

HANSARD

NOVA SCOTIA HOUSE OF ASSEMBLY

COMMITTEE

ON

PUBLIC ACCOUNTS

Wednesday, September 17, 2014

LEGISLATIVE CHAMBER

Workers' Compensation Board

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Public Accounts Committee

Mr. Allan MacMaster, Chairman

Mr. Iain Rankin, Vice-Chairman

Ms. Margaret Miller

Ms. Suzanne Lohnes-Croft

Mr. Brendan Maguire

Mr. Joachim Stroink

Mr. Tim Houston

Hon. Maureen MacDonald

Hon. David Wilson

[Hon. Maureen MacDonald was replaced by Hon. Frank Corbett]

In Attendance:

Ms. Kim Leadley
Legislative Committee Clerk

Mr. Gordon Hebb
Chief Legislative Counsel

Mr. Michael Pickup
Auditor General

Ms. Dianne Chiasson
Audit Manager

WITNESSES

Workers' Compensation Board

Mr. Stuart MacLean, CEO

Ms. Shelley Rowan, Vice President of Prevention and Service Delivery

Mr. Leo McKenna, Chief Financial Officer



House of Assembly
Nova Scotia

HALIFAX, WEDNESDAY, SEPTEMBER 17, 2014

STANDING COMMITTEE ON PUBLIC ACCOUNTS

9:00 A.M.

CHAIRMAN

Mr. Allan MacMaster

VICE-CHAIRMAN

Mr. Iain Rankin

MR. CHAIRMAN (Mr. Iain Rankin): Good morning, I'd like to call this meeting to order. Before we begin, I would ask that the cellphones be placed on silent or vibrate. We'll start off with the introduction of members, starting with Ms. Lohnes-Croft.

[The committee members and witnesses introduced themselves.]

MR. CHAIRMAN: Just for the committee business, as of June 19th, Ms. Margaret Miller, who has introduced herself, is a permanent member of the committee, just to note that.

Today on the agenda we have the Workers' Compensation Board and subject is the Safety Association funding. We'll start off with the opening statements from the witnesses.

Mr. MacLean.

MR. STUART MACLEAN: Thank you, Mr. Chairman, members of the Public Accounts Committee, I am very pleased to be here today on behalf of the Workers' Compensation Board of Nova Scotia. You met my colleagues, Leo McKenna and Shelley Rowan, two of our Vice Presidents - our Chief Financial Officer and our VP of Prevention and Service Delivery. In addition, our Client Relations Officer, Tim McInnis, who may be a familiar face to many of you, is in the gallery today.

Also in the gallery are some of the province's most passionate safety champions: Nathan Blades, who is the Chair of the Fisheries Safety Association of Nova Scotia; Trevor Bent, Chair and Jordan MacDonald, Treasurer, both with the Nova Scotia Trucking Safety Association; Susan Dempsey who is the Executive Director of AWARE-NS, who served Nova Scotia's health and community services industry; and Bruce Collins who is the General Manager of the Nova Scotia Construction Safety Association.

Mr. Chairman, members of the committee, we're making progress and I'd like to start with that. Together with our partners, we're preventing injury, we're helping people get on with their lives when an injury does occur. The evidence of this - since 2005 workplace injuries have declined by more than 30 per cent, from over 9,000 time-loss injuries to today less than 6,000. The number of days lost to workplace injury has also declined - it was 1.2 million in 2005, today we're just about over 6,000 days. The number of people who go on to receive extended benefits, which is perhaps one of the most important things that we measure, is down by some 40 per cent.

We're also pleased to have a very committed board of directors whose members represent the viewpoints of both workers and employers. We are also fortunate to enjoy a very strong working relationship with the Safety Branch of the Nova Scotia Department of Labour and Advanced Education.

Together with our partners in government and safety associations, we've developed and are implementing Nova Scotia's Workplace Safety Strategy. That's towards the vision of making the province the safest place to work in Canada. Change is needed to achieve that and that change must come within industry - the behaviour of industry and the behaviour of individuals so that people will get to a place where they will only do something if they can do it safely, and safety is seen as a priority.

Nova Scotia has eight industry safety associations that are improving safety performance. These safety association leaders who are here today also have contemporaries in forestry, retail gasoline, automobile dealers and farming sectors. They are all doing incredibly important work and have proven their ability to positively impact safety outcomes in the sector. As an example, in the construction sector, by building relationships, focusing on education, helping with training, developing effective safety systems and audit programs, the Construction Safety Association has helped more workers come home safely to the tune of cutting costs by more than two-thirds and, since their inception, have reduced their rates by greater than 30 per cent - some of the lowest rates in construction in Canada. Other industries supported by safety associations are seeing similar trends.

It's not all about the rates, though. If we look at some of the initiatives, Aware-NS has new programming on workplace violence in the health care sector. The Fisheries Safety Association is promoting PFD use and also man-overboard demonstrations, and has a conversation to improve things there. The Trucking Safety Association is doing that by

encouraging homes and businesses to make their properties safe when their workers arrive and they're working in their workplaces.

Safety associations - as we're here to talk about funding - are funded in a number of various ways. The funding for most of them comes from levies where WCB collects premiums and we collect a little bit extra so they don't have to have an accounts receivable department and those extra administrative costs. They're directed by Orders in Council or by a contractual arrangement on assessment premiums.

There are two exceptions to this: one is AWARE-NS, which is funded directly by the Nova Scotia Department of Health and Wellness; and the Farm Safety association, which is funded by the Canadian Agricultural Safety Association and the Nova Scotia Federation of Agriculture.

We're proud of what Nova Scotia workers and employers have accomplished. Continuous progress in workplace safety will take the commitment of all of us, including government, industry, labour, safety associations and all Nova Scotians. That's what's unique about the new Workplace Safety Strategy, is there's a place for all of us to understand that there's a role for everyone.

Together, we can continue to reduce the human and economic toll of workplace injury. My colleagues and I are here and are pleased to respond to any questions. Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you. We'll start with the PC caucus for 20 minutes - Mr. Houston.

MR. TIM HOUSTON: I'd also like to make a quick introduction before we start. I see Mary Lloyd and Larry Maloney from the Pictou County Injured Workers Association in the gallery so I thank them for coming this morning. I thank the witnesses for appearing.

There's quite an unfunded liability for the Workers' Compensation Board. What is the current unfunded liability as we sit here today?

MR. MACLEAN: Currently we're 71 per cent funded. In round numbers, approximately \$1.9 billion in liability and close to \$1.5 billion in terms of the money that's in the accident fund - so we only have 71 per cent of the money necessary to make the promises that we've made to injured workers to date.

MR. HOUSTON: That's an unfunded liability that has existed for some time. I think the last time the Workers' Compensation Board appeared before Public Accounts Committee back in 2010 they had a goal of addressing the unfunded liability by 2016. I think that was revised to 2021. What's the current target for addressing the unfunded liability?

MR. MACLEAN: Thank you for the question. There are a number of things that impact the unfunded liability. Obviously, the number of people getting injured, the progress and investment returns - all these different elements would impact our funding position. As we all know, in 2009 there was a big downturn, which had an impact in the investment markets, which had an impact on the fund, like it did in most pension funds.

Today we're in a position where we're looking at a range of between 2019 and 2023. We're making progress each year. For example, we were 67 per cent funded last year; this year at the end of 2013, 71 per cent. Again, it's going to take all of us to actually achieve that and we need the investment markets to stay strong.

MR. HOUSTON: So the 71 per cent, is that at December 2013?

MR. MACLEAN: That's correct.

MR. HOUSTON: Is there any more recent number now - up until June maybe or something?

MR. CHAIRMAN: Mr. McKenna.

MR. LEO MCKENNA: We haven't published the second quarter yet. We did publish the first quarter, and there was an improvement. We anticipate, when we publish the second quarter, that you'll see a further improvement.

MR. HOUSTON: So in terms of the way that the system works - you did mention investment returns. I think I read that there's a targeted investment return of 10 per cent. Did I read that right? That would be what the fund is expecting to return and you're hoping to get in their investments over the next few years?

MR. MCKENNA: We actually target between 7 and 8 per cent over the very long term.

MR. HOUSTON: I'm not sure - I think it's probably pretty relevant. I was looking at the annual report from 2013 on Page 12. It talks about a five-year target return of 10.1 per cent, a five-year rate of return of 9.8 and then it says five-year targets. I just want to make sure I'm reading those numbers correctly.

MR. MCKENNA: Sure, I can clarify that for you. What we publish on that chart, we're comparing our actual return to the target return for that particular five-year period, so we calculate the target return for that particular five-year period by looking at what happened in the various markets that we're invested in.

MR. HOUSTON: It's retrospective.

MR. MCKENNA: Exactly.

MR. HOUSTON: Now just in terms of targets, the targeted average assessment rate of 2.65 per cent - I think I must have gotten that off the same sheet - I'm just wondering about that targeted assessment rate and how that might compare to other jurisdictions across the country.

MR. MACLEAN: We have some of the highest assessment rates in Canada. The average assessment rate - you have to be careful with averages because as an example, we don't cover banks, finance institutions and insurance companies which makes it difficult to compare to other jurisdictions where they typically have universal coverage and those industries are included, in terms of workers' compensation. However, we do have high rates and part of that is the fact that we're amortizing the unfunded liability. So if you back off the industry comparisons and the unfunded liability, we're comparable to a lot of other jurisdictions. However, employers in Nova Scotia currently have the highest average assessment rate in Canada.

MR. HOUSTON: Just to kind of orientate myself a little bit on some of these targets and stuff, I did see a targeted satisfaction rate of 70 per cent, and I'm just wondering what that means. I've talked to a lot of employees and injured workers who maybe aren't particularly happy and I've also talked to a lot of employers who aren't happy with the rates so I kind of see both sides of it in my everyday work. I'm just wondering how you reconcile that with your targeted satisfaction rate and what that means.

MR. MACLEAN: Certainly we see the priority of providing service to all the different constituents and we also measure the satisfaction of our own employees as well, because we believe we need to understand what those things look like. We run surveys and those surveys have a number of questions and basically it helps us understand those priorities. The feedback from those surveys goes into our plans to try to have continuous improvement, in terms of providing services to both the worker and the employer community.

The 70 per cent number is seen to be best practices from a third party. When we set up the metric on the balance scorecard our board heard representation from what would be a good measure to start with, we recognized with workers' compensation that we're never going to make everyone happy by the nature of the fact that we're charging premiums to people who perhaps want to pay those premiums or perhaps see those premiums as high. On the other side of the coin, an injured worker would say perhaps their benefits are not sufficient or benefits are low.

We know those are issues in the system. However, we try to treat every injured worker, every employer, every interaction in a caring and compassionate way, try to educate and provide excellent service to the people who are stakeholders in our system and our board keeps a metric.

You'll notice that in 2013, for example, the indices both for worker-employer and for our staff metric are above the 70 per cent. They don't change that number - the 70 per cent - but the board does currently monitor us on a regular basis, in terms of those surveys as they come back, to ensure that we don't see any fundamental problems or changes that are taking place there.

MR. HOUSTON: I'll move on a little bit and talk about some of the numbers - this may get Leo's attention. Looking at the administration costs for the board, I see \$47 million in administration costs for 2013. I'm wondering how that compares to other jurisdictions. It's probably not an easy comparison but it must be something that the board looks at.

MR. MCKENNA: It is something that we keep a very close watch on. I can assure you that our board of directors keeps a very close watch on our administrative costs. Our board is a bipartite board with members from labour and from the employer community. I assure you that neither of those parties is interested in any more administrative spending than necessary.

With respect to your question of how we compare across the country - what we do is each organization submits to the AWCBC, the federal organization, a comparison where we look at the portion of our rate that goes to cover administrative costs. That same chart that you alluded to earlier, we show what's happening in Nova Scotia, and you can see that in 2013, 37 cents of the rate went to cover administrative costs.

That positions us roughly in the middle of the country - probably a little bit higher than average. I would submit to you that's because as a relatively small jurisdiction there are some costs that you're going to incur regardless of the size of jurisdiction. In a smaller jurisdiction you can't amortize them across quite as big a payroll base.

MR. HOUSTON: Included in the \$47 million was \$1.5 million in communication expenses. I'm just curious about that one. What is that?

MR. MCKENNA: We would be happy to provide a detailed listing if you're interested, but the big components - we do a fair amount of advertising. I'm sure you've seen the kind of work that we're doing publicly to try to generate awareness of occupational health and safety, so that's a big part of that number. Also included of course would be our telecommunications costs, our printing costs and things like that.

MR. HOUSTON: So did I understand correctly that the Department of Labour and Advanced Education is actually the one that does the safety training and that type of working with workplaces, as opposed to you guys? I'm just wondering about the need for advertising in your business and the effectiveness of what you're advertising - what the message may be, and if there's another department that's actually paying for the training and doing their own kinds of awareness activities.

MR. MACLEAN: When we look at advertising - advertising on its fundamental basis is very important to the things that we're trying to do because we're trying to achieve culture change. We're trying to change the way people think when they're actually about to do something, that if it's going to put them in danger or there's something - they need to make a different decision. We also need employers to understand the role that they play and also really move from knowing about health and safety to caring about health and safety. That's why it's so important.

To address your question directly, the Department of Labour and Advanced Education looks after the enforcement and regulation that's associated with health and safety in the workplace. We work hand in hand with them. I like to use the phrase "virtual integration" - in other words, the Department of Labour and Advanced Education is perhaps our most important partner because we really need to work hand in hand in terms of providing assistance.

We have the mandate for prevention, but an OSH officer, every time they touch base with an employer when they're in their workplaces, has an opportunity to educate, an opportunity to help and ensure that we create the conditions for success. When you look at the costs of these types of things, you don't have to look any further than the fact that we pay about \$200 million out in benefits to injured workers every year and that the premiums are close to \$280 million on the other side of the ledger. That's a big cost to business as well.

What we're trying to do is we're trying to facilitate culture change, and I think some of that progress is evident in the results that we're seeing - that employers are now starting to embrace health and safety in new ways and we're seeing workers making different choices and staying safe in the workplace, returning home to their families at the end of the day, but it is a continuum in terms of how we work together.

MR. HOUSTON: I'm still just a little interested in the need for advertising and the effectiveness of it. If a worker is injured at work and then deemed fit to return to work, whose responsibility is it to make sure that the workplace environment has been modified to prevent that injury from happening again? Is that something that falls under your mandate or is your mandate limited to just dealing with the injured person and not necessarily the environment? It was my understanding that it's more the Department of Labour and Advanced Education that would deal with the workplace environment, and you're just trying to deal with the injured people.

MR. MACLEAN: From a compliance perspective, absolutely it's the Department of Labour and Advanced Education that will be working at an employer's site, who comes to make sure they have a JOSH committee, to make sure they have hazard identifications, the different types of things they need to create that safe work environment that are covered under the law.

From our perspective, what we have with the prevention mandate is we have people who would act as coaches and help people understand what best practice looks like. I think it's very important to highlight that the employer has not just a role but a responsibility to create a safe workplace for their workers. That is all outlined in the Occupational Health and Safety Act which goes hand in hand with the Workers' Compensation Act, again one more focused on the prevention, helping, et cetera.

Our mandate is broader now, it has been about 10 years or so that we got the prevention mandate from the Department of Labour, was transferred to the Workers' Compensation Board. That mandate includes in our strategic plan things like social marketing, incentives, leadership initiatives, online tools - so it's the full gamut of trying to help ensure and create the conditions for success.

MR. HOUSTON: I appreciate that but if the caseworker, I guess, deems somebody fit to return to work, they're kind of looking at that in isolation, in regard to the physical fitness of that person. Do they then say, well, you are physically fit to return to work and guess what, we look back, we dealt with the employer and the same thing is not to happen. Is there any of that kind of connecting of the dots?

MR. MACLEAN: Well there is - and I'll just give you an example in the continuum of care. Someone gets injured, we try to do a functional assessment for that employee to make sure that we're not going to put them back in a circumstance that's going to get them reinjured, what can they do?

A lot of the focus in the past was what can't an injured worker do and then they'd go off and say, well, they can't work, as an example. Today the focus is changing to stay at work, which we believe is best practice, the proximity with the workforce, et cetera. So we work with the workforce and the workplace. The caseworkers, in fact, are spending a lot more time with employers. They're out in the workplace and they're trying to - if they have to modify work stations or whatever they need to do, to make sure that worker has a safe place to go back to because we don't want the same thing to happen over and over again, clearly.

Oftentimes if things are systemic, we're sharing information with the Department of Labour and Advanced Education. If we see things that are happening, they will, in turn, respond either at the employer level or the industry level, to make sure that we're working hand in hand, to try to get these hazards out of the workplace that are causing the majority of the problems.

MR. HOUSTON: I do have a bunch of questions about how you determine if a person is able to return to work and stuff but I'm just so concerned about this unfunded liability because I'm sure it impacts so much on how claims are assessed and everything else. I did have a chance to read the Act, and in the Act there's Section 116(4), which I'm

sure you guys are probably familiar with, which states, “Where in any year there is an annual operating deficit in respect of that year, it is the duty of the Board to ensure that, by the end of the third year following the year in which the . . . deficit occurred, the deficit is eliminated.” Does that portion apply to the overall unfunded liability? How did the unfunded grow for so many years, even after this Act was enacted?

MR. MACLEAN: Fundamentally if you look where the unfunded liability actually came to be, it was actually a period back in the 1970s and early 1980s - so 1971 to 1986 to be exact - where costs were going up at a greater rate than premiums during that period in time.

When the Act was modified back in 1992, there was this provision Section 116 put in the Act and we have been fully compliant with that, we have comprehensive revenue each year. In other words, we’re mandated to collect enough premium to cover current and future costs with all the claims that take place in a given year, in a current year.

When we have money that’s in addition to that and we’re assured that because the actual assessment rates have an amount built in for the amortization of the unfunded liability, that extra amount or what’s left over after we paid the claims, after we pay Workers’ Compensation Board’s administration, the money that goes to the Department of Labour and Advanced Education, the Workers’ Advisers Program, WCAT, and our other responsibilities, once those are all paid there is an amount of money left over that goes towards the amortization of the unfunded liability. Our premiums need to cover that and we’re compliant with that section of the Act.

MR. HOUSTON: Has the board ever approached the minister for financial assistance in clearing up the unfunded liability?

MR. MACLEAN: Not during my time as CEO. I believe that in the past there have been conversations but I wasn’t party to those conversations.

MR. HOUSTON: And you have been CEO for . . .

MR. MACLEAN: Three years.

MR. HOUSTON: So prior to that, there were possibly some discussions between the board and the government at the time.

MR. MACLEAN: It has been a long time since that conversation has taken place.

MR. HOUSTON: How are we doing?

MR. CHAIRMAN: Less than a minute.

MR. HOUSTON: I will pass that over to my colleague.

MR. CHAIRMAN: We'll move over to the NDP caucus. Mr. Corbett.

HON. FRANK CORBETT: Thank you, folks, for joining us this morning. I'm just a fill-in here this morning so I'm going to probably have a hodge-podge of questions.

As someone who has had some dealings with the board in the past and stuff like that, often when the worker is either injured or had a pre-injury, they're often put in a very precarious position. An injured worker sometimes has to deal with two Acts - an Act pre-Hayden decision and an Act post-Hayden decision. For clarity, can you explain as best you can, Stuart, the difference between the two inasmuch as timelines and so on and what you would call a pension pre-Hayden and what a pension would be post-Hayden.

MR. MACLEAN: When you look at our legislation - and again, this is based on legislation, Mr. Corbett, this is exactly where it is - basically the Act provides the rules. There was the old Act where people were compensated based on the part of body that got injured, for example; it was referred to sometimes as the meat chart at that time. It didn't take into consideration their ability to return to work, or whether or not they were losing their wages.

It was modified after the Hayden decision - I'm not sure of the exact date of the Hayden decision in the early 1990s - and a new Act was put in place. The new Act basically allowed for compensation for lost wages. So when someone is injured, we look at what they made prior to the injury, what they made after the injury - and there is a compensation that takes place and a new benefit level was introduced at that time.

There were a lot of changes in the new Act. For example, in the old Act it was 75 per cent of gross, was how the calculation was done. Today it's 75 per cent of net, based on the first 26 weeks and then it goes to 85 per cent. Those changes were made in the Act in the early 1990s. It does create some confusion because you have injured workers from the different populations who say - well how come someone pre-Hayden is back to work and they're still getting the Workers' Compensation benefit? That can happen. An extended earnings replacement benefit is what we would call a pension and we don't differentiate, rather than they're just pre-Hayden or they're post-Hayden.

MR. CORBETT: Thanks, because as I say, the part of the province where I come from, a lot of the injuries are on that line. There are quite a few though that would have been post-Hayden from the mining industry and so on, as I'm sure you're well aware. Previous to your time in your chair, it caused some consternation after the Act was changed in February 1, 1996. You had people working side by side - particularly in the coal mining industry and particularly for Devco when you had people on automatic assumption, commonly referred to as AA, where someone would be on the meat chart or clinical ratings

system and they'd be getting paid this much and the person on wage loss would be getting considerably less on wage loss.

This may not be a fair question to you and it may be a board issue, but at that point, does anybody ever recall if there was any discussion with the board in relation to saying, how do we smooth this out? It really bothers me whenever you see two groups, the exact same, except for a day in the calendar and one is in and one is out. You could have the same failure of your pulmonary function, yet because they were diagnosed even - like, you could have had this injury before Hayden but the test came after Hayden.

I wonder, was there ever any discussion with government at the time about how we would smooth these people in? If there's any large inequity within the board, I always find there is when it comes to the Hayden stuff, but no more than that because if I was more paranoid than I am, then I would say that there were decisions held back, knowing full well what was going to come out of Hayden and what that decision would be. Was there ever any discussion about that?

MR. CHAIRMAN: Ms. Rowan.

MS. SHELLEY ROWAN: As Stuart mentioned, the change in the legislation was before most of our times but I understand that the government did consider that divide between those workers who had a clinical rating scale pension, long-term pension, and those who would receive a long-term earnings loss pension. Those decisions were made at a time when the system was in financial crisis.

We've talked about the unfunded liability and at that point the board was only 27 per cent funded - significant financial issues - so a trade-off was made that they couldn't afford to bring all the workers who were receiving a clinical rating scale pension over to the earnings loss system. They did put in place a new benefit called a supplementary benefit that tried to make a bridge for those workers who had a pension under the clinical rating scale who had not returned to work and who were struggling financially.

They put in place a top-up benefit and that was improved in 1999 or 2000, I can't remember the exact year . . .

MR. CORBETT: 1999.

MS. ROWAN: . . . to increase that benefit a little bit, in the hopes of making a bit of a bridge. But there is no question that for someone in the early days who was injured prior to 1996 and did not return to work, their pension could well be less than someone on the earnings loss system, due really to the financial situation of the board at the time.

MR. CORBETT: I guess around just staying on the Hayden stuff and I guess it goes to those on post-Hayden pensions and I think Mr. MacLean will probably know where I'm coming from on this one, is there any action being taken today in the courts regarding

pensions continuing beyond the age of 65, because if you're post-Hayden, you lose your pension at 65; pre-Hayden, you keep it, right?

I want to know - as you see, there are more and more people working beyond 65, so how do we treat these people? If they lose it now, how do we treat these people if they're injured working after 65? Do they get an EERB or whatever, or are you anticipating and kind of manning the courtroom door, so to speak, about a possible challenge on the - would it be considered discriminatory or whatever, to lose your pension at 65?

MS. ROWAN: There has been discussion about the termination of Extended Earnings Replacement Benefits at age 65. Now, that benefit was put in place under the concept that most people retire by the age of 65 so the ongoing benefit would end just as my wages will end at age 65. As part of the long-term benefit there is a small benefit for the physical impairment that, if the person is getting an ongoing benefit, would continue, or it would be paid out at age 65.

There's no question that we've heard discussion about whether that will be tested in the courts, we don't know what will happen over time; the termination of benefits at age 65 is currently embedded in the legislation. If someone who is 65 is still working and they are injured, we will cover temporary earnings replacement benefits for those people but we won't provide an extended earnings replacement benefit at that point.

MR. CORBETT: I guess I'll be more direct because I remember when a lawyer friend that we both know gave you counsel on your chronic pain - that it would stand up in the federal court - and it didn't. Has it been discussed with your legal department regarding the possibility - would this stand a legal test?

MS. ROWAN: Absolutely, there are a variety of things in the Workers' Compensation Act that we know have been discussed and tested over time. Chronic pain would be a good example of that and age 65 is one of the things that the board does discuss.

MR. CORBETT: Are you at liberty to tell us what those discussions are? What advice have you been given?

MS. ROWAN: We only talk about it as a risk at this point.

MR. CORBETT: So it's just a risk - there is no ongoing case. A worker's adviser has never given notice that they're bringing what we would refer to as a test case forward?

MS. ROWAN: I'm not familiar with any case. One of my colleagues might have more information.

MR. MACLEAN: I'm not aware of any case right now that is currently moving forward.

MR. MCKENNA: I don't believe that there is a case ongoing; this has been tested before though. It has gone at least as far as the Workers' Compensation Appeals Tribunal because I can remember being called to that tribunal to help them understand the question and offer some evidence around what the costs might look like. So it has been tested before, and it's quite possible it will be tested in the future.

MR. CORBETT: The issues around those who are receiving pensions - what is the usual raise? How would you go about getting a raise? If someone is on an extended earnings benefit, after they're on it for so many years, how do they progress? By CPI or how is that figured out?

MR. MCKENNA: The legislation provides for indexing at half the rate of CPI. On the previous question around age 65, it's probably important to note that, as Shelley said, we believe the legislation was written - and of course we're not legislators, but our understanding is the legislation was written on the basis of normal retirement at age 65. It is tied to all kinds of other government programs - some of which are at the federal level around CPP, OAS, that sort of thing. So age 65 is a very standard retirement age concept.

MR. CORBETT: Those concepts are there too when we changed from the clinical rating system to this, so that was nothing new. None of those programs have arisen since February 1, 1996; I don't think that's a mitigating factor here. The federal government now is musing about raising the pension age too, which is the reason I'm asking the questions. If some of things you're reacting to at 65 - and this rolls into that - then I think you have to be proactive. Say if the feds are going to go up to 67 or whatever magic number that you pick, I think you have to be ready for that.

I'm certainly no lawyer, but I would think that someone would have a fairly decent case when it comes to regular retirement age - with air quotes - at 67. That's what you've just told me about most of your case on here if it changes. I don't know whether Mr. MacLean wants to respond to that.

MR. MACLEAN: I'll just say that our board typically will look at the types of decisions that can change the intent of the legislation. You gave some great examples earlier - whether it's chronic pain or gradual onset stress, the different things that are emerging as issues across the country, they'll look at those. We have, as you know, legislative framework and we need to honour that legislative framework. The rules around, for example, age 65 for adjudicators and case managers are very clear. The test is more of constitutional - does it actually create an disparity for people?

Certainly, if things move to 67, I can only assume that our board will have those conversations that are necessary to say what recommendations they would make to government. Then it would be incumbent on the government to actually make the changes to the Workers' Compensation Act, if that becomes the case.

MR. CORBETT: I sometimes wonder why you guys - and I'm talking about yourself on down, the employees throughout - don't go ballistic down on South Street because it moves me into another part of my question. You do, and I agree with you, have legislation and then on the other side you have board policy, so that's on balance you have - when there are gaps in the legislation, or perceived gaps, and then the board is left to its devices to say that's the intent so we're going to put a policy - and I'm fairly doing that much as a drive-by and not giving you much on that, but the reality is that many times you see decisions based on board policy because they feel that the legislation itself doesn't really cover the situation.

Is there much discussion after that rises up and the board chair - we'll just say that a meeting takes place between the board chair and yourself, Mr. MacLean - is there much asked there between the board chair saying look, we've got to go down to see the minister and say, you know, we're wandering into an area that is really legislative and not policy, does that happen? If so, does it happen very often?

MR. MACLEAN: As you know, there's a collaboration that needs to take place on policy with our stakeholders. We go to our stakeholders first of all to say, what are the emerging issues that people believe are controversial? We also have lots of input from our staff, our adjudicative staff, our case managers, where they say we have difficulty, we need clarity. Our board weighs up and consults on it; in fact, we have a policy even about our consultation process which clearly defines how we have the conversation with our stakeholders, how the board develops its policy agenda, and then how those policies get approved and vetted.

Those policies, as you've mentioned, are actually binding on staff just the same as the law is, the Statute actually calls for that. It actually is filling in the details of the legislation where there are areas of ambiguity. I think the earlier example is very clear so if there's really a lot of clarity - like, if this section says we don't cover beyond 65 for wage loss and that is not being tested and we don't need policy to understand what it means or for adjudicators to make their decisions, that's a legislative conversation.

Does the board, and the board chair, engage in conversations in terms of the priorities of the board, what the board is talking about, what they think the current issues are? That absolutely does happen with any government that's in place. Also, we have regular meetings with the advisory council, which provides advice to the Minister of Labour and Advanced Education on the state of occupational health and safety in Nova Scotia. The chair visits them once a year, they visit our board once a year to share their priorities. Those priorities are then written up on the state of occupational health and safety, a report that is tabled to the Minister of Labour and Advanced Education on an annual basis.

There's a lot of communication that takes place around our policy agenda, what the emerging issues are, what the challenges are. It can be a very difficult thing to get a legislative mandate to change in workers' compensation, just by the nature of the complexity and the fact that it's going to be controversial, whatever you do. Those are some challenges that we deal with.

We fully understand the priorities of our stakeholders and understand where they would be on these different issues because we try to keep strong communication channels open at all times so that at least the minister and the current government understand the priorities of where people are and what they would like to see, if the Act actually gets opened up.

MR. CORBETT: I'm going to do something really strange and ask you one about the topic of today: association funding. I realize one of the areas that had a growing accident rate was in the health care sector, so how does the association really help drive down those accidents?

MR. MACLEAN: Associations work in a number of different ways; first of all, I think the important thing about them is that they're industry-led so they further understand the things that go on - and you used the health care example but I'll just give you a couple of other ones. If you were in the forestry sector, they are going to be the best ones to give you training on chainsaw use. If you're in the construction sector, confined space, fall restraint, those are the types of things they would focus on. In the health care sector you need specific information to get to those committees, the JOSH committees, and it's a big organization. It's over 20 per cent of the payroll base that we assess on is in health care, so it's big. We have a lot of time loss injury that is taking place there and AWARE-NS, for example, while it doesn't have a lot of resources, they need to be strategic so they have on-line training, they have websites and they basically get the message out to the individual JOSH committees that exist through the acute care sector, through community care and nursing homes, et cetera, to basically get the messages out.

So in essence what they're trying to do is enable people to create those health and safety environments in that sector by taking an investment from the Department of Health and Wellness, finding out what best practice looks like and making it available to people. In each of the different safety associations, they have different spectrums . . .

MR. CHAIRMAN: Order. The time has expired for the NDP caucus. We'll move to the Liberal caucus. Mr. Stroink.

MR. JOACHIM STROINK: I have a few questions that lead into - three questions in total. What is the total cost of WCB to run?

MR. MCKENNA: Are you asking the administrative costs?

MR. STROINK: The whole kit and caboodle of running the WCB.

MR. MCKENNA: The total cost in 2013 was \$437 million.

MR. STROINK: How much of that is collected from businesses?

MR. MCKENNA: The assessment revenue in 2013 was \$296.8 million. I suspect your follow-up question is, where does the rest of the money come from?

MR. STROINK: No, actually it's not. As a small business owner, I'm kind of trying to see where - like for small businesses, every nickel counts. What are you doing with that money to support the smaller guys in this, because there is a perception that you're mainly focused on large businesses. What are you doing for small businesses within that?

MR. MACLEAN: Small and medium businesses - the way we would define them - would make up about 40 per cent of our payroll base. There is no question that in the Workplace Safety Strategy - the previous prevention strategy that we had in play - our focus was getting the economies of scale in the 350 or some-odd companies that have the other 60 per cent. So this is about customization - enabling the companies with coaching best practice to see success in those organizations. I think that's one of the main reasons why we've seen a lot of the success.

Small and medium businesses struggle because typically they statistically have an injury once every seven years. You need to pay premiums, so you're paying premiums and they're going up, they're going down - you need to understand it. So the needs are very different, which is why we have to have a different approach.

In the Workplace Safety Strategy we talked about and we heard from employers that we need to do something different for small and medium business by creating online toolkits and different information that will be fundamental to helping enable their success because their challenges are different. We're working with the Department of Labour and Advanced Education for different ways to show up. I'm going to turn it over to Shelley because she's our VP of operations and led the implementation of that strategy. Maybe you could just give a little bit detail.

MS. ROWAN: In terms of the Workplace Safety Strategy, as Stuart said - we heard from small businesses in particular that the web of regulation that small businesses try to follow is very confusing and to try to read the Workers' Compensation Act or the Occupational Health and Safety Act is really daunting to understand your role and responsibilities.

Within the strategy, you'll see that we have some initiatives to try to make information more accessible and easier to understand from the point of view of the small and medium-sized businesses. We're starting to build some of those tools already. We have

a brochure that we've prepared that gives the highlights of your health and safety responsibilities, and next we're going to go to a toolkit that gives a small business owner a few tools to understand how to meet their responsibilities.

On the workers' compensation or claims side, as Stuart said, a few years ago we kind of split our claims management system and had a focus on large business and a focus on small and medium. We know the needs of those two kinds of businesses are very different. Large businesses have infrastructure, they have health and safety people, they have human resources people. A small business owner is trying to do it all themselves.

There are challenges in trying to return somebody to work in a very small workplace so we've added a workplace consultant who is now accessible to small businesses, who could give them some support. We're looking at our return to work model to see if there is anything else we could do in the way we provide service that is different than how we do it for large businesses that might help support the small companies, in terms of trying to get somebody back to work, knowing they just don't have all the same resources that a large business would have.

We are early days into that. We understand the frustration and we're getting to better understand the need and try to see where we can help to try to support small and medium businesses in a different way.

MR. MACLEAN: Also, from a national perspective, the AWCBC has a prevention committee. This is an issue right across Canada that people not only struggle with but we're looking for ways to learn from each other on that, so any of the different modalities or the different things that people are doing, we're going to try to bring them back to Nova Scotia and learn from them.

In fact when we had a leadership forum last Fall, we had a special session for small and medium business to talk to leaders in those sectors about what the issues are because first, you have to understand what challenges people are having if you want to be responsive. There's no question that the challenges are different. We've made it a priority and a strategy to step up to trying to enable the success of small and medium business in a different way.

MR. STROINK: Thank you.

MR. CHAIRMAN: We'll move to Ms. Miller.

MS. MARGARET MILLER: Good morning and thank you for coming in. I've had a longstanding relationship with the Workers' Compensation Board actually as an employer as well, in the dairy industry and then later on in the forestry sector. I remember those first days - this would be in the 1970s, 1980's, early 1990s - it was almost an adversarial role, it was a hardship being involved with the Workers' Compensation Board.

Later on, during the time that we were in the forestry sector, I found a real change. I would call the Workers' Compensation Board or the offices over certain issues and things and it was very easy to get answers, very good responses. Even now as a MLA, calling the Workers' Compensation Board on behalf of constituents, I found the responses have been really great.

My question to you is, what brought about that change? I can remember somebody coming in and telling me that their husband worked for the Workers' Compensation Board but he didn't tell anybody, he just said that he worked for the government and that was it. What has changed? Why the shift in attitude and the change in profile of the board?

MR. MACLEAN: Thank you for that question. We see in our business, we recognize it's a business of influence. Just to give you an example with that, the claims are taking place but they're not taking place in our workplace, they're taking place in the workplaces of employers. It's happening to people but we don't have direct supervision so we have to be influential.

Our board - first of all, we got the prevention mandate about 10 years ago. That was very helpful in changing from being an organization that pays claims and works just to get people back to work, to being more of an organization that has a specific orientation towards working with others.

In the most recent version of the strategic plan - we're just about starting our next strategic plan now, we're in the midst of having those conversations - in the last strategic plan, the board actually added a goal of working with others, and they added another goal in terms of public confidence. Those two goals go together to say we need to show up in a different way, we need to enable, we need to know people, we need to be known by those people.

We implemented a new service delivery model during that period which allows us to have understandings of the different challenges in different industries, as an example. Also we work very closely with the injured workers associations, the Office of the Worker Counsellor, the Office of the Employer Advisor, and all kinds of infrastructure has been added to try to improve communication and navigation of a very complex system. The system is complex, we understand that, but it's about how we show up.

We also added values so that each one of our organizational employees understands that they need to be caring and compassionate, they need to have a can-do attitude, they need to be safety champions, and we want people to be proud of the value proposition that we bring.

With the prevention mandate, one of the first questions we would say to staff is, how are we going to show up for anyone and say we can help you? That was a first question

for us and we needed to develop tools, find out what best practices looked like across the country, and we needed to move from being a bit reactive to being more proactive in trying to find creative, innovative solutions.

I can't speak too much about what happened more than 30 years ago. I know I've been with the organization for a long time and I understand that what you say is real. People were ashamed to work there at one time or afraid for the political - if you say, I work there, then you're going to be in the corner talking to the person for the whole night and not necessarily be a positive conversation.

Today, I believe our employees are proud of the work they do. They see the impact of what they do. Is there hardship? Do we need to do better? I think we're aligned by the purpose that all of us understand that getting people back to work and preventing the injury in the first place is what all of us want - right from the politician to the people who work with us, to the people if it's an employer, a labour committee, or the injured worker groups. Everyone understands that the prevention mandate is important.

That's where we've put a lot of extra effort and energy and I think it has actually changed the way people see us and think about us. We've tried to become better at communicating, like with online tools. Facilitating and enabling the success of others has been a key focus of our board. We want that to be the way we're perceived and I'm happy to hear you say that.

MR. CHAIRMAN: Ms. Lohnes-Croft.

MS. SUZANNE LOHNES-CROFT: I'm the MLA for Lunenburg - I'm going to talk about fishing.

MR. MACLEAN: Oh great - my favorite topic.

MS. LOHNES-CROFT: Why is the WCB focusing so heavily on the fishing industry?

MR. MACLEAN: That's a great question. I'll just go back to last year as an example. Last year we saw more than 5 per cent reduction in time loss injury. Thousands of days were removed from the system in terms of people getting back to work in a safe and timely way, but we are seeing improvement. When you looked at the fatalities, we had 34 workplace fatalities last year and when you look at that, 17 of those were what we would call an acute fatality or something happened to the person in the workplace. The others were health related or occupational disease related.

When we look at the high-nail in all of that - to me, it's an unacceptable number. To have one fatality is a tragedy for a family, for a community. In the fishing sector, we actually had eight acute fatalities last year. We all remember the *Miss Ally* disaster that we

can never forget, but we also had a fall from height; we had someone drown off the end of a wharf. We had a young man lost off the end of a boat while they were steaming back to port.

You look at these things and they're fundamentally unacceptable. So in conversations with the Department of Labour and Advanced Education at the time, we decided to implement the Fishing Safety Strategy to try to raise awareness. We see an industry that's struggling with high levels of fatality, but also severe injury and a high frequency of injury, which results in high Workers' Compensation costs.

The MLA who just spoke, spoke about forestry and how that has changed and high rates have now changed to low rates. We need to facilitate the same type of thing in the fishing sector if we want them to be vibrant and strong. With the people in those communities, the hardship needs to stop. One doesn't have to look any further than monuments in each of these little communities to see how many people have been lost. We have a rich tradition of fishing, but it can be different and we need to believe it can be different.

So wharf-side demonstrations on getting people back into the boat - PFD use is on the uptick so we're seeing a lot of that and we're supporting the Fisheries Safety Association in their work. It is an industry-led safety association and we believe that it's important for us, both in our social media and with our tools and resources to recognize that there is a big difference we can make there. When you have a great year and you say, this is the problem - the high-nail in these particular circumstances in fishing. They need our help and we need to respond.

MS. LOHNES-CROFT: There seems to be a lot of resistance from fishers. I've met with many over the last couple of years. They find safety equipment impedes their work. Some just feel uncomfortable wearing survivor suits. There's also the cost - it's very expensive for fishers who are sometimes going sail-to-sail to provide a living for their family, to add all this expensive equipment although it is a safety issue. Is there any thought to that?

MR. MACLEAN: When we try to quantify the cost of a lifejacket or a life raft to the cost of a human life, to me I think the connecting of the dots there is what needs to happen. Certainly I don't think there's any fisherman who would not want to come home safely to their family or doesn't care about their crew. This is a rich tradition - we've been fishing for hundreds of years in this province.

The fact of the matter is you can say it's uncomfortable - we had all the same conversations in the forestry sector around chainsaw pants and the visors - they steam up, and the helmets, we shouldn't have to wear them - but you can't have somebody in flip-flops and a bathing suit operating a chainsaw. You could say well, you know what, the chainsaw pants cost a lot of money, so does the visor, so does the ear protection, so do the

gloves but it's fundamental; they shouldn't be operating in that industry if they are not willing to create a safe work environment. In fact it's covered under the law, and we need to change the attitude towards that, to get fishermen to move from knowing about it to saying you're not going to be able to step on my boat unless you're wearing a PFD.

We're seeing examples of that success across the province. The man overboard demonstration in Wedgeport at the recent Tuna Festival had probably over 300 people on the wharf watching the man overboard demonstration, cheering when they get the guy back into the boat; that fisherman who has gone overboard. These were not new PFDs that were on these guys, they were worn PFDs so we see whole communities that have surpluses and funds that are now taking those funds and directing them towards buying PFDs because they want to raise awareness.

We're seeing a groundswell. We're seeing organizations like Comeau Seafoods, who have made it a safety charter, so everyone on their boat has permission to do something only if they can do it safely. The expectation is when you are on deck you are wearing your PFD and that is the way you work. It's uncomfortable, maybe it's not convenient but the fundamental thing is eight people in this province lost their life last year in the fishing sector; this year there have been two already. That is a statistic that we can change. Last year the number was 17 at the end of the year, this year we are at three, so we're very happy that the number has come down but as long as there is one, that's going to mean we're going to have to do everything we can in our power.

Now coming back to your first point of why it's so important that we support the Fisheries Safety Association - it should be industry-led with HR sector councils involved so when we make changes or we try to make changes to create those conditions for success, we do it with the fishermen, not to the fishermen. That's critical because we need acceptance, we need culture change and we need to have the voices to say this can be different. We've seen the examples of it, now we need it to be widespread practice.

MS. LOHNES-CROFT: We've all seen the horrific accidents that have happened on trawlers and whatnot but what about the wear and tear on the body? Many of these fishers started at age 13 or 14, going out to sea. By the time they are in their 40s their bodies are pretty disabled. Is there any Workers' Compensation Program for long-time wear and tear?

MR. MACLEAN: That's a question not just in the fishing industry. If you're making rail cars or you are in construction, all of us over time are going to age, that makes it more difficult to heal when you become injured. I think what that speaks to is safety culture. If you create an environment where you don't have repetitive strain injuries, you create an environment where if someone needs to lift, you find ways to assist in the lifting, where you look at engineering solutions - this is what injury prevention is about.

I think your question actually extends to occupational disease because the things that we pay for today, there are new things that are happening today that we'll pay for tomorrow. It's not the money part of it, it's the actual toll on the people.

We have a legacy in Cape Breton, for example, from coal mining and from tar ponds and all the other things that go along with that but we need those things to be different in future generations. So it's not just wear and tear - I think we can do things about wear and tear if we work differently, but it's got to be comprehensive. Creating a safety culture is about thinking about all of the elements in the workplace and how you protect people.

Hearing protection would be another great example - it's not widely used perhaps, but we know that it has been in the news lately in terms of the veterans. We have hearing protection issues as well in Workers' Compensation. Would we like to prevent them? Absolutely, but it has got to start with the behaviour. So there are things we can do differently and we need to find ways to get to those.

MR. CHAIRMAN: Ms. Lohnes-Croft, you have 20 seconds.

MS. LOHNES-CROFT: What about retraining possibilities to get people off Workers' Compensation who have permanent injuries and whatnot, is that a possibility?

MR. MACLEAN: In 10 seconds or less - yes, it's a possibility. We do try to facilitate someone getting back to work.

MR. CHAIRMAN: Order. We'll have to move to the PC caucus. You have 14 minutes, Mr. Houston.

MR. HOUSTON: My question is for Mr. McKenna. I'm just wondering if the surcharge system is unfairly punitive to small business. I'm thinking that if you take the relationship between claim cost to payroll ratio and you compare that to others - it just seems like if you have a small payroll and you have an accident, you're going to get hit with a surcharge. I'm wondering how much time the board spends looking at how they reconcile that.

MR. MCKENNA: We've thought a great deal about that in the design of the program because you're exactly right in terms of that. That ratio can be quite different for a small business, but in order to be affected by the surcharge, your experience has to be very poor relative to your industry, and not just for one year. It needs to be for four years.

Because small employers have smaller workplaces, fewer people there, they don't tend to have injuries every year. While one serious claim can give a small employer a very high cost ratio for that year and perhaps the following year, that one serious claim is not likely to . . .

MR. HOUSTON: Because you feel like the four-year average mitigates that?

MR. MCKENNA: Exactly.

MR. HOUSTON: Is that something you hear much from small business owners about?

MR. MCKENNA: We certainly heard the concern when we first talked about the program. We've explained that in a number of forums to people and generally speaking, when people understand how the calculation actually works and see it in practice, that concern is mitigated.

MR. HOUSTON: Maybe I'll turn it over to Ms. Rowan - just the same kind of theme in a small business. I guess in a larger business with a larger payroll you can hide accidents or absorb them, let's say, but in a smaller payroll you can't. How do you feel about the experience rating system in terms of - I guess what I'm trying to get my head around is the size of your assessable payroll is not really an indication of how safe or unsafe your workplace is. I'm wondering how you kind of reconcile that. Is that something that you've thought about? Just because you have a big payroll doesn't mean you're in a safe place and that's kind of how some of the ratings seem to work.

MS. ROWAN: The experience rating program provides either - we call it a merit or a demerit for workplaces if their costs are higher or lower than their industry. So large companies can receive a merit of up to 30 per cent on their rate or a demerit of up to 60 per cent, and that is significantly lower for small businesses. While we've kept the same concept, the range is lower for small businesses because we know their payroll is smaller, the risk is different, and the frequency of injury would be different.

We've tried to build the program with that accommodation for small business. As Leo said, just as we tried to build the surcharge program, understanding the impact on small business, we did the same with the experience rating.

MR. HOUSTON: So the range is smaller for small business.

MS. ROWAN: Yes.

MR. HOUSTON: So, I guess in theory, it's easier or more likely that a small business would flip into either the merit or the demerit category because it's a tighter band?

MS. ROWAN: Actually the cost impact would be smaller, so the demerit for a small business would be smaller than a large business.

MR. HOUSTON: Okay, I may come back to that but in the interest of time, I'll stick with Ms. Rowan as well. I'm just wondering, is every licensed physician in the Province of Nova Scotia capable of providing information to the Workers' Compensation

Board? Do they have the knowledge and experience to provide the board the information that they would need, in theory?

MS. ROWAN: We don't license physicians and we don't test them. That is done by the medical schools and the College of Physicians and Surgeons; they are the ones who actually regulate that. We do do business with most family physicians and many specialists in the province. We believe that they are capable of many things - there are things they are better at than others. So there are some things that we would rely on a physician for, in terms of advice and information, and others that we might rely on other health professionals for. It's the same as we would do in our regular life - there are some things I would go to a specialist for, some things I would go to a family physician for. So depending on what information we require, we might go to a different health care professional.

MR. HOUSTON: I do have constituents who come into my office and maybe their family doctor diagnosed this and some other doctor that they've been sent to by the board says something else. In fact I have one case, and there's a couple like this, but one that's particularly troubling. He has three doctors who have determined he is not fit for work, due to a concussion. He was then sent to one doctor by the board who said he is.

I'm just wondering how something like that happens. If the board relies on the College of Physicians and Surgeons to license people and hold them to a standard, how is it that the board would say well these three opinions from the same professional body aren't relevant to us, but this one opinion is. How does that happen? In the balance of probabilities, you would think that maybe the three have some merit. How does a situation like that happen?

MS. ROWAN: In most cases where workers are injured, they seek health care from a physiotherapist, or from a physician. It's pretty straightforward and they go back to work. We do have a few cases that are more complex and with complexity comes a variety of health care professionals, generally. People end up getting a lot of tests, they get a lot of medical opinions and it's the work of the caseworker, with the support of the medical advisor who is also a physician, to weigh that medical evidence.

So they take the variety of opinions and information they have from a variety of different sources and weigh that to determine what part of the injury or did the injury arise out of the course of employment and so what would the Workers' Compensation Board actually be responsible for compensating. There's no question that there is complexity in all of that.

MR. HOUSTON: You mentioned it's the responsibility of the caseworker, alongside I think you said a medical advisor. The medical advisor is an employee of the board?

MS. ROWAN: Yes, medical advisors are contracted with us, yes.

MR. HOUSTON: How many are contracted with you? So they have their own practice and they also do some work for you guys. How many caseworkers would you have, roughly.

MS. ROWAN: We have about 80 caseworkers.

MR. HOUSTON: How many medical advisors would you have?

MS. ROWAN: We have eight.

MR. HOUSTON: How do you become a medical advisor to the board?

MS. ROWAN: We recruit medical advisors. You have to be a physician. We look for people who are interested in working part time, generally. We have a couple who are full time but predominantly we are interested in people who work part time. We advertise for them and do a recruitment process the same as we would for any other.

MR. HOUSTON: And how are they compensated?

MS. ROWAN: They are either employees or they are compensated by contract.

MR. HOUSTON: The medical advisors are contractors?

MS. ROWAN: Yes.

MR. HOUSTON: All eight of them?

MS. ROWAN: No, we have a couple who are employees who have been with us for a very long time and the rest are contracted.

MR. HOUSTON: And the contractors are compensated by case, or by time?

MS. ROWAN: By time.

MR. HOUSTON: So the medical advisor is getting these - in my constituent's case, I guess, is getting those three opinions and assessing them and coming up with their own opinion.

MS. ROWAN: The caseworker would collect all of the medical information on the file and the medical advisor would review that and provide an opinion, and then the caseworker would weigh that and make a decision. It's the caseworker's responsibility to make the decision in the end.

MR. HOUSTON: What percentage of cases end up in appeals? There's an appeals process - what percentage end up in appeals?

MS. ROWAN: It's a relatively small percentage. We probably have on claim in any one year about 10,000 people, active claims. We receive at the internal appeals level about 1,800 appeals - probably half of those from people who are in active case management as opposed to in a long-term benefit. The external appeals tribunal, I think it's about 900 they had last year.

MR. HOUSTON: So 10,000 claims - 1,800 end up in internal appeals - 18 per cent or whatever that is?

MS. ROWAN: About half of those are from the 10,000 claims. I'm ballparking, but we'd have about 900 appeals from people in active case management.

MR. HOUSTON: Have you done any analysis that looks at the number of cases that proceed to appeals? Can you track them to certain medical advisors?

MS. ROWAN: We do keep track by caseworker, by team where all the appeals come from, yes.

MR. HOUSTON: So the same medical advisor always works with the same caseworker - is that the team?

MS. ROWAN: Generally, yes.

MR. HOUSTON: I know Stuart talked a little bit about the can-do attitude and stuff - I'm just wondering how does it work internally if you find a team that has a high number of cases heading to appeals? Do you look at that? Do you talk to those people? What's the process internally? I see this all as being tied into prevention.

MS. ROWAN: Absolutely, we do review appeals that are heard at both the internal appeals level - the Workers' Compensation Appeals Tribunal and the Court of Appeal - and we try to learn from that. What happened through the appeal process that was different from what we had at the initial adjudication? Did they have the same information that we had? Often new information comes forward through the appeal process. What can we learn from the outcomes of those appeals? So yes, absolutely, we look at all of that at an organizational level and then at an individual team and caseworker level.

MR. HOUSTON: It seems like a high number going to appeals. Do you feel like that's a high number of cases that go to appeals?

MS. ROWAN: The appeal rate in Nova Scotia is higher than it is in most provinces. We have a system that provides support to injured workers. Most of the appeals come from injured workers and we have a system that provides them with support through that

process. I think it's just the way that it has always been. It is the way it has been the whole time I've been there. We talk to our colleagues across the country and they do remark that our levels are higher than others, but it is the system that we have.

MR. HOUSTON: Oh, I find that hard to accept, to be honest. If you're lagging behind the rest of the country, I would hope that you'd be looking at why. I just wonder, what is the turnover in the medical advisors? Do you become a medical advisor to the board and that's part of your gig for your working career or do they turnover? Do you get applicants every year? It seems like something that it's probably a lot like a politician - probably have a shelf life in terms of being a medical advisor. I'm wondering if the board would see it that way too. Except for Frank - Frank has no shelf life. (Laughter)

MR. CORBETT: I just don't know. I've been stale for a long time.

MS. ROWAN: I don't want to comment on your shelf life - where angels fear to tread. (Laughter) We do have turnover in our medical advisors. We have a couple of new ones that have started this year. We have a few that have been with us for a longer period of time and we have some that have been with us shorter. As with any employee base, we do have some turnover.

MR. HOUSTON: The reason I'm concerned about the number of cases going to appeals is that I would think for the most part by the time you get your appeal date, your benefits have been cut off or you've already been declined benefits. That's a pretty stressful thing for people, so we can't accept people unnecessarily having to rely on the appeals process to get what might be rightly theirs. That's a big concern for me because I believe that maybe happens a bit too much, particularly when you compare it to other parts of Canada. I would hope that you would be taking a serious look at where . . .

MR. CHAIRMAN: Order. Time has expired for questioning from the PC caucus. We'll move back to the NDP caucus for 14 minutes. Mr. Wilson.

HON. DAVID WILSON: Thank you, Mr. Chairman, and thank you for coming today. I'm going to kind of stay on the same line of questioning around casework and active claims. You mentioned about 10,000 active claims now and about 80 caseworkers. When I was trying to do the math on how many claims per caseworker, there are quite a few, and going through some of the material that was provided to committee members I noticed there were 18 vacancies currently. A number of them - I tried to find it but couldn't find it - read that there were some caseworker vacancies in your department now.

Is that a manageable caseload for these caseworkers, to have that many claims, especially where we do see a high volume of them being appealed? That's usually when my office, over the last 11 years, has been contacted - when there are those delays or they have been denied and they are concerned, they don't have an income. Is that a manageable caseload or is that something you are trying to address?

MS. ROWAN: This is something that we monitor regularly so when you look at the new claims that come in in a year, in 2013 we had about 6,000 new claims, time-loss claims. In about 80 per cent of those the people returned to work within 10 weeks, so most are pretty straightforward; they would need some support from us but relatively limited. The remaining 20 per cent, which is about 1,000 claims a year, are ones that are more complex. Those claims, those workers and workplace, would get a more senior caseworker.

When you look at the numbers, while we have a large number overall, they are spread over the complexity; some need more effort than others. To that end, we think we have the right caseworker-to-claim volume ratio, but it is something that we monitor regularly. We monitor it on an organizational level, on a team level - does one unit have more claims than others because the claims volumes go up and down - and then at an individual caseworker level. We know the level of service that you can provide is affected by the volume of work you have before you, so we monitor that pretty carefully.

MR. DAVID WILSON: By no means, I know when individuals call my office it's usually because they haven't heard anything or there's some kind of delay. For the record I want to say that our contact person, Mr. MacInnis, has been very active in getting back to us and taking on our cases, as I think the government relations point person. I know he's in the audience upstairs but I must say he has been very responsive when our office calls.

Hopefully you will be looking at filling those positions, or are you holding off filling those positions over the next year or so? I know there's a number of vacancies that usually happen but are you looking at filling some of those vacancies to make sure that people are getting the response they need, as quickly as possible?

MS. ROWAN: We are generally at full complement. We do have turnover within the organization so at any one time we can have vacant spots but we're pretty active in getting them filled. It's generally a point-in-time thing so we don't have any large vacancy right now.

MR. DAVID WILSON: I just want to turn now to something Mr. MacLean mentioned in your previous answer to my colleague. It was around looking at emerging issues across the country when it comes to issues and having to maybe look at board policies compared to legislation. I know in my time here, changing legislation does take time, but policy can be changed quite quickly to adapt.

In my background, for example, as a paramedic there is more recent awareness around PTSD, around military personnel. Of course those areas or those professions that find that this is emerging as a serious issue - EMS, fire, police, correctional services - what's the board policy on PTSD? Do you recognize that as a workplace injury for workers here in Nova Scotia?

MR. MACLEAN: PTSD is typically associated - or a lot of times associated - with an acute reaction to a traumatic event. We would compensate a worker in a circumstance where Post Traumatic Stress Disorder is arising out of the course of employment. If something happens to that individual - like say for example, a prison riot or different things can take place and then they can't work, then that is certainly compensable - our Act contemplates for that. What the Act doesn't contemplate for is the gradual onset stress that takes place. I don't want to speculate on how that could manifest itself, but recently over the course of the last year, we've been out actually consulting with our stakeholders on stress, on the trend.

In B.C. there were some changes to their legislation, which brought a bunch of questions up to the point that now there is a Court of Appeal decision that we're waiting to hear on in the next number of months, which will give us some more clarity on how stress is compensated in Nova Scotia.

The policy was the consultation and it was really meant to give the board's position; how does the board see the issues? So we had input from the labour community, from the employer community and the injured worker community, and the board has considered those things. That decision will take place in the next couple of months and then that conversation will be continuing.

MR. DAVID WILSON: Are you aware of any workers currently having a claim under PTSD in the province? I know you can't give specifics but . . .

MR. MACLEAN: Yes, I am aware of that.

MR. DAVID WILSON: So there are?

MR. MACLEAN: Yes.

MR. DAVID WILSON: I read the policy and tried to make sure I understood and I think your interpretation of it is correct - it's those acute reactions of a traumatic event. I give an example of, say, maybe a bus accident and there are many casualties. That can play on emergency personnel. It's accumulative stress of call after call after call.

My own personal experience of that - it's not an easy thing to deal with death and dying, and a lot of EMS, fire, police, deal with that on an ongoing basis. I'm concerned that we're not in a position that we can address that. Hopefully, I'll keep the pressure on. You mentioned over the next couple of months you're looking at maybe bringing a policy change forward or is it something that you think we need legislative changes to address?

MR. MACLEAN: There is a decision before the Court of Appeal where we'll get clarity. Once that decision comes back, that will provide an interpretation by the courts of what our law says - what the decision was, and what that would do - and that will inform

decision-making going forward. It's not just Nova Scotia, but other jurisdictions in Canada are looking to this decision through our Court of Appeal, which will give us some clarity.

Again, the Act is complicated. These situations are complicated. Is it multiple acute reactions or is it just "I don't like my boss"? Those are two different things, and we need clarity for our adjudicators and our case managers. That's what the policy does. It gives them the how so we're consistent.

As Shelley mentioned, there are a lot of people making decisions and we need consistency, and we need to ensure that injured workers get everything that they're entitled to. That's important to us, just like it's important that we don't pay for things that are not contemplated under the Act. We're looking for clarity out of the Court of Appeal and then our board will take that decision and look at the meaning of what that means to our policy, and that will be on the agenda for a conversation.

MR. DAVID WILSON: Is there any timeline on the decision from the Court of Appeal?

MR. MACLEAN: There is. Shelley, do you know the date?

MS. ROWAN: The case will be heard in December and then it will take the court, I suspect, a number of months to actually render the decision. We're a few months away, I suspect.

MR. DAVID WILSON: You mentioned that you are aware of individuals, workers in Nova Scotia, having a claim open or being paid a claim through that. Are you aware of any that have been denied a claim because of it not falling under the policy of that acute reaction of a current event?

MR. MACLEAN: I can't really comment on whether we have claims that are open or have been denied. I have no doubt that there would be some that would be denied or that had been paid. We have such a wide diversity of different problems that manifest themselves that arise out of the course of employment where people have had trauma in their lives and stress that manifests itself in many different ways.

Claims are complex by nature. A lot of times you may have a soft tissue injury, you've got a health person who feels great and they hurt themselves, they hurt their bicep or whatever and then that gets better and they go right back to work.

Oftentimes these claims are complex in that they call it the biopsychosocial model, so there's the biology on it but there's also the psychological element and there are also the questions of, is there a job to go back to, or what does it feel like for an injured worker to come back into the workplace and not be able to do their job? You have to do something less than your job and there's peer pressure. It's complicated in all these circumstances.

We'll see a whole range of these things and I think it would be very difficult to comment at a very high level, to say have we turned one down or have we made one? They are all different and need to be adjudicated on the merits of the individual case.

MR. DAVID WILSON: I respect that but I think in my first question when I asked are there any claims, you were quick to say yes.

MR. MACLEAN: Well I know some individuals who are being compensated for that. I can think of one fisherman, for example, who lost family members when their boat overturned. I can't speak of which claim that is but I know for a fact that that person suffers from post-traumatic stress disorder and they are compensated by our organization. So I know that it is, yes, that's why I was quick to answer that question.

MR. DAVID WILSON: Okay, thank you. I know you also mentioned, and I wrote this down - occupational disease. Is that a defined term within the legislation or is it a defined term within policy or is that just something that - I know you were trying to give a good answer to a question.

MR. MACLEAN: Well the answer is yes to your question, it is defined but it's also defined in policy. We have policies on everything from what is a presumptive clause on cancers, as an example, or what about presumptive in terms of lung function. There are all the things that Mr. Corbett referred to earlier that have affected coal miners. There are special provisions of the legislation that deal with that, there's also then governing policy which would dictate how someone gets tested, how we would actually pay those benefits.

Industrial disease, on its face, is a condition that takes place over a long period of time. You wouldn't call it industrial disease if a gun went off in somebody's ear now doesn't work, that's not industrial disease. Industrial disease is when they can't hear after being subjected to machine noise over a long period of time. That can be lung function, it can be cancers, it can be hearing loss - all those different types of things. So there's lots of different types of things that we look at that we have to deal with. We have a specialized adjudication unit that deals with industrial disease claims, because of the complexity of it. These are the things that we need to prevent for our future, as I mentioned earlier.

MR. DAVID WILSON: I appreciate that and I would say that I would think an individual who, over time, has been exposed to some of the situations that EMS, fire and police have seen could fall under "occupational disease". I hope over the next little while that we, as a province, can be more proactive.

I understand that precedent is important when you change policy but I think that doing the right thing and supporting workers that you . . .

MR. CHAIRMAN: Order, time has elapsed for questioning from the NDP caucus. We'll move over to the Liberal caucus for the final questions and 14 minutes.

Mr. Maguire.

MR. BRENDAN MAGUIRE: Thank you very much. I want to thank all of you for appearing before us today. For those of us who have worked in skilled labour, we have a very unique perspective when we drive by a job site. I find myself scanning job sites, looking for safety infractions, whether it is an improperly sloped trench or roofers without the proper harnesses.

I want to switch gears and talk about what you guys are doing on the preventive side. We see a lot of fly-by-night companies that appear - Spring, summer, winter, Fall, they are always appearing, whether it is a roofing or a framing or a landscaping company. What are we doing to properly educate the employees? In my riding what I'll see is Jason, who is a framer, he'll work for XYZ company this year and then that company goes under and he goes to the next one. So what are we doing to ensure that they know what their health and safety rights are with these companies?

MR. MACLEAN: First of all, I would like to say anecdotally, we understand acutely the impact of this. You don't have to look back further than the Fraser fatality off a building that took place last late Fall just before Christmas, where it appears there were problems in terms of training and fall restraint, et cetera. That's under investigation so I don't know the intimate details of that, but I can tell you that the construction sector treats this particular issue very seriously. They're passionate about the training that they need to do. The new fall restraint regulations show that government actually treats this as a priority as well.

So there are new regulations in place. There is a role for the safety association, particularly in construction where they do fall restraint training and that's one of their specialties - that people get the mandatory training that they need to operate at height and recognize that they need to be tied off, when that is and when that isn't.

We have to be careful, those people driving by. We're very happy that you would see something and report it to the Department of Labour and Advanced Education, but oftentimes they'll see the harness, but they can't see the rope and they are actually attached is what the inspectors find when they get there. Are they at the level of compliance in the sector that we would probably like to see? No, I would say that there is always room for improvement. You just have to look to the fatalities that have taken place in that sector any time someone falls from height.

I would want to make the point that this is not something that is specific to the construction sector. Anybody who works at height would be subject to those same regulations if you're going to be working - so people cleaning windows could be the same thing. In fact, we had a fatality in the fishing sector, which was off of a swordfish tower last

year, so we see that those things can happen. I think that there is a lot that is being done in education through the safety associations.

There is also something called the Internal Responsibility System. That is something that I think we need to push for all Nova Scotians to understand. It's one of the things we talk about when we get in front of public bodies and groups of people, and that is, people have a right to a safe workplace. That means that there is a role for the employer; there is also a role for the worker.

The three rights under the Internal Responsibility System are: the right to know, the right to participate, and then probably most importantly, the right to refuse unsafe work. If people get to a place where they understand that there is no harness and they expect me to work up there without the harness - 10 stories up and go out and do this type of activity - they should refuse to do the work. The right to refuse unsafe work is something that we need to get across to our young people through education, through school. That's what safety culture is about - making different decisions.

MR. MAGUIRE: I appreciate that. The places that I've worked, I've been lucky enough to take some of these courses and they're very useful and helpful, and you do learn a lot. My problem with that is something that I think we see a little bit of, especially when we go back to these fly-by-night companies - if you refuse, then you're out of a job.

One of the things that I wanted to ask you about is repeat offenders. There are employers that are out there that are obviously repeat offenders. What are we doing to deter this?

MR. MACLEAN: That's a great question. In fact, there are a couple of points I would say about this. Number one, enforcement lies with the Department of Labour and Advanced Education. So the big part of what they're doing is they've recently added 17 new resources further to the Workplace Safety Strategy. That means that rather than just have inspections that take place when someone drives by and they're constantly running around looking for the complaints, they're going to have the ability to be proactively . . .

MR. MAGUIRE: Spot checks.

MR. MACLEAN: Spot checks, and that means that they're going to show up in industries beyond just fall from height, which a lot of us see, which generates a lot of complaints. This is going to allow them to be proactive. So I think, number one, the proactivity will be important, the new resources are important, and I think the government's new regulations around fall restraint are important - all of those things. I think they're taking a lot of steps towards making sure that we have the conditions for success. The safety association also - Bruce Collins who is here today - would say that's a key priority for their sector as well in their safety association in their training.

MR. MAGUIRE: Has there been any thought of tying it to - and you may already be doing this so that's why I'm asking the question - about tying it to the Workers' Compensation Board premiums, so that repeat offenders would have to pay a higher premium?

MR. MACLEAN: We don't have any mechanism today that talks about infractions. In other words, you have an infraction with the Department of Labour and Advanced Education - today with the way it's actually done, they pay penalties and fines. Those penalties and fines previously went to the accident fund but now there's a recent change with the government that has basically said that's going to go towards prevention and education and health and safety awareness. Again, I think that's another positive use of that money.

We don't currently have anything in our experience-rating model that looks at infractions, it's based on costs. So if your costs are high, you pay higher premiums; if your costs come low, you pay lower premiums. That happens at both the industry and at the company level.

MR. MAGUIRE: My final question because I know everybody wants to get out of here - what exactly are you doing for repeat offenders? How do we prevent repeat offenders? I know there's a process but what are we doing to stop these repeat offenders?

MR. MACLEAN: I think number one, I mentioned that it is labour. I think the new prosecutor who is dedicated for Occupational Health and Safety to me is another positive sign. If you have somebody who is doing something over and over again, the fines need to be punitive. To me, it's fundamentally unacceptable for that and perhaps we need a prosecution in this province to send a message that this type of behaviour is unacceptable if it continues to happen over and over again.

MR. MAGUIRE: Thank you very much.

MR. CHAIRMAN: Thank you. I just want to give Mr. MacLean a few minutes to make some closing remarks to the committee.

MR. MACLEAN: First of all, I'd just like to say that we really appreciate being here. To my colleagues on the safety associations upstairs, I know that the content didn't lend itself that way but we have strong partners in delivering the Workplace Safety Strategy, we have a strong partnership with the Department of Labour and Advanced Education - everyone is stepping up. To me, if we want to see a different future in Nova Scotia, the best injury is the one that doesn't take place so we need to continue to have a resolve to focus on that but that does not diminish the importance of us providing excellent service and doing our best to make sure that injured workers get the benefits they are entitled to and the support they need to get back to the workplace and be successful with their families, to the life that they deserve.

Again, the progress is measurable, it's real, but there's still a lot of work that needs to be done. There's a role for government as well in all that, as an employer and also as the regulator, we would hope to continue to have the positive movement and success that we're seeing.

I guess I'll just leave it at that. We're very proud of our organization and we're trying to make a difference. Thank you for today.

MR. CHAIRMAN: Thank you very much and thank you to all the witnesses for coming in here for the Public Accounts Committee.

Our next committee meeting will be September 24th, on the Bluenose II Restoration Project, with Mr. Dave Darrow appearing as a witness. Following that meeting we'll have an in camera briefing regarding CNS advertising, procurement and performance.

We now stand adjourned.

[The committee adjourned at 10:44 a.m.]