

HANSARD

NOVA SCOTIA HOUSE OF ASSEMBLY

COMMITTEE

ON

PUBLIC ACCOUNTS

Wednesday, October 19, 2011

LEGISLATIVE CHAMBER

**Department of Labour and Advanced Education
Occupational Health and Safety Administrative Penalties**

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Public Accounts Committee

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Mr. Allan MacMaster

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Mrs. Darlene Henry
Legislative Committee Clerk

Mr. Jacques Lapointe
Auditor General

Mr. Terry Spicer
Assistant Auditor General

Mr. Gordon Hebb
Chief Legislative Counsel

WITNESSES

Department of Labour and Advanced Education

Mr. Jeff Conrad, Associate Deputy Minister
Mr. Jim LeBlanc, Director of Occupational Health and Safety
Mr. Vince Garnier, Director of Investigations, Technical and Internal Services
Ms. Laurie Bennett, Manager of Financial Services



House of Assembly
Nova Scotia

HALIFAX, WEDNESDAY, OCTOBER 19, 2011

STANDING COMMITTEE ON PUBLIC ACCOUNTS

9:00 A.M.

CHAIRMAN

Ms. Diana Whalen

VICE-CHAIRMAN

Mr. Howard Epstein

MADAM CHAIRMAN: Members of the committee, I'd like to call us to order for this morning. It's our meeting of the Public Accounts Committee and today we have with us witnesses who are going to be speaking about the Administrative Penalties for Occupational Health and Safety. Our witnesses are from the Department of Labour and Advanced Education.

Just before we get started, I'd like to have the members of the committee as well as our guests introduce themselves.

[The committee members and witnesses introduced themselves.]

MADAM CHAIRMAN: Thank you very much. As is our custom, we'll begin with an opportunity for you to have a statement and tell us a little bit about the program that we'll be looking at today, and I believe that would be Mr. Conrad. Thank you very much.

MR. JEFF CONRAD: Thank you, Madam Chairman, and thank you for having us in this morning. I'm very pleased to be here and obviously we've already introduced ourselves and folks have a sense of who we are. I would start by saying we really do have a great team in the Occupational Health and Safety Division. We have people who are very committed to the work, and long-serving and knowledgeable folks who are engaged in this work, so I'm really pleased to be here with such a knowledgeable group.

I do want to say a few words about the Administrative Penalties program that we have and give you a bit of a sense or a bit of an overview of some of the issues, and then we'll take questions gladly afterwards.

Administrative Penalties is an initiative that was designed to support efforts to make Nova Scotia's workplaces safer and healthier. The regulation was passed in September 2009 and the workplaces in Nova Scotia had about a four-month period to learn about the administrative penalties before they came into effect on January 15, 2010.

One thing I would say is that as a result of the beginning of the Administrative Penalties program, one of the things we see is that people in Nova Scotia are talking about health and safety more than they have in the past, so Administrative Penalties really has raised the level of dialogue and discussion to a level that we've not seen in a long, long time around occupational health and safety issues and the importance of safety in workplaces in Nova Scotia. That has been a really positive outcome of the penalty program.

Every day the way the process works is that staff from the Occupational Health and Safety Division visit workplaces across the province. When one of those staff would see a violation of the Act or of the regulations that we're responsible for, one of the things they can do is issue an order to correct the situation, so we issue an order to the employer. Last year we issued 4,950 orders in this province to correct issues that we found in workplaces.

Each order gets entered into a computerized tracking system that we maintain in the department and then it is reviewed by the administrator for the Administrative Penalties system. That administrator determines whether a penalty is appropriate and has a set of guidelines which are posted on our Web site - and I think you have copies of the material we have shared in advance that folks can see what the process is that we follow in order to determine the penalty and what amount it is.

We scale those penalties based on the level of responsibility at the workplace. One of the things the Administrative Penalties process does is it takes into account the level of responsibility that an individual has to ensure health and safety in that workplace. So for a worker receiving his or her first administrative penalty, we have a base fine level of \$100. If the contravention involves an injury or the risk of an injury, we could double that amount up to \$200. For a supervisor, an owner, or a self-employed person, the base fine is \$250 because we believe there's a greater level of responsibility for safety in that workplace. Again, if there's an injury, the fine would double up to \$500.

In the case of the organization that has the most responsibility - an employer, a contractor, a builder, a supplier, an occupational health and safety service provider, or an architect or engineer with project management responsibilities - those folks who have a higher level of responsibility, the base fine would be \$500 and would double to \$1,000 if there's injury or potential for immediate injury.

The administrator also has the authority to increase or decrease these base fines based on three other factors: what efforts were made to prevent the contravention; was there economic benefit to the person to whom the administrative penalty was issued; and what was the level of harm or potential harm of the contravention in question? The administrator also checks to see if the party has been convicted under the Occupational Health and Safety Act or has received a previous administrative penalty within the past three years.

I would point out that because we started the process on January 15, 2010, that's the farthest back we go in terms of looking, so we won't have a full three-year window to review until we get three years into the program. We don't go back previous to January 2010. If there are convictions or other penalties in that look-back period, then the fines on the individual, supervisor, or business are doubled.

Under the regulations - barring a doubling of the administrative penalty because of those previous convictions - the maximum amount that an employee can have, even under the administrator's ability to increase or decrease the fine, is \$500; for a supervisor, owner or self-employed person, a \$1,000 maximum; and for that last category of employer - contractor, builder, supplier, service provider, architect or engineer - we would look at a \$2,000 maximum. So there is a range of ability in there, too, to tailor the penalties to the issue.

One of the things we did to coincide with the launch of the Administrative Penalties program was a fairly active campaign to make sure that people are aware of the issues and aware of the program, that it was coming in. So we distributed publications, we have a very robust on-line set of resources on our Web sites, and we made more than 60 presentations across the province - folks like Vince and his colleagues have been out all over this province making these kinds of presentations - and we continue to do this now. Prior to the introduction of the penalties, we made 60 of those presentations; some of those with audiences up to 200 people, often with industry-specific organizations and folks engaged in the kind of work that we would be involved with on a regular basis.

One of the things I would point out that we believe is really important - and it's sometimes misunderstood with regard to administrative penalties - is that it does not bring any new responsibilities for employers and employees. So we'll get the question, well, why didn't you give us a warning before you upped our responsibilities? In fact, Administrative Penalties did not up the responsibilities of employers and employees. What it does is enforce the existing Occupational Health and Safety Act and regulations that we have. So as before, if an employer, a supervisor, an individual wants to avoid an order or avoid a penalty under the Act or regulations, following the Act and regulations is the best way to do that, and we also believe it's the best way to make Nova Scotia workplaces safe.

We believe that Administrative Penalties has an effective and appropriate enforcement measure. We see in other provinces such as British Columbia, Manitoba and

the Yukon that there are similar programs, and other jurisdictions are very interested in our model. For example, some of you may have recently heard of or are familiar with the Dean report, which is an Expert Advisory Panel on Occupational Health and Safety in the Province of Ontario. One of the recommendations of that advisory panel is that the Province of Ontario should implement an administrative penalty system and regulations similar to the one in Nova Scotia. So they've actually looked at our processes, the model that they've recommended in their province.

We're also in the process, of course, of listening carefully to feedback that we've received during the first year of the Administrative Penalties process and we continue to do so with an eye towards approving the system. Any new system rollout, we're always looking for the opportunity to make it better and we certainly have some thoughts on how we could move forward into the future with this program to further create positive impacts on workplaces. Looking at the long term, we expect that Administrative Penalties will result in greater compliance, and will lead to fewer orders being written in Nova Scotia, and healthier and safer workplaces.

I want to close, Madam Chairman, and thank the members for their patience and attention during my remarks. We're certainly happy to take any questions that folks may have for us.

MADAM CHAIRMAN: Thank you very much, Mr. Conrad, that was a great start. In the absence of my colleague from the Liberal caucus - I believe there was an accident on the bridge today. I did hear that when I was driving in, so I'm thinking that is the cause. So we're going to begin with the Progressive Conservative caucus and ask Mr. MacMaster to kick it off.

MR. ALLAN MACMASTER: Thank you, Madam Chairman. Thank you for coming today and giving us an opportunity to ask some questions. What happened before? What drove this legislation into being?

MR. JEFF CONRAD: What I would say is that we have a fairly wide range of tools that we use to administer occupational health and safety in the province, so we continue to have all of those tools in terms of public awareness, the issuing of orders, the expectations that we have in place, the education programs that we run. We have great partnerships in terms of occupational health and safety with organizations like safety associations and the Workers' Compensation Board. We also have the ability to do summary offence tickets in certain circumstances and, of course, in extreme circumstances to do prosecutions in the courts.

Certainly one of the things that I think we found is that organizations weren't always taking us as seriously, in terms of orders, as we would have liked. To issue an order which has no teeth behind it, there's a requirement under the Act that we do a follow-up,

we try to make sure employers and others participate in the system, but it's very challenging for us. So that would be one driver.

I think another driver for us would be one of the challenges which is often reported to us by employers is that it's sometimes difficult to get your employees to participate. When we have all of the responsibility on the employer in the workplace - so again, in the construction industry and in the roofing industry we'll get comments from employers who say, I buy fall protection equipment, I buy appropriate scaffolding, I buy appropriate materials and safety equipment at my workplace, and I leave or my supervisor leaves to run down to Home Depot or pick up supplies and my workers are up on the roof with their fall protection on not tied off to anything. The workers think it's inconvenient, it's a hassle, I've always done it this way, and it's a real challenge to get them to participate.

Although we've done relatively few penalties to actual individuals in the process so far, it has really made people sit up and take notice that you have a responsibility in the system as well as your employer. Jim, you were around prior to me, do you have any comments on some of the drivers?

MR. JIM LEBLANC: Just maybe an additional comment. We do have a standing committee of stakeholders that advises the minister with relation to occupational health and safety. One of the issues that they raised with us was to identify some additional enforcement options as they saw the issue of compliance with the laws as being something that could be improved, so there was some additional consultation with stakeholders in terms of finding other options that were available, and this is one that is used in other jurisdictions and was a model that was looked at here.

MR. MACMASTER: How have employers taken to the new system?

MR. JEFF CONRAD: I'll make a few comments. As you can imagine, those employers who have received the penalties themselves are not always enamoured with our efforts, but we found that with orders, and we find that with prosecutions and any number of other things. I think what I would say, however, is that, for example, these stakeholder groups that we work with and the advisory councils that we have and the large associations, while I wouldn't say they welcomed the penalty process, I think they certainly see some value in it in terms of the ongoing changes that we think it's going to make and the awareness that it's raising and that kind of thing. We continue to have some opportunity to talk about the process and how the system works.

Our advisory council and the stakeholders that are involved in the system see a lot of value in the system. It's always difficult when you're in receipt of a penalty to stand up and say yay, it's exciting to get a penalty, but I think we have some co-operation on that front.

MR. MACMASTER: You had mentioned an interesting point about fines also applied to individuals who are maybe working for a company or organization. How have they taken to it, are they kind of surprised by it or are they - I'll let you comment.

MR. JEFF CONRAD: Maybe I'll make a few comments and then Vince may want to make a few comments. Certainly one of the things we've seen is a higher rate of appeal than we originally anticipated, so we originally thought we'd get about a 10 per cent rate of appeal and we're at about a 30 per cent rate of appeal. I think part of that is reflective of people believing - it's early days of a new program and people, you know, they need to understand the process, follow through it and understand how it works, and I think a bit of getting used to the system in terms of the go-forward. But Vince is closer to the operations than I am, maybe I'll let him make a comment.

MR. VINCE GARNIER: As was mentioned earlier I have had an opportunity to speak with stakeholder groups across the province. In the early stages a large percentage were in favour and thought it was a good idea. I should point out, although the officers had the ability to issue compliance orders, the next step, if they wanted, was prosecution, to involve the courts where the fines could be up to a maximum of \$250,000. The introduction of Administrative Penalties does not involve the courts, so it's a kind of a lower-end bar, if you will, and lower fines and that sort of thing.

People tended to favour this approach. That kind of changed a bit as individuals started actually getting the penalties so while many of them were in favour of them, or the idea of having administrative penalties, once they received a fine they perhaps weren't as enamoured with the regulation. It's no different - I think we all agree that there need to be speeding laws in the province but none of us really like to get a speeding ticket.

It has caused a dialogue in such a way that we really haven't seen in a long, long time. That's good, there needs to be a dialogue, we need all workplace parties to be thinking about health and safety and to truly understand that they all play a part. Like the ADM has mentioned, it's not just the employer that has the responsibility for workplace health and safety; it's all parties. This is really emphasizing that and talking to the Internal Responsibility System of the OH&S Act, which is really a foundation, I think Administrative Penalties marries the IRS under the OH&S Act.

MR. MACMASTER: Thank you. You mentioned there has been a higher incidence of appeals than expected. I presume that probably adds to the cost of the operations. Can you explain a little bit about how that - what happens when there's an appeal?

MR. JEFF CONRAD: We can say a few words about the appeal process and it is a very structured appeal process. There are actually two levels of appeal within the process. Employers have an opportunity when the order is issued to appeal the order. One of the questions we sometimes get is, why does the administrative penalty come later than the actual issuing of the order? That's because we want to give people an opportunity to appeal

whether or not the order that was originally issued was actually something that they agree with and would support. They have an opportunity to appeal the order and that's a long-standing process that existed before the Administrative Penalties system. That has been no change in terms of what we see in terms of appeals to the orders.

In the Administrative Penalties system, in addition to appealing the order, they can appeal the actual issuing of the penalty, whether or not there should have been a penalty and the amount of the penalty to our appeal panel. That's a fairly formal process; it does go into the system.

We think the anomaly in terms of the higher level of appeals really is a start-up issue. We have employers who say, I've had orders before, I never got an administrative penalty, it must be a mistake, I'm going to appeal it. So it's part of an education process in the go-forward. We are working with our appeal panel around the timing of hearing those appeals and that issue in terms of addressing that unexpected level. We've also done some work with the appeal panel members in terms of really understanding the Administrative Penalties system well and making sure that the decisions of the panel are appropriate. So we've done a number of things to work our way through that.

We have already started to see some modest reduction in terms of the number of appeals and we think that will continue over the next little bit as people get more used to the system and come to understand what it is.

MR. MACMASTER: I know on the other side - in our court system and in our Prosecution Services, because you have this new vehicle to use to enforce penalties I guess we're saving money in that area of government. Can you explain a bit about that, how that has happened, and maybe in terms of what quantity of savings have been achieved?

MR. JEFF CONRAD: Sure, we can say a few words there. I don't know that we've tracked the actual savings. I think, as Vince said in his earlier comments, one of the advantages of Administrative Penalties is that it gives us a tool between an order with no teeth behind it and a prosecution. The challenge in a prosecution process is to get something which is worthy of the court's time, in terms of taking forward a prosecution.

We still prosecute, we still have an active agenda in terms of prosecuting where prosecution is the appropriate tool for us to use. I would say that our opportunity with Administrative Penalties is rather than savings in terms of what we've saved as a result of not using the court process, it's more in terms of we've instituted an extra step that we didn't have before. There may have been things before where we thought, well, this warrants more than an order but doesn't really fully justify going to the court and taking the court's time for the issue, but we don't have any other options, whereas now we have another option.

MR. GARNIER: Just one extra point I'd like to add is that when an officer makes a decision to prosecute a workplace party because of a contravention, it's kind of an opportunity cost issue. Actually because the process is so involved, it takes the officer out of the field, into the office, putting their evidence together in a very, very formal way that meets the test required by the Crown, then court time and so forth. So sometimes this can take weeks or longer. That means the officer is in the office doing that paperwork, and not in the field doing proactive inspections to ensure that workplaces are compliant and people are safe.

With Administrative Penalties, the opportunity for us is to allow the officers to spend more time in the field doing proactive work - education, compliance and enforcement - while one administrator takes care of the penalty system. So our inspections are able to continue in a productive way while the penalty system is still allowed to flourish.

MR. MACMASTER: I think in the first year of the program there was about \$700,000 in fine revenue and I think costs were somewhere in the neighbourhood of maybe \$150,000. It sounds like you've found a way to better enforce the rules, to bring greater safety to the workplace at a lower cost. Would that be safe to say, when you compare it, I guess, with the previous system of having to prosecute people and take them through the court process and whatnot?

MR. JEFF CONRAD: Yes, we would believe that this is a more cost-effective way for the province to operate, for sure.

MR. MACMASTER: I would think that progressive employers would be okay with these kinds of changes because they see the value. I've seen workplaces where they actually post their days that they've operated without injury time because, of course, it saves them money if there are safe practices in the workplace. Have you had any employers complaining and saying that this is too heavy-handed? Is anybody making complaints of that nature?

MR. JEFF CONRAD: There are some complaints with the system, as there will be in any new system. I guess a couple of places where we're looking at places where we may want to think about and modify or adjust the process, for example, would be the issue of when I talked about how we looked back over the last three years at whether or not employers have a previous administrative penalty. Some employers, because they are very large employers, work in a lot of workplaces across the province and have a wide range of responsibilities in those workplaces, have received multiple penalties, which means automatic doubling the next time around.

One of the things that we've had some feedback on, in terms of those employers, is that we're not doubling the penalty based on an infraction of a similar type before. You know, if you take a large construction company that may have multiple workplaces across

the province, over the course of a year we may issue an infraction or an administrative penalty related to traffic control and three months from now we may issue an administrative penalty for an entirely different system, for an entirely different reason - fall restraint in another site.

Should we think about, when we look back at penalties, whether it's a repeat of a similar type of occurrence or if it's just the fact that they've contravened the Act or the regulations in the past, that would be an example of a place where we've had some lobbying. We're having conversations with some of those employers and industry associations and others to say okay, there's some value in that conversation. We haven't made any decisions yet on how we're going to proceed with that but I think it's an example of a place you'll see in our annual report and others that we're thinking about options to improve the system. Jim would also like to comment.

MR. LEBLANC: Maybe I could just add a couple of things. We did provide in your package a copy of the one-year review of the Administrative Penalties regulations and that report was provided to our Occupational Health and Safety Advisory Council for their review, as well, in terms of what our experience has been and what some of the suggestions were that have been made for changes.

I think that as was pointed out, it's fairly easy to conclude that people who receive a penalty will often take objection to the fact that they have received it but, at the same token, we do hear from other folks who have a concern in terms of us taking sufficient effort to level the playing field because many employers who do their best and comply with the health and safety laws in the province are often put in a circumstance where they have to compete against companies that may not and take some shortcuts in terms of getting work done.

So we've had comments on both sides of the equation, both in favour of a stronger enforcement system, which is more visible, and one that basically ensures that those who are in violation or in contravention of the law basically are taken to task for that.

MR. MACMASTER: Is there a hope that workers' compensation premiums would reduce over time if these penalties are starting to help bring to bear more safety-minded workplaces?

MR. JEFF CONRAD: I think combined with a lot of the other things we do, one of the goals we have is always to effect what employers and others are contributing and what the costs of the system are. What I would say to you is that last week I was at a meeting with our colleagues from the Workers' Compensation Board - and actually, we have an advisory council that both the Workers' Compensation group and ourselves sit on, which meets today, and I was saying I wasn't able to be there this morning because I was going to be here. The acting CEO of the Workers' Compensation Board said to me, well, make sure

you do a really good job of defending those administrative penalties, we think they're a huge tool in the toolbox in terms of getting Nova Scotians to pay attention to that piece.

One of the things we certainly would say in terms of that question is, as we see compliance with the Act and the regulations increase, we will see injuries decrease. When you think that rates are generally established based on the incidence of injury in the workplace, if we can use tools like this, along with a whole range of others, to increase compliance, we should see a reduction in premium.

MR. MACMASTER: That's great, and I can appreciate that you're not with Workers' Compensation, but do they actually use incidence of injury based on Nova Scotia or do they use a national average?

MR. JEFF CONRAD: I'm going to refer that question to Jim. He's much more familiar with the details of how the two organizations work together.

MR. LEBLANC: In terms of the rate structure, it's based on the accident experience for the industry sector so that WCB combines similar firms into rating groups. The average rate that the sector pays is based on the cost of claims to that sector, and then that rate is adjusted up or down based on the experience of individual companies.

MR. MACMASTER: Right. Would they be Nova Scotia companies so they would look on a national - like, if they looked at an industry sector, would they look at a Nova Scotia industry sector or would they expand that and look at the incidence across, say, Canada?

MR. LEBLANC: No, the insurance rates are based on the claim costs and the administration costs within the province. But I think if you look across the country nationally, although the rates vary relative to one another, the same industry sectors are probably in the same place relative to each other. So if mining is high in Nova Scotia it's probably high in Ontario, Quebec and other jurisdictions, as well, because part of it is the nature of the industry.

MR. MACMASTER: Exactly. Okay, thank you. How have you educated workplaces of the changes?

MR. JEFF CONRAD: The changes to the Administrative Penalties program in particular?

MR. MACMASTER: Yes.

MR. JEFF CONRAD: We've done a number of things. As I said in my opening comments, one of the things we've been very active about is we've done a lot of presentations across the province to organizations and associations, so you can appreciate

that we are regularly invited to participate in workshops, conferences, meetings, those kinds of things. We do it through organizational sectors; we do it through safety associations. So prior to the days leading up to the implementation of the penalties, we did 60 presentations in the four or five months prior to the implementation. We continue to do that.

Vince and I were actually at a session in the Spring that we had collaboratively with the Construction Safety Association of Nova Scotia, for example. We had 200 or so people in a large room and Vince had the exciting opportunity to stand up and debrief on the first few months of the program and talk about how many penalties we'd put in place and what it had meant. But it is a great way to get information out.

We did a fairly active campaign in terms of producing literature and spreading literature around. We have an electronic newsletter that we distribute to people in the province who are interested in being on our list. I think somewhere around 500 businesses are in receipt of that newsletter, so we would have included information in that.

Our Web site is quite actively used and we updated our Web site in terms of that and then we have access to a national system called Knowledge Base and we would have done updates as a result of people who are accessing the national information system as well and then, of course, the normal news releases and departmental messaging part to this coming up. We certainly tried to be very active in terms of letting folks know, and continue to be active.

One of the things is, we're not in this business - our goal at the end of the day is not to issue orders or issue penalties, our goal is to improve compliance with the system and make workplaces healthier and safer. We'd be perfectly happy if people would be afraid of getting a penalty and avoid them by complying with the Act, so that's really what we want. Our promotional piece is really to try to get people to comply.

MADAM CHAIRMAN: Thank you. The time has elapsed for the first round of questioning and we're going to go to Mr. Colwell who has joined us for the Liberal caucus. I should say as well we've been joined by two other members, Mr. Porter and Mr. Skabar. If you would, 20 minutes, Mr. Colwell.

HON. KEITH COLWELL: Thank you very much. First, businesses have the impression that there is some kind of quota system that they have to get to fulfill your mandate. Is there any truth to that? I know the police departments have some quotas in place each month they have to meet and I was wondering if you have the same sort of system?

MR. JEFF CONRAD: No, in fact, there is no quota associated with the system. As you can imagine in implementing the system, one of the things we were required to do was to do some estimates around kind of what we expected - how many employers, how many

individuals, the kind of expectations we had around the number of penalties we would be issuing. We did some work around trying to estimate, given the way we expected the system to roll out, but there's no quota on the system and there's no quota on the individuals who are administering the system in terms of either number of orders, number of administrative penalties, or dollar value of any of those penalties.

MR. COLWELL: You would have detailed records of all the money that you've generated in administrative penalties in 2010-11 so far?

MR. JEFF CONRAD: We would, yes.

MR. COLWELL: Could you provide that to our committee?

MR. JEFF CONRAD: Maybe I'll defer that to Laurie Bennett. I think we've provided some information in terms of the information that has been provided in the pre-reading. There's some of the 2010-11 information in there and I believe there was financial information included in that package, but we can verify that the detail was there and provide it.

MADAM CHAIRMAN: Would you like Ms. Bennett to add anything to that? I know you brought your financial person and we appreciate that. (Interruption)

MR. JEFF CONRAD: So yes, there is a spreadsheet in your package that has been issued in terms of the financials to date. There's a chart in there that shows 2009-10 and 2010-11 in year to date in terms of the amounts that have been generated in the system so far.

MR. COLWELL: I didn't get a chance to see that, but is it broken down by types of penalties and whether it's employees, employers, supervisors whatever it is?

MR. JEFF CONRAD: Perhaps I could let Vince speak to that. As administrator of the system he's pretty familiar with those numbers.

MR. GARNIER: You'll see in your package that we've broken it down to show the spread in the various areas of the province, so the central area of the province, Cape Breton and northeast and southwest and also one of our other sections. So it is broken into five different sections based on the geography of the province and it's also broken down by employer, supervisor and employee so those figures are spread apart.

MR. JEFF CONRAD: In addition, if you look at the other thing we've provided, we were asked to provide a list of individual employers that have been assigned penalties, so you'll see a list of all the employers, the date the order was issued and the class of the receiving person, whether it was employer, supervisor, an individual, and the amount of the order that was issued. There is also a fair level of detail at the organizational level.

MR. COLWELL: Yes, I received that, thank you very much, very detailed. Sorry about that. If an employer has an employee that they have nothing but trouble with in occupational health and safety, what is the process the employer would have to go through to report that to you?

MR. JEFF CONRAD: Perhaps I'll refer that to Jim.

MR. LEBLANC: Normally occupational health and safety issues in workplaces, where an employer and an employee have a difference of opinion as to what is required, is really no different than most other HR issues. We would initially expect that an employer would use a normal coaching and discipline process to correct a behaviour in a workplace, if an employee, for example, wouldn't use a piece of safety equipment that the employer has indicated is required in a job, so there is some work.

Vince mentioned earlier the concept of the Internal Responsibility System where really the responsibility for health and safety in workplaces resides very much in that workplace. So the initial line of defence is trying to get workplaces to both identify and address any concerns and issues that may arise. For the most part, employers are very supportive in terms of exercising that system and employees are supportive as well.

In relation to the issue coming to the department, it usually comes either by way of complaint from an employee, as a result of an inspection by an officer in a workplace who identifies a specific issue, or in the example you mentioned where an employer is identifying that they're having some difficulty administering a practice or a policy that they have in place. In all of those cases the officer would become involved, render a decision as to what was required in order to ensure compliance with the law and, if it was required, issue an order to the individual to do whatever they determined was appropriate. Then that brings in the remaining enforcement mechanisms that exist under the legislation to control the behaviour.

MR. COLWELL: Do you always collect the fines from employers, employees and supervisors, whoever you may charge?

MR. JEFF CONRAD: Because we're still in the early days of the process, it's a little early to answer that question. What we can say is that of the administrative penalties that we've issued to date, we've collected about 60 per cent of the penalties that we've issued. There are a number of reasons for that, and one goes back to the appeal process that we discussed earlier.

The requirement to pay the administrative penalty doesn't come into force until 30 days after the decision of the appeal tribunal. In fact, some of the outstanding issues that we have around collection are that although we've issued the administrative penalty, it has gone to appeal and is in the appeal process. Of all the orders that we've issued to date, we've collected about 60 per cent of those.

If I could just make a reference in response to your earlier question, I thought it might be worth pointing out that in the annual report we presented to you, one of the things we have in there is a section on responses that we've gotten back from employers and issues around thinking about what we might do in terms of changes to the system. We included in there a number of verbatim quotes, some of which support the system, some of which are negative.

I would draw your attention under the fairness section there, in fact, there's a quote in there that gets directly to the question you ask. An employer is saying to us that they have tried all of the recommended disciplinary measures, such as sending people home for the day without pay, individual typed warnings on file, suspension for a week without pay, to no avail. It uses language like talk about banging your head on the wall - this is from an employer. It goes on to talk about really feeling that the administrative penalty, because it goes to both the employee and the supervisor on the site, really gives the employer another way to highlight the importance beyond what they already had. That was an employer who actually received an administrative penalty from us, as an employer, writing to us to say that they think it was positive because we also penalized the supervisor and the worker who had responsibility.

MR. COLWELL: Have you seen evidence that the penalties and the incentives you are putting in place are really helping the workplace safety?

MR. JEFF CONRAD: We've certainly seen falling accident rates in Nova Scotia and falling death rates in Nova Scotia over the last number of years. Since 2006 the Workers' Compensation Board would report that the number of lost-time injuries in Nova Scotia has fallen over that period of time and we've seen the number of deaths fall over that time as well.

Obviously administrative penalties, having only been around since January 2010, it's going to take us a little while to see the cumulative impact of the penalties themselves. We do believe it will have an impact and we think it will be a positive impact.

What I would say is that one of the things we think is the fact that we've got people talking about administrative penalties and talking about occupational health and safety issues in general is also a huge piece. The administrative penalties in and of themselves are very powerful, but the fact that it has raised the level of dialogue in the system and actually has people talking about how to avoid getting administrative penalties is a huge, positive outcome of the process.

MR. COLWELL: Is there any evidence that the program may actually deter some of the underground economy?

MR. JEFF CONRAD: I don't think we have evidence to that effect. I think one of the things that Mr. LeBlanc commented on earlier was around the comments that we get

back around the unlevel playing field. It's certainly an issue in that we regularly get our good employers who are very committed to their employees and very committed to occupational health and safety, are very concerned about issues in the underground economy and the ability to compete. But it's hard to compete when you're buying thousands of dollars worth of safety equipment and training your staff and doing all of the things that are appropriate and regular, and there are people out there that you're competing with who may not be doing that.

I would say that one of the things we're doing certainly is we actively look for infractions in all of the economy and we respond to reports and complaints. I don't know that administrative penalties are having a particular impact on the underground economy, but I would say that it's certainly having an impact in terms of that question of levelling the field and trying to get so that people have a responsibility to follow. Again, it gives us that place between just issuing an order and having to prosecute so that we can be more rigorous in terms of an overall enforcement piece.

MADAM CHAIRMAN: Mr. LeBlanc, did you have anything to add to that?

MR. LEBLANC: I don't know that I can add much to it. I think the best deterrent to an underground economy is a robust inspection system that identifies workplaces. The Dean report - the expert panel report - that came out of Ontario actually looked at that specific issue and made some recommendations to the Ontario Government, both in terms of the time that inspections are conducted and targeting specific workplaces where more vulnerable workers may be. From the perspective of the department, we're looking at that report in terms of its application to the province. In closing, I think the inspection regime is really what deters underground economic activity.

MR. COLWELL: You had mentioned awhile ago that a lot of complaints are employee-driven. Do you do inspections besides complaints or is it just complaint-driven totally?

MR. JEFF CONRAD: I'm going to let Jim describe to you in general terms the process that we have for following inspections. No, it's not purely complaint-driven at all. We do respond to complaints, and complaints come from a wide variety of places. We do certainly get employee complaints. Employees in this province have the right to refuse unsafe work and we encourage employees to refuse unsafe work as part of the responsibility system, so we do get that as well. We get complaints from one employer about another employer, and there are a lot of places that complaints come from, but we have a fairly robust process in terms of inspections. If I could, I'll let Mr. LeBlanc give a little explanation of how that works.

MR. LEBLANC: In terms of our inspection regime, I guess where we would prefer to be and where we try to be is to use a targeted inspection system that's based on claim experience and claim costs or industry sector experience. We provide to each of our

officers in the field a list of targeted sectors and employers that we would prefer to inspect. The reality, however, for us is that about 30 per cent or 40 per cent of our activity is driven by complaints, so we do get a large number of complaints directly and some of them, as was identified, come from employees; some of them come from concerned citizens who are observing activity in the province.

Our policy at this point is that we respond in some fashion to every complaint that we receive, so there is some response. An officer would either visit the site, it's a follow-up to determine what needs to be corrected with the employer, or alternatively it's a referral to the appropriate agency if it's not within our jurisdiction. We found over time, as we track our activity, that complaints do drive a large percentage of our work but we are trying to sort of push back on that exercise to get to the place where we're doing more targeted activity where we think we can make the biggest difference.

MR. COLWELL: Do you feel at this point - and I know it's a bit early in the program - that once you have inspected somebody and made them comply, penalty or not, does it appear that it's improving their safety record in that particular company, or do you have a whole bunch of repeat offenders?

MR. LEBLANC: I think from the perspective of activity and whether or not it makes a difference in a workplace, we've certainly looked at some of the research that has come out of the Province of Ontario, from the Institute for Work & Health. What they've determined - and they've looked at all the things that change behaviour in workplaces - is that the most significant impact or the most significant influence in terms of changing behaviour in workplaces is an inspection.

So all the other things that may happen, whether it's enforcement or prosecution or whether it's training, the fact that someone goes in and basically focuses on health and safety issues makes a difference. So from that perspective, I think our activity in workplaces is critical to changing behaviour and the visibility of inspection in a workplace brings health and safety to the forefront, both for the employer and the employees, and refocuses their attention on it.

MR. COLWELL: What other tools are available that an enforcement officer can use besides the administrative penalties?

MR. JEFF CONRAD: We have quite a range of tools available. I think as we said before, Administrative Penalties is a great extra piece. In terms of the inspection process that we have, obviously prevention and education is one of the places, when you think about the foundation of the system.

I guess one of the things I would say is that first of all, in the way the Act and the regulations are set up, it actually puts the responsibility for health and safety on the shoulders of the people involved in the system. So the fundamental part of our process is

what we call the Internal Responsibility System - people are responsible within their organization, within their work team, as an individual employee responsible for health and safety within the system they work in.

The responsibility to be safe in the workplace - obviously we can't patrol every day, every minute, 50,000 workplaces in Nova Scotia, so the basis of the system is out there. So the first step in terms of making sure that works well is to make sure that people have the information they need to make safe and responsible workplaces.

We provide a wide range of education tools, information tools, and we touched on some of those earlier. We have a very robust Web site, we have a lending library of information that we share with workplaces. We have a national contract with an organization called Knowledge Base that shares the best practices and what goes on in the country with employers. Our staff out in the field have a responsibility and work closely with employers so that when they go in and do an initial inspection or visit a work site, they are doing education programs, helping people, they're sharing brochures and information. Again, we have a pretty wide range of materials that we can leave behind in terms of people understanding their responsibility.

We have the ability to issue orders, as I said before. So when we issued 4,950 orders last year, we're seeing about 25 per cent of the orders that are issued lead to an administrative penalty, which tells you that there's a large number of orders out there where we're asking people to change their behaviour, change their practice, come into compliance with the Act or regulation, but don't deem it as requiring an administrative penalty to heighten that expectation.

We have the Administrative Penalties system; we have the ability in certain circumstances to issue summary offence tickets, as a police constable would; we obviously have the ability to take to prosecution the more serious issues within the system; and then we have the ability to do some really creative and interesting things.

If you might indulge us for a minute, one of the things I said in the opening comments was that we have an incredibly committed and dedicated staff. Mr. Garnier, to my left here, a few months ago on a Saturday morning, on his own time was visiting a Home Depot to pick up some things for himself and observed some folks on a roof without fall restraint, working for a contractor. He went over and called them down and had the conversation with them about what the expectation was and what their responsibility was, and on Monday morning invited that employer into our workplace to have a conversation about this inappropriate behaviour.

It was one of those employers who was very frustrated in the system - had done a lot, bought safety equipment, bought training processes, had done all the things he was supposed to do as an employer, and had staff who just repeatedly said, oh, this harness is in

the way, I can't work efficiently, it's not quick, it's hot, it's a pain, and they weren't using it.

Vince moved very proactively to bring in a number of roofing contractors from the metro area to come in and have a conversation about issues particular to the roofing industry and unbeknownst to the group arranged to have a speaker from an organization called Threads of Life, which is a national organization that arranges speaker bureaus for people who have been impacted by health and safety issues.

Vince arranged on his own to bring in a speaker who flew down from Ontario - it was the mother of a young man who had fallen off a roof and died in Ontario - and she came in and spoke with that group of roofers. We actually had some pretty hard-bitten roofers and construction owners in tears in the room. I can tell you, in this kind of work we rarely get letters of thanks from organizations for giving them penalties and the things we do, but we have a lovely written letter back in the office as a result of Vince's efforts around that. One of those employers wrote in saying they believe that we had saved lives in his workplace as a result of that initiative. So Administrative Penalties is a really important tool, but it's only one of the tools. We have a really wide range of tools in the system.

MR. COLWELL: Thank you.

MADAM CHAIRMAN: Thank you, Mr. Colwell. I'm going to turn the floor over to Mr. MacKinnon for 20 minutes.

MR. CLARRIE MACKINNON: Madam Chairman, it's a pleasure to have the folks from the Department of Labour and Advanced Education with us this morning. This is actually a good-news story we're hearing when other jurisdictions are looking at Nova Scotia in relation to the program that has been implemented here.

I think I heard a couple of figures in relation to the number of orders that have actually been issued, 4,950 sticks in my mind for some reason. From a staffing perspective and also from a budget perspective as well, we're dealing with a new program within the department, a new initiative, and I'm wondering if existing officers are doing the job or how many staff - all or in part - are working at this. Has there been any budget item for it?

MR. JEFF CONRAD: Again, I'll refer the main body of this response to Mr. LeBlanc; he's the executive director responsible for the area. As he said earlier, I think we certainly see the ability to do inspections in workplaces as one of the key determinants of the success of the program. When you think about Administrative Penalties, although it's a new program, it is a new tool in the tool belt of a group of existing workers. It's not that we write Administrative Penalties separate and have folks who only do that - well, our administrator, which is one position in the system, is responsible for that. But in terms of the issuing of orders and the information that feeds the system, it's distributed quite widely through the system. But maybe I could allow Mr. LeBlanc to make a few comments.

MR. LEBLANC: When the Administrative Penalties program was put in place, it really resulted in one additional FTE within the department, which was the administrator. From the perspective of the day-to-day operation, we haven't asked the officers to do anything differently in terms of how they do their inspection work, so we still ask them to conduct the inspections and the investigations and, where it's appropriate, use the enforcement tools that are available to them. The only difference in the system at this point is that those orders do get reviewed by the administrator in the fullness of time.

We've used some existing capacity within the department so there is some administrative support that's provided to the administrator in terms of the distribution, and that was done with existing resources. There was an existing appeal process so we've obviously had to increase the activity, but I guess we could say there was some capacity to utilize the appeal process with the system. So in terms of resources, the only additional resource was the administrator that was added to the system and that basically results in a very small - and some modifications to our computer tracking system for orders, which is a one-time cost to put the system in place.

MR. MACKINNON: There was some comment from the department about 60 per cent of the penalties actually being collected to date. I'm wondering, the member for Inverness mentioned \$700,000. I wouldn't want to question his figure in any way, but could you elaborate on the actual amount and perhaps follow the money as well? Does that money go into the general coffers - just a commentary on following that money?

MR. JEFF CONRAD: I guess I would start in reverse order of your question as to where the money goes and then I'll let Mr. Garnier, and perhaps Ms. Bennett, say a few words about the money. In fact the money, as collected, goes into general revenue. It is a question that we get on occasion about where the money goes and we get lobbied. You'll see in the annual report some feeling from our stakeholders that the money should, in fact, be distributed into a fund which would be used for prevention. We get regular lobbying that we should allow for other forms of retribution so that instead of paying a penalty, an employer would be able to make other modifications in the workplace.

I would say a couple of things in relation to that before we talk about the specifics of the money. One would be that we really do want a deterrent in the system, and Administrative Penalties, to go back to that fundamental piece, did not create new expectations from an Act or regulation perspective. When an employer would say to us, if you issue me a penalty and I have to spend \$5,000 to address that problem, I should be allowed to deduct that off in lieu of a penalty. One of the things we would say is no, it was an expectation of the system before; you're expected to run a safe, healthy system that respects the system and respects the Act and guidelines. The fact that you had to spend money to do that is not in lieu of an administrative penalty, it was an existing responsibility in the system.

We also get asked about the question of the money coming back to a safety fund or coming back to the department, of course. It would be hard to sit here, as people seriously interested in this issue, and not say that we'd like to have more money to do more work in this area; of course we would. I think I would also say that we really respect the fact that the money does go back to the general account and that we're funded to do our work, as a department, from the revenues of the province.

I think there's a responsibility to make decisions. I've heard the Finance Minister say a poor province is a weak province, and we need to figure out how to address a whole range of issues within the province. The money going into the general revenue gives us a chance to come in and work through the normal budget process of saying how important we believe this work is and it gives the appropriate process for people to balance our work with other work. Certainly we've come in on issues where we've been blessed to receive funding and support to do some of the things we think are really, really important and we're glad to follow that process, but the money does flow back to general revenue.

Maybe in terms of the specifics of kind of the flow of money and our expectations and some of the numbers we've thrown out there that are in the various reports, I could let Vince say a few words.

MR. GARNIER: As of approximately one week ago, the actual numbers were 1,740 administrative penalties issued to date; so from January 15th to the present, 1,740, which totals approximately \$1.1 million. Of that \$1.1 million, \$641,415 has been collected and leaves a balance of \$439,000. Of that amount, as the ADM indicated earlier, it's not that \$439,000 is default payment, the bulk of that is actually tied up in the appeal process now.

I should add that any person who does default on their payment, even after the appeal process that confirms the penalty, we've engaged the assistance of Service Nova Scotia and Municipal Relations to assist us with debt collection. People who do default on their payment, it becomes a debt to the province. Service Nova Scotia and Municipal Relations has a host of options to ensure collections, one of which is getting assistance from the Canada Revenue Agency to claw back a person's refunds. Actually the first one happened not too long ago.

MR. MACKINNON: In response to the member for Preston, a great job was done in how communications were actually handled to get the new initiative across to industry. The Workers' Compensation Board has had a considerable budget for actual advertising; I'm wondering did you have any kind of a communications budget to get this off the ground?

MR. JEFF CONRAD: I don't think that we had a specific budget dedicated to Administrative Penalties as part of the process. Certainly what we did is we utilized, again, existing resources within the department and existing avenues. We do have a number of

processes that we're engaged in, as I talked about earlier, like regularly attending events. But we have other avenues; we wrote a letter to every chamber of commerce in Nova Scotia, for example, fairly low-cost things to roll the piece out. I think we've made our effort in a very focused kind of way to get to employers, employer associations, and others who could help us spread the word.

The Workers' Compensation Board has a responsibility in the system for the prevention mandate for occupational health and safety in the province, so a lot of that promotional work that you see - and we collaborate with them on parts of that and are very pleased with being able to do that on parts of the system, but that responsibility really rises from their responsibility to do prevention promotion and a number of other things. It's a slightly different perspective that they bring to the table in terms of the role that they play in the system. We have kind of a regulatory role and they have a prevention and insurance kind of role in terms of the system. We really, really try to work closely together.

Again, we talk about their systems and their programs and as you saw earlier, folks like Mr. LeBlanc and Mr. Garnier are very, very knowledgeable about the system, and I would say the same on their side. So their folks are pretty knowledgeable about what we do and the kinds of penalties and processes and while they don't advertise our work, I'm sure they talk about our work and kind of the overlaps in the system as part of it.

MR. MACKINNON: You talked about the role of industry safety committees, as well, and associations. I'm wondering - just a quick question - do we know how many of those there are in the province?

MR. JEFF CONRAD: I'm going to defer to Mr. LeBlanc.

MR. LEBLANC: There are a number of industry safety associations in place and I may be wrong here, but I think the number would be seven: there's construction, retail gasoline, trucking, health care, fishing safety, agriculture; I believe that's the total. Basically, they have been supported by government and by the Workers' Compensation Board, so whenever the industry has identified an interest in collectively bringing some resources together to help improve health and safety, to help define best practices, to provide training, we've done whatever we can, but both in terms of supporting with in-kind resources and also creating structures so that revenues can be collected to fund the associations. Generally, where industry associations have been put in place, they've contributed significantly to changing both behaviour and culture in the sectors.

MR. MACKINNON: One quick question before turning it over to Mr. Skabar. You've looked at what other provinces and perhaps states are doing in relation to this and certainly we learn from other jurisdictions, but it seems in this case some other jurisdictions are learning from us, which is a really important thing for the Province of Nova Scotia - a quick comment, perhaps?

MR. JEFF CONRAD: Absolutely. Certainly one of the things that we undertook - and I have to be careful here in saying "we" because it was these folks, I make it sound like it was me but it was really these folks who did all the hard work in this process - was a review of other processes in other places. We are always interested in best practices and what can be done in terms of best practices across the country. We looked at a number of other models and although our system is not exactly like it, it is actually based upon the system from the Yukon. We based our model off of another existing Canadian model and made recommendations and some changes to it.

One of the things that we see in terms of other provinces and other jurisdictions looking at us is actually the way we've set up the administrator and the issuing of the penalties. One of the things is there's always balance in this. So we get some pressure back saying, why does it take so long for the penalty to get out, and those kinds of things. But one of the advantages of the system is by having all of that information flow into a central administrator, we have a great consistency of decision making across the province so we don't have 35 people out there who have the ability to interpret and make judgment calls and whatnot.

We have that resident in one place; we have great oversight of that through Mr. Garnier. So the coordinator reports to Mr. Garnier, they can talk about individual cases and we gain great consistency across the province in the way we administer the system. I think that's one of the things that other provinces looking at our system would like to find ways to replicate, that element at least, as well as others but that one for sure.

MR. MACKINNON: Thank you for the comments and congratulations on the job you're doing.

MADAM CHAIRMAN: Mr. Skabar.

MR. BRIAN SKABAR: Thank you very much. I have had occasion to speak with Mr. Garnier lately and the department - actually, thanks for getting back to me so quickly with my concerns because many of which have been spoken to by now.

You mentioned that of the number of reviews done, about 25 per cent resulted in administrative penalties. So out of 4,950 penalties, approximately 20,000 businesses were reviewed last year, is that correct?

MR. JEFF CONRAD: I think 4,950 is last year's number. It's about 5,000 orders that are issued on an annual basis and about one-quarter of those would receive penalties. I think the number Vince gave was 1,123 penalties or something to that effect. One-quarter of the 5,000 would receive a penalty, not 5,000 would receive a penalty out of 20,000 . . .

MR. SKABAR: Sorry, I misunderstood. How many officers do you have on strength to do the reviews?

MR. JEFF CONRAD: The way the system works - maybe I'll let Mr. LeBlanc.

MR. LEBLANC: In terms of inspection officers in the field, there are 31 officers located around the province. We have five dedicated investigators who take on the more serious workplace incidents. Then we have some specialty folks, a couple of underground mining engineers, an occupational health and safety engineer, some industrial hygienists, so it would bring our field staff to a strength complement in the low 40s, about 42 or 43.

MR. SKABAR: Okay, thanks. Now is materiality an issue when doing an investigation? Of course some offences are much more serious than others, does that kind of factor in when a decision is made as to whether or not an administrative penalty is called for?

MR. JEFF CONRAD: There are a number of factors that we look at when we're looking at an administrative penalty. One of those factors is certainly whether or not there was injury or risk of potential injury, what the level of risk of injury to the individual was or to the people involved in the infraction. Yes, materiality does enter into it. We would not issue an administrative - you know the Act and the regulations are fairly robust, as you can appreciate.

We have quite a range of employers to look after, so if we're going into an organization - and it's one of the reasons we want some flexibility in the system. It's not unusual to go into a company and issue a number of orders all related to the same kind of issue. So a workplace with more than 20 employees that's required to have a health and safety committee and post minutes and do a number of things, it doesn't have a committee yet. It may get a number of orders because they've had infractions of a related nature - they don't have a committee, they haven't posted minutes, they haven't posted the Act. Those aren't the types of things that would result in the issuing of an administrative penalty, we're much more concerned about the kinds of things that would be more serious infractions and lead to occupational health and safety injuries in the workplace. Mr. Garnier would like to add to that.

MR. GARNIER: Thank you. I just want to perhaps clarify, in case there may be a misunderstanding, every order an officer issues for a contravention is subject to an administrative penalty, so whether the order was for what could be perceived to be a minor administrative contravention or something perhaps more serious, such as the lack of a guard on a machine, that sort of thing, so every one has a potential. The administrator will actually review every one of them, the minor administrative orders and the more serious.

If, for example, an employer receives multiple orders - five or 10 - all for contraventions, there is a requirement in the policy that the administrator, if he or she feels that three or more penalties ought to be issued, that that must first be reviewed with me for a confirmation. We've built that in as an internal process. However, if, for example, four

administrative orders have been issued to an employer, the administrator will still look at those four administrative orders and could very well issue at least one penalty.

A quick example is we would consider an administrative order the requirement for a health and safety representative at the workplace if there are five to 19 inclusive employees there; that's an administrative order. Some people might argue that that's minor, that shouldn't result in a penalty and we would respond that really that's a key part of the OHS Act in terms of the internal responsibility system. This is part of the rights that employees have and this is a key responsibility for employers to ensure that that administrative function is fulfilled, so that could very well result in a penalty.

Mind you, if there are multiple orders and some of them are for more serious contraventions that could have caused an injury to someone, then the administrator will look at those and likely rank them in terms of risk and seriousness. In all likelihood the administrator will issue one or two depending on the suite of orders, and issue what he or she believes is the appropriate penalty or penalties.

MR. SKABAR: Could you explain to me just briefly the difference between - I recognize the concept of the administrative penalty, but when would a summary offence be issued in that context?

MR. GARNIER: There are actually two summary offence tickets that the officers may issue here in Nova Scotia. One is for the failure to the workplace party to comply with the order and the second is failure of the workplace party who received the order to submit a written compliance notice to the officer. So there are really only two and it's important to note that they're really separate from the administrative penalties.

One of those two summary offence tickets would be issued subsequent to the order and regardless of what the contravention is. So if I were to receive an order and I fail to comply with it, that's a prosecutable offence and an administrative penalty wouldn't be issued for that particular offence. Likewise, if I fail to submit a compliance notice in terms of what I did to comply with the officer's order, that is also a prosecutable offence, which again is separate from the administrative penalties regulation. So they are two really separate and distinct issues.

MADAM CHAIRMAN: Excuse me, Mr. Skabar, your time has elapsed right now, but there is a second round to come. I'm going to invite Mr. Colwell now for 13 minutes in this second round of questioning.

MR. COLWELL: Just one other thing - thank you very much for the list, I didn't have that before, but it was given to our office, I understand - do you also have a breakdown of the fines and penalties per sector? In other words, roofing guys, what percentage are they and concrete guys or whatever that is. You can supply it to the committee.

MR. GARNIER: Actually in the package that you received, one of the statistics, the chart is identified as distribution of administrative penalties by industry percentage. That statistic is there for you to see as well.

MR. COLWELL: Great, thank you. Also, you have the Occupational Health and Safety Appeal Board. How is that made up - is it from businesses, employees and employers, unions? How is that structured?

MR. JEFF CONRAD: I'm going to ask Mr. LeBlanc to respond to that, there have been some changes to the process recently so I'm going to ask him to explain a bit about that.

MADAM CHAIRMAN: Mr. LeBlanc.

MR. LEBLANC: Originally the appeal panel was constituted under the Occupational Health and Safety Act in 1996 and that was the first appeal process that was created. At that point in time it was made up of an independent chairman, who was agreed on by the parties and there were basically two pools of members who were drawn from as appeals were heard. There was an employer pool and an employee pool and both of those pools were selected based on some consultation with the representatives from those specific sides. The appeal panel itself - although there was an ability to go to a single person appeal - was normally made up of the chairman, who was considered neutral and a winger from both the employer and the employee caucuses.

With the introduction of the Labour Board in June of this year, the Appeal Panel Office and the appeal panel process has been rolled into that process, so we're kind of very much still in a transition period. Some of the principles that were established in the health and safety legislation when the appeal panel was introduced will be maintained, so there is an ability to go to a single-person appeal panel. There is an ability to go to a three-person appeal with appropriate representation from both employer and employee caucuses on both sides. We're yet to have our first appeal held under the Labour Board system, so it's very much a system in transition right now.

MR. COLWELL: Are unions part of the employee representation?

MR. LEBLANC: Yes they are, and there is a requirement on the minister to consult with labour organizations in terms of the selection of the pool that can be drawn from.

MR. COLWELL: Is it evenly balanced between employers and unions?

MR. LEBLANC: The pool basically has representatives. In the same token, the minister has a requirement to consult with the labour organizations on the selection of employee representatives for the pool. She also has the requirement to consult with employer representatives on the selection of the employer side of the pool. The pool then

becomes one that can be drawn from as appeal panels are constituted, with members that have been pre-vetted in terms of the acceptability to both caucuses.

MR. COLWELL: What percentage of penalties are appealed?

MR. LEBLANC: Right now it's running at about 30 per cent of appeals. Thirty per cent of the administrative penalties that are provided are being appealed. We do have an expectation that number will go down as people gain some experience, both with the kinds of decisions that the appeal panel is providing because by far and away most of the appeals that go on the question of the level of penalty are being confirmed by the appeal panel. We think that as the parties gain that experience, that will sort of temper their decision in terms of whether they want to challenge the system and appeal the penalties.

MR. COLWELL: What is the process if I am an employer and I'm going to appeal? What do I have to do, financially or legally, to properly prepare myself for an appeal?

MR. LEBLANC: Specifically, there are a couple of different processes, depending on the nature of the appeal that you're entering into, but to deal with the administrative penalty appeal process - when an employer or an individual receives an administrative penalty, there are some standard notes that go on the Notice of Penalty that identify that the appeal process is available to them and identifies how they can get the documentation that is required, either by phone or e-mail. What the recipient of the penalty would need to do would be to make the Labour Board aware that they want to appeal and identify the grounds on which they're choosing to appeal the amount of the penalty.

At that point, the Labour Board contacts us and they ask us to basically provide some additional justification relative to the decision and the level of penalty. That information is then provided back to the party. The employer gets the logic and the reasoning behind the decision that the administrator chose to issue the penalty and how they came to the amount of the penalty, and there is an opportunity for them to rebut.

The process can be iterative until there is no more new information that is being introduced and then the appeal panel will make a decision in terms of where they think the penalty level should be or if there should be a penalty.

MR. COLWELL: Is there a cost to whoever is appealing?

MR. LEBLANC: The only cost is really the time that is involved, in terms of filing paperwork and then being involved in the process, but there's no charge to appeal a penalty.

MR. COLWELL: How many inspections, daily or weekly, are done by the 31 officers, or monthly? What is the average?

MR. LEBLANC: On average our officers are doing about 100 to 120 inspections or activities a year, so that includes inspections, investigations, some training and consultation. Over time it averages to about 100 to 120.

MR. COLWELL: What's that, I didn't hear. Was that per week?

MR. LEBLANC: That would be on an annual basis.

MR. COLWELL: On an annual basis, about 120 inspections each? I can understand that because I can imagine likely in doing an inspection, they have to do a lot of follow-up in some cases.

MR. LEBLANC: That's correct. There's a fair amount of documentation. We basically like to, with any of them, some inspections may be just a few hours, some investigations may take many weeks in terms of the completion of them. There's a requirement that we try to hold our officers to a standard, in terms of the documentation of their activity, so there is a fairly strong record available, both for the administrator and for the managers in the system to be able to review our activities. There's a fair amount of paperwork and a fair amount of computer work associated with the activity in the field.

MR. COLWELL: I know when I had my business, I was inspected a couple of times by your inspectors. I can say they were very reasonable to deal with and as long as you took their advice, you had no difficulty whatsoever. I would assume that's still the case with the inspections, unless you've done something that you really shouldn't do.

MR. JEFF CONRAD: We're pleased to hear that that was your experience. I would say that certainly just in general terms, one of the things we are interested in, as I said earlier, our real interest is the health and safety of workers in the province. We are interested in good, collegial relationships; obviously that's our preferred model and we want to work with employers who are interested in working in that environment. So absolutely, those employers who want to work with us, not that we don't have a requirement at times even with good employers, to take other actions. Our preferred model obviously is to get there in the most straightforward, most collegial way we can get there. Then we look at our other tools when that doesn't work.

MR. COLWELL: As I say, I had very pleasant experiences with them in the past. They identified some things, we rectified them immediately and they put us in compliance. I'm glad they did because I'm sure it did save some injuries. Whether small or large, it doesn't matter, it saves injuries and that saves money for employers.

If an employer is in compliance with WHMIS and first aid, is that taken into account when you are considering the terms of fines or is that just something that is separate or just part of the whole process?

MR. GARNIER: If they are in compliance with the WHMIS regulation, the first aid regulation, they will not receive an order, or should not receive an order. By that, they shouldn't receive a penalty or a fine as well. As long as they are in compliance, there should be no orders and if there are no orders, there should be no penalties.

Now, having said that, if they are in compliance with those sets of regulations but in non-compliance with something else, then they will likely be issued an order to remedy that contravention. That order there could be subject to an administrative penalty.

MR. COLWELL: My question was, with that type of order issued, would the level of the fine or the terms of the fine or whatever the case may be, be less for somebody who is in compliance with WHMIS and first aid or would that just be immaterial in the whole process?

MR. GARNIER: The efforts to prevent the contravention that the administrator will consider in determining whether or not to increase or decrease the penalty really relate to that type of contravention. So the fact that you may be in compliance with other types of regulations is not an overriding factor that the administrator will consider because the person has to already be in compliance with that law anyway.

If they are in contravention - I'll use an example - they have a guard off a machine, that's a violation. But if their other machinery have guards and the officer identifies that the workers have a safe work procedure that is written, they've been trained in it, so there are other efforts there that obviously have been made by the employer, then the administrator will take that into consideration and may decrease the penalty that could be issued from that contravention.

MR. COLWELL: If a violation is noted that doesn't pose a problem for physical injury or physical risk, how long does the business have to comply with the order before a penalty is issued on a non-injury type or potential injury type of violation?

MR. GARNIER: The amount of time provided by the officer for the workplace party to comply with the order will depend on the individual officer, so there is discretion there. Often the officers will consult with the employer or whoever the party that is involved in the contravention may be and ask them what a suitable or reasonable amount of time is. They don't have to do that, but often the officers will do that. Depending on the type of contravention, it could be an immediate compliance required or the officer may give them a series of days or weeks.

I'll use a quick example. If first aid training is not at the workplace, which is required under the regulations, then the officer will likely issue an order. We all recognize that it's very difficult for an employer to comply with that in a day because they have to go out and obtain the services of a first aid provider to do that training. So often the officer will give 30 days to the employer to comply. If the employer is still having difficulty securing

someone to come in and provide that training, all the employer really has to do is contact the officer, advise that they are making legitimate and reasonable efforts to comply and request an extension. More often than not, the officer will provide an extension to that workplace party.

MADAM CHAIRMAN: Mr. Colwell, your time has elapsed now. I will turn it over to Mr. Porter for 13 minutes.

MR. CHUCK PORTER: Thank you to the panel for being here this morning to answer a few questions; I just have a few. I'm going to go down a bit of a different road here perhaps and please take the questions in the spirit in which they are meant. I would first of all start by saying that there's nothing more important than workplace safety. Having worked in a variety of fields and one for a long time, which was EHS, I can tell you all about many examples of workplace safety.

I'm just curious about the inspections mostly. I think you've got around 6,000 inspections in a year, if you've got around 40 people doing 150. Was that the right number that I just heard there, province-wide?

MR. LEBLANC: The number was around 100 to 120 activities, so that includes inspections and investigations.

MR. PORTER: Okay, that's not per inspector then. That's what I wanted to clarify.

MR. LEBLANC: Well, it's 100 to 120 per inspector, but it includes some additional activity in addition to inspection.

MR. PORTER: Again, of those numbers, would it be reasonable to assume that if you're coming into my place of employment that I would be inspected and what is the percentage of fines that would go out? So of 10 inspections you do, what is the percentage of fines that are costing employers money?

MR. JEFF CONRAD: I guess there are really two questions in there. One would be of all the inspections we do, how many are issued orders? Then, of the number of orders issued, how many end up with administrative penalties?

At the moment we're tracking fairly closely the percentage of administrative penalties. I think our most recent number is 26 per cent of all of the orders that we issue result in administrative penalties, but there could be multiple orders within one employer. So we could have a case where an employer has been inspected and there were no orders, or was inspected and there was an order that didn't lead to an administrative penalty. You could have another case where an employer was inspected, had multiple orders and had multiple administrative penalties. I'm not sure I've answered, but I think so.

MR. PORTER: That's just fine and that's where I was leading into next anyway. So you could go in and do an inspection, a warrant and/or a future penalty could end up being two or three or four or any number in one workplace, then. Is that accurate?

MR. JEFF CONRAD: It's possible, yes.

MR. PORTER: So when I look at the value for the dollar, it can get fairly expensive for any employer that is not meeting requirements. I think that is probably a fair assumption and they would tell you that.

I'm just kind of curious, when you walk in and you do an inspection, is it a warrant issued immediately by way of - well I guess a warrant would be issued. I'm just thinking of how much time do they have to comply and is there some value given in that compliance before they are actually penalized financially?

MR. JEFF CONRAD: The order is issued and there is a period of time, as Vince explained, for them to comply with the order. That period of time - again as Vince said in his earlier response, they have the opportunity to come back and request extensions and things like that.

The decision on whether or not there is an administrative penalty assigned is not dependent on whether or not they comply with the order. I think that may be the heart of what you are getting at. You can issue an order to someone, they can comply with the order and still receive an administrative penalty, even though they have complied.

Again, I am hesitant to use analogies but we do talk sometimes about the speeding situation, so if you are caught speeding you can get a warning and you can get a ticket. The fact that you are never going to speed again doesn't change the fact that you have to pay your ticket. It's similar in that concept. You are being issued an order, you are complying with the order but the administrative penalty is because the expectation on you was that you meet the Act and the regulations anyway, so the administrative penalty is not depending on whether or not you complied with the order.

MR. PORTER: Yes, I guess I can understand the analogy to some degree. The other would be, there would be some type of - using that analogy - seriousness to the issue of the order. Give me an example of that order, then, in relation to the speeding analogy you just used. Is it a hand rail off or is it somebody working up above and there's no wall? I'd like to have a bit of clarity on that analogy.

MR. JEFF CONRAD: Again, I'll turn this over to Mr. Garnier to give you some examples. I do think that sometimes - we are hesitant to use that analogy back to the speeding world. It is much more complex, of course - and I don't mean that highway patrol isn't complex but it's much more complex than the simple example of you've just broken the speed limit, so we use that carefully.

Maybe I can let Vince, because I do think some of the examples and things that we've seen and, as you've said in your opening remarks - I guess one of the things I would say as being fairly new to the department, I've been at the department now less than two years, so there's two general comments I would make. We have a distribution list that distributes to key people in the department when a serious incident has happened in a workplace - we've had a serious injury, a stop work order issued, things like that to make us all aware.

It's a bit of a heartrending event to look down at your BlackBerry and see those notices come in that we've had another workplace fatality. A couple of weeks ago we had someone who lost a portion of a limb and a number of other things. We are dealing with very serious issues oftentimes in the workplace. We do the whole range of issues, obviously, but there are still very serious issues.

The other thing I would say is that Vince and I have been back and forth in recent days around some presentations I've been making and I said to him it would be nice to have some visuals to use, on some of the pieces that I use. It's amazing how quickly he can pull out from incident reports and material collected by our officers, really fundamental violations of Occupational Health and Safety Act and regulations in the province that we see in our work.

Some workplaces are fantastic, and we would acknowledge and celebrate those people but in some places you don't have to look very hard to find some really serious things. Maybe I'll let Vince give some examples of the kind of complexity and severity and how the administrative penalties respond to that.

MR. GARNIER: Thank you. I believe there are 12 sets of regulations and two Acts that the officers will administer on a daily basis, so there's a lot of regulations built in there. Some of them, of course, may be perceived as being administrative in nature and quite minor and some perhaps more serious. I guess it depends on various circumstances, what the officers are seeing out there.

To point out one example, I recall an officer asked a gentleman to come down from a roof one day. He was on the roof in contravention of the fall protection scaffolding regulation. There was no fall arrest on him and he didn't have proper fall protection set up. He came down to the ground and was speaking with the officer. The officer said to him, sir, you have to comply with the fall protection regulations and this is what it says that you need to do. His response to the officer was, you ought to leave me alone, I've been in this business for over 20 years, I've fallen off the roof six times and I'm still here so why are you harassing me?

So he would perceive that intervention as being disruptive to his activity and perhaps very minor because he feels comfortable on the roof. The officers and we all know

differently. As the ADM has mentioned, it is pretty tragic to get a phone call from 911 or the police, telling us that they have a workplace fatality.

Back in June, we had a worker fall approximately five feet and he died. If he hadn't have fallen, and the officer showed up and gave him an order and subsequently a penalty was issued, then perhaps that person or the employer might have thought, well this is a pretty minor thing, he's only five feet up. Why am I getting a \$500 or \$1,000 fine? Well, I just gave you an example of someone who actually fell five feet and was killed as a result of that fall. Some of them are perceived by parties as being minor. We take a different position on it, perhaps because of the history that we have and we know how accidents can and do happen.

MR. PORTER: I appreciate that example and you're right. I would also say that one fatality is one too many and we would hope for no more. That was a great example. I want to ask a question about the inspectors, administrators, you all in general. Are the people out there on the street doing the inspections construction people? What's their background? What qualifies them to say, hey buddy on the roof? Are they just reading a policy? They're hired because of whatever. Anybody can read a policy and put it in place, but those people with the hands-on experience generally have a lot of that knowledge that you just spoke to and certainly the history as well.

I'm curious about the backgrounds and the qualifications of these people because this is an important task that we have these people out there on the street doing, and yourself and whoever else who is coming back to review - if I've heard you correctly - the administrator reviews it. Is this right? Will we actually give a penalty? What qualifies that to say, here's the value? You can't put a value on any life, in my opinion. Anyway, I'll leave that with you. I know our time is running short, but I'll give you an opportunity there.

MR. LEBLANC: From the perspective of the industry sectors that we're responsible for, we cover everything from the natural resources sectors of fishing and farming, through public sectors of health care, to the private industry sectors, construction. I guess what I can say is it's almost impossible to hire one individual that basically knows everything about everything.

What we do and what we look for in our officers is a strong background in one of the sectors. We basically look for experience in health and safety and enforcement activity. Then basically when we hire them, we put them through a mentoring program, an indoctrination program relative to the rules that they're requested to administer and how we would expect them to be applied. Then we assign a more senior officer that has been in the division for awhile to provide them with some on-site field experience.

We try to reinforce this with our officers over and over again - we have a wealth of experience and knowledge within the breadth of our organization. The one thing that we do

try and instill in everyone is that if you run into something and you're not sure what is appropriate then basically use the resources within the organization.

The other thing that is critical to the health and safety legislation is this concept of internal responsibility. The officers during the course of inspection, they're instructed to bring an employee with them during the course of their inspection activity. The intent of that is to basically open dialogue and provide an opportunity for people who are in the workplace to identify the issues to the officer who can then make decisions in terms of whether it warrants some intervention on our part in terms of correcting it. So you're right, we can't build a person who has experience in everything that they're going to run across in the course of a day, but we have developed some strategies to make sure that we can bring the right expertise to the problem when it's identified.

MR. PORTER: Thank you. How am I doing for time, Madam Chairman?

MADAM CHAIRMAN: You have two minutes.

MR. PORTER: So on that, Mr. LeBlanc, are you saying that - and I agree, you can't have one person look after every specialty - if there were certain incidents, maybe it's a natural resource one, a fishing one, a construction fall, are there only certain people then that you might send person A, B, or C to go and do that particular call or incident, or it's not that specialized even?

MR. LEBLANC: The way we're organized we're based on geography, so each officer in the province owns a specific piece of territory. What we have created in the last couple of years is a special investigation unit, so for the more serious accidents we have individuals strategically located around the province whose expertise is in investigations and they're very familiar with the process. When we run into things, be it construction or fishing, where we require some serious expertise, I guess, engineering support, we basically maintain a system where we contract for those qualifications to provide some insight as to what we need answered. Again, we've tried to develop strategies so we can bring the right resource to the right point, but there's no single individual who basically provides it all.

MR. PORTER: Just one final very quick question. You're in Windsor doing inspections and you're going to a business perhaps that has had a complaint, realizing that a high percentage of them come from that, and you come out and you're all done with that and when you look across the street, oh, there's a business I've never been to before. Do you go into it or do you base it on time of day and say, oh, it's late in the day, I have to get back to wherever I'm going? I'm just wondering how you fit in the balance of the non-targeted, issue-related ones.

MR. LEBLANC: We have capacity in our system to do something we call ad hoc inspections and it sort of fits in very much with that in the same way that if an officer, in the

course of being in their territory, is doing a target inspection that may take them 50 kilometres away from their home office while they're in that physical location, the opportunity to do inspections if they have time is basically what we encourage them to do so that we make the best use of the resource that we have.

MR. PORTER: No notice required?

MR. LEBLANC: No notice required.

MADAM CHAIRMAN: Your time has elapsed now, thank you. I'm going to turn it over to Mr. Ramey for the last session of 13 minutes.

MR. GARY RAMEY: Thank you for coming this morning. I think my colleague, the member for Preston was asking some questions related to one of the areas that I'm interested in, but I'd like to pursue it a bit more. If an administrative penalty is issued and I wish to appeal it, can you give me the time frames - how long do I have and what is the process, or could you just walk me quickly through that please?

MR. GARNIER: If a person receives a notice of an administrative penalty they have 21 days by which to submit their written appeal to the Labour Board.

MR. RAMEY: So there's 21 days and then what is the process after that, what do I have to do? I have to appear before a tribunal or a single individual and argue my case, is that what I have to do?

MR. GARNIER: Just to be clear, we in the division do not administer the appeal board or the Labour Board, however, from my experience I can say that when a person submits their notice of appeal then the Labour Board will acknowledge it and notify us in the division that an appeal has been filed. We will prepare our documentation to support the issuance of the penalty and forward that to the Labour Board. Once the Labour Board gets that they will provide a full copy of that to the appellant, because it's full disclosure, and then the Labour Board will ask for a response within a specific period of time, but that time is set by the Labour Board and not by us.

MR. RAMEY: If I may, the Labour Board then is the overseer of the hearing, correct? Do these parties actually appear in a room and does someone from your department appear on behalf of the department and the appellant appears on his or her behalf?

MADAM CHAIRMAN: Mr. LeBlanc, I think, has something to add to that.

MR. LEBLANC: I just wanted to clarify because the question was very much focused on whether it's an oral hearing or not?

MR. RAMEY: Yes.

MR. LEBLANC: The point that I wanted to make is that the administrative appeal process is based on a presumption that it's going to be a paper review, so it's written submissions that are considered, but the Labour Board has the ability by exception to do oral hearings. For the appeal penalty system, the regulations were very specific in terms of making it a paper review for an appeal of a penalty.

MR. RAMEY: So it is a paper process, but it has other possible ramifications?

MR. LEBLANC: The Labour Board, by exception, can permit oral hearings which would involve presentations and cross-examination of witnesses in front of a hearing. The intent was to try to keep the appeal process simple, so that's why it's weighted, if you like, toward a paper review of documents that would be submitted.

MR. RAMEY: Understood. Most of them are solved by paper process, I take it. Do you know what the percentage is where you actually have to get into the oral submission?

MR. LEBLANC: I'm not aware at this point of any oral appeals that have proceeded under the administrative penalty system. There have been lots of oral hearings and in-person hearings relative to other appeal issues, but in terms of the administrative penalty system, to the best of my knowledge, it has all been paper reviewed to this point.

MR. RAMEY: Okay, super. Thank you and if I may, I just have one other quick question. I think I heard someone say the number of workplace injuries and deaths have been decreasing in Nova Scotia which is great. I think I also heard somebody say that it's obviously not necessarily attributable to one thing and I can easily appreciate that. I would just be interested in hearing somebody comment on, what are the things that are contributing to that? Better education maybe or something?

MR. JEFF CONRAD: A really good question and I will let Mr. LeBlanc speak, he has much more expertise than me and a longer history in this. I guess in general terms I would say a few things.

It is a complex challenge and a complex issue that's out there. We do share responsibility across a wide range of partners. We have what we call the Workplace Safety and Insurance System which is a process by which all of the partners in the system, all the stakeholders try to work together on common issues to get us there. We see the prevention activities that are out there as huge, so the work gets done by our colleagues at the Workers' Compensation Board, certainly we see the education issues as huge, we see lots of education systems go on through safety associations and others. We see good partners like the community college embedding occupational health and safety training directly into their work, we see our enforcement work as a huge part of that.

I think there are quite a number, but rather than read this list that Mr. LeBlanc is writing for me, I'm just going to let him talk. (Laughter)

MR. LEBLANC: I wasn't actually writing a list for you, I was hoping that I would be able to remember some things when it was my turn. Just to build on the things that the associate deputy minister has identified, there are so many things that impact workplace health and safety and it can be anything from, if you think about the number of people who drive to work on any given day, changes to the design of highways, the twinning of highways - there are so many things that impact occupational health and safety.

The things that I think hold real promise are the changes that are occurring in the education system. After many years of working with the Department of Education, last year for the first time there was some core curricula that was embedded in Grade 9 around occupational health and safety. There have been efforts over the last year to see occupational health and safety topics moved into the Options and Opportunities programs that are offered in the public school system and the community college system. The whole basis of that is to help people appreciate that every time you make a decision, you're making a decision about the amount of risk you're prepared to accept.

Really it's a cultural change that we're striving to get to and we have many partners in the province in terms of - well, we've mentioned the Workers' Compensation Board and ourselves on a number of occasions, but the work that the safety associations and industry associations do in terms of helping to change behaviour is very significant in terms of making changes. On any given day you never know what the one initiative will be that will help sort of drive that change.

I think it was in Sunday's newspaper that there was an interview with a lady who lost her husband at sea. Basically she had turned her efforts to producing oil paintings and selling them to buy life vests for fishermen. It's those sorts of stories and that sort of commitment that basically will change behaviour and culture in the province over time.

MR. RAMEY: Thank you very much and I do agree it's probably a multi-pronged thing. I know the ads on TV, even those pretty simple ads about the saw and the guard, the tape on the pipe, and I guess the bucket that is sitting there and the ladder, all those things have an impact too. Thank you very much for that and I'll turn it over to my colleague, Mr. Skabar.

MADAM CHAIRMAN: Mr. Skabar.

MR. SKABAR: Getting back to the numbers of reviews done, about one in four inspections results in an administrative penalty, is that correct? Now, I realize that the regulations are on-line and you speak with industry associations and chambers of commerce and pretty much any mechanism out there, but of those that are assessed an administrative penalty, do many of them just say they didn't know those were the rules or

they didn't know what the regulations were or they weren't aware that that was called for to do this? Is that still an issue?

MR. LEBLANC: I think that will always be an issue in terms of trying to get information into the right hands. I don't know what the answer is but I'm reminded of an order and an administrative penalty that was issued. It was a hairdressing facility, a salon. The requirement for first-aid training has been in place probably in that industry sector certainly since 1986, probably before that in that the Workers' Compensation Act used to have a requirement for first-aid training for employers who were covered by them.

It seems so peculiar for us to have done an inspection in that workplace and have to issue an order for the first time, to get first-aid training in that location when the requirement had been there for so long. I don't know what the answer is, to be quite honest, in terms of raising the awareness with the workplace community, in terms of what the standards are. We certainly take efforts to try to both promote the requirement and spread the information. We basically make our staff available, whenever the opportunity exists, to talk about what the requirements are. But we will always run up against the issue that you have identified, where people are not aware of what the requirement is.

MR. SKABAR: Thank you. With the appeals process, yes, I am heartened to hear that they all go through one kind of clearing station so that it's not one officer making one judgment call and another officer making another judgment call, so there is kind of a consistency there.

Now, when an appeal is made, you mentioned that they're all pretty much administrative appeals, as well - paper appeals, is that correct?

MR. LEBLANC: For the Administrative Penalties system?

MR. SKABAR: Yes.

MR. LEBLANC: The preference is - the regulation is weighted to make them paper reviews, yes.

MR. SKABAR: Are many of them upheld? What's the record on that?

MR. LEBLANC: The majority of appeals basically confirm the penalty and the numbers are again identified in the package that was distributed. Of the 245 that have been decided to date, 185 of them have been confirmed. There have been 37 instances where there has been a decrease; and there have been three penalties that have been revoked. There have been 20 penalties where the appeal has been dismissed, so it was either filed late or they didn't establish grounds for an appeal. The numbers are identified in the table.

MR. SKABAR: So three out of 245; that's pretty consistent.

MR. LEBLANC: It's a pretty low overturn rate.

MR. SKABAR: Thank you. Mr. Epstein, if you care for the last couple of minutes?

MADAM CHAIRMAN: There's about a minute.

MR. HOWARD EPSTEIN: In that case, I have two very quick technical questions and one has to do with orders. We've heard several times from you this morning that previously or still there was never a mechanism for enforcing an order. I wonder if you could just confirm that or explain whether there really is some mechanism for enforcing an order. The other perhaps more important question has to do with the interaction of the administrative penalty and the possibility of a subsequent prosecution. Does the presence of an administrative penalty preclude subsequent prosecution?

MR. LEBLANC: Yes, the regulations specifically identify that if there is a prosecution either being considered or under way, that the administrator would not issue an administrative penalty. The intent very clearly is you may do one or the other, but you're not going to do both.

On your other question in terms of orders, orders become enforceable through the courts as a prosecution. If the order basically says, post something in your workplace, whether you'd want to clog up the court system and the judicial process with things that are pretty minor, so it becomes a question of resource allocation.

MR. EPSTEIN: So technically enforceable but not conveniently.

MR. LEBLANC: Yes. As it was identified earlier, prosecutions tend to be reserved for the more egregious offences and activities.

MR. EPSTEIN: Thank you very much.

MADAM CHAIRMAN: Thank you Mr. Epstein, and with that, our time has elapsed. I had just one request, if I could. There was a comment about getting a breakdown by the sector and we see that in your report. Could you give us a regional breakdown of where the administrative penalties have been? That's something we could receive later. I didn't see it in the report, but if you could that would be very good.

I had one question that I'd be quite happy to get a written response to. Just because of the materiality question that came up during the questions, I wondered if you could respond later in writing to whether or not your inspection efforts are in any way guided by the number of workers' compensation claims in a particular industry. The reason I mention that is, we know the health sector has a lot of injuries but it didn't seem to rate its 4 per cent of the penalties issued. I just wondered if you could comment and take your time and

answer us later in writing. That's something that could go back to our clerk and would be circulated to all members.

With that, I'd welcome you to say a few closing comments.

MR. JEFF CONRAD: We can provide both of those pieces to you. I would close by thanking the chairman this morning and the members for the opportunity to come and present. As you can see, we're passionate about the work we do and we believe that the administrative penalty system is a positive tool in our toolkit in terms of the range of actions that we have to take enforcement and regulation to a new place. We're really pleased to have the ability to use these things. Obviously we're still in early days and we have an opportunity to continue to improve the use of the system.

One of the things I would say in closing is that - and I think I made the comment earlier - in this kind of work, you don't get a lot of people lined up to say thank you for some of these kinds of very difficult conversations. One of the blessings that you do have as an Associate Deputy or a Deputy or a Minister of the Crown is to have wonderful people work for you, so you're lucky enough this morning to see two of the folks that are committed to this work.

We do have an exceptional team that work on this across the province and throughout the system, as well as the partners that we work with out there in terms of the safety associations and Workers' Compensation Board and good employers. It's a very diverse group, people are passionate about this work and it does bring an opportunity to do great things when people are passionate about something that really matters to the citizens of the province.

We're really pleased we were able to come this morning. We're glad to follow up in terms of your request for further information, or if there are things that come to you afterwards and you want to contact the department and follow up on any questions, we are more than pleased to respond. Thank you so much for the opportunity this morning.

MADAM CHAIRMAN: We really do appreciate the efforts that you and your staff are taking to decrease the injuries. At the end of the day this is about a safer province and we all appreciate that. I think the members have said so in their individual questioning.

So with that our meeting is completed. Just on the business side, we have one subject of information for the members and that's the draft of the annual report from our committee is available. It is on our agenda for the next steering committee that we have, the Subcommittee on Agenda and Procedures will be looking at it, but we welcome comments from any member of the committee as well, so we hope you'll take a copy of that today.

With that, our next meeting is scheduled for next week when we will be discussing Colchester Regional Hospital which was a chapter in the last Auditor General's Report. So do I have an adjournment motion?

MR. COLWELL: I so move.

MADAM CHAIRMAN: The meeting is adjourned.

[The committee adjourned at 11:00 a.m.]