

HANSARD

NOVA SCOTIA HOUSE OF ASSEMBLY

COMMITTEE

ON

HUMAN RESOURCES

Tuesday, February 28, 2017

COMMITTEE ROOM

**Pictou County Injured Workers Association
& Appointments to Agencies, Boards and Commissions**

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STANDING COMMITTEE ON HUMAN RESOURCES

Mr. Chuck Porter (Chairman)

Ms. Joyce Treen

Mr. Gordon Wilson

Mr. Stephen Gough

Mr. David Wilton

Mr. Eddie Orrell

Ms. Karla MacFarlane

Ms. Marian Mancini

Ms. Lisa Roberts

[Ms. Joyce Treen was replaced by Mr. Bill Horne]

[Mr. Gordon Wilson was replaced by Mr. Brendan Maguire]

[Mr. David Wilton was replaced by Mr. Iain Rankin]

In Attendance:

Ms. Judy Kavanagh
Legislative Committee Clerk

Mr. Gordon Hebb
Chief Legislative Counsel

WITNESSES

Pictou County Injured Workers Association

Ms. Mary Lloyd - President

Mr. Larry Maloney - Vice-President



House of Assembly
Nova Scotia

HALIFAX, TUESDAY, FEBRUARY 28, 2017

STANDING COMMITTEE ON HUMAN RESOURCES

10:00 A.M.

CHAIRMAN
Mr. Chuck Porter

MR. CHAIRMAN: Good morning, everyone. I'll welcome our two witnesses, Mary and Larry, to join us this morning. We're just going to do a little bit of committee business first, and we'll come back to you shortly.

We'll start, as we normally do, with the agency, board and commission appointments. Mr. Maguire, have you got them in front of you - ABCs, the Department of Community Services? Have you got the list in front of you? If not, we'll go to - you all have the list, do you? That's fine.

Mr. Maguire.

MR. BRENDAN MAGUIRE: Mr. Chairman, I move that Karen Bernard, Louise Carbert, Krysta Coyle, Sara Greenblatt, Michelle Kelly, and Verona Singer - sorry if I butchered their names - be approved as members of the Advisory Council on the Status of Women.

MR. CHAIRMAN: Are there any questions? Would all those in favour of the motion please say Aye. Contrary minded, Nay.

The motion is carried.

Mr. Horne for the Department of Environment.

MR. BILL HORNE: Mr. Chairman, I move that Graham A. Gagnon, Heather Johannesen, Michel Raymond, and Scott Skinner be approved as members of the Department of Environment's Environment and Sustainable Prosperity Round Table.

MR. CHAIRMAN: Thank you. Are there any questions on the motion? Would all those in favour of the motion please say Aye. Contrary minded, Nay.

The motion is carried.

The Department of Health and Wellness. Mr. Rankin.

MR. IAIN RANKIN: Mr. Chairman, I'd like to put forward the following names for the Nova Scotia Advisory Commission on AIDS for approval: William C. Hart, Rosanne LeBlanc, and Lynn Stevenson as members, and Denise Rooney as Chair and member.

MR. CHAIRMAN: Are there any questions on the appointments? Would all those in favour of the motion please say Aye. Contrary minded, Nay.

The motion is carried.

The Council on the College of Paramedics of Nova Scotia. Mr. Horne.

MR. HORNE: Mr. Chairman, for the Council on the College of Paramedics of Nova Scotia's, I move that the following be approved as members: Jonathan M. Akin, Donald Ryan Brown, Donna Denney, Karl Kowalczyk, Paul Landriault, Douglas Lloy, Dr. Elizabeth Mann, David Kent Matheson, Steven Menzies, Bruce Sangster, Tanya Snow, Louis Staple, and Guy James Williams.

MR. CHAIRMAN: Are there any questions on the appointments? Would all those in favour of the motion please say Aye. Contrary minded, Nay.

The motion is carried.

The Department of Labour and Advanced Education. Mr. Maguire.

MR. MAGUIRE: Mr. Chairman, I move that John S. Cunningham be approved as a member of the Fire Safety Advisory Council.

MR. CHAIRMAN: Is there any discussion? Would all those in favour of the motion please say Aye. Contrary minded, Nay.

The motion is carried.

The Fire Services Advisory Committee. Mr. Maguire, to finish that off.

MR. MAGUIRE: Mr. Chairman, I move that John S. Cunningham and Gary MacLaughlin be approved as members of the Fire Services Advisory Committee.

MR. CHAIRMAN: Is there any discussion? Would all those in favour of the motion please say Aye. Contrary minded, Nay.

The motion is carried.

I want to welcome this morning our witnesses from the Pictou County Injured Workers Association, Ms. Mary Lloyd and Mr. Larry Maloney. We chatted a bit before. It's good to have you here.

I'll just lay out how it works. I'll give you the opportunity to do a presentation and then we'll go around the room. We have some replacement members with us this morning, so just generally how I run the committee here - and it has worked very well - is we'll start with questions. We'll usually do a question and a supplementary follow-up, and then we'll move to another member and work our way around. That gives everybody ample opportunity.

We usually get lots of questions in, so fairly short but quicker questions, and again, with the answers, the more we can get in, and the back and forth, the better we usually have by way of exchanging some information.

The floor is yours, Mary.

MS. MARY LLOYD: First and foremost, I'd like to thank you for this opportunity to do this presentation today. We are the Pictou County Injured Workers Association, and we were founded in 1992, 25 years ago. I am the president and co-founder of that organization.

We started out, very simply, as a support group. Our first ad in the paper advertised us as a support group and we had 28 people show up. The second month we were into the 60s; the third month we were in the hundreds, and quickly realized that not only were we needing support, but we needed services, advice, and advocates. So we became all that. Currently, our office operates each year with the caseload between Larry and myself of 637 active files.

A brief history on the Workers' Compensation system: the Royal Commission was appointed by Ontario Chief Justice Meredith in 1910. The Royal Commission resulted in 1913, and the first WCB Act in Canada was brought in in Ontario in 1914.

Nova Scotia introduced their first Workers' Compensation Act in 1915. It was founded on these five basic principles: a no-fault system; security of payment, the worker is guaranteed compensation as long as the earnings are impaired; collective liability that the employers pay for; independent administration; and injured workers gave up the right to sue in return for the benefits and medical aid. That's it simply put.

The historical compromise is: the employers fund the system; in return the worker gives up the right to sue for negligence in relation to workplace injury; and the worker was to receive timely benefits and medical aid, and the employer was to receive protection.

We call this presentation a reality check. It's an example of the injustice in the system for the injured worker. We are asking for legislative reform. We are asking for a Royal Commission because it has to be done. The system is not recognizable anymore. We haven't had a review of the Workers' Compensation system in this province since 1995. There was a partial review, the Dorsey review in 2002, but it was very restricted. The major recommendations in that report were never implemented, and the current WCB process is totally inconsistent with the founding principles.

From the Dorsey report: "Over the years however, for whatever reason, incompetence, mismanagement, bungling, deceit, apathy, political interference, expediency or indifference, the program lost its way. This left the program seriously underfunded in the 1990s." Now I'll ask you to remember that, and at the end of this presentation I will ask you to answer, what's different today?

The concerns about the current Workers' Compensation system are the unfunded albatross, the WCB's failure to collect fair and sufficient assessments, employers' participation in appeals, WCB's violation of the legislation, and the non-neutrality and bias of the WCB.

We refer to this as enforced poverty. We didn't ask to be injured workers. None of us had aspirations in our lifetime of ever becoming an injured worker. When we're through with this presentation, you will understand why. Nobody wanted this lifestyle. The full burden of the unfunded liability is placed on the shoulders of the injured workers.

Financial penalties - if you were injured under the old Act, March 23, 1990, the benefits were based 75 per cent of gross, and you would receive temporary benefits to that effect. A permanent medical impairment was done, and that was called a CRS pension, which is the old meat chart, as people might refer to it. That impairment was based on 75 per cent of gross times the impairment award. As a result of fighting and lobbying, the entitlement to supplementary benefits came in, but it was only half the industry wage - but no wage loss.

After the new Act - March 23, 1990 - benefits went from gross to net. Workers were receiving 75 per cent of their net take-home pay. That seems to me like a punishment in a no-fault system. Why is it acceptable that a worker receive one cent less than they were

making when they were working? We had an earnings loss system in the old Act, which was 75 per cent of gross.

As well, a two-fifths waiting period came in. Is that not a punishment? A no-fault system - a worker is punished by the loss of two days' pay and then 25 per cent less money for the first 26 weeks. After six months, it goes up to 85 per cent. It's still a loss of income.

Reduced impairment awards - they brought in the AMA guidelines as opposed to the PMA guidelines, in which the impairment awards are based on 85 per cent of net times 30 per cent times the PMI award. You receive nothing.

The CPP offset - 50 per cent of Canada Pension disability is taken away from your benefits. The non-taxable benefit is cut. The ceiling - there's a cap on benefits of \$59,300 this year.

Indexing - prior to 1993, benefits were fully indexed. From 1993 to 2000, indexing was frozen. That was a result of the Savage Government freezing civil servant benefits. The board in its capacity froze the benefits to workers but changed every person at the board's occupation and status so that they got the raises. They didn't adhere to this freeze, but they put it on benefits to workers. At no time was the government ever intending to freeze benefits to workers, but we suffered the loss. From 2000 to present, we received only half of the cost of living.

This chart was the only one we could find. It's effective May 2, 2013. This shows the poverty levels in Canada. Workers injured under the old Act would receive supplementary benefits. The maximum income they could receive was \$21,850. As you can see, this is below the poverty level in most, and if we had today's, it would be in all.

Workers injured today receiving minimum wage would receive \$22,000 gross, \$18,000 net, but the WCB benefit is \$15,641 - far below the poverty level in all categories. Workers injured today and earning the average industrial wage would receive the net. Assuming an inability to return to work, the maximum benefit from the WCB is \$28,000. That's the poverty line in two of the categories here.

The cap, the maximum insurable earnings, is \$59,300. Now the workers don't receive \$59,000. They receive the net of that. Assuming an inability to return to work, the maximum WCB benefit is \$36,000. It doesn't matter what level of pay you came from - it could have been \$80,000, \$100,000 a year, and many workers were - that's the maximum you would receive.

How much do you make? We put these examples in here to show how bad it is. A registered nurse who is injured, their base salary is \$70,000. MLAs, your base is \$89,000. CEO of the WCB - we would love to see that money. Your lifestyle is based on your

income. Your home, your cars, your family vacations, and your children's activities are all based on your working capacity. How is it possible to maintain a lifestyle on these benefits? We ask you, can you sustain your family if today, God forbid, you were on workers' comp, if you were injured? How would you support your family if you lost two days' pay and then went to \$36,000 a year? Could your family suffer a \$30,000, \$40,000, \$50,000, or \$60,000 hit? No.

Is it right? Is it fair? Is it just? If your answer to that question internally to yourself is "no," then why is it fair for injured workers to be receiving such small benefits for a no-fault system? It's not acceptable. What are you willing to do about it?

The income examples that we've given you in those charts are based on if you were injured today. The examples were on today's calculations. Imagine if you were injured in 1990 or 1991 - the early 1990s. Your benefits are always calculated on the year you were injured. Imagine 85 per cent of the net of 1990 benefits with no indexing. Imagine what a loaf of bread, oil, rent, or even a home cost in the 1990s as opposed to today's market. We're not keeping up. We're falling farther behind. We're the poorest of the poor, and age 65 is not looking very rosy either.

The unfunded liability is no more than an excuse not to increase benefits. Financial incentives are given to employers and undermine health and safety, suppress claims, and promote the under-reporting of accidents.

Government and the WCB maintaining inadequate assessment rates in the 1970s, 1980s, and 1990s caused the unfunded liability, not workers. Also, errors and incompetence in recognizing and stating current and previous liabilities, in correcting past errors, and in failing to increase assessments to match increases in claim costs - that's out of the Dorsey report.

The new Act came in rather than amending the old Act. The only thing that was wrong with the old Act is that they weren't paying earnings lost. Instead of amending that which was a small booklet - each section was a couple of paragraphs - we got a whole new Act, whole new legislation. On the intent behind that legislation, Minister Jay Abbass is quoted in Hansard as saying, "We have established a financial plan that is intended to lead to a financially responsible and stable system. Injured workers and employers should not have to face this type of crisis situation again. We are creating a system that works for injured workers and for employers and we are ensuring a future for workers' compensation in this province." The unfunded liability in 1994 was \$460 million.

WCB must collect sufficient funds each year for current and future claims. Any operating deficit is to be retired in three years. There is no legislative authority to allocate losses in investment to the unfunded liability or to use investment income to reduce the responsibility of employers' assessment costs.

We've provided the charts, two pages here, of the unfunded liability to show you from the time the new Act came in to 2015. As you can see, it looks like they were doing something good for those few years there, but they weren't. They were denying benefits to workers. Everybody was lumped into chronic pain. That's how they achieved those reductions there. As a result of the Martin and Laseur case, they were told they discriminated, and they had to pay those benefits. In 1995, that unfunded liability went to a high of almost \$700 million. How is that possible given this new legislation?

Rather than being eliminated, the liability today is \$340 million as of December 2016. WCB is not increasing income to ensure the operating deficits are eliminated. Benefits to workers have been slashed, reduced, or restricted in order to reduce costs.

There is no concern for the unfunded liability when the WCB fails to collect hundreds of millions of dollars from employers in assessments due to the merits associated with experience rating. That's the handout we've given you all. That's the merits chart. WCB will say that that's revenue neutral. Well, it's not revenue neutral. We're telling you that hundreds of millions of dollars are not being collected to pay down the unfunded liability. There should be no reductions in assessments as long as there's an unfunded liability.

WCB has failed to increase the average assessment rate for 12 years now. Is that not what happened in the 1970s and 1980s? WCB provides millions in rebates to employers as part of the surcharge rebate program. WCB funds the Office of the Employer Advisor - \$500,000 annually to fight injured workers and challenge our claims.

WCB will spend millions on programs to reduce, restrict, and refuse benefits to workers. We have the Centralized Surgical Services program, which takes away the authority of the treating physician. It's all under WCB, which directs our care and treatment. We have no say.

Prescription drug formulary - the tune of millions of dollars has been given to Medavie Blue Cross to regulate and provide other restrictions on WCB clients. Technology enhancements over the years have been ongoing, but no one complains about the impact on the unfunded liability there. Direct access to physio programs - this is nothing more than work hardening. It's not treatment. Workers go for functional scans and are sent back to work regardless of what the medical says.

Tiered service programs are another stage of the work hardening program. Before you even enter it, it has been presumed you're going back to work - regardless. We've had many workers injured in these programs, new injuries, new distinct injuries, and they're all hidden and lumped under the original claim.

The service delivery model costs millions of dollars, and it was only beneficial to employers. It gives the employer full, direct access to claims. They took the worker out of it. This is the Workers Compensation Board, and we'll never call it anything different. They took it out because the focus now is to move away from the Meredith principles. But how many millions of dollars was it to change the name and logo at a time when there's an unfunded liability?

The Mainstay Awards cost millions of dollars. The workplace safety and insurance system was intended to provide cross-checking and prevent duplication of services for the agencies. But it's housed by WCB, and it's staffed by WCB. It is WCB, and it's their agenda.

The modernization program that's taking place now is in the \$20 million bracket. The staffing levels - if you go on the WCB website, there are always opportunities for career, and it's all about this new modernization - and the increased workforce.

How is it possible that the unfunded liability, given the legislation, has ever increased by one penny? The WCB and the Department of Labour and Advanced Education is telling us it may be eliminated in 2023. Well we've heard 2002, 2005, 2008, and 2012. They just keep moving it out. There is no appetite. The CEO and the CFO of the Workers' Compensation Board told us, in an injured workers meeting with our executive, there is no appetite to retire that unfunded liability. It's giving them what they want: suppressing workers.

The Act is clear. Section 115 states that the board shall collect sufficient funds from employers each year to meet the costs of all claims during the year, the future costs of all claims during the year, all administration costs and all other amounts payable.

Section 116 of the Act says that it is the duty of the board to ensure employers in the future are not burdened with the costs of injuries from previous years. The board must ensure any annual operating deficit is eliminated within three years of occurrence.

In these charts, we've shown you the average assessment rate. It has stayed consistent. There was a little bump in 2005. It went up by 8 cents, and it has stayed there for the last 12 years. As I've stated before, is this not what happened in the 1970s and 1980s?

Employers get reductions in their rates. From 1996 to 2016, hundreds of millions of dollars in employer assessment costs were not collected due to experience rating. There is no change in the average assessment for 12 years. There were millions of dollars given out to the construction and trucking associations. In 2015, there was a 19 per cent across-the-board cut to the fishing industry. That was at a time when there were fatalities. Why is WCB providing reduced assessments, surcharge rebate programs, and rewards while there is an unfunded liability?

Non-compliance with the Act: Section 121 of the Act says the board may - it's discretionary - reduce employers' assessment costs. To get that, they have to prove prevention initiatives. That's not done. It's based on assessable payroll. The board may increase employers' assessment rate if sufficient precautions have not been taken. It's not followed either.

International experts denounce experience rating as it promotes the under-reporting of accidents, it suppresses claims, and it is negative on any and all occupational health and safety measures. Why do we have it?

The reduction of assessment rates based on claim costs and assessable payroll is inconsistent with the Act. There is no legislative authority for WCB to allocate loss and investment income to the unfunded liability. An employer needs proof of prevention precautions in order to reduce rates, but it is our position that there should never be reductions in rates while there's an unfunded liability. That's the excuse they use for why we can't have increases in the basic cost of living to a worker, because of the unfunded liability.

Of particular notice, you'll be very interested in these next couple of slides. Small to medium employers on average have an accident every six to seven years. Surcharges occur to these employers because of the formula, a policy at the board, Policy 9.4.2. Employers are classed in groups. That's fine for setting your base rate, and ironically there's no minimum compensation. But you have to be 200 per cent worse than the next worst in your category. So the small employer, that has an accident only every six to seven years, gets dinged right away. They get hit with the surcharge. If you look at the surcharge list every year, it's the small and medium employers on there.

The large employers - less than 5 per cent of employers in this province register 73 per cent of the claims each year. There are 18,900 assessed employers. Less than 5 per cent, approximately 94 employers out of that whole group, are driving the accidents. Why aren't we clamping down on them? Those employers get the reductions in the rates. They would have to have a catastrophe similar to the Westray explosion or something similar in order for them to be 200 per cent worse than the next worst in their class. Why is this being allowed? We're protecting the bad employers in this province. Small to medium size employers get the hit, and the large employers get the Mainstay and prevention awards. Is this right? Is this just?

Historically restricted from participating in appeals, when the new Act came in it opened the door for employers to fight and challenge workers and claims. This is a no-fault system, a historical compromise. Workers gave up the right to sue. In return the employer receives protection, and the worker receives benefits and medical aid. The Workers' Advisers Program has been reporting constantly that employer participation in appeals has been causing delays, increases the adversarial nature, and increase the litigiousness.

WCAT has been reporting increased employer participation in appeals on recognition issues and benefits to workers. These unnecessary appeals are a significant cost to the system.

Employers are funded to fight injured workers. The Office of the Employer Advisor receives \$500,000 a year to fight appeals. Go on their site and see the lovely workshops they are putting on. One of them in particular that gets our back up is Pink Slips and Handshakes about how to discipline your worker on an open WCB claim or an occupational health and safety complaint. Really? Isn't that nice in a no-fault system. Since the OEA has come into the picture, recognition of claims appeals has more than doubled, and appeals on the level of benefits to workers have increased significantly.

Every time we mention an increase in the cost of living or benefits to workers, we are told that the employers can't absorb that cost. Yet employers' appeals on assessment is at less than 1 per cent. They can't be too upset about their assessment costs, or why wouldn't they appeal that? But 99.5 per cent of the employers' participation in appeals is on recognition and workers' benefits.

The WCB violates the legislation by providing employers with claim file documentation in the absence of an appeal - the Act is very clear that only participants in an appeal, and then only material that is relevant to the issue on appeal. They are getting it through these return-to-work programs and everything else. They get full access to the claim file.

They fail to collect sufficient revenue from employers to meet claim and administration costs and fail to hold employers accountable to re-employ workers from injury - Sections 90 to 101 - and inappropriately deny benefits and services, which places the burden on the taxpayers. Where do you think we go when we are being denied benefits? Health care picks us up, and social services. The taxpayer is ultimately on the hook for an injured worker when it is the responsibility of the assessed employer.

Employers are to fund the system. Injured workers gave up the right to sue, and the injured worker was to receive timely wage replacement benefits and medical treatment in a non-adversarial process while the employer received protection from immunity. That's what the employer is paying for, protection from immunity.

I would ask you here, as elected officials, why don't you outsource? Go to Lloyd's of London or some other big companies and find out what it would cost to have 100 per cent protection from liability. I guarantee, WCB is really cheap.

WCB is supposed to be a neutral administrator. They're not.

Now let's look at what benefits the worker. We put it as losses. A two-fifth waiting period in a no-fault system - why is the worker being punished and docked two days' pay because of a no-fault injury when an employer receives 100 per cent protection? Benefits

changed from 75 per cent of gross to 75 per cent of net and 85 per cent of net after 26 weeks. The PMI calculation changed from 75 per cent of gross times the PMI award to 85 per cent of net times 30 per cent times the PMI. Why is that 30 per cent in there? Nothing more than to reduce benefits. Workers under the old Act, if they had the exact same injury, might be receiving a couple hundred dollars a month on their PMI. That same worker, under this system, might be receiving \$30 per month based on that calculation.

The 50 per cent Canada Pension offset, the cap on the maximum insurable earnings, payments for an annuity - at age 65 we have 5 per cent to look forward to. For the years you've been on an earnings loss, 5 per cent is put away. A worker who has been on wage loss for 20 or 30 years might get \$25,000 to \$30,000. That's it. We've been out of the workforce. We've had no pension. We've had no CPP contributions or anything. The 5 per cent ends up hurting the worker because it's given in a lump sum, and it takes away the worker's eligibility for supplementary benefit under Old Age Security. It takes two to three years to get that mess straightened out. So there's a significant impact on the worker.

People are deemed capable. Whether you work or not, deeming is a big practice at WCB.

Benefits are indexed at 50 per cent. Benefits end at age 65. No provision is put in to account for the loss of pension and CPP due to your workplace injury.

The employer is granted the ability to participate in appeals to challenge the worker's entitlement to benefits after a no-fault claim is accepted.

The direct access to physio program and the Centralized Surgical Services program remove the worker's right and the treating physician's right to recommend treatment. Ratings were reduced as a result of WCB changing from PMI guidelines to AMA guidelines.

Employers determine whether an injury is required to be reported. Section 86 of the Act states, ". . . in such circumstances as may entitle the worker to compensation." We've been fighting for years for that to be taken out and "all accidents must be reported" put in. Why are we not wanting that? That drives under-reporting.

The tiered services program is nothing more than a work hardening program. We have workers being injured in these programs. It's horrendous, the treatment that people are receiving there. It doesn't matter. Many of them are injured in there. They're forced to keep working. They're deemed capable of working. Whether they can or not is immaterial.

We currently have a very interesting case before the courts here in Nova Scotia. It will be heard this month. It's called the Baker decision. The impact on workers if this is allowed is - WCAT gave employers complete access to private medical, financial, and

personal information because they said it would be against the natural justice for an employer not to receive it in full. That's tort. That's civil litigation. The employer wants 100 per cent protection, but they want the rights of civil litigation to give them access to total information. This is wrong.

Injured workers have no representation on the board of directors. Return to work programs are forcing people to work before being medically able to. The practice here is to get the worker physically back in the building. It matters not if you're working. It matters not if you're capable of gainful employment. We have employers that have boardrooms with workers lying around because the goal of WCB is to get them back in the building to keep assessment costs down for the employer and to meet their targets.

Employers in industries with high injury rates receive rate protection via experience rating. Employers with few injuries are penalized. The WCB's failure to reduce or eliminate the unfunded liability supports the employer advocacy for not increasing benefits to workers. Rebates are given to surcharged employers.

The employer has real time access to claim file information. The worker has to wait six to eight weeks to get a copy of their file. The employer has it daily. They can get the information in the file daily.

The employer has the right to fight and challenge benefits and services to workers at the claim management and appeals level and the ability to direct the medical treatment of a worker.

Direct access to physio - the board gives the employer the authority to send you to physio - not a hospital, not a doctor, but to a physio clinic for an FCE, a functional scan. No one will validate those scans. They are not a measure of safety. They are to throw the worker back to work. Employers avoid WCB costs by creating return to work programs where the worker is medically unable to perform any part of gainful employment.

The employer gains claim file information, which is not authorized by the Act but is provided by WCB Policy 10.3.5, internal procedures, and now WCAT, based on the Baker decision. Employers with thousands of reported injuries are honoured by LAE and WCB with Mainstay awards for injury prevention and workplace safety. It's an affront to injured workers, and it should be an affront to the legitimate employers in this province.

I want to be clear. Most employers in this province are good employers. They care about their workers, they care about safety, and they care about prevention. It's the 94 that drive the accident rates that seem to have everybody's ear.

There are close relationships with WCB decision-makers via WCB's integrated service teams.

There is free legal representation via the WCB Board of Directors. The neutral third-party administrator is funding employer groups, the OEA, to fight workers and challenge claims.

WCB claims are downloaded on to public health and social services. One thing that's not on our slide is employers' assessment costs are only rated to them for the first three years of a claim. Then it goes out of the accident fund. Why do you think all this appeal stuff is going on? To delay the process, and hopefully string it out three years. Then the cost is to the accident fund. It's not assessed to the individual.

WCB benefits are non-neutral. It's operating like a private insurance company focused on reducing costs and benefit reduction rather than being an unbiased administrator basing decisions on evidence and merits of each claim.

The Workplace Safety and Insurance System, WSIS, is intended to be a forum for the four agencies - WCB, WCAT, WAP and OHS - to share information on best practices and reduce duplication. Instead, WCB houses it, and WCB staffs it. They control it and use it to implement and expand their philosophy.

Unnecessary appeals result in significant costs to the system and long delays for workers. Sixty-seven per cent of WCB decisions are overturned at WCAT, but they are allowed to make the same decisions over and over again.

The WCB is not held accountable. All other jurisdictions in Canada have periodic reviews at least every three years. It has been 22 years since we had one.

We are asking for a Royal Commission. The reason for a Royal Commission is that we need it. Somebody has to look at this mess. We are advocating for a Royal Commission as opposed to a review because of give and take. We've lost enough. Someone has to look at this - a retired judge or a retired expert on workers' comp - and do a thorough review of what's going on.

The WCB answers to no one, and no one holds them accountable. I've been known to say that you have Dracula guarding the blood bank over there. The change to Work Safe For Life was a means of removing the worker, along with a change in focus. WCB claims are downloaded on to the public system - social services, health care, and EI. With cuts to social services programs and health care, I wonder what impact the WCB is having on that. Surgical wait times - what impact is the WCB having when they are jumping the queues in our public sector? Why is that allowed? And deeming of workers' earning capacity.

The Centralized Surgical Services program, direct access to physio, and tiered service programs give the WCB complete control over our medical treatment and take away the input and the authority of the treating physicians. These are overturned on appeals constantly.

Public health surgery wait times are delayed because WCB surgeries get priority. The statement of principles and objectives was two years of hard work by stakeholders. It was approved by an Order in Council, yet it has been ignored, particularly in the appointments of worker reps.

Administration costs are among the highest in Canada. If we believe the WCB facts, time-loss claims are down, accidents are down. Why do they keep adding to their staff ratio there? Why are their admin costs so high?

Return to work programs are focused on reducing time loss and claim duration rather than injury prevention and safety. Our belief, and it will never change, is that unless and until the accident has been reported, the accident has been investigated, there has been remedial change, and the treating physician has approved that that worker is safe to return to work, that's the only time we will have a safe return to work program.

We need this urgent reform. We have to have a review. The only founding principle of the Meredith report is that we can't sue. The current workers' compensation system in Nova Scotia is so eroded that legal challenges will be successful, and that door is opening wider every day. We've had quite a few successful challenges already.

Right now, as we sit here today, there's a class action suit in Ontario. What happened there is exactly what's happening in Nova Scotia. They have a policy in the process right now on pre-existing conditions, but there's a secret policy - and the board here is doing the same thing - that's slashing benefits to workers. That challenge is going forward now. The judge said it can go through. WSIB blocked them, and the class action suit is proceeding.

Is there a historical compromise? Where is it? Workers cannot file civil suits. Workers' benefits and services are consistently limited and reduced. Employers are protected from lawsuits but are funded to fight and challenge workers' benefits. Is this fair? Is this just? Is this moral?

Collectively the power is in this room. You are all elected officials from each individual Party. I would ask you to go back to your respective caucuses and demand that something be done with workers' comp.

MR. CHAIRMAN: Just before we go to questions, there's one small part I forgot this morning, and that was introduction of the members at the table. I'm going to do that just for the record of Hansard and also so you will recognize everyone here.

[The committee members introduced themselves.]

MR. CHAIRMAN: We'll start with questions, as we generally do in this committee. I'll get the members to ask one question, and we'll follow up with a supplementary. We'll try to keep those exchanges fair - I won't say short - so we can get around the table and get everybody in.

Ms. MacFarlane, we'll start with you.

MS. KARLA MACFARLANE: Thank you so much. That was an eye-opener for sure and very detailed, so I thank you for that. I thank you for your dedication and effort. You stuck it out in Pictou County, and it is truly appreciated by those who need your service. Thank you to both you and Larry.

I know that in the Fall of 2018 the Premier filled out a survey through Pictou County Injured Workers and checked off the eight different statements and blocks that you guys were looking for assistance with. At that time he had also indicated that there absolutely needed to be more accountability with WCB, and there needed to be an increase in benefits for the workers.

I'm just wondering, has the current Liberal Government shown any indication of following up on those statements at that time, as the Premier indicated to you he would?

MS. LLOYD: No. We've met with the Premier. We've met with the Minister of Labour and Advanced Education on several occasions. To this date, they're using the unfunded liability as the reason why benefits can't be touched. At this point in time, they're certainly not indicating any appetite for a review because of the unfunded liability ironically. But there seems to be money for everything else.

MS. MACFARLANE: Am I allowed to read a quote from Hansard?

MR. CHAIRMAN: Sure.

MS. MACFARLANE: Thank you. During the last three years, the PC caucus has asked a number of questions during our time in the Legislature with regard to the Pictou County Injured Workers Association and the WCB across Nova Scotia. One of the comments made after asking the Premier if he would promise a Royal Commission, the quote from the Premier is, "Mr. Speaker, I want to thank the honourable member for the question. I want to thank workers across our province, the people at WCB have been working with workers across Nova Scotia. As you know there's a huge unfunded liability there, they've been working through that process. We're going to continue to work with them to make sure we have in place a system that, if any worker in the province requires

support, financial support, that is the appropriate amount for that worker to look after his family if they've been injured on the job." Have you seen any action?

MS. LLOYD: Zero. We can't even get an increase for the cost of living. There has been no action, and the Premier has been made well aware of the hundreds of millions of dollars in reduced assessment costs. He is well aware of all the expenditures from WCB on anything and everything but benefits to workers. So the money is there. It's just the will isn't.

MR. CHAIRMAN: Mr. Orrell.

MR. EDDIE ORRELL: In your presentation, what kind of got me is that you highlight the need for the employers to pay more in assessments. I understand that if you're an employer that has a good safety record, you should be rewarded for that. As I understand, Nova Scotia employers already pay among the highest rates in Canada. How can this be addressed without affecting a business person's ability to run their business? How can we decrease that unfunded liability with the way we are already?

MS. LLOYD: First, I would like to mention that we have the lowest benefits. On the unfunded liability, we have demonstrated that it could have been paid for tenfold now, based on the monies that are not being collected.

Any other type of insurance is based on an individual. Your homeowner's insurance or your car insurance is based on your experience. They lump employers together to set a rate, and as I stated, there's not even a minimum rate. Some employers in this province are paying as little as 40 cents on the dollar of assessment. So there has to be a minimum. Then you have to break out of those categories. The employers that are driving the accident rate should be paying through the nose. As I stated in my presentation, I would ask you collectively to go to Lloyd's of London or somewhere else and find out how much that insurance would cost them for 100 per cent protection from civil liability.

As well, in the presentation I think I outlined that the needs of the workers are not being met. Workers are living in enforced poverty. We can't provide properly for our families. So how can it not be afforded? If those assessment costs are as horrendous as everybody seems to feed back to us, why are employers not in appeals fighting those assessment rates? Less than 1 per cent are in appeals challenging their assessment costs. They must be okay with it. We're in appeals fighting for our lives.

MR. ORRELL: If they set a rate, and every employer paid that same rate, you would have a lot more money in the kitty to pay that unfunded liability.

MS. LLOYD: Well, we've advocated, and that's one of the founding principles - universal coverage.

MR. ORRELL: You referred to the medium and small employers as being penalized by a formula for setting rates and the large employers benefiting. Can you explain that to me a little more? I kind of got lost where that formula is.

MS. LLOYD: It's a policy of the board that that 200 per cent calculation is put in. Just categorizing employers into different categories is fine for setting your base rate, but as we say, after that it should be based on your individual experience rather than this . . .

MR. ORRELL: So real insurance then?

MS. LLOYD: Yes, in that category for setting rates. Instead, like I said, the small to medium employer has an accident only every six to seven years. One accident for them puts them at 200 per cent worse than the next worst in their category. They get dinged right away.

The bad employers, the ones that are driving the accident rates in this province, would have to have a catastrophe to be 200 per cent worse than the next worst. So we're not penalizing the ones that should be penalized. We're hitting the small and medium guy who, for the most part, is caring and compassionate and wants to do what's right.

I would like to clarify too. The medium and small employers have accidents. These large employers are driving the accidents. When you know the who, when, why, and how something is happening, and it continues to happen over and over again - and it's the same injury, same body part, system, function - those are not injuries. They are crimes and should be punished accordingly. If we're going to have a safety culture here, we have to crack down on that.

MR. CHAIRMAN: Mr. Horne.

MR. HORNE: I wonder if you could tell us a little bit about the clients you have and how you work with them to present themselves at the WCB appeals or try to get funding for them. How does that operate?

MS. LLOYD: We do the gamut. We represent injured workers in providing advice and assistance. We advocate on their behalf. We go to case management meetings to ensure that their rights are being protected. We represent in appeals if they've been turned down by the WAP. The implementation of decisions is another problem area. We assist the workers. We enlighten them on their rights and responsibilities. We advocate for change and just provide general support across the board.

As I stated earlier, right now Larry and I - I'm a volunteer; Larry is the only staff - deal with 637 files, active files.

MR. HORNE: I guess the follow-up is, have you been successful at any time . . .

MS. LLOYD: Always.

MR. HORNE: Always successful, okay.

MS. LLOYD: Our track record is very good on overturning and getting benefits for workers. If you look back over my 25 years, there's millions and millions of dollars I've brought back.

MR. HORNE: Do you feel that you have enough control over what you are doing? Do you need more caseworkers?

MS. LLOYD: Resources? We've been crying for extra help there. We've been advocating and crying that this caseload is unhealthy. We receive only \$100,000. That's to run an office. We had two staff. We had to close our office for three weeks in the summer because of insufficient funding. It has been only Larry and I since. I'm a volunteer. We lost our receptionist because of insufficient funding. We had a rent increase, and we were falling behind because of that increase. Every quarter, before our money would come in, we were \$4,500 in arrears. To make up that difference, we had to close the office and lay off a staff member. So there's one and a half people, as I call myself, an injured worker, trying to deal with 637 active files.

MR. CHAIRMAN: Mr. Rankin.

MR. RANKIN: Thank you for the presentation. I think your message is pretty clear, that you want to look at assessments in terms of having to address the unfunded liability. Mr. Orrell made a good point about already having pretty high assessments.

The 94 employers that you've cited as responsible for, I think you said, 76 per cent of claims or around that figure, would all those 94 employers be considered big businesses?

MS. LLOYD: Yes, for the most part.

MR. RANKIN: Okay. I'm trying to figure out if that is typical in other jurisdictions and provinces, if it's a trend in terms of the type of work that they're doing or the actual workforce itself. In other provinces, do you know if three-quarters of their claims are coming from big business manufacturing sectors? Do you know anything about that?

MS. LLOYD: I'm not really sure. I wouldn't be able to answer that. It's hard enough keeping up with this province.

MR. RANKIN: You did a good job. Thank you.

MR. CHAIRMAN: Ms. Mancini.

MS. MARIAN MANCINI: I thanked you in advance for the PowerPoint, which is excellent. It's very dense, and it's not an area that I'm particularly familiar with. This has been a real learning experience for me. I do have a lot of questions. I'll start with this one. It's probably very basic to you, but it will be helpful to me.

The Workers' Compensation Board of Nova Scotia is an independent body, and they are responsible for setting policy. There's a couple of aspects where I'm trying to figure out what's policy and what's in the legislation. I'm not familiar with it, so you can correct me on it. One of the things you mentioned was that there is an Office of the Employer Advisor and that they receive \$500,000 from WCB. Can you tell me how that body was created? Are you familiar with the history of that?

MS. LLOYD: Yes, it was lobbying by these employers. The ones that drive the accidents, as I say, seem to get the ear of governments and the board. It was their lobbying that they wanted something similar to the Workers' Advisers Program that workers have entitlement to for representation. They got it through their lobbying activities. They receive this funding and put on training workshops for employers. As I indicated earlier (Interruption)

As a result, there's an Office of the Worker Counsellor as well. They gave one to the labour side as well.

But this one is very active. It's funded directly from the board of directors. It is inconsistent to us that you would have a neutral third-party administrator funding an organization that is fighting and challenging the level of benefits to workers and putting on workshops about how to discipline your worker on an open claim or an occupational health and safety complaint. No one sees anything wrong with that in a historical compromise situation.

MS. MANCINI: How does this work, compared to Workers' Advisers Program? Do they actually represent the employer?

MS. LLOYD: Well, according to what we were told about that program, they're not supposed to be involved in appeals. But they are very heavily involved in appeals and behind the scenes in the appeal process. They're on the conference calls and everything else. Technically, they say they're not involved, but they've been on every appeal that we're participating in. So they do represent employers.

MR. CHAIRMAN: Ms. Roberts.

MS. LISA ROBERTS: You make reference to the WCB philosophy. I'm wondering if you can give me a little bit more specifics in terms of how its board is constituted or how its philosophy has come to not be focused on those Meredith principles.

MS. LLOYD: They're running as though they were a private insurance company with shareholders. They've gone away from it. Their way of reducing and restricting benefits to workers is by adhering to the unfunded liability which was created by WCB. The founding principles were to be neutral and to administer at arm's length from the government and to administer based on providing benefits to workers and on the real merits and justice of the case.

Instead, you look at every one of their targets. They're based on this experience rating, durations, employability, time lost. All those are experience rating-type activities. The focus is not on helping and assisting the worker. They're training disentitlement to benefits as opposed to providing and assisting workers.

MS. ROBERTS: Can you talk a little bit more about experience ratings? What is an experience rating used to determine? Is it to determine how long an employer receives benefits, or does it determine how the employer is assessed? I don't understand what that is.

MS. LLOYD: The experience rating is used as the rate-setting model. It's supposed to be, and it should be - let's go back to the basics. It was brought in in Ontario. We spoke directly with the person who brought it in in Ontario. It was never intended to be what it is in Nova Scotia and across Canada right now. It was intended for the good employers not to be paying higher rates because of the actions of bad employers. It was more about ensuring that the ones driving the accidents paid.

Instead, they started with this revenue-neutral talk. We'll put this in, and we'll give the good employers reductions in rates, and we'll penalize the bad ones. It will be revenue-neutral. We're not seeing that. We're seeing because of that policy, the 200 per cent worse, that it's not targeting the employers that it should be targeting. We feel that policy has to be eliminated altogether. We feel that a system should be put in place where for the classification, it's fine to lump employers together, but then they should be singled out based on their individual experience and targeted.

Our position is and will be that until that unfunded liability is retired and workers receive proper benefits, employers shouldn't be receiving reductions in assessment rates because they're getting what they paid for: protection from civil liability.

MR. CHAIRMAN: Ms. MacFarlane.

MS. MACFARLANE: I don't know a lot about the Ontario class action suit. I know you do. I'm just curious what kind of impact or how that will resonate with our board here in Nova Scotia.

MS. LLOYD: In that Ontario case, the fact that the door has been opened for a class action suit is the first big victory for workers. There will be more to come. If the bodies here and the powers that be do not take a proactive approach, there are going to be more lawsuits like that because the same practices are happening here in Nova Scotia. Workers' benefits are being slashed based on assumptions.

The pre-existing disease policy is in place. Although technically it hasn't been approved yet, it has been in place. It's a way of trying to find anything other than the workplace injury to blame the case on. If a worker hurt their back, and the first X-ray shows there's some degenerative changes, the board takes the position that you had a pre-existing condition, the progression of that would cause you disability, and the accident had nothing to do with it. So it's to deny benefits or to slash benefits or take away from the impairment award.

MS. MACFARLANE: Obviously, we would not want to see ourselves go in that direction. I, too, believe that can be prevented. We certainly don't want to see ourselves go down that path. If we were able to create a Royal Commission, can you explain, Mary, what that would look like and the difference of a Royal Commission compared to a review and how that would move us forward in a positive direction?

MS. LLOYD: Well, a Royal Commission as opposed to a review - usually under a review, a person is appointed as chair. Then you have equal representation from employers and workers, and there's a give and take. We've given enough.

In a Royal Commission, a neutral party comes in and looks at the system. They weigh the fairness and whether it's acting in accordance with its reason to be. They would provide it with staffing, persons to help them with that. It would be a totally independent look at the review, and it would look at everything.

MR. CHAIRMAN: Mr. Orrell.

MR. ORRELL: In a question a little earlier, I asked about the rates for small and large businesses and so on. I'm assuming that changing the rate so that it's flat across the board, every employer pays the same, would be very easy to do. What kind of money would that produce towards paying off that unfunded liability?

MS. LLOYD: I didn't mean a straight rate. I meant that there should be a minimum rate to start with, a minimum rate across the board for anyone. Certain employers would probably be started off at a higher rate because of the nature of what they do. Universal coverage would bring in and generate a lot of income. It's ironic in this province that there's such pushback to have a clear, universal coverage mode.

The revenue that would generate I'm sure would help considerably in increasing the revenue brought into the board. It would be fair because unlike - and most people aren't aware - only 73 per cent or 74 per cent of employers in the province are assessed employers but those 73 per cent or 74 per cent - I'm not sure of the number - they pay the full cost of occupational health and safety because it comes out of the accident fund.

Is it fair that the assessed employer pays for all of occupational health and safety and the other employers benefit from it?

MR. CHAIRMAN: Mr. Orrell, on a follow-up.

MR. ORRELL: I just want to change gears a little bit if I could, Ms. Lloyd. You talked about the physio and the tiered system. I was in the profession when this was brought into play. The way it was explained at the time was that it will give you direct access to physio for your initial assessment to begin the process of healing because it has been shown that the longer you are away, the longer it takes to heal and some people didn't have a doctor and couldn't get in right away and this was the idea to prevent further degeneration and further injury.

I haven't been involved now in the last four or five years. When did it go off the rails? Now they have full control, by the sounds of it, they are going into a tiered system. When did that change happen and why?

MS. LLOYD: Well because we've had these clinics tell us in case management meetings that if we do what the doctors are saying, we'd lose our contract. So they're doing the bidding of WCB and that's just to get you back to work.

The workers aren't receiving treatment, they're receiving work hardening - push, pull, lift. It's to see what function - as we say, if you are breathing, you are going back to work. It's not about care for the worker.

Some of it is barbaric. We've seen injured workers crying in these settings, horrific treatment - pushing and lifting and carrying things that have caused ruptured discs and other problems. They are ignoring, on the basis of the board doctor's opinion, who never

saw the worker, never treated the worker - not the consulting physicians, not the specialists, not the CAT scans that are showing that there's something wrong. Everyone is treated as though it is a chronic pain condition, hurt versus harm.

We've seen the harm and it has to stop. It's barbaric and it's unacceptable that it's okay to treat injured workers this way in this province.

MR. CHAIRMAN: Thank you. Ms. Mancini.

MS. MANCINI: Thank you. I'm just wondering if you could explain to me a little bit about your association, specifically on how you work with the Workers' Advisers Program.

MS. LLOYD: We represent workers on all aspects of their claim, from support the day they are injured, in return to work situations, in case management. The Workers' Advisers Program is only involved in the level of appeal but we, for the most part, initiate and we do the initial filing of appeals because there's a wait time for workers to get to see a workers' adviser and then there are criteria, whether they meet that criteria or not for a workers' adviser.

We initiate all the appeals. If they are accepted by the WAP, then they would take them on through the appeal. If they are not accepted and we see the case has real merit, we will proceed with the appeal, and then implementation of decisions is a nemesis. The WCB can cut you off in a heartbeat but it takes years to get your benefits after you won, to get them to implement a decision, so we are involved on those ends too.

We're not as involved in the appeal. On average we might do 20 or 30 appeals a year out of those 675, but we're very active in the case management part and in the return to work part and in the implementation of decisions and advocating and change.

MS. MANCINI: I read in - I don't know if it was the Dorsey report or not but one of the reports that I was reviewing, that there was a recommendation made, and this would be back in like 1998 or so, for an independent medical adviser when there are two conflicting reports. Does that exist today? Was that a recommendation that was put in place? If so, does it work?

MS. LLOYD: Are you talking a medical review? It's not in place. The board medical doctors have taken on a whole new life at the Workers' Compensation Board and any time you ask the board what is the role of the medical adviser, they'll tell you the same answer, but that's not what they're doing in practice.

The role of the board medical adviser is for the non-medical people, to interpret medical evidence. If there's conflicting medical coming in, whether another opinion is needed or whether further testing is needed, that's the role and the assignment of PMIs unless it's psychiatric. But they're making medical legal decisions. They're overruling treating physicians. They're involved in every aspect of the claim, but they never examine or see the worker. It's not working, and they're overturned on appeal constantly.

MR. CHAIRMAN: Mr. Horne.

MR. HORNE: I guess I would like to understand a little bit more. You say you have over 600 clients. Are these ones that haven't been decided yet, or are in appeals, or new ones? What's the breakdown of those types of injuries?

MS. LLOYD: What we call an active file is a file that we're touching actively every week. That's an active file to us. Basically, what we're doing is triaging right now, with the staffing level at our office, and putting out fires. We're not giving those files the attention that they deserve, but we're the only resource for them.

The Cape Breton Injured Workers are in the same boat. They're putting out fires with their resources. They have two full-time staff down there.

We're represented all over the province. Although our name is Pictou County Injured Workers Association, we have workers from all over the province. You're involved in touching base on all those active files. As they drop off - if we close a file because there's nothing further we're going to do, we've gotten the benefits, or whatever - three are coming in the door.

When we were first hollering for an increase in funding - when we first opened our office in 2005, we had 100 active files. Within two years, now we were more noticeable. We have a storefront. Before, it was out of my home. After we got an office, our caseload doubled in the first year and has been increasing steadily. Last year, it was in the 500s. It's 675 active files now.

No, we're not giving the service, and we've been asking - and we ask you, too, to go back and say we need the proper funding. Unless you're going to fix this system, give us the funding to help truly represent these people and their needs.

MR. HORNE: On the issue of other types of assessments of injured persons, do you promote safety issues? Do you go out and talk to employers?

MS. LLOYD: Employers don't want us in talking. We advocate and promote safety in these returns to work, but we're the ones who are drowned out. We're the ones who are fighting for remedial action. We want investigations before workers go back to work. As I stated earlier, our motto is no worker should be returning to the workplace unless and until

the accident has been reported, remedial action has taken place, and the worker is fit to return to work.

We have been advocating for 10 years now for changes to the Occupational Health and Safety Act. In this province Section 63 only requires that fatalities and serious injuries be reported to the Department of Labour and Advanced Education. "Serious injury" is not well defined. We've been asking for a section b that says within five days all accidents be reported. We've been asking for Section 86 of the Act to be amended to reflect that accidents have to be reported and take out that discretionary - that in such circumstances may entitle the worker to compensation. We got pushback on that. How can we have a safety culture in this province when we're built on a broken foundation, the experience rating, and we don't want to hear where the accidents are happening?

MR. CHAIRMAN: Ms. Roberts.

MS. ROBERTS: I'm wondering what your experience is of trying to get worker representation on the board of the Workers' Compensation Board. Have you proposed names for nomination? What can you say about that process?

MS. LLOYD: We have continuously put names forward for the Workers' Compensation Board, highly qualified people. But for some reason, they do not want injured workers on the board. I was on for five years. I was the first injured worker rep as a result of the Statement of Principles and Objectives. Since I left the board, there has been no injured worker representation.

MS. ROBERTS: When was that?

MS. LLOYD: I left in 2010. I left because of the injuries and direct access to physio. For years, we had been complaining about those injuries and hiding and covering injuries up. We finally proved it. The board admitted it. Nancy MacCreedy-Williams, the CEO; Stuart MacLean, the vice-president at the time; and the board medical adviser, Jamie Cox, admitted they didn't investigate those things. There were injuries happening in those programs, and they were covered up by hiding them under the original claim. There was going to be a big investigation and unfortunately, I had personal circumstances come up - my brother was ill and subsequently died - I missed two board meetings and I gave the board the opportunity to move in and they attacked the Pictou Country Injured Workers Association as opposed to directing the attention to let's do something about these injuries and the impact that physio is having.

So I left the board, if that's the way we're going to treat things; I left the board. We have no say. We have no representation; we have no contact with - in fact, we wrote a letter to the four labour reps on the board in December asking to meet with them and we got a letter back from the chairman of the Workers' Compensation Board telling us it was

inappropriate for us to meet with our stakeholder reps. So, I'd say we have no representation.

MR. CHAIRMAN: Thank you. Ms. Roberts on a follow-up.

MS. ROBERTS: How is the accident fund funded that funds the workers - I'm sorry, I'm losing my acronyms here but you do know what I'm talking about.

MS. LLOYD: It's assessments on employers. The accident fund is directly done by assessments to employers. Employers are to pay the total cost of workers' compensation; that was the historical trade-off. So, an employer is assessed based on their groupings, their categories, whatever, just like you would be with your home insurance or your car insurance, and then it should be based on your individual - but it's not because of that formula with the WCB. It seems to go after the small to medium rather than drill down on the ones driving the accidents. Yes, their rates might go up but they're not being penalized; it's mainly the surcharges go to the small to medium. If you look at the surcharge list every year, it's the small to medium employer that's on there that's publicly humiliated by their name on a surcharge list.

MR. CHAIRMAN: Ms. MacFarlane.

MS. ROBERTS: Sorry, can I just ask a real, quick clarifier.

MR. CHAIRMAN: We'll come back to you, Ms. Roberts, in a moment. Ms. MacFarlane.

MS. MACFARLANE: I don't believe there's any denying that this system has been broken for decades and I know that I've had the opportunity because we are from the same county and I've learned so much through you. Now, in saying that, any time that I've had to deal with WCB, I have to commend - maybe it was my lucky days - but I certainly have had good people to work with and have found it quite fortunate in my situations and my constituents' situations to work things out; so I commend them. But, at the end of the day, we need to do something and I would say that we have to lean towards a Royal Commission too. I believe something has to happen, but I want to go back to that, Mary, and have you be more specific in telling us here today, who do you think should be on that commission, how many people, and from what demographics - how do you visualize that looking?

MS. LLOYD: A Royal Commission, it wouldn't be from the demographics. What you're speaking to is more of a review. A review would be a neutral party with representation equally from employer and worker side. What we're advocating for with a Royal Commission would be an independent body, like a retired judge or an expert in Workers' Compensation, they would hire whatever support people they would need to do that review, and it would be totally independent and unbiased. That's what we want, and let them look at the system and make the recommendations whether we are going to continue with the system, because if we don't do something soon I guarantee the court

challenges are going to be coming more frequently and very successfully and we're going to be allowed to sue, because employers can't have it both ways. They get protection, but they're allowed to fight and challenge.

MR. CHAIRMAN: Ms. MacFarlane on a follow up.

MS. MACFARLANE: So, are you indicating that the judge would be responsible for ensuring . . .

MS. LLOYD: The support people.

MS. MACFARLANE: . . . to pick people, and would you have any idea of what that financial cost would be to the taxpayers of Nova Scotia if this did go to court?

MS. LLOYD: The taxpayers?

MS. MACFARLANE: Well, like, if . . .

MS. LLOYD: For a Royal Commission?

MS. MACFARLANE: No, no, but if we don't have a Royal Commission and get this settled and we end up like Ontario. Has there been a dollar figure thrown out to you of what this could cost?

MS. LLOYD: Well, look at the chronic pain; look at the mess that made because the board didn't do it right. In order to cut their unfunded liability, they labelled thousands of workers in this province with chronic pain. Whether you had it or not was immaterial. It was a means of denying benefits. Many workers ended up with chronic pain benefits because the board labelled them chronic pain when, really, a small percentage each year would be a true chronic pain claim, maybe 10 per cent. Thousands of workers, because we're in the backlog of appeals, were lumped there because they denied benefits. When the Martin and Laseur case came out, thousands and millions of dollars were spent. So you have to be careful what you are labelling people.

This class action suit, I don't know how many are involved in the class action suit. We just got wind of it last week, but I can imagine it would be thousands of people impacted. It shouldn't cost the taxpayer. It should be costing the assessed employers that are in the system.

MR. CHAIRMAN: Ms. Mancini.

MS. MANCINI: I'm wondering if you could talk a little bit about your association's relationship with the MLAs' constituency offices and, further to that, whether you think there should be a more structured collaboration.

MS. LLOYD: We got slapped on the wrist for trying to create a structured collaboration back when we asked for extra funding a couple of years back. We were told, no more funding. You have to work within your means. You're going to have to find another way to deal with these people. So we felt, well what else could we do but refer injured workers out to their MLA offices? We were chastised by government and the little bit of money we were receiving was threatened, that we would lose that.

We try to refer, and we work with people, but there's not that liaison that there used to be years ago because of that threat that we got. That was a few years back.

MS. MANCINI: This is from a conversation you and I had just before we went in, and I would like to follow up with you. You mentioned that if I am calling and getting in touch with Mr. McInnis in relation to a constituent, the phone call is recorded in a certain manner. Would you elaborate on that?

MS. LLOYD: What I was referring to there is the five years I spent on the Workers' Compensation Board. Mr. McInnis's report would come. He is the compliance officer. He is supposed to handle complaints, and he reports only whether it was an inquiry or a complaint.

Everything from a MLA's office is recorded as an inquiry. You don't have any problems with workers. Workers aren't complaining about the system. It's all inquiries that are reported in his stats. Very few are listed as complaints. Unless you formally say or put it in writing that this is a complaint, it's not recorded that you are complaining about some kind of service with WCB or a caseworker is not getting back to someone or whatever. Those are complaints, but they are not recorded that way. It's an inquiry because an MLA called.

MS. MANCINI: I appreciate knowing that.

MR. CHAIRMAN: Ms. Roberts.

MS. ROBERTS: What percentage of workers do return to work from their injuries? Of those, can you give a sense of how many are actually fit to return to work and return to work meeting the criteria you spelled out, versus the ones that are returning to work and not?

MS. LLOYD: Well that's a hard one because there's so many figures thrown out there. The board will have you think that 96 per cent of people return back to their pre-accident job and employability at the same rate of pay. I would love to see those people because they don't come to our door. They're not the people we're dealing with.

The majority of workers we deal with are the people who are over 26 weeks, for the most part, or over a few weeks and in case management because they have the most serious injuries. They have the longer-term injuries and need surgeries, or they have objective medical findings and that.

Some workers go right back to work. What I want to emphasize is that the return to work stats are so false and inflated by the WCB because workers are physically just being put in a building. You have offices and buildings where workers are sitting lined up like you have people here against the wall, and that's their job for the day. They're in such horrific pain and suffering. It's unacceptable. Just as long as they are physically in the building they are classed as return to work.

Ironically, they are on WCB benefits. The WCB is still paying. They're getting those benefits, not their pay. They are not getting their pay from the employer, the WCB is paying but the benefit is classed as their return to work. It's smoke and mirrors. This has to be delved into.

MR. CHAIRMAN: Ms. Roberts on a follow-up.

MS. ROBERTS: Further to that, what is the incentive? Why are people being asked to come and sit in a boardroom and not work and still receive compensation? What is the incentive that is causing that particular situation?

MS. LLOYD: What's driving that? The board's targets - employability, their target for return to work, their target for duration of claims. The employer's target is to keep their costs down, so as long as you are physically in the building, they are not dinged with that, or the assessment cost is not going to be affected by that because they are physically back to work.

The two-fifths waiting period is a day to get that into action so that there's no time loss, yet they are on benefits but they are back in the building. Someone has to look at these stats from the board and drill down on them because there are so many inadequacies. Dorsey said, the "bungling," "deceit," "apathy" - all those other words, he couldn't rely on any stats from the WCB and we certainly don't believe in them because we know first-hand that they are not proper stats.

MR. CHAIRMAN: Mr. Horne.

MR. HORNE: Can you circumvent the WCB and get clients to go to see medical, physiotherapy? Are those things part of what you can do or advise your injured workers?

MS. LLOYD: We can try but in order to keep their benefits they have to go through the WCB process. They are directed. Our doctors are directed by the WCB that if they want to make a referral, they have to send in a form to the WCB and a caseworker picks who you are going to.

We have to question, given the wait times in this province, do you really want to be seen by that surgeon if you need surgery - the one that is available tomorrow? I want to be on the waiting list of the good guy, personally. We have to question how come people are so available for the WCB? And, if they are so available, are they the best person to see you? Our doctors have no say in our treatment, no, it's controlled by case management or the WCB or a board doctor at the WCB.

MR. HORNE: Do you talk to the WCB and try to get a better surgeon or a better doctor? Or are you not too successful?

MS. LLOYD: We do but it falls on deaf ears. That defeats their agenda. Their agenda is to get the outcome they are looking for, to deem you capable, saying that it's chronic pain or whatever and dismiss you. We have to proceed through the appeals to have that addressed.

MR. CHAIRMAN: Mr. Orrell.

MR. ORRELL: In one of your slides, Mary, you talked about LAE saying that the unfunded liability may be eliminated in 2023. That's six years away. It's not that long in a big picture but are there any indications on how they're going to achieve that? Has anyone said anything - I can say I may lose 100 pounds tomorrow too. It's probably not going to happen. Is there any indication of what the plan is to eliminate that unfunded liability, other than what we're trying to do now that it's obviously not working?

MS. LLOYD: The only thing they've been doing is slashing, cutting, and denying benefits to workers and relying on the markets. So if the markets crash tomorrow, that unfunded liability will never be retired.

We were promised that in 2002 it would be retired. We, as injured workers, had to go back to our memberships and we bought in, in 2002, it was the first time in the history of workers' compensation that workers, employers, and the board were in the same room. We agreed that we would back off on asking for enhancement to benefits and the employers would not have any reductions in their assessment costs and have that unfunded liability retired by 2002.

We bought into that and we had to come home and sell that to our injured worker groups. We were not well-received, I can tell you, that we weren't going to advocate for changes to the miserable benefits and we bought into that. We were lied to because they meant the average assessment, so they had been going along with this experience rating all along, giving reductions to employers but benefits have never increased one cent.

When it went up to the \$695 million, that was because the markets crashed. They are relying solely on the markets to reduce the unfunded liability and slashing and cutting - because there's a spending spree.

We've shown you where all the money goes. The physio, those two-tier clinics, are getting 10 times the amount that you would. They're paying all these exorbitant fees for these services. Medavie Blue Cross - it's a case manager's job or a medical doctor's job whether or not a prescription should be filled. But they're paying.

There's money for everything in the system except the benefits to workers. Either fix the system or scrap it.

MR. ORRELL: The other thing that really tweaks my interest in this or that I find very interesting is, a worker who we'll say is 40 is injured, and he can't return to work for whatever reason - we won't get into that. He turns 65, and his benefits are cut off. He goes into his Canada Pension Program but hasn't paid to that program in 25 years. So his benefits would be a lot less. Is there some way, either through the benefit program, through the employer program, or whatever, that we could work into somehow arranging to get some sort of Canada Pension Program payment so that when a person does retire they can either keep the lesser of the two or the greater of the two - whatever it might be depending on what your payments would be as they turn 65?

The Canada Pension Plan and Old Age Security pension were brought in to make sure that our seniors and our retired people would be able to live on what they had. Is there any way we can work around that? Has there been anything ever tossed around about that?

MS. LLOYD: Yes.

MR. ORRELL: If it is, would it cost a lot more money?

MS. LLOYD: I don't think so. We've been advocating, and we've presented it to every government so far, but we're not getting - because of that factor.

The worker who's injured later on in their life is better off at age 65. As you indicated, someone who's 40 or 30 or whatever when they come out of the workforce has no contributions to the Canada Pension Plan, no contributions to any kind of pension plan or anything. Certainly, with the money we're receiving, we can't afford to put it in either.

What's happening in Newfoundland is, employers and the board together continue those premiums for CPP or a health care plan or whatever or a pension plan. When the worker hits 65, they have those benefits there for them. For the workers in between, the ones that would be coming up to 65, and that wouldn't be of any benefit right now, there's a supplementary program. We're the poorest of the poor now, and when we hit 65, we're going to be the poorest of the seniors too. Where else are we going to be but on the taxpayer?

We've been advocating for a supplementary program to be put in place because our earnings lost should not end at 65. Benefits should be for the life of the worker as they were in the old Act. Why are benefits ending because we turn 65? We're still injured. The injury didn't go away. The disability didn't go away. Now we're in worse financial hardship than we were before. Our Canada Pension is going to be nothing, so at least bring us up to half the industrial wage or something that we can live on in our old age as well and not be a burden to the taxpayers because we shouldn't be.

An injured worker should not cost the taxpayer one cent. It should be the assessed employers that pay for the system. If you go to universal coverage, that would take care of a lot of that.

MR. CHAIRMAN: Ms. Mancini.

MS. MANCINI: I think you may have answered this, but it's complex, so I'm hoping you don't mind repeating it again for me. It's dealing with the unfunded liability aspect. Unfunded liability is essentially a future expense, but there's no savings or investments set aside to pay for it. That's essentially it, I think. What is the actual impact of that unfunded liability on the benefits that are awarded? Is there one?

MS. LLOYD: The unfunded liability that was created in the 1970s, 1980s, and early 1990s. The unfunded liability was \$350-some million dollars at that point in time. It was created by not collecting enough assessments. That's what created this. It's a projection. If the doors closed tomorrow, it's what they would have to have in the bank to meet the benefits that are already on the books. It's just a projection. It's an actuary figure really.

With the new Act, what they did was slash the benefits to workers as a means to keep the benefits lower. At the same time, they didn't jack up - they went up slightly, to \$2.54, I believe, when the new Act first came in and then there was only an 8 cent increase after the chronic pain. There have been no increases. So there's no incremental increases of the average assessment rate to make sure that the monies collected are meeting the needs. That's what the Act clearly said.

The new Act clearly said they have to collect enough to meet the needs and that if there's a deficit in any given year, that that has to be retired within three years. So when they had the market crash in 2006 or 2007 or whenever, that was all being dumped into the unfunded liability because they weren't making the money, rather than collect more. So if

employers are not angry or upset about the rates that are in the appeals, is a cent or two more on their assessment cost really going to bankrupt any employer? I've been asking for years to produce one employer who had to shut their door because of WCB costs. I can't get anybody to produce one.

As I go back to my position, if you go and check this out with Lloyd's of London or any other big insurance carrier, I would say it's very cheap that they are getting 100 per cent protection for what they are paying. But workers are not getting the benefits that they agreed in that compromise and the courts are going to see it that way soon and, if successful in the courts, we're going to get true wage loss, true benefits and true reflection of what we're entitled to. So do we want to be proactive or do we want to wait and let the courts settle it?

MR. CHAIRMAN: Ms. Mancini, on a follow-up?

MS. MANCINI: No, that was the second part. I was just going to ask if there was going to be legal action in relation to it. It sounds like you answered that.

MR. CHAIRMAN: Thank you. We'll go to Ms. Roberts.

MS. ROBERTS: I have a picture in my mind of the employers in Nova Scotia where injuries occur and I immediately think of fisheries and I think immediately of nursing home care and hospitals and places where people are helping to lift patients.

Clearly you have in your mind I think a sharper picture of where the actual injuries are and I wonder if you would name some of the employers who are in this 5 per cent of employers who are causing so many injuries.

MS. LLOYD: Health care has driven the accident rate, that's your nursing homes and hospitals, every year in the reporting. Manufacturing. Forestry has been doing a much better job. Fishing - who am I missing? Construction, yes. They drive the accident rates, they are the highest but they are also on the awards for the Mainstay Awards and it's insulting, as I said, that somebody receives an award for safety or prevention and has thousands of injuries.

MS. ROBERTS: Is there actual variation amongst employers in those sectors where there are a lot of injuries? Are there nursing homes out there that have very few injuries, versus other nursing homes essentially doing the same work with the same risks associated but managing to have fewer accidents?

MS. LLOYD: Yes.

MS. ROBERTS: How does that happen? What's the difference?

MS. LLOYD: Well, some of them are doing preventive initiatives. A lot of the injuries in nursing homes are due to either equipment or to lack of staffing. Most of the workers who are in these nursing homes or the health care sectors that are driving the accidents, most of the staff are injured workers. They've been put back to work on these so-called modified duties but they're doing the full work so you might be working with an injured worker who has got restrictions and you end up injured because she can't or he can't carry the full impact of the job, or you are lifting someone together and they are limited to 15 or 20 pounds but they have been thrown back into the same job. It's causing further injuries.

Ironically they all say they have these lifts. Well the manufacturing requires two people to operate a lift. One person is assigned to a hall, or a wing as they call it, so there is one person down this wing and 20 people, you have 20 people, you can't get a person off each wing every time. Most of the people are invalids and need lifting and there are no slings. Each incontinent person needs four slings per day. There might be one or two slings, and they're hung out on the day that an inspection takes place. Everybody seems to know well in advance when inspections from Occupational Health and Safety happen. So the slings are hung on the lift on those days, but on real-time days, the lifts aren't available. They're not operational because there's no slings and there's no staff. Staffing shortages are one of the big things.

Having people back who are injured and not fit to be doing that job working alongside you is causing further injuries. In manufacturing, we see guards being taken off machinery time and time again because they slow down production. Everything is about production and the almighty dollar rather than safety and prevention.

MR. CHAIRMAN: We're going to go to Ms. MacFarlane. We've got a couple left before we give you an opportunity to close, Mary.

MS. MACFARLANE: I want to go back and get some clarification on a question that my colleague asked you. It's a no-fault system. You want universal coverage. You mentioned that they shouldn't be making anything less than what they were making at the time they were injured. But when they hit 65 - can you clarify that you feel that they should still be making the same wage? I don't think anyone in this room will be making the same when we all turn 65. I wasn't sure if you said you thought they should. That's all.

MS. LLOYD: No, I'm just saying the benefit shouldn't end. The benefit should be modified to reflect what a retirement income would look like after a work life.

We don't have a pension plan. We don't have any resources put into that. At 65, you go from having wage loss to nothing. In the PMI guidelines under the old Act, you got 75 per cent of gross times the impairment award. That was indexed over the years, and you would have a monthly cheque at least at age 65 in that situation.

But for workers in the new Act, it's 85 per cent of net times 30 times - it's a pittance. It's only \$30 or \$40 a month for the most part. Because of the AMA guidelines, most workers receive very little percentage of an impairment. If it's under 30 per cent, it's commuted as well at age 65, so you don't even get that meagre pension each month. There's nothing.

You go from - I can't say it's an earnings loss because there's no one receiving a true earnings loss in Nova Scotia. But you go from what you're receiving as an earnings loss to basically nothing at age 65. I don't even know what the minimum Canada Pension is, but that's what we'll be on.

MS. MACFARLANE: Hypothetically, I am 62 years old. I am injured in a construction job, worked all my life at a good job, paid into CPP, going to turn 65, but get WCB immediately because I absolutely can't go back to work at 62. So when I turn 65, the CPP would be more than what the WCB would be, so should I not be entitled to CPP?

MS. LLOYD: As I stated earlier, the worker who's injured late in life is not as traumatically affected by the Canada Pension and pension. They would have paid in, as you said, all their life. You would have a pension available to you. You would have Canada Pension contributions available to you.

For the most part, we're concerned about the workers who, as Mr. Orrell had indicated, have been taken out of the workplace at an early age and have no contributions to anything - Canada Pension, pension plan, or anything. There has to be some kind of supplementary put in there to ensure that they are not left in poverty.

MR. CHAIRMAN: Mr. Horne to wrap it up.

MR. HORNE: To follow up on earlier discussion, I believe the Workers' Compensation Board has a strategic plan for 2016 to 2020 in order to try to satisfy the stakeholders who have been waiting for WCB to achieve financial stability. Have you heard of this?

MS. LLOYD: Oh, I've heard of it, and I've seen many of their strategies. If the markets crash tomorrow, that strategy is out the door because it's based on them achieving financial neutrality or the unfunded liability being met.

But look at the provinces in Canada where they have no unfunded liability. There is still this mindset with Workers' Comp, because of the lobbying by employer groups - and ironically, it's the employers that drive the accidents that seem to have the ear, not the good employers, which are the majority of the employers. They want to keep the benefits suppressed because the control is there to hide and under-report and get their workers back to work early or before they are medically able.

MR. HORNE: So you would say you don't expect they will get to a neutral point where you can discuss the issues of compensation with the employers and/or the workers?

MS. LLOYD: Well in the words of the CEO, Mr. Stuart MacLean and the CFO Leo McKenna, there's no appetite to really retire that unfunded liability. So unless the markets - that's all they're relying on, the markets. It's not the activities they are doing to be proactive and to put the rates up enough to meet the needs or whatever. They're not complying with the Act right now.

We were told in 2002 that it would be retired. We were told in 2005, 2006, 2008, and 2012 - it's just another number they are throwing at us. I have no confidence, based on this current Workers' Compensation Board, that that will ever be retired.

MR. CHAIRMAN: Thank you, Ms. Lloyd, for a good presentation, a good question and answer. We were able to get about 20 rounds in. Thank you very much for that.

If you or Mr. Maloney, I'd like to give you an opportunity to take a few minutes for some closing comments, that would be great.

MS. LLOYD: I'd just like to state that prior to a workplace injury, we were productive, happy, healthy people, working and providing for our families and providing taxes to this province. After a workplace injury, not only are we dealing with the impact of the loss - many of us are dealing with the loss of a loved one - the impact of the injury or the illness, that in itself is enough for a worker to have to deal with, but we're dealing with financial ruin and hardship. Our families are dealing with it. Our children are removed from the programs they were in because we can't afford it. We have no vacations. Everything has been taken away from us.

While we're in the system we're treated with disrespect. We are humiliated. I have no rights. We've been threatened and intimidated through the process, discriminated against and now, with the Baker case, we have no privacy. FOIPOP doesn't apply. As legislators, you can change that. The Workers' Compensation Act supersedes the FOIPOP regulations so whatever is going on now with the Baker case, we can't even have the rights of FOIPOP to protect our personal privacy.

Prior to a workplace injury, an employer can't even ask certain questions. After a no-fault injury, it's not just my medical history or Larry's medical history, but any specialist takes a thorough history of your family. Our family, our children's personal medical history is in there. That shouldn't be allowed. The employer shouldn't be allowed to fight and challenge. When they fill out an accident report, they report that an accident happened in the workplace, that should be the end of it. They should have no say or fight or be able to challenge or have access to anything in our file, in a no-fault system. The employer should not be allowed to fight and challenge claims when they were receiving 100 per cent protection from civil liability and no worker in this province should be suffering financial hardship and be treated with anything other than respect and dignity. That's all we ask for. Thank you.

MR. CHAIRMAN: Thank you very much, Ms. Lloyd and Mr. Maloney, although we didn't hear from you this morning. I saw you handing a few notes, helping along the way. We appreciate both of you being here and the folks with you as well.

We have just a couple of short bits of business here to do. There was some correspondence from Ms. Laura Lee Langley from a request on the December 6, 2016, meeting. You have been provided that, at least I hope you have.

Our next meeting will be March 28th, from 10:00 a.m. to 12:00 noon. The witness will be Deputy Minister Montgomerie, Department of Labour and Advanced Education, on student employment programs. Other than that, that is today's agenda. Thank you very much.

[The committee adjourned at 11:49 a.m.]