:

A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

A witness must answer all questions put by the committee. Where a member of the committee requests written information of your department, I would ask that 15 copies be submitted to the committee Clerk, who will then distribute the document and record it as a tabled document.

You are reminded to please address all your comments through the Chair.

Now I just would also relate to you that when we come back after the question and answer period, you will be afforded an opportunity to make very specific comments on each and every

one of the recommendations here, from recommendation .26 through .105 contained in this chapter.

So if you wanted to just provide a general opinion at this point in time and reserve your more specific comments as we go through the recommendations, it might serve well for the purposes of the committee and I would just allow you now to make your comments, introduce your officials, Mr. Cameron, if you would.

Mr. Cameron: — Thank you, Mr. Chair, ladies and gentlemen. On my left is Peter Federko, who was hired as a vice-president of budget and finance in 1993 and has recently, as of last June, been promoted to the position of the chief executive officer of the board and charged with the responsibility of day-to-day operations. I'd like to thank Judy for a fair assessment of the process that we've been through and a fair reporting of what we . . . the challenges that we had.

Since the board took office in 1993, it has repeatedly staked out and defended its independence and questioned and opposed the authority of the Provincial Auditor to audit the Workers' Compensation Board. The board has legal opinion that it believes support that position. In 1995, without prejudice to its position and in the spirit of cooperation with executive government, Workers' Compensation Board agreed to cooperate with the Provincial Auditor in conducting the audit of the board.

The board further agreed to follow the recommendations of the task force on roles and responsibilities of auditors and again this was done in the spirit of cooperation. At no time has or did the board agree that it was relinquishing any of its autonomy or its independence. The board is a quasi-judicial, independent body with no relationship or accountability to any committee of the legislature.

The premiums collected by the Workers' Compensation Board from employers are no more public money than the premiums collected by Crown Life or any other insurer.

Despite the cooperation that the board has shown to the Provincial Auditor's office and/or to executive government, this quasi-judicial body continues to question the jurisdiction of the Provincial Auditor's office and respectfully — respectfully — the jurisdiction of this committee. And therefore we question our appearance here today.

The Chair: — Okay, with that opening statement I'll entertain questions for members of the committee.

Mr. Sonntag: — Yes, first of all thank you very much to Mr. Cameron and to Mr. Federko, and certainly to the auditors and to Judy for the good presentation, and also to the folks from KPMG. I have gone through this chapter in detail and certainly have listened in the past to the ongoing differences of opinion between Workers' Compensation and the Provincial Auditor's office.

And after having gone through everything, I as well have to admit that I have questions as to whether or not this committee is properly mandated by the Legislative Assembly to be dealing with the recommendations, and I'm personally not convinced of

that mandate.

And I think that this has striking similarities to the situation with Greystone Management. And in light of that I want to expediate things and I'm going to recommend and move:

That the committee direct the Chair to seek arguments and legal opinions from Legislative Counsel and Law Clerk, Department of Justice, the Provincial Auditor's office, and the Workers' Compensation Board as they pertain to the autonomy of the Workers' Compensation Board and the jurisdiction of the Provincial Auditor to audit the Workers' Compensation Board.

The Chair: — Discussion on the motion. The motion before us is moved by Mr. Sonntag:

That the committee direct the Chair to seek arguments and legal opinions from Legislative Counsel and Law Clerk, Department of Justice, and the Provincial Auditor's office and the Workers' Compensation Board as they pertain to the autonomy of the Workers' Compensation Board and the jurisdiction of the Provincial Auditor to audit the Workers' Compensation Board.

Is the committee ready for the question?

Mr. Sonntag: — If I could just speak to that just briefly, because I made the motion.

The Chair: — I'm sorry, Mr. Sonntag.

Mr. Sonntag: — No, that's fine. I just very, very briefly, I refer to the Greystone Management situation and I do not . . . I guess I do not see any difference between this and Greystone Management. And it is in light of that that I make this motion.

We at that time I think, sought four legal opinions I believe it was. Yes, I think it was four legal opinions . . . (inaudible interjection) . . . Two? I thought we had the Legislative Law Clerk, Justice, Greystone's, and the Provincial Auditor's.

Anyway, my point is that I don't see any . . . I really don't see any difference between this and the situation that we dealt with as a committee with Greystone Management, and it's for that reason that I make this motion.

The Chair: — Is the committee ready for the question? Mr. Toth, you had a . . .

Mr. Toth: — Yes. First of all I'd like to know: does the Workers' Compensation Board receive provincial funding?

Mr. Cameron: — No, none.

Mr. Toth: — None whatsoever?

Mr. Cameron: — Absolutely nothing. All funding we receive is from the employer. This is as a result of a 1913 decision of a Chief Justice Meredith in which workers agreed that there would no longer be suit against employers for lost earnings or for personal injury. In court law the employers then agreed to fund the insurance plan through premiums set by the Ontario

Workers' Compensation Act. That Act led the . . . historically led to a royal commission in Saskatchewan in 1929 which adopted the principles of Meredith, adopting the same processes that it was no-fault, and that in fact workers would by legislation not have the access of court law for damages and workers . . . or employers would fund that insurance plan.

Mr. Toth: — So there's no public funding, no taxpayers' funding whatsoever for the board. All your money comes from — if I understand correctly — is coming through fees that you set on employers and employees.

Mr. Cameron: — Employees pay no portion of the premium. All the premium is paid by employers, and for that the employer has protection of suit through tort law.

Mr. Toth: — So who does Workers' Compensation Board feels that it holds itself accountable to then — the employer, the employee, or who are you responsible for?

Mr. Cameron: — Well the board convenes a number of meetings with stakeholders and has a mid-year review of its financial position, its plans, and where it is leading the organization. The board invites some 40 employer associations to participate in that process, and we have a . . . very much like a general meeting, if you will, of a corporation.

We take our signals clearly from the employers in those meetings as to the direction in which they would like to go, what directions they'd like to see, the areas of concern.

We have a similar meeting with the other stakeholder, which is labour. We invite them to come and participate and we share with them the same information we shared with the employers — now that takes place usually in July — which is a reporting of the happenings in the previous six months. That is followed in November — October or November — and through December as we go through a budget process of anticipated costs with the employers on the benefit side.

So we feel a strong accountability here to the employer and to labour, who we consider to be the primary stakeholders of the system. And the fact is we believe that that position was supported in the most recent Committee of Review's report. Now that was also, we believe, was clear in correspondence between the previous Chair, who had been the Chair of the Committee of Review for the previous three committees, Judge Alastair Muir, who made clear in submissions to executive government about the autonomy and the independence of the board. So we believe the true stakeholders of the board is where we are accountable, which is in fact employers and labour.

Mr. Toth: — Who?

The Chair: — Mr. Toth, if I could just interject at this point, there is a motion before us right now, before the committee and for good order's sake, when there is a motion before us, we shouldn't be engaging officials of the Workers' Compensation Board or of the auditor's office in the debate on the motion itself.

And I'm wondering if the committee might consider a couple of

options here. One would be that the motion just before us be essentially a notice . . . be treated as a notice of motion. So that all members of the committee could provide the questioning that they want toward the officials present and obtain some answers. Or just straight leave of the committee that we be able to, with the motion before us still, ask questions of officials present.

Mr. Pringle: — Could I just respond to that, Mr. Chair?

Mr. Toth: — If I could just make one comment first.

Mr. Pringle: — Sorry.

Mr. Toth: — The reason I'm asking, I'm asking some of the questions, I'm trying to determine exactly where the motion is going and there's a few questions I think need to be asked and I think its . . . in my mind, I need to have a strong feeling as to the role of the board.

And I think the way the motion is worded, I don't have enough information to just make a decision on that motion. And I think the questions I was asking kind of related to the motion, to get an idea of the reasons for the motion. I would like to hear other persons' points of view as well but I think you need to have a bit of a debate to get an understanding of where we're coming from on this motion.

Mr. Pringle: — Point of order, Mr. Chair.

Well my point of order, Mr. Chair, and members, is that if, if the WCB is saying there is no jurisdiction here in this judgement, in their legal opinion, it's my personal view they don't have the . . . they're not obligated even to answer any questions by the committee members. That was sort of my point of order.

And I know what you're trying to do. And I don't disagree with that. It just seems to me that they're not obligated to necessarily answer any questions if there's no jurisdiction by the committee. So I'm just raising that. I don't have any strong feelings as to whether we set it aside. But I just feel that that's not necessarily fair to the WCB officials.

The Chair: — Well, Mr. Pringle, with respect to your point of order, I would just point out to the committee that the Workers' Compensation Board is referred to in the summary financial statements of government, and in giving such, that perhaps we should consider to allow . . . either allow leave or allow this to serve as a notice to motion, given that there was no real prior warning to any members of the committee, and that as I say, that Workers' Compensation Board is referred to in the summary of financial statements of government.

So again I would . . .

Mr. Pringle: — Just as a follow up too, Mr. Chair. If we — there is a motion before the floor — if we deal with the motion, then after that if WCB wants to answer general questions, that's up to them, which could provide the opportunity you're asking for.

It's just, I guess I just . . . just because you refer to it in the auditor's report, there's a pretty strong statement that there's no jurisdiction here in a legal opinion that they have. Now I don't know if that's true or not, but I'm just not sure it's fair to be asking questions and obligating answers in this forum under these circumstances.

The Chair: — The debate on the motion before us then will continue, and the members of the committee will have to debate this motion before us then at this point.

Ms. Draude: — I guess my concern is that the statement was made that there was no government funding in it, and I agree. But workmen's compensation actually does fund one department of government, which is Labour. There is money that's going from workmen's compensation into Labour. And there will be more so when we get . . . as the occupational health and safety standards and that type of thing are brought forward.

I think that if we don't have an opportunity to actually discuss some of these things with workmen's compensation that we're leaving out a whole element.

Mr. Sonntag: — I don't think anybody is disagreeing necessarily. We're just asking for opinion.

The Chair: — Ms. Draude, do you want to continue?

Ms. Draude: — I guess the discussion then is whether this motion will go ahead — is that where you're sitting with that?

The Chair: — This is correct.

Ms. Draude: — I guess I disagree with the motion because I think that if we don't have some more . . . if we don't have some direct accountability where we can talk to them and ask questions — things like the concerns that were brought up last year when there was an increase in assessment — if we don't . . . if people don't feel that they can go to government and go through the board only as employer and employee, I think that we're losing some touch with people out there.

Mr. Pringle: — Mr. Chair, Mr. Toth has the floor except on the point of order, right? Mr. Toth has the floor, except on the point of order, which takes precedence. We're talking about the point or order.

The Chair: — I'd ruled on the point of order essentially.

Mr. Pringle: — I thought you had, yes. So Mr. Toth still has the floor?

The Chair: — Mr. Toth. I'm sorry, Mr. Toth.

Mr. Pringle: — Mr. Toth still has the floor.

The Chair: — Did you have anything further or did . . . Do you want me to ask Mr. Thomson for his comments first and come back to you?

Mr. Toth: — I'll make a comment and I'm certainly willing to hear from other members, and actually I had, I think I had allowed the recognition of other members as well.

But I just wanted clarification on the motion. The motion before us is basically asking, if I understand it, for . . . what was it? Right — whether or not it doesn't occur in time . . . at the present time this motion isn't usurping the committee's ability to make some inquiries either of the auditor or of Workers' Compensation Board, but you're asking for some clarification as to whether the committee has jurisdiction to bring the board to the committee. Am I understanding that motion correctly? I need some verification on that.

Mr. Sonntag: — The second part of your assumption is certainly correct.

The Chair: — For the benefit of the members of the committee if I could read the motion again that's before us.

That the committee direct the Chair to seek arguments and legal opinions from Legislative Counsel and Law Clerk, Department of Justice, the Provincial Auditor's office, and the Workers' Compensation Board as they pertain to the autonomy of the Workers' Compensation Board in the jurisdiction of the Provincial Auditor to audit the Workers' Compensation Board.

Mr. Sonntag: — And in drawing if I may . . . and then drawing the conclusion then that those opinions would come back to this committee to review. And depending on what those opinions would be, then we would make the decision at that time.

Mr. Toth: — So basically then if your motion moves forward then any further debate in committee at this current time would be somewhat moot. You'd be waiting for these arguments to be brought forward to determine whether or not we proceed with any further debate as to the . . . (inaudible) . . . Yes.

Mr. Sonntag: — Because I think the precedent has been set under Greystone. I mean we as a committee, I think, need to be consistent. And that . . . I mean unless somebody else has some argument that would say that there's a substantial difference between Greystone and Workers' Compensation, who also don't have any money — direct funding from the province — then I think it's only fair that we do essentially the same thing as we've done with Greystone. And that's not to preclude any decisions at all from the committee.

The Chair: — So I'll just remind the members that the debate before us right now is on the motion before us. The debate is on this motion before us. So Mr. Toth did you have anything further at this . . .

Mr. Toth: — I'll take my place and let other members speak, and get a better idea of what's going on.

The Chair: — Mr. Thomson, I had you next.

Mr. Thomson: — If I may addressing the motion and I guess in part Ms. Draude's concerns. The question here is not so much

one of whether the Workers' Compensation Board should report to the legislature but rather through which mechanism it should do so. They of course do appear before Crown Corporations Committee to discuss policy and rate issues. And as such, I think that that's properly before that body of the Assembly.

The question here is whether or not this is an autonomous and independent body that receives of course no government funding and to what extent it should appear before the provincial Public Accounts Committee.

So it would seem appropriate that what we should deal with is we should vote off Mr. Sonntag's motion, which would provide us with clarification as to whether or not we do have jurisdiction to discuss these matters, at which point we will be able to review that in a technical way and decide whether we wish to continue the investigation of Workers' Compensation Board or whether they're better dealt with through some other mechanism.

And I think that it's really that narrow of an issue. I would suggest that once we've concluded that motion, there really would be no other reason to pursue a discussion and dialogue today with Workers' Compensation Board until we hear back as to jurisdiction. So with that I'd simply say I'll be supporting Mr. Sonntag's motion.

The Chair: — Further discussions?

Mr. Pringle: — Yes, I basically . . . I mean, I don't know what the answer is in terms of the jurisdictional question, but I hear the Chair of the board saying there's a legal opinion that says that this committee has no jurisdiction. And I don't know if that's true, but it's a long-standing issue.

And so if we deal with the motion and, at the willingness of the officials to entertain some general questions after, I don't see anything wrong with that, if they agree to that. That's up to them.

But it just seems to me, as Mr. Sonntag said, there is a precedent here for sorting out the jurisdictional issue by a process that is fair, I think, to all parties. And to me, with the Legislative Law Clerk involved, that's profoundly fair.

And so regardless of our opinions or the recommendations and so on, there is obviously a strong feeling that this committee does not have jurisdiction. And I don't know how we can deal with recommendations until that point is clarified. It just doesn't make any sense to me, and we have to sort that one out. And I don't know how anybody could take dispute with that.

The Chair: — Is there any further discussion?

Mr. Toth: — So if I understand this motion correctly, basically this motion has tied our hands as far as debate. My questions that I had originally had begun asking, after the motion was brought forward, was trying to get clarification as to where this motion is going.

Now the motion, as I understand it, if we vote on this motion

and it's carried — which chances are it most likely is going to be carried; I don't think there's enough opposition here to oppose it — then as I see it there is no further debate in committee until the report is brought back?

Mr. Sonntag: — I think I just . . . If I may?

The Chair: — Go ahead.

Mr. Sonntag: — Mr. Pringle had referred to it — you may not have heard it; you were just discussing a little bit — but if the officials from Workers' Compensation so feel they would like to, I don't think there's anything inappropriate, after this motion is dealt with, for them to answer some general questions if they so feel that they would.

I know you were asking some very general questions at the very beginning and I don't necessarily see that as being inappropriate. Now that's up to them as far as I'm concerned, but I don't have a problem with that. But that will be entirely up to them.

But as it pertains to the specific recommendations, then it would be my view that we need to get the opinions back before we deal with the specific recommendations.

Mr. Toth: — That's how I perceive the motion as reading.

Mr. Sonntag: — Okay.

Mr. Toth: — Basically, debate in committee becomes mute until the report that the motion of commissions is dealt with. We've been debating issues that may or may not, may be seen as yes, this committee does have jurisdiction or doesn't and we'd be jumping the gun.

I guess the only concern I have is maybe we should have had some debate prior to that. Obviously there's a motion on the floor that doesn't allow us to disband our debate in this committee other than to debate the motion before us and then vote on at this time.

Mr. Pringle: — Well particularly when WCB's saying they have a legal opinion that says they don't have to be here, it seems to me that needs to be clarified before they're obligated to answers by committee members.

Mr. Toth: — Well one would have to really wonder what Workers' Comp is really responsible to, and I think the auditor does bring out some good points in here. The auditor points out the fact that there's certainly differences of opinion when it comes to injury. And as elected representatives, we certainly do receive concerns from people, from constituents, as to how they are treated by Workers' Comp.

Some of the concerns . . . I think the auditor's bringing out the fact that his responsibility is to find out whether Workers' Comp is accountable, and I guess that's something we'll have to determine who they're really accountable to. Are they accountable to the board? Are they accountable . . . I think in one of the questions I posed the comments are made that certainly accountable to the employers and their employees.

I guess one of the concerns I have is when you look at Workers' Comp and some of the concerns that are raised, does Workers' Comp set up its own rules? And if you fall within the rules as an employee, then you are able to get benefits or does the Workers' Comp operate on its own, or does it follow the guidelines and work together with other medical professions?

Mr. Pringle: — Mr. Toth, if we don't have jurisdiction, then we don't have jurisdiction. If we don't agree with that as legislators and want to have jurisdiction, then we need to deal with that by some legal means. So it just seems to me these opinions about Workers' Comp in representing the different perspectives, whether from employers or labour or what comes to you as an MLA, is perhaps irrelevant if you don't have any jurisdiction to raise those here.

I'm not saying irrelevant in a way that . . . I'm saying illegally irrelevant. And we have to operate within the laws too, or change the laws. But surely if their legal opinion says they don't have to be here, we need to clarify that. These questions are just as valid in a month from now. And I don't know how we cannot be consistent as a committee — that doesn't make any sense to me.

Mr. Sonntag: — I think the Provincial Auditor can make all kinds of recommendations about us as individuals and our operations, and I'm sure he'd like to on occasion, but that doesn't mean that. . .

Mr. Toth: — He's got a lot already.

Mr. Sonntag: — But that doesn't necessarily mean that they would be appropriate.

Mr. Toth: — Well, I think we're spinning our wheels today based on this motion. I just feel we're. . .

Mr. Pringle: — Well this is pretty fundamental though, isn't it?

Mr. Toth: — The motion basically has . . .

Mr. Pringle: — Do have we jurisdiction or not is not fundamental to you? That isn't fundamental?

Mr. Toth: — Has tied the committee. My personal view is, based on this motion, we're spinning our wheels. There's not really room for debate outside of the motion that's before us.

Mr. Thomson: — If I may just say, many of the questions that Mr. Toth has raised — and I assume he's giving notice that he will raise again when this issue comes back before us, if we have jurisdiction — are outside of this committee mandate anyway. Those are questions that should be asked in Crown Corporations Committee. They're not questions that should be asked in what is essentially the audit committee of the legislature, because they don't deal with audit and accounting issues. They deal with rate-setting; they deal with policy issues. This committee doesn't deal with those issues.

So I mean there's nothing that precludes the member from

asking his caucus member, whoever that may be that sits on Crown Corporations — perhaps it's him — but asking them to raise those questions legitimately there. I would argue that even when we come back that those questions would still not be in order because they don't deal with what the auditor has raised and are not particularly germane to our discussions.

But regardless, I would suggest that we proceed with the motion.

Mr. Toth: — I'd have to disagree with Mr. Thomson.

Mr. Thomson: — I'm shocked.

The Chair: — Is the committee ready for the question? Those in favour of the motion, say aye. Those opposed. The motion is carried.

So what I would ask now at this point of the chairman of the Workers' Compensation Board if he would make available to myself, as chairman of the Public Accounts Committee, a copy of the legal opinion that you as Workers' Compensation Board have with respect to your autonomy from government. And then it'll be the undertaking of the committee to obtain the legal opinions as expressed further in the motion that we've just voted on.

For the benefit of the members of the committee that aren't aware, the Workers' Compensation Board, as Mr. Thomson somewhat alludes to, has appeared before the Standing Committee on Crown Corporations as well, so if that has some bearing in here.

Mr. Koenker: — I wonder whether we shouldn't follow the protocol that we followed with Greystone, and that is namely to have the Clerk formally send a letter as was done in the Greystone case requesting a legal opinion from all the parties so they all get the same letter, they all know what the context and the issue is, and it's framed in exactly in the same fashion so we don't have confusion. I think we need clarity. That's why we're doing this.

I mean it's fine to serve notice today and ask that . . . I mean, it's obvious Mr. Cameron is here and he knows the . . . he's hearing the discussion so he knows that issue as does the auditor. But the Legislative Law Clerk, for example, would not have benefit of this discussion until he sees *Hansard*. Thus, I think we need to be clear, procedurally, and have the Clerk to the committee just send the standard letter.

And I also would urge that we do this with the same kind of dispatch that we did with Greystone; that we put a date in there of not, hopefully, not more than a month.

The Chair: — So the discussion is around how to proceed from here. With cooperation of the Law Clerk of the Assembly and in consultation with the committee, we'll draft a letter requesting the legal opinions from the various parties with respect to the Workers' Compensation Board.

In terms of time lines that we wish to place on it, Mr. Koenker has mentioned not exceeding a month to ask for a response.

Does that sound reasonable to everyone here?

Mr. Koenker: — I would say by not later than — what? — May 31?

The Chair: — Does that sound reasonable?

Mr. Pringle: — Could I recommend that the Chair, the Vice-chair and the Clerk just sort of — because you've done this before, same process — just sort of sign off the letter, if that's agreeable, because I think the intent is clear here to all the members to expedite the process.

Mr. Toth: — Well, I think it would be — excuse me, Mr. Chairman — I think it would be appropriate that it's done sooner rather than later so this question is resolved rather than letting it carry.

A Member: — Agreed.

The Chair: — Everyone agrees to the urgency so we will undertake this as soon as possible.

Unless anyone feels at this time they want to have any further discussions, I would suggest that we would move a motion to adjourn this meeting.

Mr. Sonntag: — So moved.

The committee adjourned at 10:45 a.m.